



CITY OF HAYWARD AGENDA REPORT

Meeting Date 12/16/04
Agenda Item 3

TO: Planning Commission

FROM: Erik J. Pearson, AICP, Associate Planner

SUBJECT: **Use Permit No. PL-2004-0410 and Variance No. PL-2004-0671** – Request to Modify Use Permit/Variance 86-62 and Remodel the KFC Restaurant Including a Variance to Allow a Trellis in a Front Yard – Kathy Brady for KFC - Rancatore (Applicant)/ Harman Development Incorporated (Owner)

The Property is Located at 1299 W. Tennyson Road, at the Corner of Patrick Avenue, in a Neighborhood Commercial (CN) Zoning District

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15302 *Replacement or Reconstruction*, and Section 15305 *Minor Alterations in Land Use Limitations*;
2. Approve the modification of the use permit, subject to the attached findings and conditions; and
3. Approve the setback variance, subject to the attached findings and conditions.

DISCUSSION

In 1987, the City Council approved a use permit and variance to construct the drive-through restaurant. The variance allowed two roof signs. On June 10, 2004 the Planning Commission approved a variance application to allow two wall signs for the KFC restaurant. A variance was required to install the signs above the roof of the building and to use 48-inch-high logo signs where 24-inch high logos are permitted. The approved signs have not been installed. Although no longer considered "roof" signs, the need for the already-approved sign variance remains for the oversized 48-inch-high logo signs that would be utilized with the new design. The applicant now proposes a building remodel requiring a modification to the use permit; a staff recommendation for an enhanced trellis at the drive-thru window would require approval of a setback variance.

The building has a Spanish architectural theme that is encouraged by the Harder-Tennyson Neighborhood Plan. The building has a substantial overhang with a mansard roof. The proposal

would remove the mansard roof and accentuate the parapet with three mission-style bell-shaped curves. The proposed design for the restaurant building would retain the columns and tile mosaics on all sides. The design also includes a tower at the southwest corner of the building. The tower would contain the two logo signs approved by the Planning Commission in June. The tower would also have Mission tile roofing, using tiles to be saved from the mansard roof. The proposal includes a contrasting cornice to accent the top of the parapet wall and a "banded grid" consisting of plaster with score lines wrapping the upper portion of the building.

Staff is recommending, through conditions of approval, five design enhancements that would make the restaurant more compatible with the Spanish design theme.

1. The "banded grid" at the top of the parapet wall lacks sufficient visual interest and would not be compatible with the Spanish theme. Staff recommends the use of ceramic or similar tiles where diamond shapes on shown on the proposed elevations.
2. The proposed design includes awnings made of standing seam metal. Staff recommends, as a condition of approval, that a different metal awning that would be more durable and more compatible with the Spanish design theme be used.
3. The monument sign has no decorative features to complement the building architecture. Staff recommends a new monument sign be required to incorporate design elements from the building.
4. The roof overhang over the drive thru window would be removed. The applicant proposes to replace it with a wooden trellis attached to and extending approximately 5 feet from the wall of the building. In staff's opinion, the proposed trellis would be too small to soften the visual impact of the drive-thru operation from the street and should be lengthened to extend over the driveway, supported by posts in the planter. Vines could be planted to grow on the structure to further screen the drive-through window. This larger trellis would extend into the required landscape screening area, at 9 feet from the property line where 15 feet is required, and would require a variance. While the Zoning Ordinance requires a 15-foot landscape strip and building setback between the street and the drive-thru operation, the site is developed with only 10 feet of landscaping between the sidewalk and the drive-thru lane. Staff recommends approval of a variance so that the trellis may sufficiently screen the drive-through operation as required by the Zoning Ordinance and City design guidelines.
5. The applicant has submitted an attractive color palate for the building. However, there should be more contrast between the base wall color (Colony Buff) and the color of the tower and the portal elements (Irish Crème). Staff is recommending that a revised color scheme be submitted with the building permit application.

In addition, there are two trash enclosures – one with masonry walls and one with chain-link fencing adjacent to each other. In order to meet current ordinance and clean water requirements a new covered trash enclosure constructed with walls matching the building is required.

