



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 07/06/99
AGENDA ITEM 8
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission's Denial of Use Permit Application No. 99-160-04 for Off-Sale Sales of Beer and Wine at a Market. And a Variance Application No. 99-180-03 to Allow the Use Adjacent to a Bar Where a Minimum 500-Foot Separation Is Required and Denial of Request For a Finding of Public Convenience or Necessity for the Off-Sale Sales - Jorge L. Gonzalez (Applicant/Appellant), Dorothy Levin and Arthur Zemel Trustees et. al. (Owners)

The property is located at 603 "A" Street, on the southeast corner of "A" and Grand Streets in the Central City - Commercial Sub-district (CC-C).

RECOMMENDATION:

It is recommended that the City Council deny the appeal and uphold the Planning Commission decision denying the use permit, variance and statement of public convenience or necessity.

BACKGROUND:

The applicant, Jorge L. Gonzalez, currently operates El Tapatio Carniceria and Taqueria, a business that combines a small seating area for customers to eat on site, and a small grocery store. The applicant would like to start selling beer and wine at his business, both for on-site consumption by diners, and for take home consumption from the grocery portion of the business. The State Department of Alcoholic Beverage Control ("the ABC") and the City's alcoholic beverage regulations are different for on-site and off-site consumption. Under the City's regulations, the applicant may sell beer and wine to his restaurant customers for on-site consumption without any permit from the City. Although he will have to obtain a license from the ABC, he does not need any approvals from the City to sell alcoholic beverages at a restaurant.¹

¹ During the initial processing of this application the ABC gave the City incorrect information regarding the status of the license procedure as it pertained to obtaining a license for on-site consumption. The ABC indicated it would need a letter from the City stating it affirmatively supported granting the license before the ABC could act on an application. Based upon this misinformation, the Planning Commission considered the issue of whether to support such a request. That issue is not before the Council in this matter because under the City's regulations as

However, the rules concerning the applicant's request to sell alcohol for take home consumption, known as "off-sale," are different. The applicant is required to obtain a conditional use permit from the City in order to do so. In this instance, his business is located in an area with several other alcoholic beverage outlets within a certain proximity, which, under the terms of the City's ordinance, prohibit him from being able to obtain a use permit. He is requesting a variance from this requirement. In addition, the business is located in an area that has been designated by the ABC as having an over-concentration of liquor establishments. If the City were to approve the applicant's variance request and grant a use permit for off-sale of beer and wine, the ABC would further require that the City submit to the Department an affirmative statement that it finds that the public convenience would be served by allowing the additional off-sale liquor sales. By previous action, the City Council placed responsibility for this determination with the Community and Economic Development Director as a representative of the governing body. The Director's negative determination on this issue was referred to the Planning Commission along with the use permit application, which also determined that the public convenience and necessity would not be served by the addition of another alcohol outlet. (The Planning Commission staff report and minutes are attached as Exhibit C.)

On May 6, 1999, the Planning Commission considered applicant's request and denied (5:1:1) the use permit and variance application to allow off-sale of beer and wine at the market and the request for the City to determine that the public convenience or necessity would be served by off-sales of alcoholic beverages in an area determined by the ABC to be over-concentrated with such establishments. The applicant is now appealing that decision (Exhibit B).

DISCUSSION:

Under the City's alcoholic beverage outlet regulations, new establishments desiring to sell alcoholic beverages must obtain a use permit from the City, unless they fall under one of several exceptions. Use permits for new off-sales liquor establishments may not be granted if the new establishment is within a radius of 500 feet of any other existing on-sale or off-sale establishment. In this instance, the applicant's market is located within 500 feet of other existing establishments, thereby prohibiting his ability to obtain a use permit (Refer to the area map attached as Exhibit A). He has asked for a variance from this requirement, arguing that his customers desire the convenience of being able to purchase beer and wine with their groceries, and that his business is a benefit to the community.

