



CITY OF
HAYWARD
HEART OF THE BAY

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DATE: January 10, 2008

TO: Planning Commission

FROM: Arlynn J. Camire, AICP, Associate Planner

SUBJECT: **Zone Change Application No. PL-2005-0536 and Use Permit Application No. PL-2007-0558- Russ Pitto for Simeon Commercial Properties (Applicant) / SimVest Real Estate I, LLC (Owner) – A Request to Modify a Planned Development District to Allow a Neighborhood-Serving Retail Center Including a Drive-Thru Coffee Shop and a Convenience Store Selling Beer and Wine for Off-Site Consumption on a 1.5-Acre Parcel at the Mt. Eden Business Park**

The project is Located at 26251 Industrial Boulevard Adjacent to and North of Highway 92 Located at the Southeast Corner of the Mt. Eden Business Park

RECOMMENDATION

That the Planning Commission recommends to the City Council:

1. Approval of the Revised Negative Declaration;
2. Approval of the modification to the Planned Development District, based on the attached findings and the conditions of approval; and
3. Approval of the Conditional Use Permit, based on the attached findings and conditions of approval.

SUMMARY

Simeon Commercial Properties requests to modify the existing Planned Development District to allow neighborhood-serving retail uses in place of the full-service restaurant contemplated by the Planning Commission and City Council in 1997 when the business park was approved. The central issue is whether beer and wine sales should be allowed at the convenience store proposed for the retail center. The Commission was split on such issue at its previous meeting on December 13, 2007, and continued the item to January 10, 2008, to allow for full Commission consideration.

BACKGROUND

On September 6, 2007, the Planning Commission voted (4:1 with 2 absent) to direct staff to conduct environmental review and prepare appropriate findings and conditions for approval of the proposed project. Several Commissioners preferred a full-service restaurant at the site, but believed that the applicant, while not successful, exercised due diligence to secure a full-service, sit-down restaurant. The Planning Commission supported the retail center uses of a drive-thru Starbucks coffee shop, a restaurant and a convenience store. Several of the Planning Commissioners expressed concern for the alcohol sales at the convenience store, but did not want to restrict the type of potential tenants.

On December 13, 2007, the Planning Commission discussed the item and expressed support to recommend approval of the modification of the Planned Development District to City Council, but could not agree to recommend approval of the Conditional Use Permit to allow the sale of beer and wine at the proposed 7-Eleven convenience store. As reflected in the attached draft minutes, two motions were made that ended in a deadlocked vote of 3:3, with 1 absent (Attachment F). The agenda item was continued to allow full Commission consideration. If there is a lack of consensus at the January 10, 2008 meeting, then the item would be forwarded to Council without a recommendation.

DISCUSSION

The December 13, 2007, staff report is included as Attachment E of this report. The Planning Commissioners recommending approval at the last meeting felt that the convenience store with beer and wine sales would allow travelers and those on their way home from work to stop to buy grocery items and beer and wine, saving drivers from making added trips to a separate liquor store. They acknowledged that the applicant has conducted an extensive search for a full-service restaurant prior to proposing a convenience store. Of the three Commissioners who were opposed to the sale of alcohol, two Commissioners were not opposed to the convenience store, but thought that the sale of beer and wine at this location was not necessary since alcohol is available for sale within 1 ½ miles from the site. Also discussed was the safety of the hotel guests, whether the sale of beer and wine would damage other businesses in the area, and whether a convenience store was appropriate for the site.

According to the applicant, demographic research indicated that a 7-Eleven would be successful at this site. The applicant also indicated that 7-Eleven would not be willing to restrict the hours of alcohol sales.

Upon the request of the applicant and agreement of the Planning Commission, three recommended conditions of approval have been modified (Attachment D). Condition No. 22 (k) requires the use of sustainable flooring and no longer specifies the type of flooring materials. Condition No. 23 (h) requiring a shrub and tree buffer adjacent to the State Highway 92 on-ramp has been modified to require only a shrub buffer because trees would interfere with a proposed bioswale and an easement. In addition, Cal Trans has planned to reconfigure the off-ramp including the planting of a wider landscape buffer area between the highway on-ramp and Mt.

Eden Shops and Business Park. Condition No. 28 clarifies that alcoholic beverages are to be kept separate from non-alcoholic beverages.

Staff is supportive of recommending approval of beer and wine sales at the convenience store because it offers a convenient option to nearby residents, hotel guests and nearby employees to buy beer and wine while they are shopping for grocery items or picking up dinner at restaurants in the retail center. In addition, the sale of beer and wine would be regulated by the conditions of approval recommended by the Police Department and required by the Alcohol Beverage Control Board. If the Planning Commission does not recommend approval of the sale of alcoholic beverages, new findings for denial would be recommended to the City Council.

PUBLIC NOTICE

On December 21, a Notice of Continuation of the application was mailed to every property owner and occupant as noted on the latest assessor's records within 300 feet of the Mt. Eden Business Park, Eden Garden-Park west Homeowners Association and the Mt. Eden Task Force.

Prepared by:



Arlyne J. Camire, AICP
Associate Planner

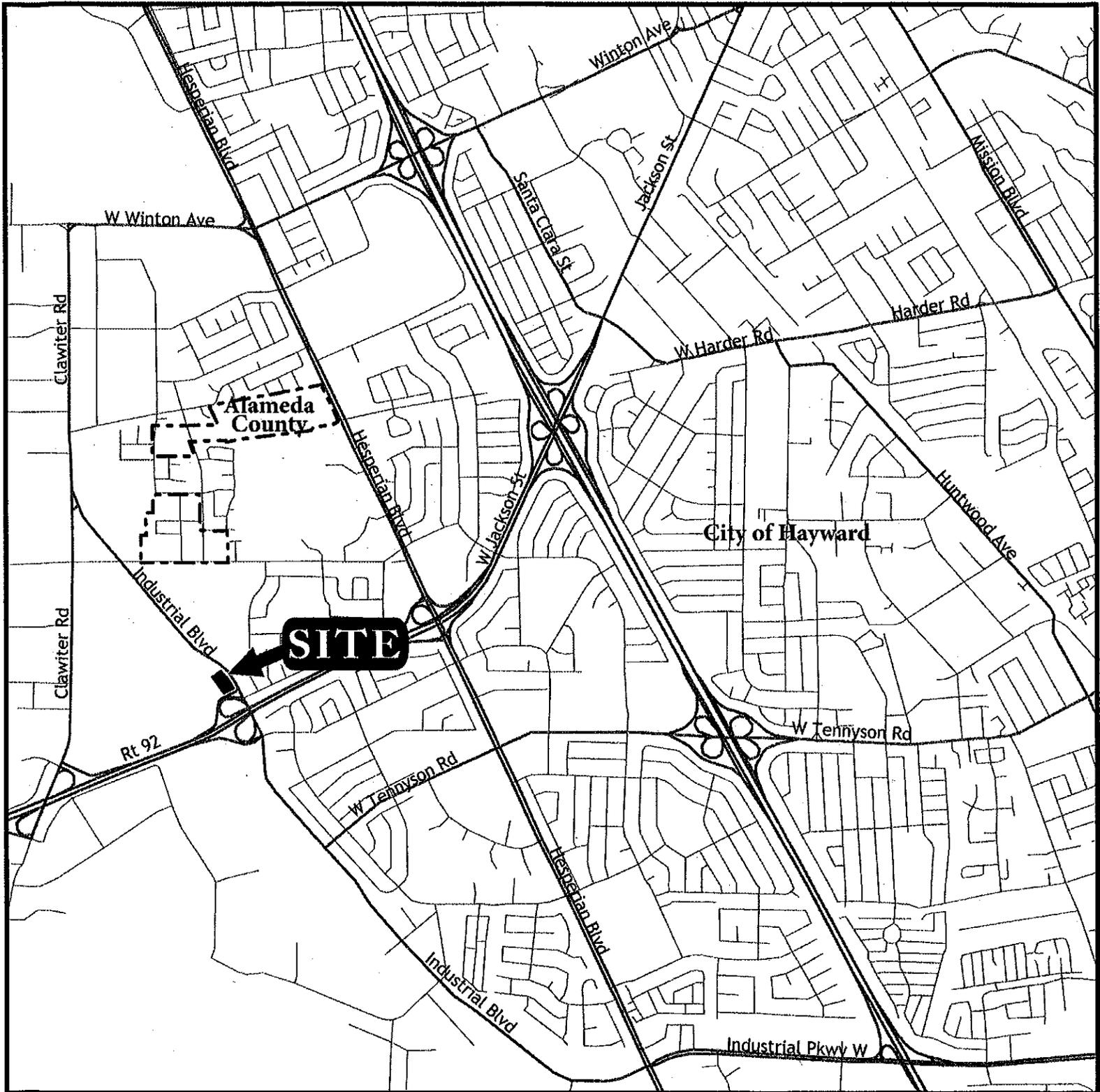
Recommended by:



David Rizk, AICP
Planning Manager

Attachments:

- A Vicinity Map
- B Zoning Map
- C Findings for Approval
- D Revised Conditions of Approval
- E Planning Commission Report Dated December 13, 2007 (previously distributed to Commissioners)
- F Planning Commission Draft Minutes Dated December 13, 2007
- G Two Petitions Dated December 6, 2007 from the Spanish Ranch I Mobile Homeowners Association and South Hayward Neighborhood Collaborative
- H Email from Nick Dahya, Dated December 10, 2007



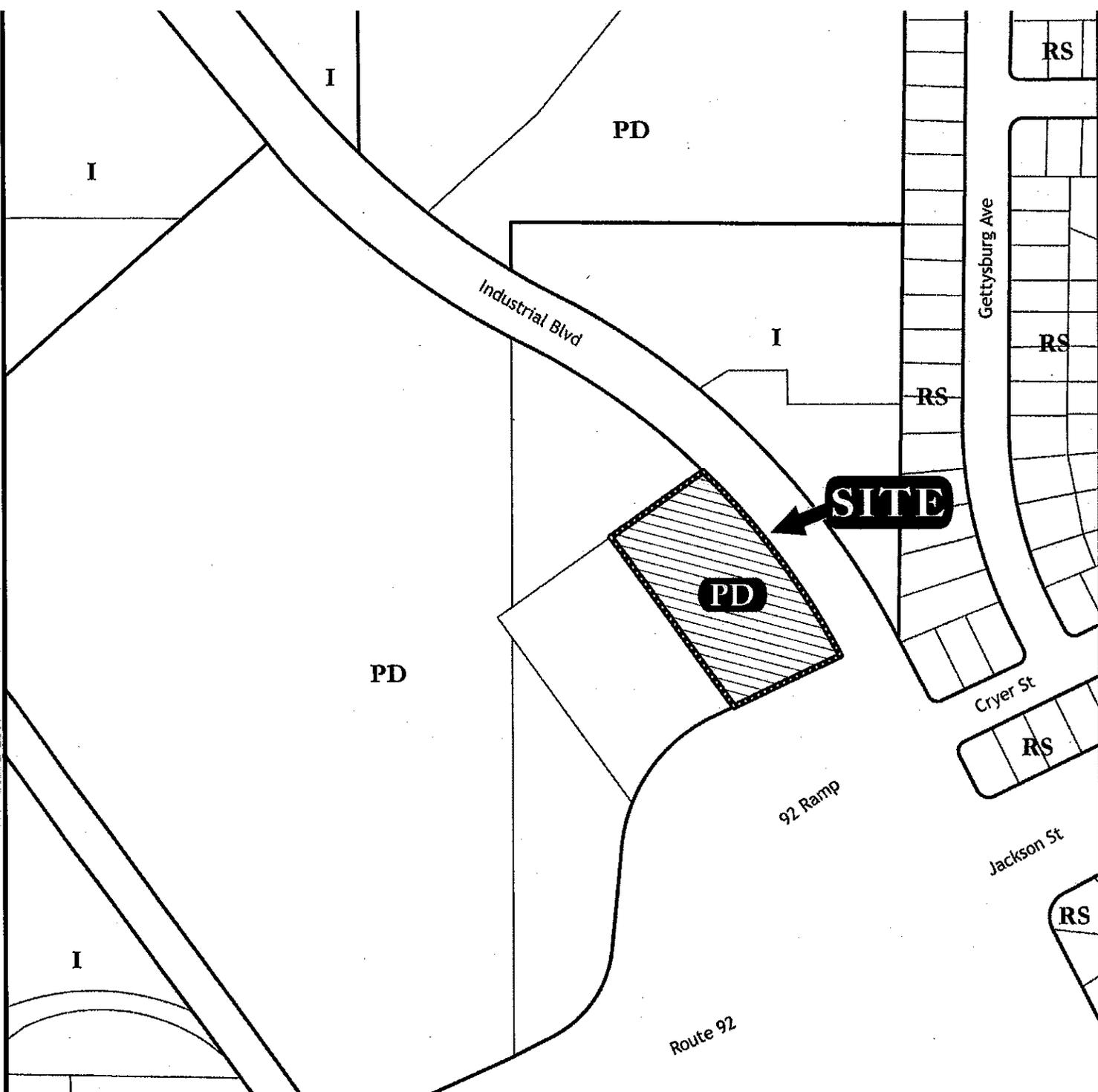
Vicinity Map

PL-2005-0536 Mod of ZC

Mt. Eden Business Park at Hwy 92 and Industrial Boulevard

FEET 2000 4000





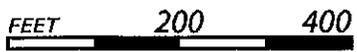
Area & Zoning Map

PL 97-120-05 PD

Address: 25801 Industrial Blvd
 Applicant: Susan Cronk
 Owner: Simeon

Zoning Classifications

- RESIDENTIAL**
 RS Single Family Residential, min lot size 5000 sqft
- INDUSTRIAL**
 I Industrial
- OTHER**
 PD Planned Development



**Zone Change Application No. PL-2005-0536 and
Use Permit Application No. PL-2007-0558
Request to Modify Planned Development District No. 97-120-05
Mt. Eden Business Park Retail Center
Russ Pitto for Simeon Commercial Properties (Applicant)
SimVest Real Estate I, LLC (Owner)**

FINDINGS FOR APPROVAL

1. The project will have not significant impact on the environment, cumulative or otherwise, the project reflects the City's independent judgment, and, therefore, a Negative Declaration has been prepared.

Zone Change

2. The modification would be in substantial harmony with the surrounding residential, industrial and educational uses and development with the proposed conditions of approval. In addition, the use would be in substantial harmony with applicable City policies and the intent and purpose of the underlying Planned Development zoning district in that the approved Planned Development allows for a neighborhood serving retail center, to serve adjacent business park workers, hotel employees and customers, nearby college students and faculty and residential neighborhoods in the area.
3. Existing streets and utilities are adequate to serve the traffic, sewer and water needs of the uses proposed for the proposed retail center. On and off-site circulation would not be impacted by traffic generated by the proposed uses. Industrial Boulevard and nearby State Highway 92 are designed to accommodate the amount of traffic that is anticipated to be generated by the retail center. An on-site circulation analysis prepared by Ferh and Peers and accepted by City Transportation Engineering staff concluded that the proposed uses of a drive-thru coffee shop, take-out food and convenience store, as well as other anticipated retail uses in the proposed tenant spaces, could be accommodated by the proposed parking lot and circulation plan. The existing sewer system and water mains can accommodate the propose uses of the retail center.
4. The applicant has not asked to vary from development standards. However, the applicant has asked an exception to allowed additional uses that are not traditionally found in industrial areas. However, the exceptions would result in providing needed services to the adjacent residential neighborhood, industrial area and educational institutions.
5. The proposed modification would be in conformity with applicable performance standards, the 1.5 acre parcel is an appropriate size and location for the proposed development and the uses, and would create an environment of sustained desirability and stability since the uses proposed would serve the other uses within the business park and the surrounding neighborhoods. The proposed retail center is desirable for the public convenience or welfare in that uses would serve the neighborhood by offering a variety of products and services that are currently lacking within the immediate area thereby not creating a substaintial adverse effect upon surrounding development.

Use Permit

6. The proposed sale of beer and wine at a convenience store for off-site consumption would be desirable for the public convenience or welfare in that it offers a convenient option to nearby residents, hotel guests and industrial employees to buy beer and wine at the same time shopping for grocery items and/or buying dinner at the retail center. In addition, it would save drivers from making additional trips to liquor stores.
7. The proposed sale of beer and wine at a convenience store for off-site consumption would not impair the character and integrity of the zoning district and surrounding area in that such use would be compatible with the uses proposed at the retail center, the Mt. Eden Business Park and the surrounding neighborhood. The proposed convenience store would be located in excess of 500 feet from churches, schools, public playgrounds and parks, and recreation centers, and is located across a major thoroughfare from the nearest residential neighborhood and effectively in excess of 500 feet from the closest residential structure.
8. The proposed sale of beer and wine at a convenience store would not be detrimental to the public health, safety, or general welfare in that the conditions of approval recommended by the Police Department and required by the Alcohol Beverage Control Board would regulate the sale and consumption of the beer and wine, including prohibiting sale of individual containers in addition to all the required conditions of approval.
9. The proposed sale of beer and wine at a convenience store is in harmony with applicable City policies and the intent and purpose of the Planned Development district in that the retail center would contain compatible uses and the approved Planned Development District encourages uses that are neighborhood-serving.
10. The Alcoholic Beverage Control Board has determined that the subject census tract is not overconcentrated in regard to establishments dispensing alcoholic beverages for off-site consumption and approval of the use permit will not result in an over-concentration in the area of establishments dispensing alcoholic beverage.

