



2

**DATE:** May 14, 2009

**TO:** Planning Commission

**FROM:** Richard Patenaude, AICP, Planning Manager

**SUBJECT:** **Conditional Use Permit Application No. PL-2009-0100; Moses Libitzky and Don Lapidus (Applicants) / Libitzky Holdings, L.P. (Owner) – Request for an extension of time for Use Permit No. 97-160-13 to allow continued use of a 225,406 square foot warehouse for an additional five years to August 20, 2015.**

The project site is located at 199 Filbert Street at the intersection of Filbert and Burbank Streets in the Cannery Area

**RECOMMENDATION**

Staff recommends the Planning Commission finds that the project is categorically exempt from CEQA review and approves the requested extension of time for the conditional use permit resulting in the continued use of the warehouse to August 20, 2015, subject to the attached Findings and Conditions of Approval.

**BACKGROUND**

In 2005, with the adoption of the Cannery Area Design Plan and the Cannery development, the zoning of this property and the surrounding properties was modified from Industrial to Planned Development, thus making the existing warehouse a non-conforming use. When the residential development for the Cannery was approved, it was envisioned that the warehouse uses on this site would be discontinued in 2010 and the site would then be developed with residential uses. However, given the current economic climate and depressed housing market, residential development has slowed considerably and the owner has requested an extension of time on their use permit to continue operation of the warehouse uses until August 20, 2015.

**Project Description and Setting**

The project site is located at the intersection of Filbert and Burbank Streets in the Cannery area of Hayward. The project site is currently developed with a 225,406-square-foot warehouse and occupied by two tenants. The two tenants are Custom Freight, who occupies the northern and north-east sections of the warehouse and Inter Global Logistics, who occupies the southwest corner

of the warehouse. The site is/will be bounded on the east, south and west by existing and entitled future residential development, and on the north by the Burbank Elementary School.

## **DISCUSSION AND STAFF ANALYSIS**

Since the economic climate has delayed potential for residential development on this property, there is strong interest on the part of the property owner to obtain an extension of time for the use permit related to the continued operation of the warehouse uses for an additional five years. Since the current land use and zoning designations for the property would not allow the warehouse uses, staff began negotiations with the property owner. The purpose of the negotiations was to establish the terms under which required findings could be made to allow staff to be supportive of a time extension for the warehouse uses. Those terms are summarized below.

### **Terms**

#### **Time Period for Extension**

The City and property owner have discussed that the maximum allowable time limit for the Use Permit extension would be five years or until August 20, 2015. It appears that the residential market may continue to be slow for a few years, but it is hoped that as the economy begins to turn around, that by 2015, investment in residential development will pick up.

#### **Participation in a Community Facilities District**

The City is in the process of establishing a Community Facilities District (CFD) that would eventually encompass all of the existing and future residential development within the Cannery area to help off-set the costs for provision of police services. The tax in the CFD would be \$484 per residential unit, which would eventually generate approximately \$287,000 in revenue per year. The City Council is scheduled to form the District on May 26, 2009. The subject property is indicated as a future annexation area to the District. The City and the property owner have discussed and the owner has agreed to a condition supporting participation in the CFD in the future.

#### **Removal of Warehouse Building and Accessory Buildings**

Staff is willing to support the time extension for the warehouse uses, provided at the end of the five-year term, the warehouse building and any accessory buildings are fully demolished. The owner has agreed to remove all of the structures at the end of the five-year term, which would not be guaranteed per the terms of the existing use permit. Staff will be requiring a performance bond be posted to ensure the demolition of the buildings does occur at the end of the five-year term.

#### **Modified Truck Route**

Staff had concerns about the continued operation of the warehouse uses, particularly the truck route to and from the warehouse site, in light of the new Burbank Elementary School. In 2006, the truck route to and from the warehouse was modified due to the impending development of Burbank Elementary School and the expansion of Cannery Park. The revised truck route was aided by the creation of a gated entry at the northeast side of the property adjoining Filbert Street and a second driveway created at the southern end of the building. Staff has worked with the owner to establish a revised truck route to and from the site that does not involve any truck traffic north of the site near

the school. The owner has agreed to a revised truck route that involves the use of the gated entry created in 2006 adjacent to Filbert Street and trucks will use Filbert Street and Meek Avenue to access Winton Avenue; thus eliminating all truck traffic by the school. The second driveway at the southern end of the warehouse will also be utilized for the second tenant and will also use Meek Avenue to access Winton Avenue. Attachment C is a diagram showing the proposed truck traffic routes to and from the warehouse site.

