

**PLANNING COMMISSION MINUTES OF DECEMBER 8, 2008**

**2008-0881:** Appeal by a neighbor of a Special Development Permit to allow the sale of beer and wine at an existing gas station and convenience store. **Valero** [Applicant] **Mohan S and Hardev K Dhanota** [Owner]: Application for a property located at **698 N Fair Oaks Avenue** (at Caliente Dr) in a C-1/PD (Neighborhood Business/Planned Development) Zoning District. (APN: 205-01-010) LG

**Gerri Caruso**, Principal Planner, presented the staff report. She said staff is recommending the Commission deny the appeal and uphold the decision of the Administrative Hearing Officer approving the Special Development Permit.

**Comm. Sulser** said his understanding of the City code is there is not supposed to be an over concentration of alcohol outlets within a certain number of feet from the proposed use. He asked staff the definition of an alcohol outlet. Ms. Caruso said the definition would be retail sales of alcohol for off-site consumption, confirming that a restaurant would not be considered an alcohol outlet because the alcohol sales would be for on-site consumption.

**Comm. Klein** referred to attachment E of the report. He asked if staff checked the approximate distances of the seven other sites that sell alcohol in the area to see if the distances indicated in the citizen' letters are accurate adding that the seven sites listed are a mixture of restaurants and retail locations. Ms. Caruso said the report acknowledges that the distances are not met and that other conditions contributed to the approval. Comm. Klein said that staff indicates there are three retail locations and the letters in attachment E show, four retail locations within 1000 feet. Comm. Klein further discussed with staff the concentration of sites that sell alcohol within a 1000-foot radius of this site. Ms. Caruso said that she could not confirm the specific distances between the proposed site and the seven nearby sites.

**Vice Chair Chang opened the public hearing.**

**Janet Ayres**, appellant, said she lives approximately 500 feet from the proposed site and the other establishments mentioned in attachment E. She said the new license would allow a fifth retail establishment within a 1000-foot radius in the neighborhood. She said many signatures from neighbors opposing this application have been provided to the Commission. She said there are two elementary schools nearby and children walk through the area near the proposed site. She said she feels it would be inappropriate to add another retail establishment that sells alcoholic beverages, commenting that there have been loitering problems in the past which required more Public Safety presence. She

thanked the Commission for their time and asked the Commission to deny the application as a protection to neighboring residents and school children in the area.

**Comm. Hungerford** discussed the findings that the Commission has to make to grant the appeal confirming with Ms. Ayres that her reasons for the appeal include that if the application were granted that the action would adversely affect people working or residing in the area. She said that specifically the school children who walk through this area are affected as there are loitering problems in an open lot behind this gas station and sometimes people loiter and drink alcohol in the lot. She said there are also foreclosed homes in the area that have been broken in to and occupied. She said adding more alcohol to the situation would not be helpful.

**Rick Cole**, representing the applicant, said he agrees with staff's recommendation to approve the Special Development Permit. He said he is available to answer any questions the Commission may have.

**Comm. Sulser** said there has been concern expressed about the clustering of alcohol sales in the area and asked Mr. Cole to comment about the concern. Mr. Cole said that the ABC (Alcoholic Beverage Control) uses the census track to determine how many licenses are allowed in an area and according to the ABC this area can have another license. Comm. Sulser said that the City of Sunnyvale requirements allow a maximum concentration of four locations to sell off-site alcohol within a 1000-foot radius. Mr. Cole said that the ABC requirements are different than the City of Sunnyvale requirements. **Kathryn Berry**, Senior Assistant City Attorney, said the City has more restrictive requirements, and this is pursuant to a new ordinance for gas stations allowing the sale of packaged goods. She said, notwithstanding what the ABC might require, that it would be up to the Commission whether to make an exception for this site. Comm. Sulser asked Mr. Cole if he had a chance to look at attachment E from the nearby residents. Mr. Cole said yes and that one of the Fair Oaks sites listed is more than a 1000 feet away. He said he only sees three locations within the 1000-foot radius.

**Comm. McKenna** asked why the applicant is seeking this license. Mr. Cole said that the applicant is seeking the license for the convenience for his customers who have requested that alcohol be sold, commenting that the amount of beer he would be allowed to sell would be restricted.

**Ms. Ayres** said she believes that there are already four establishments in this area that have retail off-site sales which are the Seven Eleven, Fiesta, Chavez

market, and the Liquor and Food. She said most of the establishments are within 200 feet of the proposed site and one is about 500 feet from the site.

**Comm. Sulser** asked Ms. Ayres what type of establishment the “Fiesta” is. Ms. Ayres said it is a liquor store with some food items.

**Mr. Cole** said he has been transferring liquor licenses for over 40 years and commented that the letters of protest appear to be one letter prepared that was circulated through the neighborhood for signatures. He said it could be that the competition does not want another store there. He said he does not think the ability to sell alcohol in this small store is going to affect anyone except those who want to purchase it.

**Vice Chair Chang** closed the public hearing.

**Comm. Hungerford** moved to grant the appeal which would result in the denial of the ability to sell beer and wine at this site. **Comm. McKenna** seconded the motion.

**Comm. Hungerford** said, as explained by staff and the code, that there are rules about how close together establishments can be that sell beer and wine. He explained the findings that the Commission must make to approve the Special Development Permit, as shown on page 4 of the report. The proposed project does not meet all of the findings so to approve this request additional findings must be made. He said he could not make the additional findings as he thinks this project would “adversely affect persons residing or working in surrounding areas” as there are already some problems in this area. He said he thinks there are enough beer and wine sales in this area as it is.

**Comm. McKenna** said she agrees with Comm. Hungerford’s reasoning. She said she has been in this neighborhood and thinks the restaurants should be included when looking at this issue. She said it is important to hear from those who live in the neighborhood and thinks if she lived in this neighborhood she would be concerned about protecting the children in the neighborhood and the feeling of safety.

**Comm. Klein** said he would be supporting the motion. He said approximately a year ago when this ordinance was created one of the concerns was the concentration of retail establishments for alcohol sales in a location. He said with this project there are multiple establishments that sell alcohol and combined with the resident’s views into consideration, the ongoing affects on the community, he cannot in good conscience support the request. He said he thinks the appeal makes sense.

**Comm. Travis** said he would be supporting the motion. He said there are already four locations nearby that provide retail sales of alcohol and, though he understands the applicant's desire to sell alcohol, he thinks the other locations provide adequate convenience to customers to purchase alcohol.

**Comm. Sulser** said he would be supporting the motion. He said that given what is already available at the nearby establishments that he thinks approving this application would result in one too many establishments selling alcohol. He said if there was not the existing concentration he would probably have supported the request.

**Vice Chair Chang** said he would be supporting the motion. He discussed the ordinance, the findings, and the concentration of existing retail alcohol sales establishments. He said considering the factors and the concerns of the nearby residents that he would be supporting the motion.

**ACTION: Comm. Hungerford made a motion on 2008-0881 to grant the appeal and deny the Special Development Permit. Comm. McKenna seconded. Motion carried, 6-0, with Chair Rowe absent.**

**APPEAL OPTIONS: This action is final unless appealed to City Council no later than December 23, 2008.**