



## CITY OF HAYWARD AGENDA REPORT

Meeting Date 06/10/04  
Agenda Item 1

**TO:** Planning Commission

**FROM:** Erik J. Pearson, AICP, Associate Planner

**SUBJECT:** **Variance No. PL-2004-0079** – Request to Install Two Logo Signs on The Roof of an Existing Fast Food Restaurant (KFC) Where Roof Signs Are Prohibited and Where The Height of The Signs Exceed 24" (48" proposed) – David Grace for Sign Designs (Applicant)/ Harman Management (Owner)

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

### RECOMMENDATION

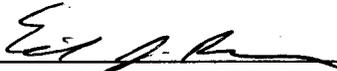
Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305 *Minor Alterations in Land Use Limitations*; and
2. Approve the variance application subject to the attached findings and conditions.

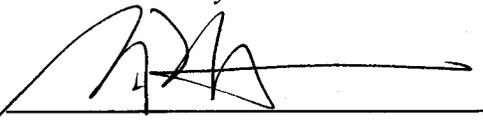
### DISCUSSION

On May 27, 2004 the Commission voted 6-0 to direct staff to present findings and conditions in support of the requested variance. The Commission directed staff to include conditions of approval addressing landscaping, picking up litter, noise, lighting and nighttime access to the parking lot. The original conditions of approval (see Attachment C) requires that employees must pick up trash originating from the site within 300 feet of the perimeter of the property. The original conditions also include a requirement that the lighting be designed to not cast direct light or glare upon adjacent properties. Staff recommends the conditions of approval require the applicant to submit a new lighting plan to show that the current design will be improved. The original conditions will remain in effect and have been attached. All remaining issues have been incorporated into the new conditions of approval.

*Prepared by:*

  
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Erik J. Pearson, AICP  
Associate Planner

*Recommended by:*

  
\_\_\_\_\_  
46 Dyana Anderly, AICP  
Planning Manager

**Attachments:**

- A. Findings for Approval of Variance Application
- B. Conditions of Approval of Variance Application PL-2004-0079
- C. Conditions of Approval of Use Permit and Variance Application 86-62
- D. Draft Minutes from May 27, 2004 Planning Commission Meeting  
Plans

**CITY OF HAYWARD  
PLANNING DIVISION  
VARIANCE APPROVAL**

**JUNE 10, 2004**

**Variance No. PL-2004-0079** – Request to Install Two Oversized Logo Signs on the Roof of an Existing Fast Food Restaurant (KFC) – David Grace for Sign Designs (Applicant)/ Harman Management (Owner)

The property is located at 1299 W. Tennyson Road, at the corner of Patrick Avenue, in a Neighborhood Commercial (CN) Zoning District

**Findings for Approval:**

- A. Approval of Variance Application No. 2004-0079, is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, *Minor Alterations in Land Use Limitations*.
- B. There are special conditions or circumstances peculiar to the property involved that apply generally to property in the same district that warrant the proposed roof-mounted logo signs. Roof signs were approved with the design of the building. The existing roof signs will be removed and the new roof signs will be better integrated into the architecture of the building.
- C. Literal interpretation of this article would cause a hardship or deprive the applicant of rights enjoyed by others in the same district in that the building design does not easily accommodate wall signs. The variance will allow the store to update its image with the company's new logo as other business properties in the area have done.
- D. The granting of the variance would not grant a special privilege inconsistent with the limitations on other properties in the same district. The property was granted a special privilege when the original roof signs were approved. The variance will simply allow that privilege to be retained as the roof signs are relocated.

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**Conditions of Approval:**

1. All conditions of approval from Use Permit and Variance 86-62 shall remain in full force and effect except where superceded herein.
2. Variance Application No. PL-2004-0079, is approved subject to the plans labeled Exhibit "A" and the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a building permit or electrical permit application has been submitted and accepted for processing by the Building Official, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 15 days prior to the above date.
3. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
4. Any proposal for alterations to the proposed site plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
5. Prior to the issuance of a Building Permit, Electrical Permit or a Sign Permit, the following work shall be completed:
  - a) Detailed landscaping and irrigation plans shall be prepared by a licensed landscape architect and submitted for review and approval by the City Landscape Architect.
  - b) Landscaping shall be installed per the approved plans.
  - c) A lighting plan shall be prepared by a qualified professional and submitted for review and approval by the Planning Director to show how fixtures will be modified or replaced so that light and or glare is not cast upon adjacent properties. Details of decorative fixtures shall be included. Both existing and proposed photometric plans must be submitted. The parking lot should be lighted to a minimum of 1 candle-foot.
  - d) Lighting shall be installed per the approved plans.
  - e) Details of a decorative barrier to be erected across driveways when the restaurant is closed shall be submitted for review and approval by the Planning Director.