### **Findings for Conditional Use Permit Application**

In order to approve a Conditional Use Permit, a series of findings must be made. The following is a discussion of each finding, followed by staff's analysis supporting each required finding.

#### **The proposed use is desirable for the public convenience or welfare.**

By extending the time limit for the continued operation of the warehouse uses on the project site for an additional five years until August 20, 2015, this ensures that the buildings on this site can be occupied and will not be left vacant, generating sales tax revenue for the City. The vacant building or property could be an attraction for homeless and/or crime, which would not be an asset to the City nor the surrounding neighborhood. The extension of time, subject to the conditions of approval and based on the terms discussed above, staff believes the continued operation would be desirable for the public convenience or welfare.

#### **The proposed use will not impair the character and integrity of the zoning district and surrounding area.**

The warehouse uses are in an area that has historically been an industrial area. It was in the last five years that this began to change with the approval of a residential development, Cannery Place. However, the construction of the residential development has been slow, primarily due to the current economic climate. The extension of time for an additional five years will not impair the character nor integrity, provided the terms of the extension and associated conditions of approval are adhered to, including but not limited to: routing truck traffic away from Burbank Elementary School, participation in the Community Facilities District (CFD), and ultimately demolishing the structures at the end of the five year time extension. Citation Homes, the current residential developer of Cannery Place, intends to construct residential units west of this site initially near Martin Luther King Way and will gradually develop in the eastern direction closest to the site. There may, however, be some residential development and/or park development that occurs southeast of the site in the near term. In an effort to provide a separation between the continued industrial use of the site and the adjacent residential communities, staff is requiring the applicant to install eight-foot screen fencing along the perimeter of the site. The Zoning Ordinance requires the installation of an 8 foot separation between Industrial uses and adjacent Residential or Open Space uses. In addition, there are some tanks that are located on a future park site, located just southeast of the site that must be removed. These tanks shall be removed within six months of the Use Permit extension, by November 16, 2009, so that the area can be developed as a neighborhood park.

#### **The proposed use will not be detrimental to the public health, safety, or general welfare.**

The extension of time for continued operation of the existing warehouse uses will not be detrimental to the public health, safety or welfare, provided the terms of the time extension and associated conditions of approval are met. By routing truck traffic away for the Burbank Elementary School,

this will reduce any potential conflicts with the school operation. Once the five years time extension has run out, the buildings will be demolished, thus preparing the site for the future residential development. Participating in the CFD would help ensure that public services will continue to be provided to this area, which helps to maintain the public health, safety and welfare. The City's General Plan includes policies about balancing the need for development with other goals such as maintaining economic investments. By granting the use permit extension, the City is recognizing the need to balance the continued economic viability of the warehouse uses during a time when residential development is economically depressed, which in turn, will ultimately better serve the public welfare since there will be activity in this location as opposed to vacant land that would attract homeless or vagrants.

**The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.**

The City has a policy regarding balancing the need for development with other goals and objectives, such as retaining existing businesses. The extension of time for the continued operation of the warehouse uses would be consistent with this city policy since the economic climate is not conducive to residential development at this time. The surrounding areas, which have approvals for residential development, have been slow to construct because of the economy. In the interim, it would benefit the City to allow the continued operation of the warehouse uses, especially under the terms of the agreement. In addition, the City and the community will benefit from the continued operation with additional sales tax revenues, occupied buildings with tenants as opposed to vacant buildings and additional screening which would not otherwise be required. In addition, through the agreement, the truck route will be revised, the property will eventually participate in the CFD, and the demolition of the existing buildings at the end of five years will allow the property to be developed with residential uses creating the residential community envisioned in the Cannery Area Design Plan.

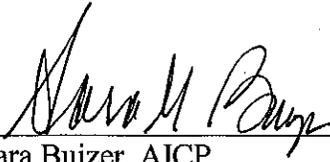
## **ENVIRONMENTAL REVIEW**

This project is categorically exempt from the California Environmental Quality Act, pursuant to Section 15301, related to the continued operation of existing facilities which involve negligible or no expansion of an existing use.