When the Commission approved the sign variance in June of this year, several conditions of approval were included to address concerns raised by neighbors. These conditions, which have

been carried forward to this permit, include security cameras for the parking lot, a lighting plan and chains across the driveways to keep people out of the parking lot during non-business hours.

VARIANCE

Approval of a variance requires a determination that the property in question has special conditions or circumstances peculiar to the property involved that do not apply generally to property in the same district. The unusual condition about the property is the proximity of the existing drive-through lane to the street that warrants the recommended trellis structure. The location of the building and the drive-up window are impediments to installing a screening trellis that is consistent with setback requirement. The trellis is necessary for the project to be consistent with the intent of the minimum design and performance standards to screen queuing vehicles.

Representatives for KFC have expressed security concerns regarding the trellis, however, the trellis would face a major arterial and there are other means of addressing security issues such as lighting and surveillance cameras in the drive through area.

ENVIRONMENTAL REVIEW

The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15302, *Replacement or Reconstruction*, and Section 15305, *Minor Alterations in Land Use Limitations*.

PUBLIC NOTICE

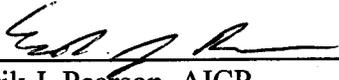
On July 29, 2004, an Official Notice was sent to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Notice was also provided to the Tennyson-Alquire Homeowners Association, Harder-Tennyson Community Organization, South Hayward Neighborhood Group and the Harder-Tennyson Neighborhood Task Force. The Referral Notice provided an opportunity for persons to comment on the project. Staff did not receive any comments regarding the project.

On December 6, 2004, a Notice of Public Hearing for the Planning Commission meeting was mailed. In addition, a public notice sign was placed at the site prior to the Public Hearing to help notify neighbors and interested parties residing outside the 300-foot radius.

CONCLUSION

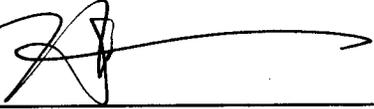
The proposed redesign of the building, as conditioned, meets the City's Design Guidelines and the intent of the Harder-Tennyson Neighborhood Plan. The proposed project is also consistent with adopted land use policies of the General Plan. The project meets all applicable requirements of the Zoning Ordinance and other applicable ordinances and will be compatible with the surrounding neighborhood. Staff recommends that the Use Permit for the building remodel and the Variance for the trellis setback be approved.

Prepared by:



Erik J. Pearson, AICP
Associate Planner

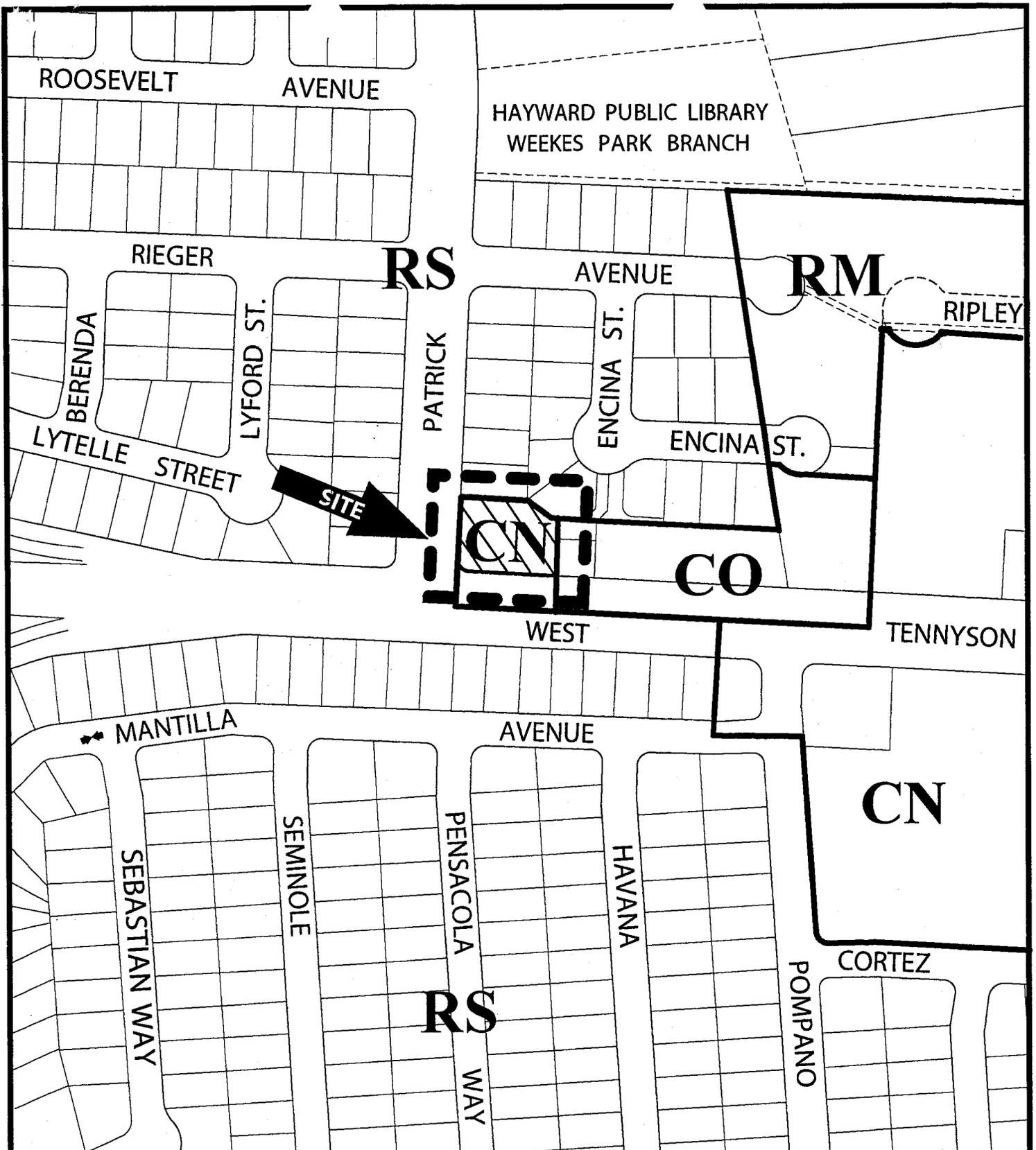
Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area & Zoning Map
- B. Findings for Approval of Use Permit Modification
- C. Findings for Approval of Variance
- D. Conditions of Approval for Use Permit Modification
- E. Conditions of Approval for Variance
Plans



Area & Zoning Map

PL-2004-0410 UP

Address: 1299 West Tennyson Road

Applicant: Kathy Brady

Owner: Harman Development Inc.

CN-Neighborhood Commercial

CO-Commercial Office

RM-Medium Density Residential RMB 3.5, RMB 4

RS-Single-Family Residential,RSB4,RSB6



FINDINGS FOR APPROVAL

USE PERMIT APPLICATION NO. PL-2004-0410

Kathy Brady for KFC - Rancatore (Applicant);

Harman Development Incorporated (Owner)

1299 W. Tennyson Road

Request to Modify Use Permit/Variance 86-62 and Remodel the KFC Restaurant.

General

- A. The approval of Use Permit application No. PL-2004-0410, as conditioned, will have no significant impact on the environment, cumulative or otherwise. The project reflects the City's independent judgment, and the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Sections 15302 of the CEQA Guidelines (*Replacement or Reconstruction*).

Use Permit

- B. The proposed use is desirable for the public convenience or welfare in that the remodel will make the existing restaurant a more attractive part of the neighborhood.
- C. The proposed use will not impair the character and integrity of the zoning district and surrounding area in that the conditions imposed on the operation of the restaurant will ensure that the use will have no significant impact on surrounding properties.
- D. The proposed use will not be detrimental to the public health, safety, or general welfare in that the use, with the new security measures, will actually improve health and safety in the area.
- E. The proposed restaurant use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

FINDINGS FOR APPROVAL

**VARIANCE APPLICATION NO. PL-2004-0671
Kathy Brady for KFC - Rancatore (Applicant);
Harman Development Incorporated (Owner)
1299 W. Tennyson Road**

Request to for a Variance to Allow a Trellis in a Front Yard

General

- F. The approval of Use Permit application No. PL-2004-0410, as conditioned, will have no significant impact on the environment, cumulative or otherwise. The project reflects the City's independent judgment, and the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Sections 15305 of the CEQA Guidelines (*Minor Alterations in Land Use Limitations*).