CONDITIONS OF APPROVAL
Zone Change Application No. PL-2005-0536 and
Use Permit Application No. PL-2007-0558
Russ Pitto for Simeon Commercial Properties (Applicant/Owner)
26251 Industrial Boulevard
(APN 441004500700)

Revised by the Planning Commission on January 10, 2008

Zone Change Application No. PL-2005-0536 and Use Permit Application No. PL-2007-0558 to modify Zone Change Application No. 97-120-05 allowing a coffee shop with a drive-thru window, restaurant, a convenience store with beer and wine sales for off-site consumption, administrative and professional offices and services, personal services, and retail commercial uses, shall be constructed according to these conditions of approval and the plans recommended for approval to the City Council by the Planning Commission on January 10, 2008 and approved by the City Council.

1. This approval is void one year after the effective date of approval unless prior to that time an extension is approved. Any modification to this permit shall require review and approval by the Planning Director. A request for a one-year extension-of-time, approval of which is not guaranteed, must be submitted to the Planning Division at least 30 days prior to one year from the date of conditional approval by the City Council.
2. If a building permit is issued for construction of improvements authorized by the zone change and conditional use permit approval, the conditional approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the zone change and use permit approvals.
3. Unless otherwise required, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director prior to final inspection and occupancy of any structures.
4. 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.
5. Violation of these conditions is cause for revocation of permit, after a public hearing before the duly authorized review body.
6. In addition to the uses permitted in condition of approval No. 28 of Zone Change No. 97-120-05, the permitted uses for the subject property are a restaurant, convenience store, coffee shop and coffee shop with a drive-thru window, and uses listed as Administrative and Professional Offices/Services, Personal Services, and Retail Commercial Uses in the Central Business District. In addition, other similar uses may be approved by the Planning Director with the determination that they support a neighborhood marketing base.

7. Prior to issuance of a building permit, all building materials and colors shall be approved by the Planning Director.
8. The design of the awnings shall be appropriate to the mass of the building as determined by the Planning Director; details shall be submitted for approval prior to submittal of an application for building permit. In addition, a color sample shall be approved by the Planning Director prior to installation.
9. Downspouts and other similar appurtenances shall be enclosed within the structure.
10. Continuous, connecting pedestrian walkways shall be delineated via decorative paving to match that existing in the Mt. Eden Business Park and are subject to approval by the Planning Director. Pedestrian walkways and circulation areas shall be raised 6 inches in height above the finished parking lot level.
11. All entry drives shall be constructed of decorative paving between the property line and the first cross-driveway. Materials shall be consistent with those used in the Mt. Eden Business Park and shall be indicated on building permit plans for review and approval by the Planning Director.
12. Bicycle racks shall be installed. The location and design of the racks shall be approved by the Planning Director prior to submittal for building permit.
13. All roof-mounted mechanical equipment and any satellite dish shall be fully screened from State Highway 92, Industrial Boulevard, the adjacent hotel and Mt. Eden Business Park from ground-level view within 150 feet of the property.
14. No outside storage of material, crates, boxes, etc. shall be permitted anywhere on site, except within the trash enclosure area as permitted by fire codes. No material shall be stacked higher than the height of the trash enclosure screen wall and gate.
15. Tenant management shall take reasonable necessary steps to assure the orderly conduct of employees, patrons and visitors on the premises to the degree that customers of on-site and surrounding commercial uses would not be intimidated and that loitering does not occur.
16. Sidewalks and parking lots must be kept free of litter and debris and to minimize the amount of wind-blown debris into surrounding properties and streets. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. No cleaning agent may be discharged to the storm drain. If any cleaning agent or degreaser is used, washwater shall be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval, and conditions of the City wastewater treatment plant.
17. A minimum of one trash receptacle shall be placed at each customer entry. Trash receptacles shall be the same decorative, pre-cast concrete type with a self-closing metal lid. The design shall be approved by the Planning Director.
18. No vending machines shall be displayed outside the building, except for newspaper racks. The newspaper racks are not permitted to contain adult publications.

19. The developer, owner(s) and/or tenants shall maintain in good repair all building exteriors, walls, lighting, trash enclosure, drainage facilities, driveways and parking areas. The premises shall be kept clean. Any graffiti painted on the property shall be painted out or removed within 72 hours of occurrence.
20. Prior to occupancy and the installation of any signs, the applicant shall submit a Sign Permit Application to the Planning Director for review and approval, subject to the following:
 - a. Compliance with the City of Hayward Sign Regulations;
 - b. The sign program may contain signs to be placed on the existing freeway-oriented sign and one monument sign;
 - c. The base and framing of any monument sign shall reflect the architectural design, colors and materials of the retail center;
 - d. Tenants shall use individual channel letters;
 - e. Logo signs are permitted;
 - f. Directional signs shall not exceed 6 sq. ft. in area per face and 3 feet in height; and
 - g. The applicant/business operators shall not display any illegal banner signs, portable signs, inflatable signs, or other illegal signs on the property. Any temporary promotional material, such as grand opening banners, requires the issuance of a sign permit prior to display, in accordance with the City's Sign Ordinance.
 - h. The Fairfield by Marriot hotel sign may be required to be relocated if in conflict with development of the site. Relocation of this sign is required to be approved by the Planning Director and shall be included on a revised site plan of the retail center.
21. Exterior lighting for the center shall be maintained which is adequate for the illumination and protection of the premises, but does not exceed a light level that provides glare to motorists, nor spills onto nearby properties, or up into the sky. The fixtures shall be designed to keep the light from spilling onto adjacent properties and onto the adjacent State Highway 92 and Industrial Boulevard. Within the parking lot, the minimum requirement is 1-foot candle of light across the entire surface. Luminaires shall be of a design that complements the architectural style of the building and the landscaping in developing a quality image of the City of Hayward and shall be approved by the Planning Director. The maximum height of the luminaires shall be no greater than 40 feet unless otherwise permitted by the Planning Director. The lighting, and its related photometric, plan shall be reviewed and approved by the Planning Director.

Green Building

22. The follow green building and sustainable development practices shall be followed:
 - a. Use construction materials that contain recycled content and/or renewable materials, if feasible.
 - b. Use building material from local distributors when possible.
 - c. Advance ventilation practices shall be implemented and maintained.
 - d. Install energy efficient mechanical systems.
 - e. All HVAC ducts are required to be sealed with mastic and shall be tested. Ducts shall be insulated when possible.

- f. All windows shall be high-performance windows.
- g. A cool roof shall be installed.
- h. High-efficiency lighting shall be installed and maintained.
- i. Water-efficient fixtures shall be installed and maintained.
- j. Entryways shall be designed to reduce tracked-in contaminants.
- k. Sustainable flooring shall be used. Formaldehyde adhesives are prohibited. Low or no VOC adhesives and finishes are permitted.
- l. Building installation or insulated panels shall be installed shall not contain formaldehyde.
- m. All interior building finish and adhesives shall be low or no volatile organic compound (VOC) off-gassing.

Tenants are required to meet the following requirements:

- n. Install and maintain energy efficient appliances.
- o. Use low- or no- VOC cabinets, countertops, furniture, floor and wall finishes, and paints and adhesives.
- p. Use take-out containers that are made from recycled or alternative content.
- q. Apply to the Alameda County Green Business Program. Proof of application shall be submitted to the Planning Division prior one year from approval of the business license.

Landscaping

23. Prior to the approval of improvement plans, or issuance of the first building permit, the applicant shall submit detailed landscaping and irrigation plans prepared by a licensed landscape architect for review and approval by the City. Landscaping and irrigation plans shall comply with the City's Water Efficient Landscape Ordinance and the following requirements:
- a. Parking areas shall be buffered from the street and freeway with shrubs; their type and spacing shall create a continuous 30-inch high screen within two years.
 - b. Above-ground utilities (e.g. gas or electric meters, backflow devices) shall be screened from public view with minimum 5-gallon size evergreen shrubs.
 - c. Bay-Friendly Landscaping Guidelines as defined by StopWaste.org are required to be followed and maintained.
 - d. One 24-inch box street tree is required for every 20 – 40 lineal feet of street frontage. Trees shall be planted to fill vacancies in the street tree pattern, and to replace any declining or dead trees. Trees shall be planted according to the City Standard Detail SD-122.
 - e. Landscaped areas adjoining drives and/or parking areas shall be separated by a 6-inch high class "B" Portland Cement concrete curb. When the adjacent landscape area is being used as a part of the requirements for the Clean Water Act, slots will be allowed where drainage may be passed through to be filtered by the groundcover. Appropriate groundcover for filtration must be provided.
 - f. Masonry walls or fences facing a street shall be buffered with shrubs and vines.
 - g. Parking lots shall include one 15-gallon tree after every six parking stalls. Parking lot trees shall be planted in tree wells or landscape medians located within the parking area. Parking rows shall be capped with a landscaped median with an additional shade tree. All tree wells and medians shall be a minimum of 5 feet wide measured inside the curbs. Parking and loading areas shall be screened form

the street with shrubs, masonry walls or earth berms, as determined by the Planning Director. Where shrubs are used for screening, the type and spacing of shrubs shall create a continuous 30-inches high hedge within two years.