## **PUBLIC OUTREACH**

An official notice of this application was sent on March 12 to the Burbank Neighborhood Task Force and to neighboring property owners and residents. In addition, notice of this Planning Commission hearing was also sent to the Burbank Task Force and surrounding property owners and residents. Staff received some comments from nearby residents on Filbert Street who expressed concerns over noise emanating from the warehouse uses, including truck noise and emergency alarm noise, damage by trucks to sidewalks and neighborhood vehicles, and general compatibility with residential uses. Staff has added conditions of approval related to the revised truck route, noise and hours of operation (Conditions # 4, 7 and 8) to address these concerns.

Prepared by:



---

Sara Buizer, AICP  
Senior Planner

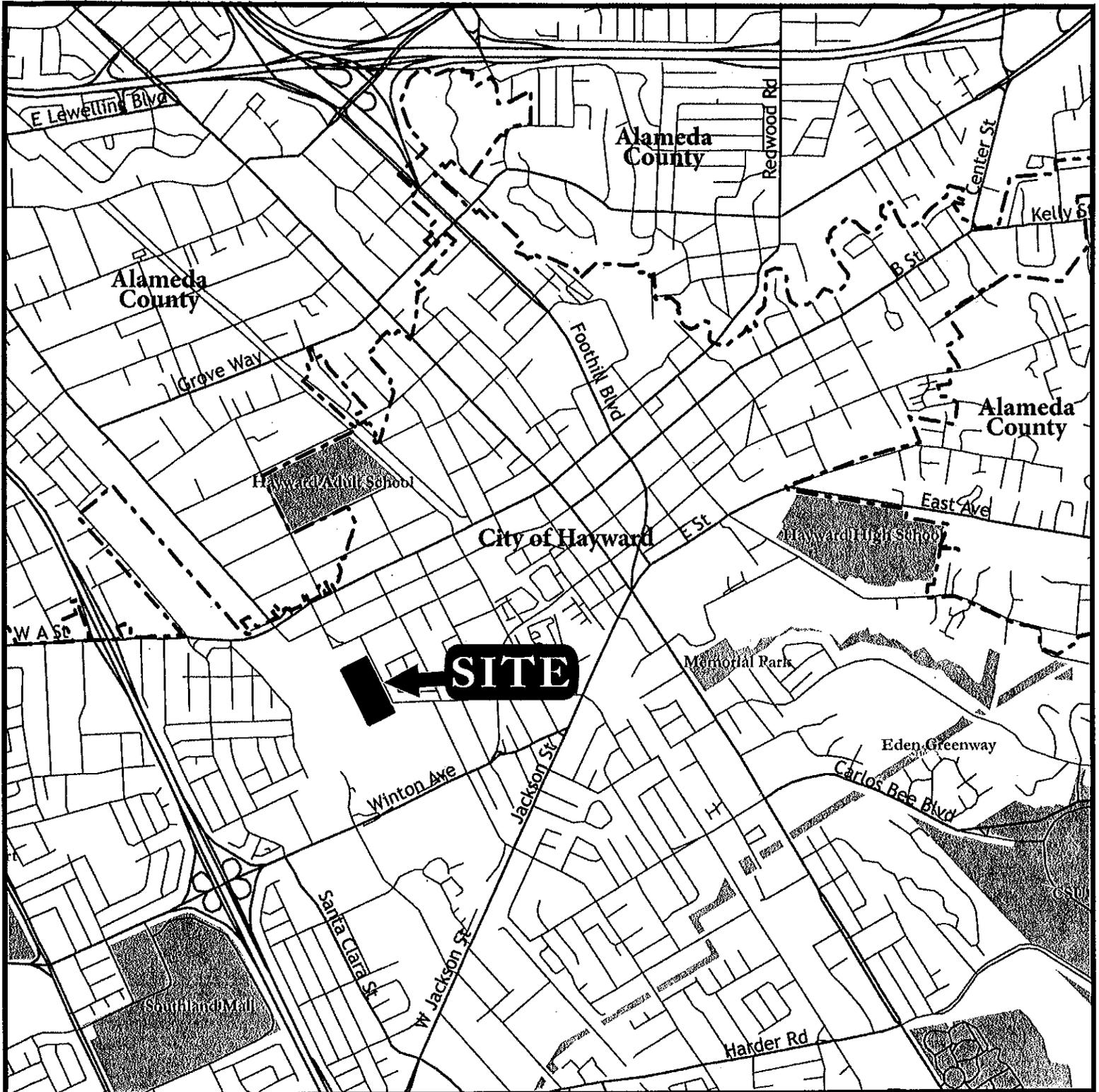
Recommended by:



---

Richard Patenaude, AICP  
Planning Manager

- Attachment A:** Vicinity Map
- Attachment B:** Area and Zoning Map
- Attachment C:** Proposed Truck Traffic Route
- Attachment D:** Conditions of Approval
- Attachment E:** Findings for Approval

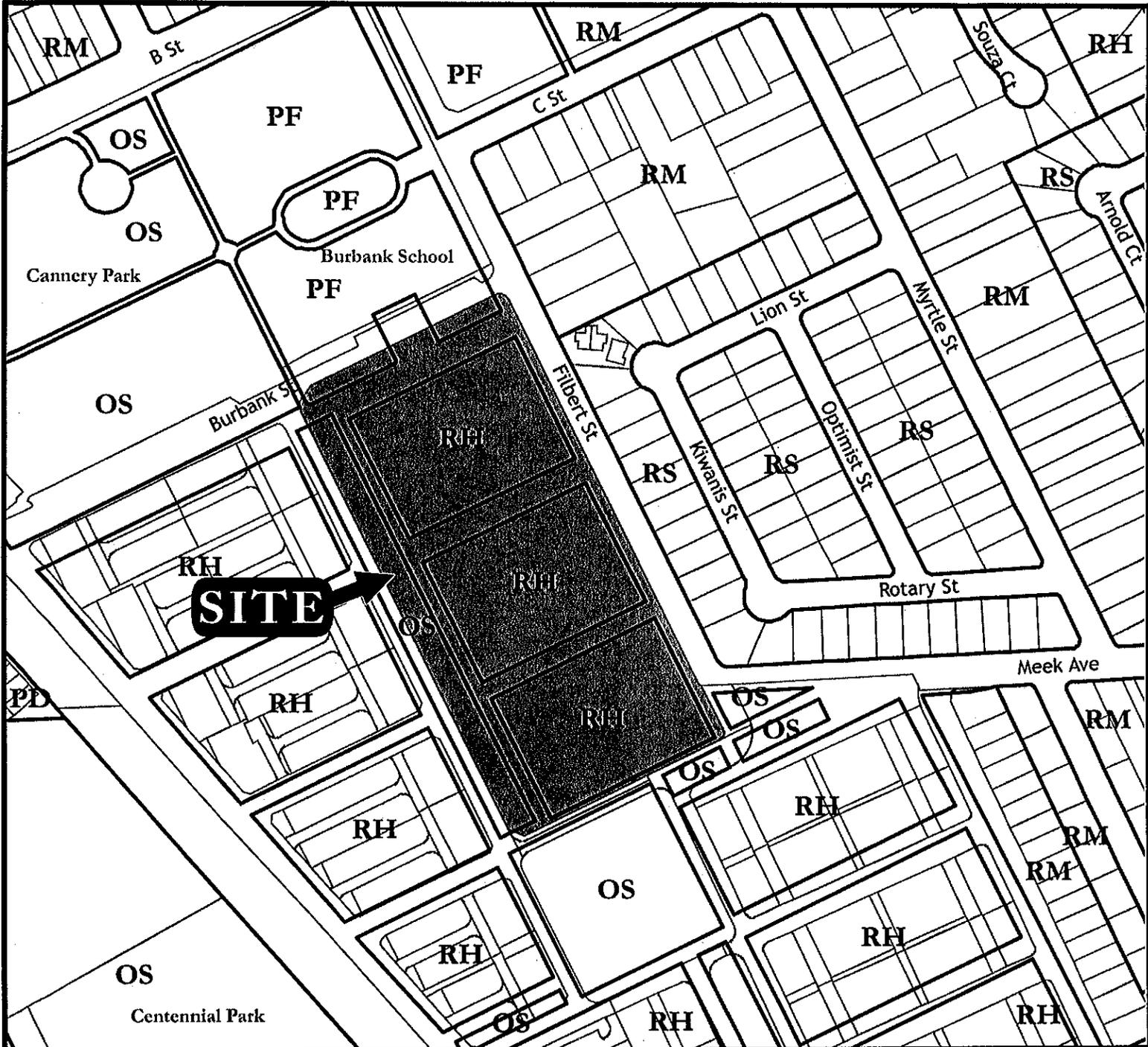


# Vicinity Map

PL-2009-0100 CUP

199 Filbert Street





## Area & Zoning Map

PL-2009-0100 CUP

Address: 199 Filbert Street

Applicant: Moses Libitzky/  
Don Lapidus

Owner: Libitzky Holdings, L.P.

### Zoning Classifications

#### RESIDENTIAL

- RH High Density Residential, min lot size 1250 sqft
- RM Medium Density Residential, min lot size 2500 sqft
- RS Single Family Residential, min lot size 5000 sqft

