



CITY OF HAYWARD AGENDA REPORT

Meeting Date 1/23/03
Agenda Item 1

TO: Planning Commission

FROM: Tim R. Koonze, Assistant Planner

SUBJECT: **Appeal of the Planning Director's Denial of Tentative Parcel Map 7690 – Ed Fuentes (Applicant/Owner) - Request to Subdivide a 9,000± Square-Foot Parcel into Two Parcels and Approve a Variance to the Rear Yard Setback - The Property is Located at 22838 Francisco Street in an CC-C (Central City Commercial) Subdistrict (Continued From October 17, 2002)**

RECOMMENDATION:

Should the Planning Commission find the project categorically exempt per CEQA, approve the Tentative Parcel Map and grant the requested rear yard variance, staff recommends the attached findings and conditions of approval.

DISCUSSION:

On November 17, 2002, the Planning Commission reviewed the appeal of the Planning Director's denial of this application. Staff raised concerns about inconsistency with the *Downtown Hayward Design Plan*, the *General Plan*, and the *Zoning Ordinance* in that the project would create small lots that would constrain envisioned retail and high-density residential development. Planning Commissioners pointed out that the commercial building is vacant now and is in need of repair. Approval of the subdivision would allow the applicant to obtain the funds necessary to revitalize the building, thus enhancing the downtown retail center while upgrading a building with historic qualities. Also, the parcels could be reassembled in the future. Reuse of older commercial structures and enhancing the downtown retail are consistent with the policies of the *Downtown Hayward Design Plan* and the *General Plan*. By a unanimous vote, the Planning Commission directed staff to prepare the necessary environmental documents and the findings and conditions of approval in support of the project.

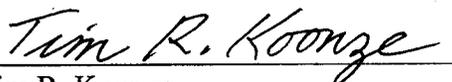
ENVIRONMENTAL REVIEW:

The proposal is categorically exempt per California Environmental Quality Act (CEQA) Guidelines Section 15304, Class 15 Minor Land Divisions.

PUBLIC NOTICE:

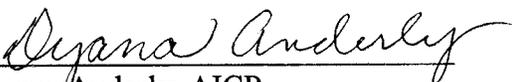
On January 13, 2003, a Notice of Public Hearing was mailed to every property owner and tenants within 300 feet of the subject property, as noted on the latest assessor's records, and to all interested parties regarding this public hearing and a meeting notice was published in the local newspaper on December 3, 2002.

Prepared by:



Tim R. Koonze
Assistant Planner

Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A Staff Report dated 10/17/02
- B Planning Commission minutes dated 10/17/02
- C Findings for Approval
- D Condition of Approval



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FROM: Tim R. Koonze, Assistant Planner

SUBJECT: **Appeal of the Planning Director's Denial of Tentative Parcel Map 7690 – Ed Fuentes (Applicant/Owner)** - Request to Subdivide a 9,000± Square-Foot Parcel into Two Parcels - The Property is Located at 22838 Francisco Street in an CC-C (Central City Commercial) Subdistrict

RECOMMENDATION:

Staff recommends that the Planning Commission uphold the action of the Planning Director and deny Tentative Parcel Map 7690 and the associated rear yard variance subject to the attached findings.

DISCUSSION:

On July 2, 2002, the Planning Director denied Tentative Parcel Map 7690 and the associated rear yard variance citing that the proposed subdivision is not consistent with the General Plan and the Downtown Hayward Design Plan and that findings could not be made to support a reduction in the rear yard from the required 15 feet to 5 feet. The Planning Division received an appeal letter from the property owner on July 17, 2002 stating that he believes that the project is consistent with the General Plan, applicable specific and neighborhood plans, and the City's Zoning Ordinance.

The request is to subdivide a 9,000±-square-foot parcel into two parcels of 4,655 and 4,350-square feet. The parcel is relatively flat and rectangular in shape. There is a one-story single-family home fronting on Francisco Street and a two story commercial building facing Mission Boulevard. The three existing trees and both buildings are to remain. The site is located within the limits of the Downtown Design Plan and the Core area Specific Plan.

The General Plan Land Use and Housing policies and strategies encourage high-density development for transit-oriented projects with emphasis put on projects located within one-half mile of a BART station and one-quarter mile of a major bus route. The property fronts onto Mission Boulevard, which is a major arterial that provides high exposure for the site along one of Hayward's main entryways. The Hayward BART station is located approximately one-third of a mile away. AC Transit has several bus routes along Mission Boulevard and D Street, which is 150 feet away.