- f) Driveway barrier(s) shall be installed per the approved plan.
  - g) A sign shall be posted in the drive through area asking patrons to keep noise levels to a minimum.
  - h) Surveillance cameras shall be installed to monitor the exterior of the premises on a 24-hour basis.
6. Prior to the issuance of a Sign Permit, the following changes shall be made to the plans:
- a) Details shall be included that show the new signs to be recessed into the existing walls.
  - b) A note shall be included on the plans stating that the new signs will be non-illuminated while the business is closed.
  - c) A note shall be included on the plans stating that the existing roof signs will be removed prior to the installation of the new signs.
7. Landscaping shall be maintained in a healthy, weed-free condition at all times. The owner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% die-back) shall be replaced within ten days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected by, and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to Municipal Code.
8. Prior to final inspection all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.
9. Violation of these conditions or requirements may result in the City of Hayward instituting a revocation hearing before the Planning Commission.

CONDITIONS OF APPROVAL  
USE PERMIT AND VARIANCE APPLICATION NO. 86-62

1. All improvements indicated on the approved site and landscape plan, as amended by staff and labeled Exhibit 'A', and all conditions herein (except where otherwise noted) must be installed prior to authorization for gas or electric meter service.
2. After initial installation, all plantings must be maintained, including replacement where necessary, and landscaped areas shall be maintained in a weed-free condition.
3. Where any landscaped area adjoins driveways, parking areas, and City sidewalks, Class B Portland Cement concrete curbs shall be constructed to a height of 6 inches above the finished pavement.
4. Wood exterior doors shall be of solid core construction and at least 1-3/4" thick. Exterior entry doors shall be equipped with nonremovable hinge pins and shall have deadbolt locks which are equipped with case hardened cylinder guards. Delivery doors and employee entrance doors shall be equipped with wide angle viewers. Any entry doors equipped with glass or within 48" from glass shall be equipped with double cylinder deadbolts.
5. Utility meters shall be screened other than by plant materials, allowing sufficient distance for reader access. Transformers located in landscaping areas abutting rights-of-way shall be underground.
6. The developer shall contact the Fire Prevention Bureau for the location of standpipe systems, first aid fire appliances, and/or Fire Department connections.
7. Mechanical equipment shall be prohibited on the roof unless screened from view from the street by the roof.
8. The premises shall be kept clean, and the operator shall make all reasonable efforts to see that no trash or litter originating from the use is deposited on adjacent properties. Employees shall be required to daily pick up trash or litter originating from the site upon the site and within 300 feet of the perimeter of the property, and all paved areas shall be hosed down daily.
9. Hours of operation shall be limited to between 10:00 a.m. to 10:00 p.m. daily. Any increase in hours of operation shall first be approved by the Planning Director. If at any time substantial problems result from the expansion of the hours

of operation, the use shall come before the Board of Adjustments for possible reduction in operating hours.

10. No obnoxious odors shall be generated on the site.
11. Noise levels measured at the property line shall not exceed the level of background noise normally found in the area.
12. Management of the use shall take necessary steps to assure the orderly conduct of employees, patrons, and visitors on the premise.
13. Exterior lighting shall be planned, erected, and maintained so that light is confined to the property and will not cast direct light or glare upon adjacent properties or public rights-of-way. Roof lighting is prohibited, and fixtures shall not exceed 14 feet in height.
14. An 8-foot-high masonry wall shall be installed along the northerly and northeasterly property lines, except to within 20 feet of Patrick Avenue where the height shall be 4 feet. A 6-foot-high masonry wall shall be constructed along the easterly property line except to within 10'6" of Tennyson Road, where the height shall be 4 feet. Fences shall be treated with a graffiti-resistant finish and shall be kept free of graffiti.
15. The owner shall maintain in good repair and free of graffiti all building exteriors, signs and common areas, including but not limited to driveways, landscaping (plant materials to be replaced when necessary), lighting and drainage improvements.
16. Prior to issuance of a building permit:
  - a. A detailed landscape and irrigation plan shall be submitted to and approved by the Planning Director reflecting changes as indicated on Exhibit 'A', including decorative paving under and around the bus stop bench.
  - b. The Planning Director shall approve the design and location of a trash enclosure for a dumpster and of at least 4 litter receptacles to be provided on site.
  - c. The Planning Director shall approve the design and location of a bicycle rack with a capacity for at least 4 bicycles.
  - d. The Planning Director shall approve a lighting plan. The parking lot area shall be lighted to a minimum of 2 c/f at ground level during hours of darkness while restaurant is operating.