#### OPEN SPACE

- OS Open Space

#### OTHER

- PD Planned Development
- PF Public Facilities

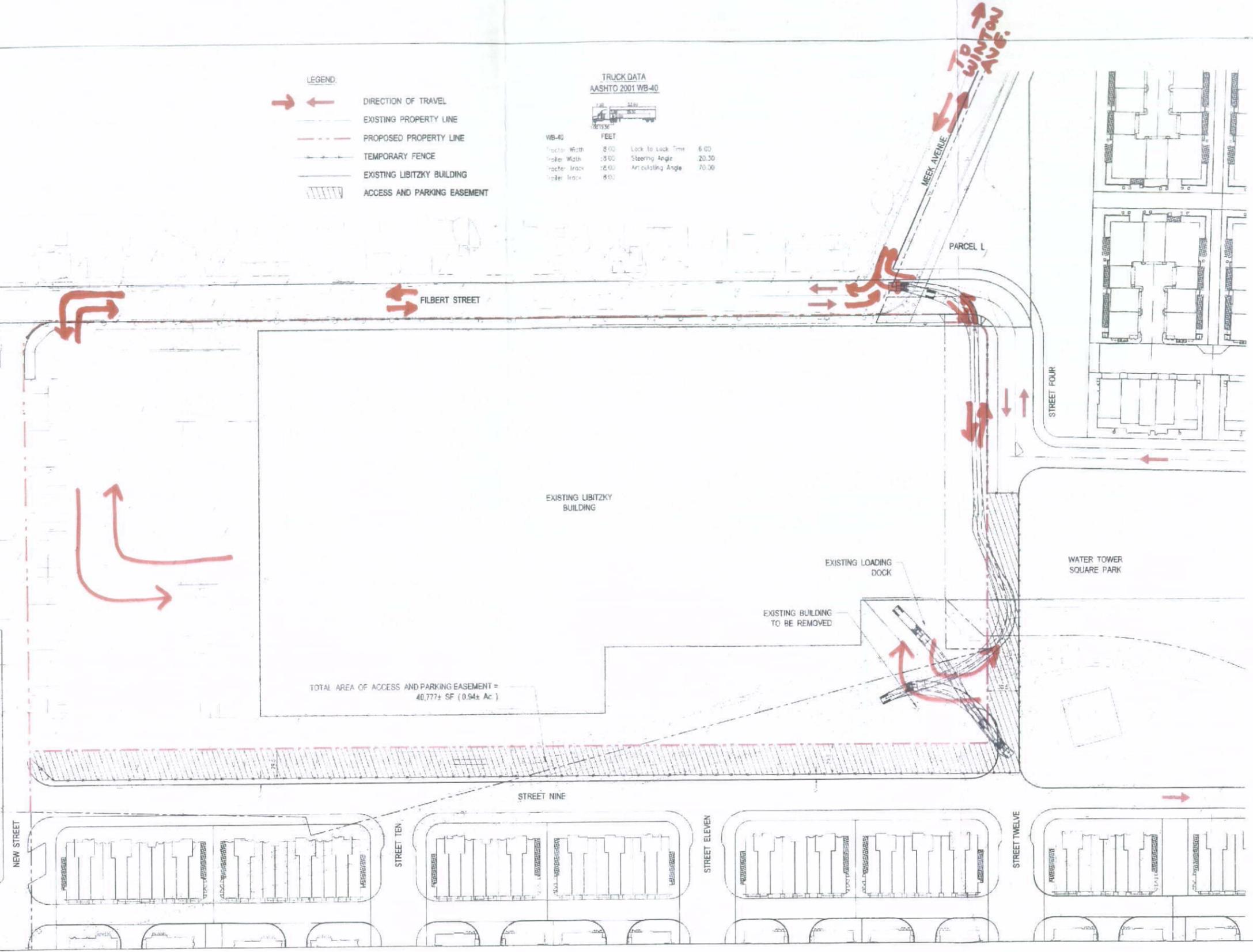


FEET 300 600

- LEGEND:
-  DIRECTION OF TRAVEL
  -  EXISTING PROPERTY LINE
  -  PROPOSED PROPERTY LINE
  -  TEMPORARY FENCE
  -  EXISTING LIBITZKY BUILDING
  -  ACCESS AND PARKING EASEMENT

TRUCK DATA  
AASHTO 2001 WB-40

FEET	
Tractor Width	8.00
Trailer Width	8.00
Tractor Track	8.00
Trailer Track	8.00
Lock to Lock Time	6.00
Steering Angle	23.30
Articulating Angle	70.00



TOTAL AREA OF ACCESS AND PARKING EASEMENT =  
40,777± SF (0.94± Ac.)

LIBITZKY PROPERTY  
ACCESS EXHIBIT - TURNING TEMPLATE (OUT)  
CITY OF HAYWARD ALAMEDA COUNTY, CALIFORNIA  
**PROPOSED TRUCK TRAFFIC ROUTES**




SCALE: 1" = 30'  
JANUARY 2, 2007



Carlson, Barber & Gilbert, Inc.  
CITY ENGINEER

## CONDITIONS OF APPROVAL

### CONDITIONAL USE PERMIT APPLICATION NO. PL-2009-0100 LIBITZKY WAREHOUSE

Moses Libitzky/Don Lapidus (Applicant)

#### Planning Division

1. This Use Permit extension Application No. PL-2009-0100, for the continued operation of warehouse uses at 199 Filbert Street, is valid until August 20, 2015.
2. At the end of the term of the use permit extension in 2015, the owner shall be responsible for obtaining demolition permits from the City of Hayward Building Department and demolishing all warehouse buildings and accessory buildings on site by October 20, 2015, to the satisfaction of the Planning Director. The applicant shall submit a performance bond to the City prior to the expiration of the original Use Permit, by August 20, 2010, equal to the estimated cost of demolition of the warehouse building and any accessory buildings.
3. Beginning on the date that a certificate of occupancy associated with a building permit for residential construction is issued for the property and continuing thereafter in perpetuity, the property may be subject to special taxes levied pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, to pay for the cost of the City providing to the property those public services identified in a public services plan prepared by the City and to pay for the costs of administering the community facilities district in which special taxes are levied. This condition shall apply to the current property owner and any successors in interest of said property.
4. A new truck route shall be established for truck traffic to and from the project site as shown on Attachment C of the May 14, 2009 Agenda Report. No truck traffic to or from the site is permitted on Filbert Street north of the project site. The revised truck route shall be shared with all drivers accessing the project site. In the event that development occurs on tract 7613 to the south prior to the expiration of the use permit that necessitates the conversion of Meek Avenue to one-way circulation, then the developer will work with the city to implement a mutually agreeable alternative truck circulation plan that still avoids truck traffic near Burbank Elementary School and minimizes impacts to surrounding residential areas.
5. Any modification to Use Permit time extension shall be reviewed and approved by the Planning Commission.
6. The owner shall maintain in good repair all building exteriors, walls, lighting, trash enclosure, drainage facilities, driveways and parking areas. The premises shall be kept clean. Graffiti shall be removed within 48 hours after occurrence.