The existing single-story single-family home is well maintained but has no significant historical or architectural value. The existing commercial building, which is in need of maintenance, includes a

The existing single-story single-family home is well maintained but has no significant historical or architectural value. The existing commercial building, which is in need of maintenance, includes a residential unit on the second floor. Staff's recommendation to deny the lot split takes into consideration the long term goals of the City, but in the short term, there is concern that the buildings on the site could suffer from deferred maintenance because of difficulties in finding a lending institution who will provide a loan on a mixed-use property.

The commercial building is a classic two-story Italianate structure with a wood clad false front and has some historical value. This style was popular in the West, after the Gold Rush, as a way to make hastily built town buildings look more like the commercial buildings of the East and to create a more urban atmosphere. A staircase at the rear of the building provides access to the upper-story residence. Preservation and rehabilitation of this building is desirable.

The single-family residence has a gravel driveway that can accommodate two off-street parking spaces. There is no parking provided for the commercial building. No variances or parking improvements are proposed. The Off-Street Parking Regulations state that a structure shall not be deemed nonconforming solely because of the lack of off-street parking.

Conformance To City Regulations:

The *Downtown Hayward Design Plan* and *General Policies Plan* recognizes that the downtown area is changing, focusing on a pedestrian-oriented center inviting residents and visitors from BART to stroll into the central business area. It is being revitalized and is depending on new commercial and residential development to help create a vibrant neighborhood. The *General Plan Land Use Map* designates this site as Retail and Office Commercial. The *Zoning Ordinance* implements the policies expressed in these documents.

The following are requirements, policies and strategies from these documents that are applicable to the subject parcel:

Downtown Hayward Design Plan

The Minimum Development Sites section of the *Downtown Hayward Design Plan* identifies this parcel as being within the "Project Expansion Area" which regulates that the minimum size of a development site shall be 10,000 square feet and no site shall be developed so as to create a remnant development site of less than 10,000 square feet. Subdividing the existing 9,000± square-foot parcel into smaller lots would be inconsistent with this directive.

The CC-C Subdistrict definition within the *Downtown Hayward Design Plan* reflects the Zoning Ordinance. Recognizing the need for higher-density residential and retail development in the downtown area at a density of 50 units per acre has been established with a height limitation of 55 feet and 90 percent lot coverage. Reducing the parcel sizes would limit their ability to take advantage of these generous development inducements established for the downtown area.

General Plan Policies and Strategies

The site is encouraged to be developed with high density residential or retail as it is located in the downtown area one-quarter mile from the Hayward BART station, near major AC Transit lines and numerous public amenities. Creating two small parcels restricts the potential for quality development that meets City guidelines. The policies and strategies below are guidelines toward the revitalization of Hayward's downtown commercial retail, which promotes pedestrian-oriented development by constructing or rehabilitating continuous retail frontage and creating nearby high-density housing to support the retail. Subdividing the property into two small parcels limits the construction of a new commercial building or the rehabilitation of the existing commercial building. It would also inhibit high-density development possibilities. This area should be striving towards consolidation rather than subdivision of parcels.

Land Use:

Transit-Oriented Development

- Support higher-intensity and well-designed quality development in areas within ½ mile of transit stations and ¼ mile of major bus routes in order to encourage non-automotive modes of travel. (p. 2-17)

Downtown Area

- Continue to implement the Downtown Design Plan and the Core Area Specific Plan.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwanted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses. (p. 2-18)

Economic Development Policies and Strategies:

Community Development

- Utilize an economic strategy that balances the need for development with other City goals and objectives. (p. 4-17)

Land and Infrastructure

- Revitalize declining commercial and industrial areas and obsolete facilities through rezoning, redevelopment, rehabilitation and other available means. (p. 4-17)

Housing Strategies:

Expand the Housing Supply

- Encourage high-density residential development along major arterials and near major activity or transit centers. (p. 5-39)

Zoning Ordinance

The *Zoning Ordinance* designates this site as being within the CC-C (Central City Commercial) Subdistrict, the purpose of which is to establish a mix of businesses and other activities to enhance the economic vitality of the downtown area. To allow the greatest development potential of properties within the district there are no lot size, lot width, frontage, or lot depth requirements allowing maximum flexibility in development design. There are two existing non-conforming parcels on Francisco Street that have similar layouts that appear to have existed since the 1940's. These parcels have never received City approvals nor has the City approved any parcel split or variance on Francisco Street.