In order to approve such a variance, Council would have to find that special circumstances are applicable to the property and necessitate granting a variance, that strict application of the regulations would deprive the applicant of privileges enjoyed by other similar properties, and that the variance would not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity. Staff believes that none of these findings can be made, and that the variance request should be denied. There are no special circumstances applicable to the property, the alcoholic beverage regulations apply equally to all similarly situated

well as the ABC's regulations, no action by the City is required for the ABC's consideration of the license as it relates to on-site consumption.

properties, and granting applicant an exemption from the requirements would constitute a special privilege unavailable to others.

The Police Department does not support the off-sale application because of the over concentration and the high number of service calls related to public consumption of alcohol and public drunkenness in the Downtown. They believe that alcoholic beverages are readily available in the Downtown area. An increase in alcoholic beverage off-sale availability would further compromise the safety of residents and visitors who frequent the Downtown area.

There are additional concerns that the parking lot cannot be effectively monitored, thereby affording the opportunity for patrons to consume alcoholic beverages in the parking lot. Moreover, the windows are covered with signs and display racks are pushed against the windows and a door making it difficult for Police officers to see into the store and store employees to view activities outside.

Two citizen groups, COMMPRE and Hayward Citizens for Responsible Liquor Outlets, are concerned with the granting of this application request (Exhibits D and E). They state that the 500-foot separation requirement of the City of Hayward Alcoholic Beverages Ordinance is designed to prevent undue concentration of and undesirable impacts on the community. They emphasize that El Tapatio would further impact the census tract area that is currently over-impacted by off- and on-sales liquor establishments. In addition, they feel that another off-sale liquor establishment would be contrary to the promotion of public safety.

COMMPRE submitted a petition (130 signatures) seeking denial of the appeal (Exhibit F). In addition, COMMPRE provided residents with an information sheet that explains the appeal (Exhibit G). The appellant's attorney submitted a letter stating that the signature collectors misled residents by telling individuals that by signing the petition, they are supporting the sale of alcoholic beverages at the market (Exhibit H).

CONCLUSION:

There is no evidence to support findings necessary to approve the variance request, and it should therefore be denied. Moreover, because the market is located in an area of over concentration, staff and the Planning Commission are of the opinion that additional opportunity for an off-sale liquor establishment is not necessary and does not serve the public convenience.

Prepared by:



Arlyne J. Camire AICP
Associate Planner

Recommended by:

for 
Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:

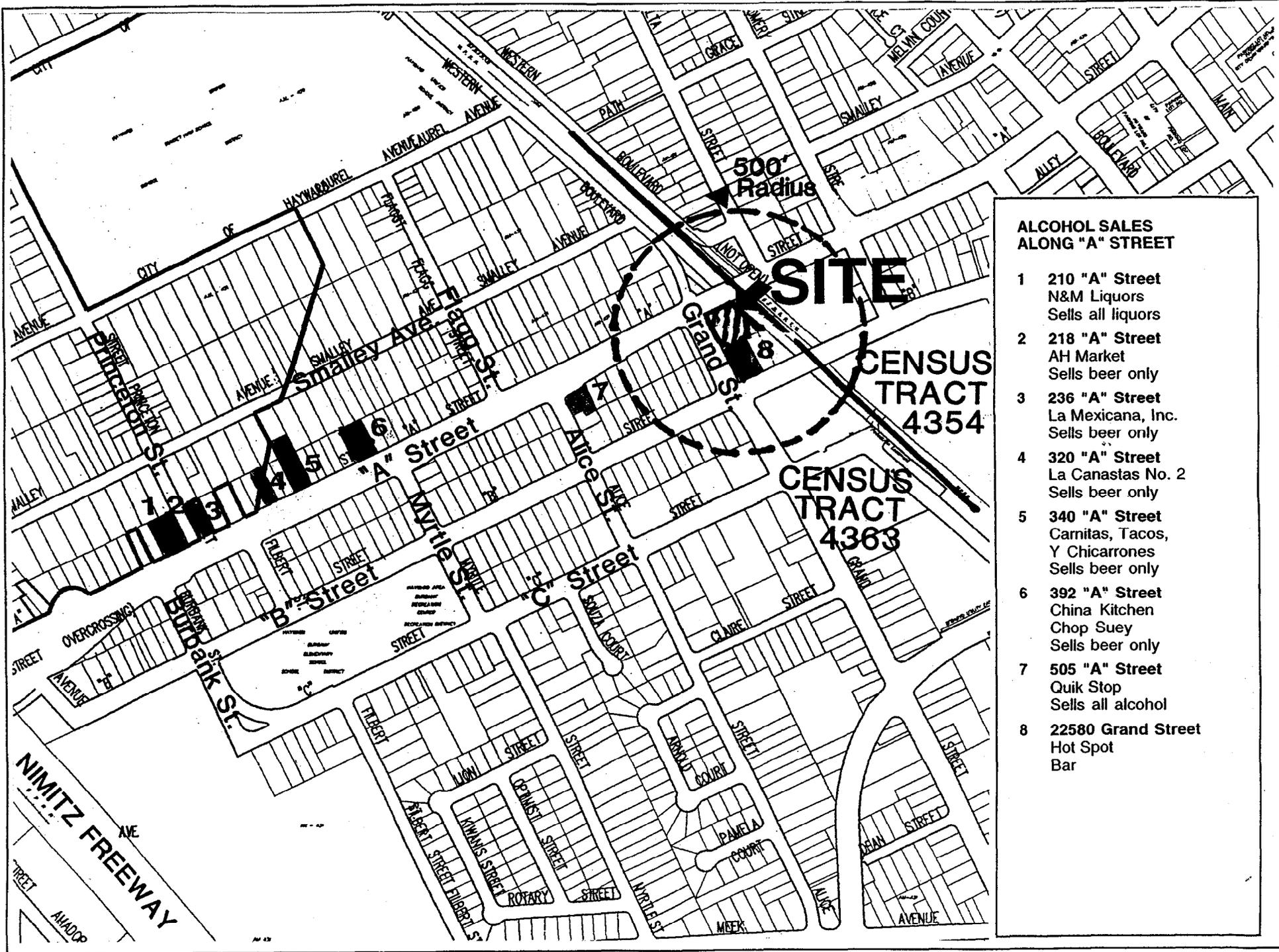

Jesús Armas, City Manager

Attachments:

- Exhibit A Area Map
- Exhibit B Letter Requesting an Appeal of the Planning Commission Decision dated May 17, 1999
- Exhibit C Planning Commission Minutes and Staff Report (including Findings for Denial) dated May 6, 1999
- Exhibit D Letter from COMMPRE dated May 27, 1999
- Exhibit E Letter from the Hayward Citizens for Responsible Liquor Outlets dated May 25, 1999
- Exhibit F Petition in Opposition
- Exhibit G Information Sheet distributed by COMMPRE (English and Spanish)
- Exhibit H Letter from Jason I. Robman, Attorney Representing Appealant dated June 22, 1999
- Exhibit I Findings for Denial
Draft Resolution

6.30.99

A-1



**ALCOHOL SALES
ALONG "A" STREET**

1	210 "A" Street N&M Liquors Sells all liquors
2	218 "A" Street AH Market Sells beer only
3	236 "A" Street La Mexicana, Inc. Sells beer only
4	320 "A" Street La Canastas No. 2 Sells beer only
5	340 "A" Street Carnitas, Tacos, Y Chicarrones Sells beer only
6	392 "A" Street China Kitchen Chop Suey Sells beer only
7	505 "A" Street Quik Stop Sells all alcohol
8	22580 Grand Street Hot Spot Bar

EXHIBIT A

LAW OFFICES OF
Mark D. Poniatowski

2811 CASTRO VALLEY BOULEVARD, SUITE 208
 CASTRO VALLEY, CALIFORNIA 94546

TELEPHONE: (510) 881-8700
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REPLY TO CASTRO VALLEY