- h. Shrubs shall be planted as a buffer from State Highway 92 and are to achieve a solid screen within 2 years. This measurement shall be from the top of curb.
 - i. Protect the existing trees and entry landscaping along Industrial Boulevard. The existing trees shall be preserved in accordance with the *Tree Preservation Ordinance*. An arborists report by a certified arborist shall be provided for all of the existing trees giving species, size, health, and value for each tree. Prior to the commencement of clearing and grading operations, all trees to be preserved or removed shall be indicated on the grading, site plan, and landscape plans. Bonding equal to the value of the trees that are to remain shall be in place and such bonding shall remain in place until two years after the acceptance of the project. All trees to remain in place shall be provided with tree protection measures in compliance with the certified arborist's recommendations.
- 24. A separate tree removal permit is required prior to the removal of any tree. Replacement trees equal in value to each tree that is removed shall be required for any trees removed, as required by the Tree Preservation Ordinance.
 - 25. Landscaping shall be installed and a Certificate of Substantial Completion and an Irrigation Schedule shall be submitted prior to issuance of a Certificate of Occupancy.
 - 26. Landscaping shall be maintained in a healthy, weed-free condition at all times and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution. The owner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30-percent dieback) 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 the Municipal Code.

Alcohol Sales

- 27. An on-site Mt. Eden Business Park security guard shall be provided between the hours of 6:00 pm to 6:00 am seven days a week.
- 28. No more than 5 percent of the square footage of the sales area shall be dedicated to alcohol sales. Alcohol must be stored away from products oriented to youth, such as candy. Alcoholic beverages shall be kept separate from non-alcoholic beverages.
- 29. There shall be no exterior advertising or sign of any type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.
- 30. No person under the age of 21 years may sell alcoholic beverages.

31. The sale of individual containers of beer or malt beverages is prohibited. The sale of distilled spirits is prohibited.
32. Beer, malt beverages, and wine coolers may be sold only in manufacturer pre-packaged multi-unit quantities.
33. Wine may not be sold in bottles or containers smaller than 750 ml.
34. The Petitioner(s) shall post and maintain professional-quality signs at or near all entry and exits facing the premises parking lot(s) that reads as follows: 1) NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES – the sign shall also contain the following text – “Loitering, defined as “to stand idly about or linger aimlessly without lawful business” is prohibited on any sidewalks or property adjacent to the licensed premise under the control of the Licensee(s) as depicted on the ABC-257”; and 2) PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES IS PROHIBITED BY LAW (HMC 4-2.10). The signs shall be at least two feet square with two-inch block lettering. The signs shall be in English and Spanish.

Utilities

35. Each business is required to have an individual water meter.
36. The developer shall install a separate irrigation water meter for landscaping purposes.
37. The developer shall install Reduced Pressure Backflow Prevention Assembly as Per City of Hayward Standard Detail 202 on all domestic & irrigation water meters.
38. Additional Sewer System Capacity to accommodate the volume and waste strength of wastewater to be discharged from proposed businesses must be purchased, at the rates in effect at the time of purchase (\$45.93 per gallon of daily discharge), prior to discharge.
39. The developer shall install a mechanical device to control fat, oil and grease discharge from any food service establishment, unless this requirement is expressly waived by the Director of Public Works or designee. The type, size, and location of the device shall be approved by the Director of Public Works.
40. The following notes shall be added to the revised plans to be submitted for a building permit:
 - a. Provide keys/access code/automatic gate opener to utilities for all meters enclosed by a fence/gate as per Hayward Municipal Code 11-2.02.1.
 - b. Only Water Distribution Personnel shall perform operation of valves on the Hayward Water System.
 - c. Water and Sewer service available subject to standard conditions and fees in effect at time of application.

Fire Department

41. The developer is required to comply with the following Fire Department requirements:

- a. The proposed driveway and parking lot shall be a dedicated fire travel lane (as described on the plans). Any additional alterations to the fire travel lane will be addressed on the improvement plan review.
- b. Design and engineering of the fire travel lanes within this development shall meet the Fire Code and Hayward Fire Department Standards. Pavement shall be all-weather surface material and shall be engineered to withstand the 50,000 lb. GVW of fire apparatus.
- c. Red-painted curbing shall be required on landscape islands and driveway opening flares that are abutting and are a part of the fire travel lane.
- d. Fire travel lanes shall be identified as such. White stenciled lettering shall be installed on all red-painted curbing stating "Fire Lane – No Parking".
- e. A new double steamer type (private) fire hydrant shall be installed within the proposed development on the east side of building's A and B (in the parking lot along the fire travel lane).
- f. A new double steamer type (public) fire hydrant will be required on Industrial Boulevard at the driveway entrance to the new development.
- g. Installation of both fire hydrants shall be in conformance with the City of Hayward Public Works Department and the Hayward Fire Department.
- h. Fire flows shall meet the California Fire Code, Appendix III-A and Hayward Fire Department Standards and Ordinances.
- i. The proposed project data (retail buildings) shall be reflected on the architectural plans and shall reflect the occupancy classifications, square footage, number of stories, type of construction and fire sprinkler system requirements.
- j. Exiting requirements shall meet the California Building Code (CBC), Chapter 10.
- k. Building addressing shall meet Hayward Fire Department requirements.
- l. The proposed retail building that is greater than 5,000 square feet shall be equipped with an automatic fire sprinkler system conforming to NFPA 13 Standards.
- m. Commercial and retail buildings constructed without a known tenant shall have a fire sprinkler system installed having a minimum density of .33 gpm over the most remote 3,750 square feet, or, as required per NFPA 13 Standards.
- n. A dedicated underground fire service line (to supply the fire sprinkler system) shall be designed and installed per NFPA 24 Standards for buildings protected with an automatic fire sprinkler system.
- o. Buildings protected with an automatic fire sprinkler system shall have its Fire Department Connection (FDC) and Post Indicator Valve (PIV) installed in a location approved by the Hayward Fire Department.

- p. Buildings protected with an automatic fire sprinkler system shall have an exterior fire sprinkler local alarm bell installed on the fire sprinkler riser in a location approved by the Hayward Fire Department.
- q. Retail tenant spaces (protected with an automatic fire sprinkler system) shall have a manual pull station and audible alarm signaling device installed within each tenant space in a location approved by the Hayward Fire Department.
- r. Central station monitoring shall be required for any fire sprinkler system (if over 100 fire sprinkler heads are installed on the system).
- s. Portable fire extinguishers shall be installed throughout each of the proposed building, including the individual retail tenant space and in any common area. Fire extinguishers shall be placed in centrally located areas as required by the Hayward Fire Department. Fire extinguishers shall have a minimum rating of 2A:10BC or other rating (as required by the Fire Code) specific to the tenant use.
- t. Businesses which occupy the individual tenant spaces shall obtain a City of Hayward Business License prior to occupying the space.
- u. There shall be no use and/or storage of hazardous materials within any retail tenant space unless a review has been conducted by the Hayward Fire Department.
- v. Tenant merchants who wish to conduct commercial cooking shall notify the Hayward Fire Department for review of and approval of cooking equipment and hood and duct fire extinguishing system(s).
- w. Retail tenant spaces shall be restricted for their specific use (M occupancy or B occupancy). There shall be no hazardous operations (i.e., welding, flammable finishing, woodworking, etc.) allowed within the tenant spaces unless reviewed and approved by the Hayward Fire Department.
- x. Building and tenant space addressing shall meet Hayward Fire Department standards.
- y. Fire permits shall be obtained for the installation of any fire protection and life safety systems required for the proposed retail development.

Hazardous Materials Office, Fire Department

- 42. A Phase 1 environmental assessment is required to verify any land contamination. The developer shall contact the Hayward Fire Department's hazardous Materials Coordinator, Hugh Murphy, for further requirements and information. Pending results of the Phase 1 further requirements may be necessary including environmental and health clearance from either the California Regional Water Quality Control Board-San Francisco Bay Region or California Department of Toxic Substance Control.
- 43. All retail tenants are responsible for submitting a chemical inventory if the business requires any storage and/or usage of hazardous materials.