The Zoning Ordinance refers to the *Downtown Hayward Design Plan* for density and height requirements. Recognizing the need to encourage high-density development in this area a generous 50 units per acre and 55-foot height requirements have been established to maximize development.

The Zoning Ordinance requires a 15-foot setback for residential uses and other uses abutting residentially developed property. Therefore each building must set back 15-feet from the rear property line. This cannot be achieved as there is only 27-feet between the two buildings. The subdivider is proposing a 5-foot rear yard setback for the single-family home and a 22-foot rear yard setback for the commercial building. The property is rectangular in shape and there are no special circumstances applicable to the property such as size, shape, topography, location, etc. that would warrant support of this variance.

STREETS AND UTILITIES:

There is no curb, gutter and sidewalk on Francisco Street. If the subdivision is approved, the owner will be required to enter into a deferred street improvement agreement to install frontage improvements at the time it is requested by the City Engineer. Mission Boulevard is fully improved and fully dedicated. Water, sewer, and storm drain mains within the abutting streets have adequate capacity to serve the project.

ENVIRONMENTAL REVIEW:

Projects that are denied do not require CEQA review. Should the Planning Commission wish to consider approval of all or part of the proposed project, staff will have to prepare an initial study to determine whether a Negative Declaration or an Environmental Impact Report (EIR) will be required. At this time, staff believes that an EIR may be required because there is no way to mitigate the inconsistency of the use with the General Policies Plan.

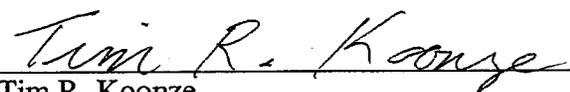
PUBLIC HEARING NOTICE:

A notice was mailed to all property owners and tenants within 300 feet of the subject property and to all interested parties regarding a preliminary meeting held on October 11, 2001. No citizens attended. These same citizens were also sent notices of the Planning Commission meeting and a meeting notice was published in the local newspaper on September 12, 2002.

CONCLUSION:

The subdivision is inconsistent with the *Downtown Hayward Design Plan*, the Land Use, Economic Development, and Housing Elements of the *General Policies Plan*, and the *Zoning Ordinance* in that it would create small lots that are not able to accommodate the type of retail and high-density residential development envisioned by these documents.

Prepared by:

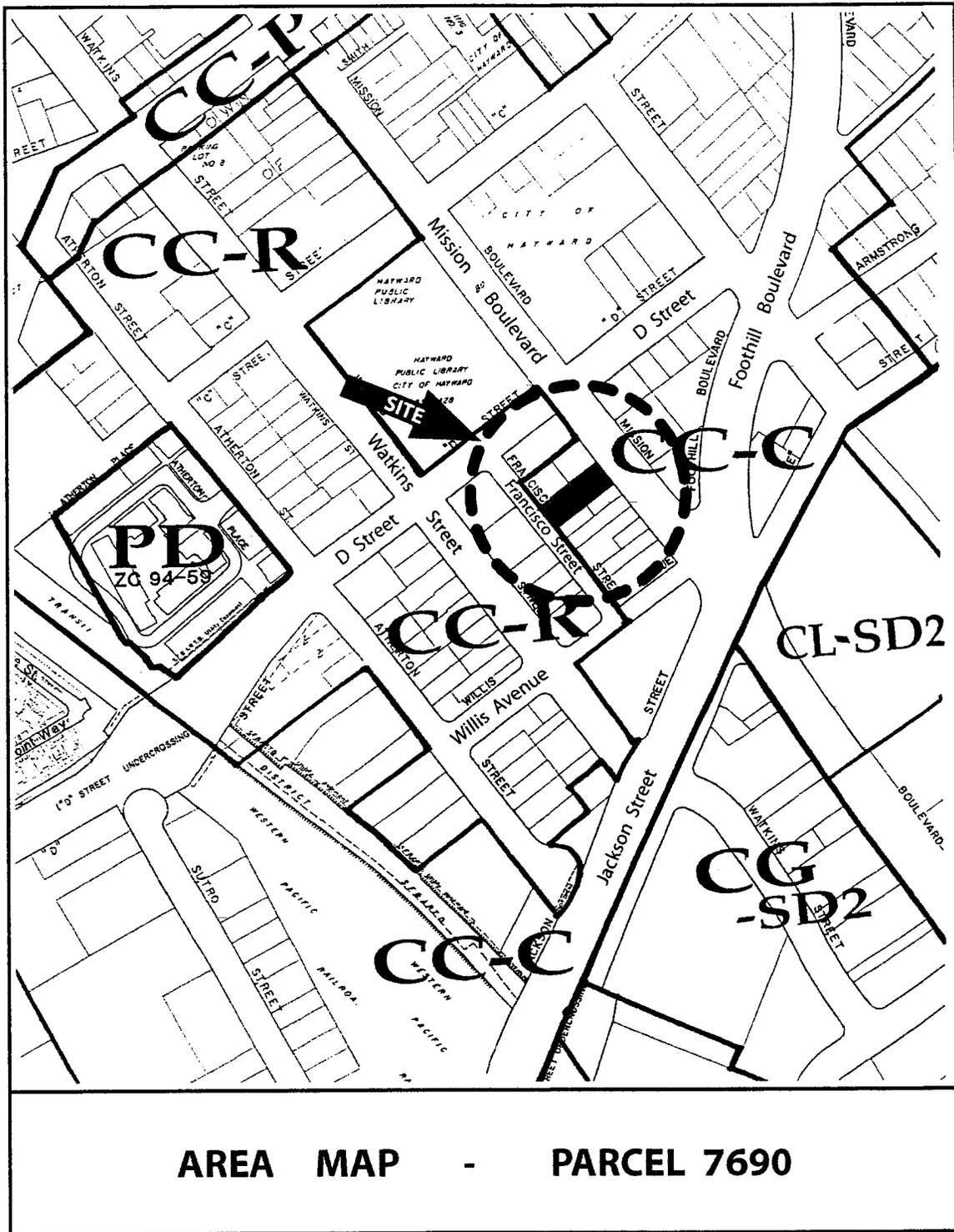

Tim R. Koonze
Assistant Planner

Recommended by:


Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Denial - Tentative Parcel Map 7690
- C. Applicants' Appeal Letter
Tentative Parcel Map 7690



**FINDINGS FOR DENIAL
TENTATIVE PARCEL MAP 7690**

- A. The finding set forth in Section 64474 (a) of the Subdivision Map Act¹ has been made in that the subdivision is not consistent with the General Policies Plan, which is identified as grounds for denial of this subdivision.
- B. The subdivision is inconsistent with the *General Policies Plan* in that the subdivision of the property creates small lots that are not conducive to high density residential development or strip retail development as specified in the policies and strategies of the Land Use, Economic Development and Housing sections of the *General Policies Plan*.
- C. The subdivision is inconsistent with the *Zoning Ordinance* in that creating small parcels limits development potential within the Central City Commercial (CC-C) District thereby reducing the potential effectiveness the property has of enhancing the economic vitality of the downtown area as specified in Section 10-1.1521 of the *Zoning Ordinance*.
- D. The subdivision is inconsistent with the *Downtown Design Plan* in that the subject parcel is within the "Project Expansion Area" that specifies that no site shall be developed under 10,000 square feet and no site shall be developed so as to create a remnant development site of less than 10,000 square feet. Although the existing 9,000± square-foot-parcel is shy of the 10,000 square-foot minimum requirement, subdividing it further is in contrast to the direction provided within the Minimum Development Sites section of the *Downtown Design Plan*.

Findings for Denial of Variance to required Rear Yard

- A. The property does not have any unusual shape or special circumstances to warrant a variance to the rear yard. The parcel is a flat rectangular shaped parcel that has two existing buildings and two street frontages.
- B. No other parcels in this zoning district have been granted a variance to the rear yard; therefore, application of Zoning Ordinance requirements would not deprive the property of privileges enjoyed by other properties in the vicinity under the same zoning classification.
- C. Granting a variance would constitute a grant of a special privilege as no other rear yard variances within the zone and vicinity in which the property is located.

¹ The findings of Section 64474 set forth the grounds for denial of a tentative map which are as follows:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property with the proposed subdivision.

RECEIVED

JUL 17 2002

PLANNING DIVISION

July 15, 2002

Ms. Dyana Anderly
Planning Director
City of Hayward
777 B Street
Hayward, CA 94541

SENT Via Fax (510-583-3649) and Register Mail

Re: Appeal of Administrative Denial – Francisco Street Subdivision

Dear Ms. Anderly,

I received the postcard "Notice of Decision" declaring your administrative denial of my subdivision application.

I hereby appeal your decision and await my hearing before the Planning Commission.

The specific grounds of my appeal are that my subdivision project is consistent with the General Plan and applicable specific plans and neighborhood plans and my subdivision project is consistent with the City Zoning Ordinance, therefore, it should be approved.