THE LEIMERT-OLD OAKLAND
 456 EIGHTH STREET
 OAKLAND, CA 94607
 (510) 839-8700

MARK D. PONIATOWSKI
 JASON I. ROBMAN

May 17, 1999

Arlynn J. Camire,
 Associate Planner
 City of Hayward
 Development Review Services Division
 777 "B" Street
 Hayward, California 94541-5007

VIA FACSIMILE AND
 FIRST CLASS MAIL

RE: Appeal Of Use Permit Application #99-160-04, Variance
 Application #99-180-03 and Decision By The Planning
 Commission

PROPERTY: 603 "A" Street, Hayward, CA 94541
El Tapatio Carniceria & Taqueria

Dear Ms. Camire:

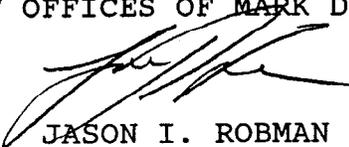
Please be advised that this firm represents Mr. Gonzalez, owner of El Tapatio Carniceria & Taqueria, in his appeal of the above-entitled matter. Pursuant to our conversation of May 17, 1999, this letter will confirm that Mr. Gonzalez has invoked his right to appeal the Planning Commission's denial of Use Permit Application 99-160-04, Variance Application No. 99-180-03 and public convenience/necessity determination. Further, Mr. Gonzalez intends to address his appeal in terms of both on-site and off-site alcoholic beverage sales.

Kindly provide this office with all information concerning the appeal process. In response to your query concerning timing for the appellate hearing, I suggest the appeal be placed on the City Council meeting agenda for July 13, 1999. Please advise this office as soon as possible of the date upon which the City Council intends to hear this matter.

Thank you for your time and cooperation. If you have any questions or concerns, please feel free to give me a call at (510) 881-8700.

Very truly yours,

LAW OFFICES OF MARK D. PONIATOWSKI


 JASON I. ROBMAN

RECEIVED

cc: Dyana Anderly, Development Review Services Administrator
 MAY 20 1999

Utilities Center Building on Soto Road. In terms of gateways to the City, they are proposing to extend the Foothill Boulevard landscaping treatment from Grove to Apple Avenue. The City was successful in gaining federal funding from T-21 grants to be used for pavement rehab and improvements of signals and signals; budget continues to conservatively estimate that Measure "B" will not be reauthorized so the funding is limited. The City's sidewalks and public infrastructure, i.e., sewer and water, are also being addressed in this budget.

Commissioner Bennett asked more specifically about the Airport Master Plan and the enclosure of Sulpher Creek.: Public Works Deputy Director/Engineering Bauman explained that the property by the airport has for 30 years already been zoned for commercial and industrial development. The present application for development needs to enclose Sulpher Creek. He added that there will be a separate environmental process for each project identified in the Master Plan.

In response to Commissioner Fish's question about the process for obtaining design consultants, PW Deputy Director/Engineering Bauman explained that the process is largely dictated by State Law, and design consultants are selected on the basis of ability, not cost. Request For Proposals are sent to those who have submitted an interest in designing City projects. Staff evaluates and often conducts interviewing panels before negotiating with the best firm.

Public Hearing was opened and closed at 7:47 p.m.

Commissioner Bennett emphasized that most of the Commissioner questions were answered in the previous Work Session. She moved, seconded by Commissioner Bogue, to recommend passing the CIP on to Council and agreeing that it conforms to the General Plan.

Chairperson Williams added his appreciation for the way the document is coming together and how much easier it has become to read and appreciate.

Commissioner Halliday added that she was pleased to see Weekes project. She expressed concern regarding the possible over-capacity of sewer and water piping into the hills and said she hoped the City was not overdeveloping to serve greater development in the future. The present development into the hills has been established and it is important to continue to preserve the land up there. She would worry about the open space land being vulnerable in the future.

The motion passed 6:0:1, with Commissioner Zermefio absent.