Public Works -Solid Waste

44. The owner(s) and/or tenants shall participate in the City's recycling program. The applicant shall clearly indicate the proposed location and dimensions of each enclosure, indicating whether the trash and recyclables will be compacted. The applicant must also indicate the number and type of refuse and recycling containers that will be used. The space and available capacity provided for the storage of trash must be the same size as that provided for recyclables. The procedure that must be followed regarding sorting and collection of recyclables is provided for in Section 3.2.02 of the Franchise Agreement.
45. Six-inch wide curb or parking bumpers must be provided along the interior perimeter of the two trash enclosures walls to protect them from damage by the dumpster. A 6-inch wide parking bumper, at least 3-foot long, should also be placed between the refuse dumpster(s) and the recycling containers.
46. A minimum space of 12 inches must be maintained between the dumpster(s) and the walls of the trash enclosures and the recycling carts/dumpster to allow for maneuvering the dumpster(s). A drain to the sanitary sewer should be provided beneath the refuse dumpster(s) wherever wet waste, such as food waste, is generated and wherever can washing areas are located.
47. If any equipment/trash enclosure is gated, the gates and hinges must be flush with the enclosure wall. It is important to ensure that the gates open straight out and that the hinges and that the gate be flush with the enclosure wall, in order to allow adequate maneuverability of the equipment/dumpster in and out of the enclosure to service it. All trash enclosures shall be covered.
48. The developer must ensure that there is adequate space for a garbage truck to service each dumpster. A 40-foot turning radius is adequate for garbage trucks.
49. The applicant is required to submit for review by the Solid Waste Manager an on-site recycling plan, which would be implemented during the entire demolition and construction phases.
50. The applicant must ensure that construction debris is removed from the site by a licensed contractor as an incidental part of a total construction, remodeling, or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes, or is directly loaded onto a fixed body vehicle and hauled directly to a disposal facility that holds all applicable permits.
51. The applicant shall provide for adequate on-site storage capacity for recyclables within the buildings, including storage space for containers to store paper, glass/plastic/metal beverage containers, and other recyclables where these materials are generated.
52. The applicant shall ensure that the specifications of any compactor meet the approval of Waste Management.
53. The applicant must contact the City's franchised hauler, Waste Management of Alameda County, at 537-5500 to arrange for delivery of containers with sufficient capacity to store construction and demolition materials to be landfilled.

Public Works - Engineering

54. 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.
55. Project application received after 8/14/06 or projects that have not submitted a complete application as of 8/14/06 and that are creating or replacing 10,000 square feet or more of impervious surface must comply with the hydraulic sizing design criteria for stormwater quality treatment.
56. The proposed BMPs shall be designed to comply with the hydraulic sizing criteria listed in Provision C.3.d of the ACCWP NPDES permit (page 22). In addition, the California Stormwater Quality Association's Stormwater Best Management Practice Handbook New Development and Redevelopment, Subsection 5.5 on pages 5 – 12 has a section titled "BMP Design Criteria for Flow and Volume." This should be available on their website at www.cabmphandbooks.com.
57. Prior to the issuance of a grading permit and/or the beginning of any construction activity on-site, the Developer's Engineer shall complete a Development Building Application Form Information: 1) Impervious Material Form, and 2) Operation and Maintenance Information Form.
58. The owner shall prepare a Storm Treatment Measures Maintenance Agreement (available in the Engineering and Transportation Division); the Maintenance Agreement shall be recorded with the Alameda County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity.
59. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat stormwater runoff. Landscaping shall also comply with the City's "water efficient landscape ordinance" or equivalent
60. All on-site and off-site storm drain inlets shall be labeled with "No Dumping – Drains to Bay or equivalent, using methods approved by the City.
61. The existing overhead line along the property frontage shall be underground.
62. Install sidewalk along Industrial Blvd., handicap ramps and crosswalk striping.
63. A copy of the Notice of Intent (NOI) from the State Water Resources Control Board shall be provided to the City prior to the start of grading.
64. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the City for review and approval by the City Engineer.
65. A property owner and/or owners shall be responsible for maintaining the BMPs.

66. The hydraulic calculations for the storm drain system shall be reviewed and approved by the ACFC & WCD.
67. The location of the proposed water meters shall be as per City Standard Detail SD-213.
68. Label all top of curbs and finish pavements.
69. All parking stalls and maneuvering areas shall meet the minimum standards of the City Parking Ordinance. The parking areas shall be paved with either Portland cement or asphalt concrete and the area shall be striped to designate the parking stalls. The Planning Director shall approve the design of the driveway, curbing and materials to be used. Aisles, approach lanes, drive-through lanes and maneuvering areas shall be marked and maintained with directional arrows and striping to control traffic flow.
70. Vehicular circulation areas shall be signed as a fire lane and posted for no parking except within designated parking stalls and pick-up areas.



CITY OF
HAYWARD
HEART OF THE BAY

3

DATE: December 13, 2007

TO: Planning Commission

FROM: Arlynn J. Camire, AICP, Associate Planner

SUBJECT: **Zone Change Application No. PL-2005-0536 and Use Permit Application No. PL-2007-0558- Russ Pitto for Simeon Commercial Properties (Applicant) / SimVest Real Estate I, LLC (Owner) – A Request to Modify a Planned Development District to Allow a Neighborhood-Serving Retail Center Including a Drive-Thru Coffee Shop, Restaurant and a Convenience Store Selling Beer and Wine for Off-Site Consumption on a 1.5-Acre Parcel at the Mt. Eden Business Park**

The project is Located at 26251 Industrial Boulevard Adjacent to and North of Highway 92 Located at the Southeast Corner of the Mt. Eden Business Park

RECOMMENDATION

That the Planning Commission recommend to the City Council:

1. Approval of the Revised Negative Declaration;
2. Approval of the modification to the Planned Development District, based on the attached findings and the conditions of approval; and
3. Approval of the use permit, based on the attached findings and conditions of approval.

SUMMARY

Simeon Commercial Properties requests to modify the existing Planned Development District to allow neighborhood-serving retail uses in place of the full-service restaurant contemplated by the Planning Commission and City Council in 1997 when the business park proposal was approved. The central issue is whether the uses at the retail center should continue to be restricted to the uses allowed under the Planned Development District versus the proposed uses, which consist of a convenience market that sells beer and wine, a restaurant and a drive-thru coffee shop.

On September 6, 2007, the Planning Commission reviewed the proposal with staff's recommendation for denial. However, as reflected in the attached meeting minutes (Attachment C), the Planning Commission directed staff to conduct the environmental review and prepare

findings and conditions of approval for the proposed project. The majority of the Planning Commission was of the opinion that the proposed uses would be appropriate for the site and that the proposed retail center would adequately serve the adjacent hotel and employees of the business park and adjacent industrial area, students at adjacent colleges, and residents to the east. Staff further recommends that a limited list of additional use be approved, including administrative and professional offices and services, personal services, and retail commercial uses, to serve the long-term needs of the community.

BACKGROUND

On October 21, 1997, the City Council approved Planned Development District No. 97-120-05 that allowed the construction of a high-tech/biotech research and development business park. The Mt. Eden Business Park consists of six tilt-up concrete buildings with a total area of 372,107 square feet. Phase One included four buildings on the northwest side of the business park, which was completed in March 1999. Phase Two included the remaining two buildings on the southeast side of the business park, which was completed in December 2000. A vacant 3-acre parcel remained in anticipation of development of a hotel and a full-service restaurant or other uses specified in the conditions of approval that would support the business park and the adjacent area. The Quality Inn and Suites, an 84-room extended-stay hotel, was completed in November 2001. The hotel is now a Fairfield Inn and Suites by Marriot.

The Planned Development District currently allows a wide variety of service and light manufacturing uses in the Mt. Eden Business Park. In addition to a restaurants, among the listed allowed uses are administrative offices, business service and consulting offices, travel agencies, delicatessens, manufacturer's representative offices, engineering and design facilities, financial institutions, cultural or commercial recreational uses, and micro-breweries (see Attachment H of Attachment D).

Simeon Commercial Properties requests to modify the Planned Development District to allow neighborhood-serving retail uses; specifically, a convenience store with beer and wine sales, a restaurant and a coffee shop with a drive-thru window, along with other yet unidentified retail and service uses (see Attachment C of the attached September 6, 2007 Planning Commission report, which is Attachment D to this report).

On September 6, 2007, the Planning Commission voted (4:1 with 2 absent) to direct staff to conduct environmental review and prepare appropriate findings and conditions for approval of the proposed project. Several Commissioners preferred a full-service restaurant at the site, but believed that the applicant, while not successful, exercised due diligence to secure a full-service, sit-down restaurant. The Planning Commission supported the retail center uses of a drive-thru Starbucks coffee shop, a restaurant and a convenience store. Several of the Planning Commissioners expressed concern for the alcohol sales at the convenience store, but did not want to restrict the type of potential tenants.

DISCUSSION

Zone Change-Modification of Planned Development District

The applicant proposes construction of two retail buildings: a 1,838-square-foot drive-through coffee shop (*Starbucks*) and an 8,250-square-foot multi-tenant building for three to five tenants (see attached plans). Restaurants such as *Subway* and *Jamba Juice*, delicatessens, a convenience store (*7-Eleven*) that sells beer and wine, and other services, such as a dry cleaner, copy center, drug store, clothing store and small shops supplying retail merchandise, are being sought by the applicant to occupy the larger building. Except for *Starbucks* and *7-Eleven*, the tenants for the retail spaces have not been secured. The applicant's goal is to provide a retail mix that would provide services to visitors to the area, to employees of the business park and to the adjacent residential neighborhoods west of Hesperian Boulevard.