Variance

- G. There are special conditions or circumstances peculiar to the property involved such as the proximity of the existing drive-through lane to the street that warrant the recommended trellis structure to bring the property into conformance with City design guidelines.
- H. Strict application of the Zoning Ordinance would deprive the applicant of rights enjoyed by others in the same district in that other drive-in establishments do not have non-conforming sites that limit their ability to make architectural modifications.
- I. The granting of the variance would not grant a special privilege inconsistent with the limitations on other properties in the same district in that the variance attempts to mitigate a situation which does not conform to the City's design guidelines and in that any new drive-through restaurant would be designed to conform to contemporary standards.

CONDITIONS OF APPROVAL

USE PERMIT APPLICATION NO. PL-2004-0410
Kathy Brady for KFC - Rancatore (Applicant);
Harman Development Incorporated (Owner)
1299 W. Tennyson Road

Request to Modify Use Permit/Variance 86-62 and Remodel the KFC Restaurant.

General:

1. All conditions of approval from Use Permit and Variance 86-62 shall remain in full force and effect except where superceded herein.
2. Application No. PL-2004-0410 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a business operations have commenced in accordance with all applicable conditions of approval, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the above date.
3. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
4. Any proposal for alterations to the proposed site plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
5. Prior to a final inspection or occupancy of the building, all improvements indicated on Exhibit "A", and all conditions of approval shall be completed to the satisfaction of the Planning Director.
6. A copy of the conditions of approval for the use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.
7. Prior to application for a Building Permit, the following changes shall be made to the plans:
 - a) A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
 - b) A trellis shall be included that provides an attractive screening of the drive-through area. The trellis design is subject to approval by the Planning Director.
 - c) The metal awnings shall be a material other than standing seam metal. A fine metal screen material is recommended.
 - d) Details shall be included that show the new signs to be recessed into the walls.
 - e) A note shall be included on the plans stating that all signs will be non-illuminated while the business is closed.

- f) A note shall be included on the plans stating that the existing roof signs will be removed prior to the installation of the new signs.
 - g) Plans shall include a lighting plan prepared by a qualified professional to show how fixtures will be modified or replaced so that light and or glare are not cast upon adjacent properties. Details of decorative fixtures shall be included. Both existing and proposed photometric plans must be submitted. The parking lot should be lighted to a minimum of 1 candle-foot.
 - h) Plans shall include details of the sign to be posted in the drive through area asking patrons to keep noise levels to a minimum.
 - i) Plans shall include details of the surveillance cameras to be installed to monitor the exterior of the premises on a 24-hour basis.
 - j) Plans shall indicate the use of ceramic or similar tiles where diamond shapes are shown on the banded grid on the elevations.
 - k) Plans shall include details for a new covered trash enclosure to be constructed with walls matching the building.
8. Surveillance cameras shall monitor outdoor activity on the premises 24 hours a day.
9. The property owner shall maintain in good repair all fencing, walls, buildings, lighting, parking areas and driveways. The premises shall be kept clean and in an orderly fashion.
10. Prior to final inspection all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.
11. Violation of these conditions or requirements may result in the City of Hayward instituting a revocation hearing before the Planning Commission.