3. Use Permit No. 99-160-04 and Variance No.99-180-03 and Referral of a Decision by the Director of Community and Economic Development/Planning Director to Refuse Endorsement of On-Sale of Alcoholic Beverages at a Bona Fide Restaurant and Off-Sale of Alcoholic Beverages at a Market. Endorsement is required by the State Department of Alcoholic Beverages Control - Jorge L. Gonzalez for El Tapatio Carniceria and Taqueria (Applicant), Dorothy Levin and Arthur Zemel Trustees et. al. (Owners) - Request off-sale of beer and wine at a 4,029-square-foot market, and a variance to sell off-sale beer and wine adjacent to another establishment that sells alcoholic beverages (500-foot separation required) and a request for the City to determine that public convenience or necessity would be served by selling on- and off-

sales of alcoholic beverages in an area determined to be over-concentrated with such establishments. *The project location is 603 "A" Street, on the Southeast corner of "A" street and Grand Street in the Central City Zoning District- Commercial Subdistrict (CC-C).*

Associate Planner Camire described the application and said the applicant asked to be able to serve beer and wine in his restaurant. The Alcoholic Beverage Commission said the area was impacted by beer and wine sales already. As a result, the City has to make a finding that the public necessity will be served by approval of this application. Police Department is concerned. Letters of opposition and contact from Burbank Neighborhood Task Force member Raelina Anderson were presented. Staff recommends denial of application and no findings for ON-Sale of Alcoholic Beverages;

Commissioner Halliday asked whether any of the previous owners at the location have had a liquor license and was informed that alcoholic beverages had been served when the former restaurant operated there some years ago. She then asked how the proposed Lucky's store will be allowed to gain permission to sell liquor.

Developmental Review Administrator Anderly responded that since Lucky's will be over 10,000 square feet, they are exempt from our local ordinance.

Associate City Attorney Borger explained that State law requires that if the ABC is going to issue a license in an area that is over-concentrated, they must have prior written consent by the City. The Director of Community and Economic Development has been given that authority by the City Council, but in this instance has opted not to do so. If the Planning Commission believes the City should agree to issuance of a license for on-site consumption, it would be making a recommendation to Council, who, in turn, would make the final decision.

PHO 8:02 p.m.

Jorge Gonzalez, 512 Smalley Avenue, applicant, went to City to get information on how to get permission to sell beer and wine at his establishment and said the ABC told him it was not an impacted area. He followed the procedures and set up an appointment with Lt. Hoover of HPD who indicated that the Police Department could see no reason to deny the application. He felt satisfied that the application was going to be accepted. He was told on April 5, by staff, he could sell beer and wine inside the restaurant..

Chairperson Williams commented that since he was applying for a new license, the Commission would be making a decision based on new information at the hearing and the report.

Commissioner Caveglia asked Associate Planner Camire to comment on his testimony.

Commissioner Halliday asked whether if the Commission was to find in favor of serving wine and beer in the restaurant but not off site would that be helpful to operate the establishment

Mr. Gonzalez indicated that they only have 4 tables in the restaurant.

Keisha Tyler, 450 28th Street, #104, Oakland, said she was representing the Hayward Citizens for Responsible Liquor Outlets who encouraged the Commission to deny the variance, already the applicant is not in compliance with the Sign Ordinance.

Linda Pratt, Director of Compre, 22652 2nd Street, said they strongly don't think the finding of public necessity has been met. She indicated that there are problems already with those who sell alcohol in the area.

Jose Gonzalez, 512 Smalley Avenue, brother of the applicant asked for the beer license for take out since without it, their customers would go elsewhere. He indicated that they are trying to preserve the community by having the best business available to serve their customers.

Gerardo Munoz, 603 "A" Street, said he was a regular customer and the establishment is very clean.

Public Hearing Closed at 8:29 p.m.

Chairperson Williams asked for further clarification from Lt. Hoover of the Hayward Police Department.

Lt. Hoover indicated that this location is on the border of 2 police beats: "A" Street to Meekland and again "A" to "B" to Mission to "C" Streets those 2 areas; police incidents in the area are high; the "A" Street beat had over 450 calls in the last 6 months; the second area "A" to "C" excluding BART had over 700 calls, although not all were alcohol related. The ABC has determined by their standard the census tract is over-saturated. Based on this information, the Department was not recommending approval of the application.