To provide greater variety of potential uses in the proposed retail center to serve the long-term needs of the employees of the business park and the adjacent residents, staff proposes that a limited number of additional uses be allowed based on those permitted in the Central Business (CB) District (Southland Mall). The uses would include the uses listed in the CB District as administrative and professional offices services, personal services, and retail commercial uses, which include such uses as a dry cleaner, clothing store and bank (Attachment H).

The Mt. Eden Park Shops buildings are proposed on a 1.5 acre parcel at the southeasterly portion of the Mt. Eden Business Park with the storefronts facing Industrial Boulevard; the loading area would be between the two buildings. The smaller building (1,838 square feet) is proposed to be located in the northern portion of the site. A drive-thru Starbucks coffee shop would be the tenant in this building. The drive-thru entrance would be located at the entry to the parking lot adjacent to the southern business park driveway. The larger retail building (8,250 square feet) is located at the south side of the parcel adjacent to the State Highway 92 westbound on-ramp. This building is proposed to have two to four small tenants and a convenience store. The design of the buildings would be contemporary with a stucco finish and brick veneer entries with fabric awnings.

Parking would be located adjacent to the Industrial Boulevard frontage. The proposed parking is adequate to meet needs of the retail center and meets the City's Off-Street Parking requirements. The parking lots would be accessed directly from Industrial Boulevard as well as from the primary driveway serving the business park. Staff is recommending that the developer be required to install a sidewalk on Industrial Boulevard, which could accommodate a bus stop if AC Transit programs a bus route serving this site.

A circulation study was completed by Fehr and Peers, Transportation Consultants, who determined that the queuing for the drive-thru Starbucks is adequate and that on-site parking and on-site circulation would not be negatively impacted. In addition, it was determined that the queuing would not extend into the business park driveway or into Industrial Boulevard. The City's transportation planners concur with the conclusions of the consultant.

Conditional Use Permit

The applicant requests to sell beer and wine at the convenience store (7-Eleven) for off-site consumption (off-sale). A conditional use permit is required for all markets less than 10,000 square feet in area to operate as an off-sale liquor establishment. In addition, the State Department of Alcoholic Beverage Control (ABC) requires that the City make a determination that the public convenience or necessity would be served by another alcohol establishment when there is an over-concentration of off-sale liquor establishments in a census tract. A census tract is over concentrated when it exceeds the number of liquor establishments allowed by ABC for a census tract, which is one off-sale liquor establishment for every 1,250 persons within a census tract.

According to the ABC, the proposed retail center would not be located in an area of over concentration of retail alcohol outlets. Six off-sale alcohol licenses are permitted in the tract that contains Mt. Eden Business Park. Currently, there are only two off-sale liquor establishments.

The City Council adopted Resolution 06-005 in January, 2006 which states, "that no finding of public convenience or necessity shall be made to the Department of Alcoholic Beverage Control in connection with the licensing of bars or liquor stores in any census tract in which the ABC indicates that there is an over-concentration of ABC licenses." However, since the proposed project would not be located within an over-concentrated census tract, this finding is not required to be made.

The Police Department states that the proposed project is located in an area that has a limited need for police service, especially at night. However, it is located adjacent to a high crime reporting district to the north. The reported crime within the adjacent district is at 235.5 percent of the average crime for the entire city. Police are concerned that the project as proposed with a convenience store and associated alcohol sales would generate an increase of calls for service for the proposed center and in the surrounding area. Furthermore, the Police are concerned that the convenience store may attract loiterers and become a spot to "hang out," which can lead to inappropriate behavior and an increase in crime within the area. Therefore, staff recommends conditions of approval (31-38) that would require the maintenance of a security service between the hours of 6:00 pm to 6:00 am for the proposed retail center and Mt. Eden Business Park, control the operation at the convenience store and restrict the type of containers that can be sold. These conditions would also limit the size and packaging of the containers available for sale. The Police Department is requesting that these conditions of approval be included as requirements in the ABC liquor license.

CommPre sent a letter in objection to the proposal (Attachment I), based on the number of retail alcohol outlets in the City of Hayward. In addition, CommPre believes the convenience store is not an appropriate use for the site, because of the high potential of police calls for service for activities such as loitering, public drinking and an increased youth access to alcohol. CommPre questions whether the City residents need another off-sale liquor establishment and how the community would benefit. If the use permit is approved, they suggest a list of conditions for operation. Several of these recommended conditions have been incorporated as part of the staff-recommended conditions of approval for the project. Although not recommended by staff,

CommPre recommends that there be no cold storage of alcoholic beverages, that such beverages should be in locked storage and that sales of such beverages should occur not later than 10:00pm. The Police Department does not recommend a restriction on the hours of sale of alcoholic beverage for off-sale establishments.

Staff has received a call of opposition from a resident in the adjacent single-family neighborhood who is concerned that alcohol would be purchased at the nearby convenience store and that drivers would park within the neighborhood to consume the alcohol and leave the empty containers in gutters and front yards. She stated that people currently park within the neighborhood and litter her front yard and the gutter in front of her house. She is also concerned about the behavior that accompanies the consumption of alcoholic beverages.

Currently, the employees at Mt. Eden Business Park, students, faculty and staff of Heald College and Life Chiropractic College West, and residents in the neighborhoods west of Hesperian must drive to restaurants and services located on Hesperian Boulevard. The proposed uses: restaurants, a convenience store and a drive-through coffee shop, are designed to serve motorists, especially during the morning peak commuting hours. The convenience store would offer items that are not presently available in this area such as beverages, prepared meals, snack foods, incidental grocery and sundry items, and beer and wine. As reflected in the attached findings for approval, staff is of the opinion that the applicant has demonstrated that the retail center would provide an unmet need for the neighborhood and surrounding areas.

ENVIRONMENTAL REVIEW

An Initial Study and Negative Declaration have been prepared for the retail center pursuant to the California Environmental Quality Act (CEQA) (see Attachment G). No significant environmental impacts, including those related to traffic and circulation as stated previously, are expected to result from the project.

PUBLIC NOTICE

On October 5, 2005, a Referral Notice was mailed to every property owner and occupant as noted on the latest assessor's records within 300 feet of the Mt. Eden Business Park, Eden Garden-Park west Homeowners Association and the Mt. Eden Task Force. Staff had received a petition and letters of support for the project prior to the September hearing from both tenants of the business park and from residents, who all indicate the proposed project would provide services and conveniences that currently do not exist in the immediate area (see Attachment I of Attachment D).

On November 14, 2007, a notice of Public Hearing and Notice of Preparation of the Negative Declaration was published in *The Daily Review*. On November 13, 2007, a Notice of Public Hearing and Notice of Preparation of the Negative Declaration was mailed to every property owner and occupant within 300 feet of Mt. Eden Business Park as noted on the latest assessor's records, to the Eden Garden-Parkwest Homeowners Association and the Mt. Eden Task Force. Staff did not receive additional comments, other than from the resident previously identified.

Prepared by:

Arlyne J. Camire

Arlyne J. Camire, AICP
Associate Planner

Recommended by:

David Rizk

David Rizk, AICP
Planning Manager

Attachments:

- A Vicinity Map
- B Zoning Map
- C Planning Commission Minutes Dated September 6, 2007
- D Planning Commission Report Dated September 6, 2007, with Attachments A through J
- E Findings for Approval
- F Conditions of Approval
- G Revised Negative Declaration and Revised Environmental Checklist dated December 4, 2007, with three attachments
- H Recommended Additional Allowed Uses
- I Letter from CommPre dated November 8, 2007
Plans

theme of the project to be Northern European, with a village concept.

Commissioner Sacks noted that she visited the Mt. Eden area and complimented the project and the staff at the sales office.

In response to Commissioner Loché's inquiry for the next step in dealing with the land where the expansion was envisioned, Mr. Farmer indicated that the land owner has expressed interest for developing his property and the City is awaiting his application.

In response to Chair Peixoto, Mr. Farmer indicated that there would be one homeowners association for both phases. He added that there would be a property manager.

Chair Peixoto closed the public hearing at 8:47 p.m.

Commissioner Loché made a motion per staff recommendation indicating support for the project and its attractiveness.

Commissioner Mendall seconded the motion including the added Condition of Approval for the Tract related to payment of fees into the Benefit District. Mr. Mendall added that the project is a good fit for the neighborhood and encouraged City staff to continue the efforts to complete the expansion of the park.

Commissioner McKillop concurred with the importance to have the park expanded and congratulated Senior Planner Buizer for a very well done presentation.

Commissioner Sacks supported the motion and concurred with the sentiments for the park and its completion.

Commissioner Loché moved, seconded by Commissioner Mendall, and unanimously approved with Commissioner Thnay absent, to recommend to City Council to adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program and approve the Zone Change, Preliminary Development Plan and Tentative Map, subject to the findings and conditions of approval with the addition of a Condition of Approval for the Tract related to payment of fees into the Benefit District.