Regards,



Eulalio (Ed) Fuentes
22838 Francisco Street
Hayward, CA 94541

ATTACHMENT C

**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Bogue, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeño, McKillop, Sacks, Caveglia, Halliday, Thnay
CHAIRPERSON Bogue
Absent: COMMISSIONER None

Staff Members Present: Anderly, Conneely, Gaber, Koonze, Looney, Patenaude

General Public Present: Approximately 10

PUBLIC COMMENT

There were no public comments.

AGENDA

1. Appeal of the Planning Director's Denial of Tentative Parcel Map 7690 – Ed Fuentes (Applicant/Owner) – Request to Subdivide a 9,000± Square-Foot Parcel into Two Parcels – The Property is Located at 22838 Francisco Street in a CC-C (Central City-Commercial) Subdistrict
2. Use Permit Application No. PL-2002-0106 – Julie McKillop and Ana Marisol Valles (Applicants); Julie McKillop (Owner) – Request to Operate a Retail Wine and Food Shop in the CC-C-SD-1 (Central City-Commercial/Streetcar Special Design District) Zoning District – The Property is Located at 742 B Street, Across From City Hall

PUBLIC HEARINGS

1. Appeal of the Planning Director's Denial of Tentative Parcel Map 7690 – Ed Fuentes (Applicant/Owner) – Request to Subdivide a 9,000± Square-Foot Parcel into Two Parcels – The Property is Located at 22838 Francisco Street in a CC-C (Central City-Commercial) Subdistrict

Assistant Planner Koonze explained why the Planning Director denied the application as well as the history of the application. He then described both buildings on the lot. He explained that the applicant wants to upgrade the commercial building. He explained that staff is looking at the long-term goal of high-density for that area and therefore, the subdivision is inconsistent with the Downtown Design Plan and with the Zoning Ordinance. Staff feels that the area should be striving toward consolidation rather than subdivision of parcels.

Commissioner Caveglia questioned the City's vision and what they would like to see.

Assistant Planner Koonze explained that staff is looking forward to incorporating into a higher intensity use in that area.

Planning Manager Anderly suggested that in looking at just these two lots, for the short term this might be a good solution. Eventually, however, the whole block might be considered. She noted that there is no vision for the block but the General Plan indicates a long-term vision of high density and commercial. She also stated that staff does not know how structurally sound the commercial building is.

Commissioner Caveglia commented that in driving by the property he noticed two major cables on that side need to be fixed. He asked staff to make a note of this.

Commissioner Halliday asked whether this is in the Redevelopment Area.

Planning Manager Anderly responded that it is. She then noted that by approving the request, there would be more property that would be problematic for the Redevelopment Agency plans.

Commissioner Halliday asked whether the backyard is out of conformance.

Assistant Planner Koonze responded that at present it is not since it is all one lot.

Chairperson Bogue opened the public hearing at 7:45 p.m.

Ed Fuentes, property owner, noted that he was appealing the staff denial of the project. He explained that he is doing this with private funding, and commented on a letter from his banker who supports the project. He noted that the property is too complex and special to stay as one lot, and said he would like to get the commercial building back into service. The upstairs of the property can be converted to two or three units. He noted that by separating the lot there would be both the commercial and the residential property. He explained that he knows, in time, the house is going to have to go. He noted that he came to the City in July and met with both the Redevelopment and Planning Directors. He learned at that time that there is no long term Redevelopment plans for that block. He explained that having the building vacant is not positive for either the City or himself.

Commissioner Zermeño asked the applicant what plans he had for the building.

Mr. Fuentes responded that it has incurred years of neglect. He would need to shore up the old floor, and bring the building up to code standards. He thought he would add another bathroom both upstairs and downstairs. Since he has been told it is structurally sound, he thought \$30-40,000 would make it attractive for responsible tenant.

Commissioner Zermeño then asked what type of business he envisioned in the building.

Mr. Fuentes responded that there would be a variety of service businesses that might be



interested and that the building and location lend themselves nicely to all types of retail.

Commissioner Halliday noted that she had spoken by phone with the applicant. She asked about his report of the minimum size of the development site.

Assistant Planner Koonze commented that this was a section of the Downtown Hayward Design Plan that was removed. Having it in the staff report was in error.

Assistant Planner Koonze said the minimum lot size requirement was removed from the Downtown Hayward Design Plan as part of the last revision.

Commissioner McKillop asked about the rental costs for the properties.

Mr. Fuentes said it would be different whether it were a single unit or two units. The rental would probably be between \$1400-\$1500. As to the commercial space, he was assuming it would rent for over a \$1 a square foot, which is typical of the downtown area at this time, and it is 1500 square feet.