Chairperson Williams said that if ABC and City give the applicant the encouragement to pursue it, it was hard to understand why denial was made.

Lt. Hoover added that there was some confusion on initial meeting in that he did not have the data he needed to discuss the application when they first met. He added that based on the surface information, he assumed there would probably not be a problem.

Commissioner Caveglia moved, seconded by Commissioner Halliday, to deny the application and variance. He added that the issue is clear, the law is clear. The vote is based on the public need. As a teacher, he needs to tell young people that drugs and alcohol are bad. It would be hypocrisy to approve this; if the applicant does a good job of food presentation and preparation, the customers will not only be there to buy beer.

Commissioner Fish added that many times, first meetings are off the top of the head. He would support the motion

Commissioner Bennett originally had questions regarding miscommunication with the City but it has been cleared up. Sometimes only what the applicant is giving us. She could find no compelling reasoning for the applicant.

Commissioner Bogue commented about the miscommunication but the ABC makes the decision regarding this location and meets a public necessity. He added that he could not support the idea;

Commissioner Caveglia assured the applicant that any other restaurants going into the area would get a "No" vote from him as well.

Chairperson Williams commented that the applicant should be able to rely on the authority of those who are in charge in the City. He added that it seems that if this facility had the license when you bought it the first thing would be to transfer it. He was not convinced that convenience to customers isn't compelling and might not be described as necessity. He said he would not support the motion.

The motion passed 5:1:1, with Commission Williams voting No; and Commissioner Zermeño absent.

ADDITIONAL MATTERS

3. Oral Report on Planning and Zoning Matters - None
4. Commissioners' Announcements, Referrals

Commissioner Fish asked again about the trucks on Mission Boulevard; he then asked whether staff could respond regarding a letter from John Kyle that was included in the mail packet.

Commissioner Bogue discussed a letter from HARD regarding a parcel on Industrial Boulevard declared surplus.

Commissioner Halliday reported that the artwork committee for the City garage on "B" and Watkins is in the process of receiving applications and has received one application; she also inquired regarding the rental of space in the commercial space at the "B" Street Marketplace

Commissioner Bennett requested staff to make copies of letters being sent on to Commission members so staff knows what is being sent on.

Commissioner Caveglia said grading has begun on the Bailey property and asked staff to investigate the amount of grading being done to verify that it is being done properly.

Chairperson Williams asked about the Lucky project and was told that an environmental firm is finishing up their evaluation of the project.



CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 05/06/99

Agenda Item 2

TO: PLANNING COMMISSION

FROM: Arlynne J. Camire, Associate Planner

SUBJECT: Use Permit Application No. 99-160-04, Variance Application No. 99-180-03 and Referral of a Decision by the Director of Community and Economic Development/Planning Director to Refuse Endorsement of On-Sale of Alcoholic Beverages at a Bona Fide Restaurant and Off-Sale of Alcoholic Beverages at a Market. Endorsement is required by the State Department of Alcoholic Beverages Control - Jorge L. Gonzalez for El Tapatio Carniceria and Taqueria (Applicant), Dorothy Levin and Arthur Zemel Trustees et. al. (Owners) - Request off-sale of beer and wine at a 4,029-square-foot market, and a variance to sell off-sale beer and wine adjacent to another establishment that sells alcoholic beverages (500-foot separation required) and a request for the City to determine that the public convenience or necessity would be served by on- and off-sales of alcoholic beverages in an area determined to be over-concentrated with such establishments.

The project location is 603 "A" Street, on the southeast corner of "A" Street and Grand Street in the Central City - Commercial Subdistrict (CC-C).

RECOMMENDATION:

It is recommended that the Planning Commission deny the applications.

DISCUSSION

Setting

The property is within the Marks Historic District within the Downtown Hayward Redevelopment Area and is developed with a 4,029-square-foot market and restaurant. The balance of the site is a 40-stall parking lot that serves the business (See Plan).