→ **3. Zone Change Application No. PL-2005-0536 and Use Permit Application No. PL-2007-0558 – Russ Pitto for Simeon Commercial Properties (Applicant) / SimVest Real Estate I, LLC (Owner) – A Request to Modify a Planned Development District to Allow a Neighborhood-Serving Retail Center Including a Drive-Thru Coffee Shop, Restaurant and a Convenience Store Selling Beer and Wine for Off-Sale Consumption on a 1.5-Acre Parcel at Mt. Eden Business Park - The Project is Located at 26251 Industrial Boulevard Adjacent to and North of Highway 92 Located at the Southeast Corner of Mt. Eden Business Park**

Staff report submitted by Associate Planner Camire, dated December 13, 2007, was filed.

Associate Planner Camire summarized the staff report indicating that on September 6, 2007, the



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Commission reviewed the proposal for denial and directed staff to conduct the environmental review and prepare findings and conditions of approval. Ms. Camire added that a representative of Community Prevention of Alcohol Related Problems (COMMPRE) was in attendance to address the Commission and she noted that COMMPRE received two petitions from members of the Spanish Ranch Mobile Homeowners Association and the South Hayward Neighborhood Collaborative in opposition to the modification of zoning to allow a convenience store with an alcohol license to sell wine and beer. The petition indicated that the City already had enough retail alcohol outlets and the problems associated with consumption of alcohol would increase the service calls to police. Ms. Camire added that she was in receipt of an e-mail from Mr. Nick Dahya, owner of Fairfield Inn & Suites-Marriott Hotel adjacent to the proposed project, who expressed support for the project; however, was in opposition of having a 24-hour convenience store such as a 7-Eleven Store that sells wine and beer. He also expressed safety concerns for the hotel guests.

Ms. Camire indicated that the applicant expressed the following concerns: Condition of Approval No. 22 (k) regarding green building and sustainable development practices, "*Natural linoleum or wood flooring alternatives shall be used,*" was too restrictive and Condition of Approval No. 23 (h), "*A minimum of one 15-gallon buffer tree shall be planted for every 20 lineal feet of property line adjacent of the state Highway. Understory shrubs shall be planted between the trees to achieve a solid screen within two years. This measurement shall be from the top of curb;*" would conflict the flow line of the swale at the location. Ms. Camire felt that the concerns could be resolved at staff level. In reference to the concern regarding Condition of Approval No. 24, "*A separate tree removal permit is required prior to the removal of any tree. Replacement trees equal in value to each tree that is removed shall be required for any trees removed, as required by the Tree Preservation Ordinance,*" Ms. Camire noted that it is a standard condition. In addition, regarding Condition of Approval No. 28, "*No more than five percent of the square footage of the sales area shall be dedicated to alcohol sales. Alcohol must be stored away from products oriented to youth, such as candy and non-alcoholic beverage,*" Ms. Camire indicated that Officer Hutchinson agreed to modify the Condition of Approval No. 28 to read, "*No more than five percent... Alcohol must be stored away from products oriented to youth, such as candy.*"

Upon request by the Commission, Associate Planner Camire clarified Conditions of Approval No. 22 (k), 23(h), 22(g), 22(q), 23(f), and 27 through 34.

Commissioner Lavelle, referencing the letter from COMMPRE, Attachment I, Item 2, "*No cold storage or refrigeration of any alcohol products,*" and Item 6, "*Restrict the hours of sales of alcohol so that sales are stopped by 10:00 p.m.*" inquired why they were not included as part of the conditions of approval. Associate Planner Camire indicated that the Police Department did not deem item 2 necessary. In reference to item 6, she indicated that the Police Department does not restrict sale of off-sale businesses.

In response to Chair Peixoto's inquiry for the police stand regarding the proposal, Associate Planner Camire indicated that the main concern expressed by the Police Department was lack of available staff for the proposed area. She added that it would have fewer incidents for police

surveillance, but the on-site security would be available from 6:00 p.m. to 6:00 a.m.

Chair Peixoto opened the public hearing at 9:15 p.m.

Mr. Russ Pitto, applicant for Simeon Commercial Properties, indicated that he was in attendance to respond to any questions.

In response to Commissioner Mendall's inquiry for the selection of a 7-Eleven and not a restaurant for the site, Mr. Pitto indicated that the 7-Eleven meets the demographics for the area and that efforts for a full service restaurant were proven unsuccessful. Mr. Pitto added that he will continue to look for other restaurants, but added that most likely a restaurant would sell beer, wine and possibly alcohol.

Commissioner Sacks inquired if a 7-Eleven would have surveillance cameras. Mr. Pitto indicated that 7-Eleven stores have surveillance cameras, and the project development would rely on the prospective tenants' ability to provide safety measures. He added that a security guard would be responsible for monitoring the retail center. Mr. Pitto added that by large, they have not received opposition from residents, other businesses, or neighbors.

In response to Commissioner Loché's inquiry about the limitation of size and packaging of the containers, Associate Planner Camire referenced Condition of Approval No. 31, "*The sale of individual containers of beer or malt beverages is prohibited. The sale of distilled spirits is prohibited;*" Condition of Approval No. 32, "*Beer, malt beverages, and wine coolers may be sold only in manufacturer pre-packaged multi-unit quantities;*" and Condition of Approval No. 33, "*Wine may not be sold in bottles or containers smaller than 750 ml.*" In reference to hours of sale of alcohol, Mr. Pitto indicated that the proposed 7-Eleven is not willing to restrict hours of sale of alcohol.

Mr. Cristobal Madueño, through translator Alfredo Coria, addressed the Commission. As resident of Hayward, he expressed concern for the existing 281 retail alcohol outlets. He strongly opposed another alcohol outlet because he felt that there is not enough police personnel to supervise current problems. He requested that the Commission oppose another alcohol establishment in the City of Hayward.

Mr. Alfredo Coria, representing COMMPRE, opposed the modification of the existing Planned District to allow an off-sale liquor outlet. Mr. Coria noted the current 281 retail alcohol outlets and indicated that approval of the application would lower the standards in Hayward. He referred to a sting operation by police which reported that about 27 adults purchased alcohol for minors at Hayward 7-Eleven stores. He indicated that there are four 7-Eleven stores within three miles of the proposed location with the closest one at 1.5 miles away. He referred to data that indicated that alcohol is one of the main revenues for 7-Eleven stores. He urged the Commission to consider that the adjacent reporting district has a higher rate of crime in Hayward. He respectfully requested denial of the application for sale of alcohol.

Chair Peixoto closed the public hearing at 9:31 p.m.

Commissioner Mendall expressed disagreement for any motion that would allow another liquor



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license for the proposed site. Mr. Mendall shared from personal experience that a 7-Eleven would not be a preferred service for the proposed area. He made a motion to approve the revised Negative Declaration; approve the modification to the Planned Development District; and deny the Use Permit.

Commissioner Loché seconded the motion.

Commissioner McKillop did not support the motion on the floor. She indicated that staff has been working with the applicant to find the right business. She disagreed that the proposed convenience store would add loitering or crime to the area, but rather, she indicated that it will be an added benefit for the area.

Commissioner Sacks did not support the motion indicating that she felt that people in the Mt. Eden Business Park requested services that would be delivered. Ms. Sacks noted from personal experience that 7-Eleven stores are convenient for frequent travelers.

Commissioner Loché understood that a restaurant might not be realistic for the proposed site; but disagreed that a 7-Eleven would be a good alternative. He expressed disapproval for another liquor establishment and disagreed that a 7-Eleven would represent a convenience to prospective patrons.

Commissioner Lavelle did not support the motion. Ms. Lavelle referred to the extensive list of restaurants that were contacted for the site and were proven unsuccessful. She believed that a 7-Eleven made sense for the proposal. She acknowledged the report presented by COMMPRE and was impressed with the willingness of City staff to work and compromise with the Police Department and COMMPRE staff.

Commissioner Mendall complimented staff for including the green building requirement in the report.

Chair Peixoto, referring to the e-mail by owner Narendra Dahya of Fairfield Inn & Suites-Marriot Hotel and the petitions by the Spanish Ranch Mobile Homeowners Association and the South Hayward Neighborhood Collaborative, was concerned that the approval of a business that sells beer and wine for off-site consumption could constitute damaging other businesses in the area. Mr. Peixoto was inclined to approve a 7-Eleven without the sale of alcohol. He commended the diligence of the developer in trying to secure a restaurant for the area; but felt that Hayward has enough alcohol establishments and lack of police personnel to patrol.

Interim City Attorney Conneely clarified the motion on the floor.

Commissioner Mendall moved, seconded by Commissioner Loché, and failed, to recommend to City Council to approve the Revised Negative Declaration; approve the modification to the Planned Development District, based on the findings and the conditions of approval; and deny the use permit, based on the findings and conditions.

AYES: Commissioners Mendall, Loché
Chair Peixoto
NOES: Commissioners McKillop, Sacks, Lavelle
ABSENT: Commissioner Thnay
ABSTAINED: None

Having failed the motion, Commissioner McKillop made another motion per staff recommendation.