- e. The Planning Director shall approve the sign program which shall be limited to two wall signs consisting of individual letters not to exceed 18" high and which shall fit between pilasters on sides of buildings, customer awareness signs regarding noise, menu board, address, and directional signs.
  - f. The Planning Director shall approve the drainage plan.
  - g. The gallons-per-minute water demand shall be submitted to the Water Department for determination of proper meter size.
  - h. Structural plans shall have been submitted to and approved by the Alameda County Department of Health.
17. Prior to occupancy, unused curb cuts, or portions of unused curb cuts, shall be replaced with curb and gutter in accordance with City standards.
18. A copy of these performance standards and all conditional use permit conditions of approval shall be posted alongside the necessary business licenses and be visible at all time to employees.
19. Violation of conditions is cause for revocation of permit after public hearing before the duly authorized review body.
20. This permit becomes void on October 20, 1988, unless prior to that time substantial continued progress has been made toward the establishment of the use and/or structure approved or an extension is approved. A request for a one-year extension(s), approval of which is not guaranteed, must be submitted to the Planning Director at least 30 days prior to the above date.
21. Parking stall No. 1 shall be used for employee parking only and marked accordingly.



approved. She noted, however, that there is a mechanism for a change. It does not appear to her that there is a need for changing the rules.

Commissioner Fraas said she would definitely support the motion. When and if the Ordinance change were to come before the Commission, they could discuss it at that time.

Commissioner McKillop said she also would support the motion adding that she hopes Ms. Bennett takes up the issue. She said she wished she could feel more comfortable with this decision.

Commissioner Thnay said the current Ordinance is flawed. A 6-foot fence might have worked in previous era but today, there are zero lot line homes, decks are being built everywhere, and people are taller. Fences make good neighbors, and there is a time for privacy. He noted that Pleasanton allows 8-foot fences, and Fremont has the same option but 7-foot might be a good compromise. They should have an option. This item might not meet the variance requirement but the City should look at other cities to see what they are doing.

Commissioner Bogue also supported the motion. This applicant has no grounds in this place at this time for a higher fence. He argued that second stories eliminate privacy as well.

Chairperson Zermeno discussed his own home and his 6-foot fence. He agreed with Commissioner Thnay that the Ordinance needs to be revisited. There is a place for higher fences in some areas.

The motion **carried** by the following vote:

- AYES: COMMISSIONERS Sacks, Fraas, McKillop, Bogue
- NOES: COMMISSIONER Thnay
- CHAIRPERSON Zermeno
- ABSENT: One Vacancy
- ABSTAIN: None

**2. Variance No. PL-2004-0079 – Signs Designs (Applicant) / Harman Management (Owner)**  
– Request to Install Two Logo Signs on The Roof of an Existing Fast Food Restaurant (KFC) Where Roof Signs are Prohibited and Where The Height of The Signs Exceed 24" (48" Proposed) – The Project is Located at 1299 W. Tennyson Road, at The Corner of Patrick Avenue (Continued from May 13, 2004)

Associate Planner Pearson described the location as well as the other signs in the area. He noted the number of signs and the visibility of the location. He said that the City Sign Ordinance encourages lower, monument signs. He showed various other KFC's in the area. He added that the variance would require special circumstances. In 1987, when the Council approved the building, a cupola sign was proposed and was rejected; saying the building itself and the two roof

signs were adequate. After which, four directional signs and a monument sign were installed to further increase the visibility. As to the other signs in the area, they were either not roof signs or approved before 1984. Staff recommended denying the variance.

Chairperson Zermeno explained that he has a business close to this location but was deemed okay to hear it since his business is more than 500-feet away, and closer to Tampa. He asked what about the two small signs near the driveways and whether they would be affected by this.

Associate Planner Pearson explained that they are already oversized but not part of this variance request.

The public hearing opened at 7:57 p.m.