Steven Davis, described himself as a building official, said he has been working with Mr. Fuentes. He has spent some time evaluating the building, and feels it is very sound.

Chairperson Bogue closed the public hearing at 8:02 p.m.

Commissioner Halliday described the property on both sides that are subdivided. Since there is no date for when the City will be able to redevelop the lot, she commented that it would be an asset to make this work. She then moved, seconded by Commissioner Zermeño, to uphold the appeal, pending staff returning with findings to approve and CQA review.

Assistant City Attorney Conneely commented that staff would have to perform CEQA review, so the motion is to conduct CEQA review and bring back findings for approval.

Commissioner Zermeño said that in the long term he would agree with staff goals, but meantime, the property is not appealing. He said he would like to see it upgraded and more attractive. He said he too had talked with Mr. Fuentes.

Chairperson Bogue said he also had talked with Mr. Fuentes.

Commissioner Thnay asked whether an Environmental Impact Report would be required.

Planning Manager Anderly indicated that this has been staff's response where the project does not meet City policies. However, the Planning Commission's action reflects their belief that it is consistent with the General Plan.

Commissioner Thnay commended staff for the overall direction the City is going. At the same time, with CCC zoning and financing, Mr. Fuentes might still contribute to the enhancement of downtown. He noted that in the short-term, this is an interim solution.

Commissioner Sacks said she was sorry she had missed Mr. Fuentes on the telephone. She noted that this is a redevelopment situation in the future, but since the Commission has to deal with the day-to-day realities, she said she would support the motion.

Commissioner McKillop said she has had her eye on this building for a long time. She would love to see the old building get another lease on life.

Commissioner Halliday commented that Mr. Fuentes has done an excellent job of helping staff make findings that this project will conform to the General Plan.

Commissioner Zermeño said the sign on the building was pretty ugly and hoped it would probably have to go.

Planning Manager Anderly stated that any sign for an obsolete business would have to go.

The motion passed unanimously.

2. Use Permit Application No. PL-2002-0106 – Julie McKillop and Ana Marisol Valles (Applicants); Julie McKillop (Owner) – Request to Operate a Retail Wine and Food Shop in the CC-C-SD-1 (Central City-Commercial/Streetcar Special Design District) Zoning District – The Property is Located at 742 B Street, Across From City Hall

Commissioner McKillop recused herself due to a conflict of interest.

Planning Manager Anderly described the wine bar proposed for across the street from City Hall. She noted that it would be 500-feet from nearest alcohol sales. They plan to have outside seating in the rear. One letter of objection was received from Commpre, which noted that the location was in an area of over-concentration. Staff says the use permit can regulate many things, including hours. She said there is an expectation that the downtown will have wine bars, etc. She noted the request from Commpre to having a requirement for Responsible Beverage Service classes for the staff. She said they were also asking for “no off-sale,” as well as a requirement that the gross sale of alcohol would not exceed the gross sale of food. She noted that this would be difficult for the City to monitor with inadequate staff.

Commissioner Caveglia said that in looking at the drawings, there was nothing of the residence in the upper part of the building.

Planning Manager Anderly responded that the Use Permit is for the bar and alcohol sales. The residence is separate from this hearing.

Commissioner Sacks discussed the property near City Hall. She said many people think of the green area as a kind of park. She emphasized that it is not a park. Plans for a commercial building have been submitted for this area.



Planning Manager Anderly noted that a request for an office building on that parcel had already been submitted.

Commissioner Zermeño clarified that Commpre had recommended no off-sale liquor sales.

The public hearing opened at 9:20 p.m.

Anna Marisol Valles, Applicant, described her passion for hospitality. She said she wants to bring the service and luxury she has learned to Hayward and this establishment. She described the business model for the building, and said she appreciated the effort of Commpre. The applicants had met with them to try to solve their concerns. She noted that they had agreed to the responsible beverage training. She then asked the Commission to grant the permit.

Commissioner Halliday asked about the conditions #13, #14 that refer to beer, malt liquor, and distilled spirits being sold. She said she thought this was a wine bar.

Ms. Valles explained that there could be foreign beers offered for sale as well.

Commissioner Caveglia said he thought the project was a fascinating new concept. Having the two apartments upstairs. He asked about the cost of the wine.

Ms. Valles said that it would vary with the variety of wines. She said it might be from \$12 - \$21. The bottles would mostly be mid-range wines and sell for \$15 or so. She noted that they would have educational classes as well.