7. No truck deliveries, unloading/loading activity or truck idling shall occur outside of the warehouse during the hours of 7:00 p.m. to 7:00 a.m., Mondays through Fridays and 5:00 p.m. to 8:00 a.m. Saturdays, Sundays and National Holidays.
8. If in the event the warehouse facility generates truck or other operational noises, which exceed noise levels in the general vicinity during nighttime hours, the tenant shall provide an acoustical study for review and approval by the Planning Director. If a noise problem cannot be resolved by mitigating measures, the matter shall be referred to the Planning Commission for review to determine possible revocation of the use permit.
9. The applicant is required to install an 8-foot high screen fence, either solid wood fence or powder coated chain link with slats, surrounding the warehouse site to provide screening between the continued operation of the warehouse uses and the surrounding residential areas.
10. The applicant shall remove the tanks located on the water tower park site by August 20, 2010, and remove the easement from the property so that the development of the water tower park may commence.

## FINDINGS FOR APPROVAL – Libitzky Warehouse

### CONDITIONAL USE PERMIT APPLICATION NO. PL-2009-0100

#### *Findings for Approval – California Environmental Quality Act:*

- A. This project is categorically exempt from the California Environmental Quality Act, pursuant to Section 15301, related to the continued operation of existing facilities which involve negligible or no expansion of an existing use.

#### *Findings for Approval – Conditional Use Permit:*

- B. By extending the time limit for the continued operation of the warehouse uses on the project site for an additional five years until August 20, 2015, this ensures that the buildings on this site can be occupied and will not be left vacant, generating sales tax revenue for the City. The vacant building or property could be an attraction for homeless and/or crime, which would not be an asset to the City nor the surrounding neighborhood. The extension of time, subject to the conditions of approval and based on the terms discussed above, staff believes the continued operation would be desirable for the public convenience or welfare.
- C. The warehouse uses are in an area that has historically been an industrial area. It was in the last five years that this began to change with the approval of a residential development, Cannery Place. However, the construction of the residential development has been slow, primarily due to the current economic climate. The extension of time for an additional five years will not impair the character nor integrity, provided the terms of the extension and associated conditions of approval are adhered to, including but not limited to: routing truck traffic away from Burbank Elementary School, participation in the Community Facilities District (CFD), and ultimately demolishing the structures at the end of the five year time extension. Citation Homes, the current residential developer of Cannery Place, intends to construct residential units west of this site initially near Martin Luther King Way and will gradually develop in the eastern direction closest to the site. There may, however, be some residential development and/or park development that occurs southeast of the site in the near term. In an effort to provide a separation between the continued industrial use of the site and the adjacent residential communities, staff is requiring the applicant to install screen fencing along the perimeter of the site. In addition, there are some tanks that are located on a future park site, located just southeast of the site that must be removed. These tanks shall be removed within six months of the Use Permit extension, by November 16, 2009, so that the area can be developed as a neighborhood park.
- D. The extension of time for continued operation of the existing warehouse uses will not be detrimental to the public health, safety or welfare, provided the terms of the time extension and associated conditions of approval are met. By routing truck traffic away for the Burbank Elementary School, this will reduce any potential conflicts with the school operation. Once the five years time extension has run out, the buildings will be demolished, thus preparing the site for the future residential development. Participating in the CFD would help ensure that

public services will continue to be provided to this area, which helps to maintain the public health, safety and welfare. The City's General Plan includes policies about balancing the need for development with other goals such as maintaining economic investments. By granting the use permit extension, the City is recognizing the need to balance the continued economic viability of the warehouse uses during a time when residential development is economically depressed, which in turn, will ultimately better serve the public welfare since there will be activity in this location as opposed to vacant land that would attract homeless or vagrants.

- E. The City has a policy regarding balancing the need for development with other goals and objectives, such as retaining existing businesses. The extension of time for the continued operation of the warehouse uses would be consistent with this city policy since the economic climate is not conducive to residential development at this time. The surrounding areas, which have approvals for residential development, have been slow to construct because of the economy. In the interim, it would benefit the City to allow the continued operation of the warehouse uses, especially under the terms of the agreement that staff can support such as the revised truck route, participation in the CFD, demolition of the existing buildings at the end of five years so that the property can ultimately be developed with residential uses creating the residential community envisioned in the Cannery Area Design Plan.