Andy Soares, Sign Designs, said looking at the location basic needs have to be addressed at this location. The first is visibility. The signs were updated in 1994. With all the tile work on the walls, there is no allowance for wall signs. He asked how do you identify this business. As the franchise changes, the needs and requirements change. The cupola tower is not being used any more. The image is changing. They were asking for 62 square feet of signs, which is the current signage on the site. They would like to reallocate the signs. Mount the logo signs flush to the wall and remove the roof signs. Another issue is the Ordinance, which limits a logo to 2-feet in height. With this logo, it would look ridiculous. They would like to maintain the image as much as possible. The Colonel logo is used to identify the store. They are proposing the reallocation of present square footage.

Chairperson Zermeno clarified that they would take away the present roof signs and replace them with tower signs.

Hazel Fong, Regional Director for the area, she said they were told by the corporation that they needed to upgrade and update all the restaurants. She explained that they came to the City of Hayward and gave them 6 options. Planner Pearson helped through the process. Once they got approval and were ready for construction, the Planning Manager said you cannot do this. They had spent over \$80,000 and two years following recommendations. They were left with the option of trying to get a variance. She suggested that staff should have more oversight and direction before allowing the project to get to this point. She added that she was with the owner/manager and suggested they would have to walk away from the whole remodel if the Variance is not approved. She noted that Union Landing is strong competition, and implied it was developed with the approval of this Planning Commission. She noted they are trying to brighten this restaurant up and be competitive since the company has been in this location 20 years.

Commissioner McKillop clarified that Union Landing is Union City and this is the City of Hayward. She asked how much of the \$80,000 development cost went to the sign issue.

Ms. Fong reiterated that without the signs the remodel is finished. The amount of cost went to the whole package of which the signage is a major part. She added that they would scrap the entire remodel.



Commissioner Sacks noted that in the staff report was a discussion regarding trees, the replacement of missing trees and had they been allowed to grow, their obstruction of the proposed sign on the cupola. She asked whether this was considered and for comment from staff.

Associate Planner Pearson reported that some trees are still missing.

Planning Manager Anderly added that some of the replacement trees were palm trees, which are not allowed and were not approved for this site.

Commissioner Sacks asked again whether mature trees of the type required could obscure these brand new signs. She said she could say the business is there because of the signs.

Ms. Fong explained that she does not envision them being that tall. She added that just looking at the building you cannot tell what it is.

Commissioner Thnay asked whether the architectural improvements would include changes to the wall façade on Tennyson and possibly open the walls for people to see inside.

Ms. Fong said she would love to open it up and have windows. It is her understanding that this is a requirement of the City.

Planning Manager Anderly explained the building was approved in the Mission style. The part obscured is not the dining area. Hayward does not encourage franchise architecture.

Commissioner Fraas asked about the investment of \$80,000 in the renovation. She asked whether the bathrooms will be ADA accessible. She then asked staff whether the landscaping plan was followed.

Planning Manager explained that initially it might have been followed, but over time, replacement of trees did not consider the landscape plans. This might also be a mixture of excessive pruning and change of species.

Commission Bogue asked once again about the expenditure of the \$80,000 for the project.

Cathy Brady, construction coordinator for Harman Management, explained that this plan was completely approved by the Planning Department, and approved by the Building Department. All of which was then disapproved. The money was spent on architectural fees. She emphasized that they were not asking for more signage than allowed but asking for the sign on the cupola. This sign would be under the roofline, since there is a roof on the cupola. She noted the three variance requirements. She did a sign survey. Newly approved restaurants have over signage adding they need to keep up with the rest of the restaurants.

Stan Rogers said he has lived in Hayward since 1989 and is an area consultant for Harmon

Enterprises. He noted that they have been doing business in the City of Hayward for a long time adding that they have done a lot for the community and hired a number of employees. Several go to CSUH. He lives near the Fairview area. Although, this restaurant is in a rough area, they would like to save it.

Rocky MoHammed, manager of this KFC, said he started as a chicken cook and moved up. He was asking for consideration of approval of the signs. He said they aren't asking for much.

Chairperson Zermeno said there seems to be someone who does not appreciate the activity in the parking lot.

Mr. MoHammed said they were talking about chains and camera. He said they have a rule for lights out at 12 p.m. for the neighbors.

Chris Primi, a neighbor, said he has no axe to grind with any of these folks. Bought a house around the corner. He said that late at night, as you drive past there is rampant activity of drugs and prostitution. He said the problem is there is no chain or lights so this activity takes place. Larger sign will increase the activity. He was asking them to help curb these other activities. Boom boxes in cars are extra loud. Jack-in the Box has a sign asking to quiet the sound. Also, patrons go through and toss their garbage out into the neighborhood. He suggested that they might be required to have someone go around in the immediate area and pick up the garbage.