Landscaping:

12. Detailed landscaping and irrigation plans shall be prepared by a licensed landscape architect and submitted for review and approval by the City Landscape Architect. The following details must be addressed on the plans:
- a) Repair/Restore the existing automatic irrigation system to good working condition.
 - b) Existing 'turf' areas along the frontage are not per the approved plan. If you intend to keep those areas as turf, provide a water use chart for the site. The planter areas, including the 'turf' areas need to be restored to an even, smooth surface with no holes or 'ponds'.
 - c) Since the existing landscaping does not match the previously approved landscape plan, provide a landscape plan that shows the existing plant material and shows new living groundcover in bare dirt areas.
 - d) Provide Flowering Pear street trees in the parkway strip between the curb and sidewalk along Tennyson Street. Use the City Street Tree detail for installation.
 - e) Provide vines on the north and northwest property line walls and trash enclosure walls. Provide shrubs along the north and northeast planter areas.

- f) Remove black plastic and volunteer palm trees from all planter areas. Provide pre-emergent and a 2" layer of bark in all planter areas for weed control. Pre-emergent must be reapplied as necessary each year per the manufacturer's directions.
 - g) Show all signs, trash containers and utility boxes on the plans that conflict with the landscaping. Show how the landscaping will work with the signage. The accessible parking area does not seem to work and the bicycle area is missing the bike rack and designation signage.
 - h) Seventeen (17) trees were shown on the original approved plan. Only eight (8) trees still exist on site. Replace the missing trees. Street trees are to be 24-inch box trees minimum. Interior trees may be 15 gallon trees.
- 13. Landscape plans must be submitted to the City Landscape Architect for review and approval prior to any demolition or installation work.
 - 14. Landscaping shall be installed per the approved plans. A Certificate of Substantial Completion and irrigation Schedule shall be submitted by the project landscape architect prior to approval of occupancy or a final inspection unless otherwise required to be deferred by the City.
 - 15. Landscaping shall be maintained in a healthy, weed-free condition at all times. The owner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% die-back) shall be replaced within ten days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected by, and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to Municipal Code.

Engineering:

- 16. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site in order to limit the entry of pollutants into storm water runoff to the maximum extent practicable. It is highly recommended that a grassy swale be installed to intercept the surface runoff.
- 17. Any broken sidewalk that creates tripping hazard shall be removed and replaced

Solid Waste & Recycling:

- 18. A Construction and Demolition Debris Recycling Statement must be submitted with the building permit application.
- 19. A Construction and Demolition Debris Recycling Summary Report must be completed, including weigh tags, at the COMPLETION of the project.
- 20. This approval is subject to the requirements contained in the memo from the Solid Waste and Recycling Division of the Public Works Department dated 8/9/04.

Revocation:

- 21. Violation of any of the above conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.

CONDITIONS OF APPROVAL

VARIANCE APPLICATION NO. PL-2004-0671
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Harman Development Incorporated (Owner)
1299 W. Tennyson Road

Request to for a Variance to Allow a Trellis in a Front Yard

General:

1. Application No. PL-2004-0671 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a business operations have commenced in accordance with all applicable conditions of approval, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the above date.
2. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
3. Any proposal for alterations to the proposed site plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
4. Prior to a final inspection or occupancy of the building, all improvements indicated on Exhibit "A", and all conditions of approval shall be completed to the satisfaction of the Planning Director.
5. Prior to application for a Building Permit, the following changes shall be made to the plans:
 - a) A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
 - b) A trellis shall be included that provides an attractive screening of the drive-through area. The trellis should extend across the drive-through aisle and the design is subject to approval by the Planning Director.
6. Prior to final inspection all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.
7. Violation of these conditions or requirements may result in the City of Hayward instituting a revocation hearing before the Planning Commission.

Landscaping:

8. Detailed landscaping and irrigation plans shall be prepared by a licensed landscape architect and submitted for review and approval by the City Landscape Architect. The plans must include vines on the trellis in the drive-through area.

9. Landscape plans must be submitted to the City Landscape Architect for review and approval prior to any demolition or installation work.
10. Landscaping shall be installed per the approved plans. A Certificate of Substantial Completion and irrigation Schedule shall be submitted by the project landscape architect prior to approval of occupancy or a final inspection unless otherwise required to be deferred by the City.
11. Landscaping shall be maintained in a healthy, weed-free condition at all times. The owner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% die-back) shall be replaced within ten days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected by, and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to Municipal Code.

Revocation:

12. Violation of any of the above conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.