Commissioner Caveglia then asked about the restaurant and its menu.

Ms. Valles said they would serve cheeses, soups, and dishes that compliment wines.

Commissioner Zermeño asked for more information about the classes and could they be combined for credit at Chabot.

Ms. Valles described them as wine classes and education. She noted that occasionally vintners would come in.

Commissioner Zermeño then commented that he had never heard of Neumanali winery.

Ms. Valles responded that the name refers to the three owners.

Commissioner Sacks asked whether there would be anything available for people who do not drink wine.

Ms. Valles described the wine shop as a destination point, a place to view art or just be around other people. She noted that food would be available to them as well as other beverages.

Helga Grayson, co-applicant for the project, described her background as having a specialty catering business. She commented on the passion of many people of a glass of wine with a great meal. She said they looked at the success in the downtown area and felt it could be further enriched and added to the culture. She then read condition 15, and demonstrated the sizes of wine. She asked for the sizes of wines to include a split or 375 ml size rather than simply over 750 ml for sale.

Commissioner Zermeño said the gallon jugs would worry him.

Ms. Grayson noted that the largest size they would make available would be a magnum but these would be rare.

Commissioner Zermeño then asked whether the shop would serve California wines only.

Ms. Grayson responded that they would have mostly California wines but would not say only since there are many specialty wines with a European flair. She explained that they might have exceptions.

Commissioner Sacks asked whether corked wine was typical of their sales.

Ms. Grayson said yes, everything sold would have a cork.

Clarice Roberts said she is part of the art group going at the shop. The Phantom gallery is presently located in temporary quarters on B Street. They have a 6-month lease and will have to vacate soon. She said they were originally formed to help revitalize the downtown. She said they would be staffing the art part of it. The gallery will show local artists, more than half of whom exhibit nationally.

Jim DeMersman, representing the Hayward Chamber of Commerce, commented that the Downtown is alive, well and growing. It is in full swing and the place to be. He noted a number of attractive uses available. He said the urban transit/housing is being noted on a national level. He said the arts help to draw residents and visitors alike. As museum curator he noted that although many other cities are losing response, Hayward's Museum patrons have increased 36 percent from last year. He noted that each component adds to the success of the downtown. Ms. McKillop has made a commitment to the community. He noted that she had brought much of her business from the San Francisco area to invest in the Hayward community.

Emily Chung, representing Commpre, said the law would not allow a new establishment within 500 feet of a licensed liquor outlet. She called attention to Albertson's, which is within 200 feet. She added that although they are exempt from ordinance because of their size, they are still there. She noted the distilled spirits in the conditions. She emphasized that this is not a "wine only" license. She commented that if this business was not successful or sold to someone else, the next owner would be able to sell beer. She then discussed a different



solution. She suggested a license type 41, which must operate at a bona fide eating-place. She noted that Buffalo Bill's is a kind of 41-type. She said Commpre would like them to increase the gross sales of food. ABC will enforce such a condition.

Commissioner Halliday asked whether the License 41 could have a provision for off-sale.

Ms. Chung responded that they could have the privilege for off-sale. She noted that Buffalo Bill's has off-sale as well.

Commissioner Halliday then asked about the provision for 50 percent of the total sales being food as well as alcohol. She commented that if they were selling wine, sales of wine would exceed food. She noted that it would be hard to enforce. Everything is half

Ms. Chung commented that since it is a condition of the Alcohol Beverage Commission, they would have to enforce it. She said Commpre does not want to encourage over-saturation of alcohol establishments in this area.

Commissioner Caveglia said he was interested in the License 41 and would like a response from the applicant.

Ms. Valles said that their license would be a combination of a 20 and a 41, since the sales would not be half food.

Planning Manager Anderly said she was not versed enough to know the restrictions. She noted that with the higher priced wines, it would be difficult to achieve a half and half percentage of sales of alcohol versus food.

Commissioner Sacks commented that the license types do not take into account the cost of the product.

Ms. Chung said a License 41 includes a restaurant.

Commissioner Sacks said that is not a consideration of what the applicant is asking. They are not planning a full restaurant.

The public hearing closed at 8:53 p.m.

Commissioner Zermeño said he certainly appreciated Commpre's effort. However, the applicant had plans to only sell wine and beer. He said he could not see winos or teenagers buying booze here. He said he does see this as unique and upscale, with an art galley and a garden. He moved for approval of the permit, with elimination of Condition 15. The motion died for lack of a second.