Commissioner Fraas asked whether he had talked to the owner about the problems.

Mr. Primi said the owner seemed to agree with these things.

Commissioner McKillop asked staff whether the conditions of approval did address for cleanliness and noise.

Planning Manager Anderly noted that the permit was granted in 1984 but it is quite probable that these things were included. As to the access to the parking lot after hours, Jack in the Box needed to do this, closing it off might be a solution.

Commissioner Thnay suggested that low-level lighting could be a deterrent to prevent illegal activities on the property. If they were to provide these things, it could be a win, win for the neighbors.

The public hearing closed at 8:32 p.m.

Commissioner Thnay asked about the Sign Ordinance and the amount of wiggle room for the signs. He commented that his concern was that this area is a gateway area and he would hate to see this business becomes bankrupt. He would like to see whether there can be a compromise. Not sure if this is a sign problem but this could be enhanced. He wondered whether a clock tower would be more acceptable rather than a sign.

Planning Manager Anderly said she could find out but did not think this was what they were looking for.



Commissioner Bogue suggested that they were shown elevations of a redesigned building and whether that design is under consideration or whether only the variance on the existing building is the issue.

Planning Manager Anderly said they trying to fit the sign onto the existing tower.

Commissioner McKillop asked should this redesign go into effect, could the Commission ask for additional conditions of approval.

Planning Manager Anderly suggested that they could attach anything reasonable and a nexus between the action they were taking with the sign and other conditions they would apply.

Commissioner Sacks said she was not ready to make a motion. She had some comments. She thought, looking at the building that there was no reason for signs. However, looking at it, she realized that the cupola might look better with the signs rather than bare. She said she was inclined in that direction. She added that she likes the side facing on Tennyson which is lovely.

Commissioner McKillop **moved**, seconded by Commissioner Thnay, to approve the variance for special with conditions, including lights around the parking lot but not intrusive; chains in the parking lot; sign requesting that patrons reduce the volume of cars; surveillance cameras as well, picking up litter and garbage.

Planning Manager asked for clarification, suggest bring back conditions and findings, and that the chains and lights be attractive.

Commissioner Fraas added that she actually thinks it is an advantage for the building not to look like a fast food restaurant. So she would support the motion.

Commissioner Bogue suggested chains would be acceptable but should be marked and flagged. He noted that camera surveillance should be 24-hours a day.

Commissioner Thnay said staff is competent. There is one chance in a million that this would happen. He agreed with Commissioner Sacks that the cupola is missing something. He hopes this variance would enhance the area. He would not like to see this area deteriorate further.

Commissioner Sacks said, if we are wrong, we are going to pay for it. So she hopes they are right.

Commissioner Bogue asked about the landscaping plan and that the standard conditions be part of the motion.

Planning Manager Anderly said she will check with the original use permit but those in place

today are no more onerous than the older ones would be.

Chairperson Zermefio said he would also support the motion. Thanked the neighbor, in particular, for coming to the meeting and expressing his comments.

**The motion passed unanimously.**

Planning Manager Anderly said the findings and conditions will be coming back to the Commission in two weeks.

### **ADDITIONAL MATTERS**

#### **3. Oral Report on Planning and Zoning Matters**

Planning Manager Anderly noted the three up-coming meetings in June.

#### **4. Commissioners' Announcements, Referrals**

Commissioner Thnay suggested that others might check out the City of Hayward's GIS. He also recommended other informative websites: Keyhole.com which has the availability to look at the City Of Hayward in 3-D, and MTC's website 511.org. He noted that the latter contains a lot of useful information.

Chairperson Zermeno commented that he was pleased to see the various projects in process around the City. He also wished a Happy Birthday to Barbara Sacks.

Commissioner Sacks thanked Chairperson Zermeno noting that it was a very special weekend for her. She was celebrating her birthday this day and would be retiring from her job the next. She also thanked Planning Manager Anderly for a beautiful bouquet of flowers.

### **APPROVAL OF MINUTES**

– May 13, 2004 approved

### **ADJOURNMENT**

The meeting was adjourned by Chairperson Zermefio at 8:50

**APPROVED:**

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Christopher Thnay, Secretary  
Planning Commission

**ATTEST:**