Commissioner Lavelle seconded the motion indicating support for the 7-Eleven and noting that non-Hayward residents would be shopping at the store. She favored the proposed Starbucks. She offered two amendments: that Condition of Approval No. 28 regarding alcohol sales, *"No more than five percent of the square footage of the sales area shall be dedicated to alcohol sales. Alcohol must be stored away from products oriented to youth, such as candy and non-alcoholic beverages,"* be separated into two conditions of approval with *"Alcohol must be stored away from products oriented to youth, such as candy and non-alcohol beverage,"* as a separate condition. Also, that the condition recommended by COMMPRE, *"Restrict the hours of sale of alcohol so that sales are stopped by 10:00 p.m."* be added as a condition of approval.

Commissioner McKillop accepted the amendments to the motion.

Commissioner Sacks supported the motion adding that the 7-Eleven would sell items other than alcohol.

Commissioner Mendall did not support the motion.

Commissioner McKillop moved, seconded by Commissioner Lavelle, and failed, to recommend to City Council to approve the Revised Negative Declaration; approve the modification to the Planned Development District based on the findings and the conditions of approval; and approve the use permit, based on the findings and conditions with two amendments: that Condition of Approval No. 28 be separated into two separate conditions with *"Alcohol must be stored away from products oriented to youth, such as candy and non-alcoholic beverages,"* listed as a separate condition; and to add a condition to restrict hours of sale of alcohol by 10:00 p.m.

AYES: Commissioners McKillop, Sacks, Lavelle
NOES: Commissioners Mendall, Loché
Chair Peixoto
ABSENT: Commissioner Thnay
ABSTAINED: None

Interim City Attorney Conneely indicated that since there was a deadlock (a 3:3:0 vote), she suggested that the Commission follow Council's procedures and continue the item until the full commission is in attendance. She added that in the event that there would be lack of consensus, the item would then be forwarded to Council without a recommendation.

Chair Peixoto exercised his Chair prerogative and continued the item until the full Commission is



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present.

ADDITIONAL MATTERS

4. Oral Report on Planning and Zoning Matters

Planning Manager Rizk indicated forthcoming meetings in January, one scheduled for January 28 as part of a Joint City Council meeting regarding an update to the 238 Bypass Study.

5. Commissioners' Announcements, Referrals

Commissioner Sacks reported that the Tea Garden might need attention. She complimented Engineering/Traffic staff for their informative assistance and for the speed humps on Tennyson Road.

Commissioner Mendall reported on the power lines on Mission Boulevard at the Mission Paradise property that were used for the PG&E Underground Project.

APPROVAL OF MINUTES

The minutes of November 15, 2007, were approved.

ADJOURNMENT

Chair Peixoto adjourned the meeting at 9:55 p.m., wishing everyone a Happy Holiday Season.

APPROVED:

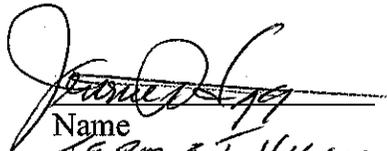
Al Mendall, Secretary
Planning Commissioner

ATTEST:

Miriam Lens
Commission Secretary

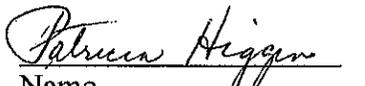
City of Hayward/ Alcohol Outlet Zoning Petition

As a member of the *Spanish Ranch Mobile Homeowners Association*, I strongly oppose the modification of zoning to allow a convenience store with an alcohol license to sell wine and beer at Industrial Blvd., near the Hwy. 92 (westbound) ramp. The city of Hayward currently has 281 retail alcohol outlets, 1 per 550 individuals. Our youth, families, and loved ones already have easy access to alcohol, massive exposure to alcohol ads, and crimes linked to the use and abuse of alcohol. Therefore, I respectfully request the denial of the proposed alcohol outlet in the city Hayward.


Name
JEROME T. HIGGINS

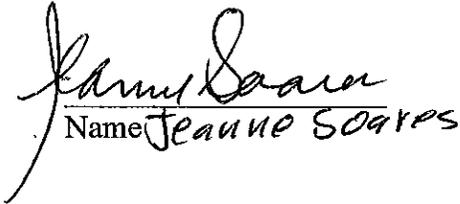
SPANISH RANCH I MHP
Agency/Organization

6 Dec 2007
Date


Name
PATRICIA HIGGINS

SPANISH RANCH MHP
Agency/Organization

12-6-07
Date


Name
JEANNE SOARES

S. R. I
Agency/Organization

12-6-07
Date


Name
REY ABAYA

SPANISH RANCH I
Agency/Organization

12-6-07
Date


Name
Colleen Levinski

SPANISH RANCH I
Agency/Organization

12-6-07
Date

RECEIVED

DEC 11 2007

City of Hayward/ Alcohol Outlet Zoning Petition

As a member of the *Spanish Ranch Mobile Homeowners Association*, I strongly oppose the modification of zoning to allow a convenience store with an alcohol license to sell wine and beer at Industrial Blvd., near the Hwy. 92 (westbound) ramp. The city of Hayward currently has 281 retail alcohol outlets, 1 per 550 individuals. Our youth, families, and loved ones already have easy access to alcohol, massive exposure to alcohol ads, and crimes linked to the use and abuse of alcohol. Therefore, I respectfully request the denial of the proposed alcohol outlet in the city Hayward.

Chu Jones
Name

Spanish Ranch
Agency/Organization

12/6/07
Date

Sean Jeffers
Name

Spanish Ranch I
Agency/Organization

12/6/07
Date

Jane Hart
Name

SPANISH RANCH I
Agency/Organization

12/6/07
Date

Julia S. Mays
Name

Spanish Ranch I
Agency/Organization

12/6/07
Date

Kevin Rey
Name

Spanish Ranch I
Agency/Organization

12-6-07
Date

RECEIVED

DEC 11 2007

PLANNING DIVISION

City of Hayward/ Alcohol Outlet Zoning Petition

As a member of the *Spanish Ranch Mobile Homeowners Association*, I strongly oppose the modification of zoning to allow a convenience store with an alcohol license to sell wine and beer at Industrial Blvd., near the Hwy. 92 (westbound) ramp. The city of Hayward currently has 281 retail alcohol outlets, 1 per 550 individuals. Our youth, families, and loved ones already have easy access to alcohol, massive exposure to alcohol ads, and crimes linked to the use and abuse of alcohol. Therefore, I respectfully request the denial of the proposed alcohol outlet in the city Hayward.

PATRICIA SMITH SR1 12/6/07
Name Agency/Organization Date

Monica R. Schultz Spanish Ranch 1 12-6-07
Name Agency/Organization Date

Linda May Spanish Ranch 1 12.6.07
Name Agency/Organization Date

Stacia Nigman Spanish Ranch 1 12/6/07
Name Agency/Organization Date

[Signature] Spanish Ranch 1 12/6/07
Name Agency/Organization Date

RECEIVED
DEC 11 2007
PLANNING DIVISION

City of Hayward/ Alcohol Outlet Zoning Petition

As a member of the *South Hayward Neighborhood Collaborative*, I strongly oppose the modification of zoning to allow a convenience store with an alcohol license to sell wine and beer at Industrial Blvd., near the Hwy. 92 (westbound) ramp. The city of Hayward currently has 281 retail alcohol outlets, 1 per 550 individuals. Our youth, families, and loved ones already have easy access to alcohol, massive exposure to alcohol ads, and crimes linked to the use and abuse of alcohol. Therefore, I respectfully request the denial of the proposed alcohol outlet in the city Hayward.

Paul Trumh III resident
Name Agency/Organization

12/6/07
Date

Sara Lameri resident
Name Agency/Organization

12/6/07
Date

Doug Beeman Hayward business owner
Name Agency/Organization

12/6/07
Date

Andrea Wilson Hayward Unified
Name Agency/Organization

12/6/07
Date

Karen Nozell Resident
Name Agency/Organization

12/6/07
Date

RECEIVED

DEC 11 2007

PLANNING DIVISION

Arlynn Camire

From: Nick Dahy
Sent: Monday, December 10, 2007 9:56 AM
To: Arlynn Camire
Subject: re:December 13, 2007 Public Hearing - PL-2005-0536 ZC(Mod of PD 97-120-05& PL-2007-0558 UP SIMEON Commercial Properties

Hello Arlynn

RE: PL-2005-0536 ZC(Mod of PD 97-120-05& PL-2007-0558 UP SIMEON Commercial Properties

This is Nick Dahya one of the owners of the hotel(Fairfield Inn & Suites-Marriott) next to the the project that is going to be reviewed on December 13, 2007.

I just wanted to let you know our opinion regarding the above mentioned project. We are in favor of having a Starbuck coffee shop along with sandwich shops and other neighborhood uses(i.e dry cleaner, video shop etc). **However, we are NOT in favor of having a 24 hour convenience store such as a 7 Eleven selling beer and wine or any other convenience store. We are concerned with the safety and security for the guest staying at the hotel.**

thank you