Commissioner Thnay moved, with Commissioner Sacks seconding, approval of the permit. He noted that Condition 15 would be changed to 375 ml instead of 750 ml. He commented on the difference between an alcohol shop and this up-scale wine shop. He added his compliments to Commpre for all the work they are doing but this is part of the evolution of downtown in trying to attract more people to the area.

Commissioner Halliday asked staff about the existing 500 feet and whether Albertson's was exempt.

Planning Manager Anderly said it was exempt and not to be considered in this decision.

Commissioner Halliday then said as long as these people run this establishment she would feel comfortable with it. However, if they were to leave the building the license will go with the land.

Planning Manager Anderly clarified that the new owner would be restricted by the same Conditions of the Use Permit.

Commissioner Halliday then proposed a friendly amendment to delete most of Condition 16, so that it would read, "Distilled spirits shall not be sold." Both the maker of the motion and the seconder agreed.

Planning Manager Anderly said she did not think the applicant would mind this restriction.

Commissioner Halliday added that she was excited to see both applicants at this meeting. It really indicates that the downtown is taking off. She said she liked to see locally inspired small business. This looks like a nice business, its near BART, and should enhance the ambiance of downtown. She added that she highly respect the work of Commpre.

Chairperson Bogue asked that a further condition be added to require the Responsible Beverage Classes for employees. This was also agreed to.

Commissioner Sacks added that there should be plenty of oversight with its location across from City Hall.

Commissioner Caveglia commented that for the first time in 7 years, he would be voting for a project that has alcohol.

The motion passed unanimously 6:0:1, with Commissioner McKillop abstaining.

ADDITIONAL MATTERS

3. Oral Report on Planning and Zoning Matters

There were no oral reports.

4. Commissioners' Announcements, Referrals

MINUTES



REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD, Council
Chambers
Thursday, October 17, 2002, 7:30 P.M.
777 "B" Street, Hayward, CA 94541

There were no announcements or referrals.

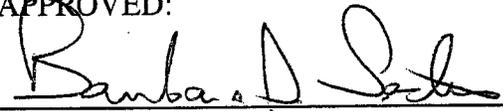
APPROVAL OF MINUTES

- September 26, 2002 - Approved.

ADJOURNMENT

The meeting was adjourned by Chairperson Bogue at 9 :08 p.m.

APPROVED:



Barbara Sacks, Secretary
Planning Commission

ATTEST:



Edith Looney
Commission Secretary

**FINDINGS FOR APPROVAL
TENTATIVE PARCEL MAP 7690
22838 Francisco Street**

The following findings can be made if the Planning Commission approves the requested variance:

- A. The tentative parcel map, is categorically exempt per California Environmental Quality Act (CEQA), Section 15304, Class 15, Minor Land Divisions.
- B. The tentative parcel map, as conditioned, substantially conforms to the State Subdivision Map Act, the City's Subdivision Regulations, and the General Plan.
- C. The site is physically suited for the proposed type of development.
- D. The design of the subdivision and the proposed improvements are **not** likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife and their habitat.
- E. The design of the subdivision and the proposed improvements are **not** likely to cause serious health problems.
- F. Existing streets and utilities are adequate to serve the project.
- G. None of the findings set forth in Section 66474 of the Subdivision Map Act¹ have been made, and the approval of the tentative parcel map is granted subject to the recommended conditions of approval.

Findings of Approval for the Rear Yard Variance

- A. The dual property frontage and the existing building with historical elements creates a special circumstances to warrant the rear yard variance.
- B. Strict application of the Zoning Ordinance requirements would deprive the property of privileges enjoyed by other properties in the vicinity under the same zoning classification that have similar rear yard setbacks.
- C. Granting a variance would not constitute a grant of a special privilege as other properties in the vicinity and zone have similar rear yard setbacks.

¹ The findings of Section 66474 set forth grounds for denial of a tentative map which are as follows:

- A. That the proposed map is not consistent with the applicable general and specific plans as specified in Section 65451.
- B. The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- C. That the site is not physically suitable for the type of development.
- D. That the site is not physically suitable for the proposed density of development.
- E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- F. That the design of the subdivision or the type of improvements is likely to cause serious public health problems.
- G. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property with the proposed subdivision.

CONDITION OF APPROVAL
TENTATIVE PARCEL MAP 7690
22838 Francisco Street

1. Prior to issuance of a building permit the owner shall enter into a deferred street improvement agreement to install street improvements along the Francisco Street property frontage. The design of the street improvements shall be approved by the City Engineer.