The vacant property on the northwest corner of the intersection diagonally across "A" Street is scheduled to be developed with related uses. It is adjacent to single family homes located in the Neighborhood Commercial-Residential (CN-R) Zoning District. Property to the north across "A" Street is a parking lot also in the CN-R Zoning District. The Southern Pacific Railroad right-of-way and the elevated BART tracks are to the east. The property to the west

across Grand Street is in the CN-R Zoning District and is developed with a single-story commercial office building which houses the Alameda County Association for Retarded Citizens program. To the south, in the CC-C Zoning District, is the "The Hot Spot" bar that is an on-sale liquor establishment serving beer, wine and spirits (Attachment A).

Proposal

The applicant, Jorge L. Gonzalez, operates El Tapatio Carniceria and Taqueria. Mr. Gonzalez has requested to sell beer and wine at the market and in the restaurant. The restaurant meets Zoning Ordinance requirements for an on-sale liquor establishment in the Central City District and therefore does not require approval of a conditional use permit. A conditional use permit is required for all markets less than 10,000 square feet in area to operate as an off-sale liquor establishment. In addition, since the site abuts a property that contains a bar, which is classified as an on-sale liquor establishment, a variance from the 500-foot minimum separation requirement is necessary to sell off-sale beer and wine at the market.

In addition there is an over concentration of liquor establishments in the census tract wherein El Tapatio is located. There are currently 8 off-sale liquor establishments where 4 are allowed and 10 on-sale liquor establishments where 7 are allowed. The over concentration regulations are relatively new and statutorily prohibits the State Department of Alcoholic Beverage Control (ABC) to license a new on- and off-sales liquor establishment in this area unless the governing body determines that the public convenience or necessity would be served by an additional increase. The City Council has authorized the Planning Director to make this determination. In this instance, the Planning Director is of the opinion that the public convenience or necessity would not be served by sales of alcoholic beverages at subject location.

Police Department and Staff Concerns

The Police Department does not support the application to allow the market to become an off-sale liquor establishment. The reasons for their opposition are:

- There is an over-concentration in the census tract of establishments that sell alcoholic beverages, both on-sale and off-sale. Two on-sale liquor establishments are within two blocks and two off-sale liquor establishments are within three blocks (Attachment A);
- There is a high number of service calls related to public consumption of alcohol and public drunkenness in the Downtown; and
- There is a social services agency serving mentally challenged adults in the vicinity of Grand and "B" Streets within 100 feet of the site.

The Police Department believes that alcoholic beverages are readily available in the Downtown area and is of the opinion that the approval of an additional off-sales liquor establishment may increase the incidence of the public consumption of alcohol in the Downtown area. This would further compromise the safety of residents and visitors who frequent the Downtown area.

Staff is also concerned that the parking lot cannot be effectively monitored and is concerned that patrons will consume alcoholic beverages in the parking lot. Moreover, the windows are covered with signs and display racks are pushed against the windows making it difficult for the Police to see into the store.

Public Concerns

Staff has received two letters and one e-mail in opposition to the granting of the application requests. The concerns of Hayward Citizens for Responsible Liquor Outlets, COMMPRE and Ken Kremer owner of a nearby commercial property include:

- The 500-foot separation requirement is designed to prevent undue concentration of and undesirable impacts on the community. El Tapatio further impacts the census tract area which is currently over-impacted by off- and on-sales liquor establishments;
- Another off-sales liquor establishment would be contrary to the promotion of public safety;
- Several community organizations that serve families and children are located in adjacent neighborhoods;
- Potential to hinder leasing of new commercial project to be built at the intersection of "A" and Grand Streets; and
- The neighborhood streets are littered with empty alcoholic beverage containers left by people who consume alcohol in public (Attachments B, C and D).

History of the Business

The site is located at an entry to downtown and should be maintained in an orderly fashion. However, there has been a history of outdoor storage violations since the onset of business in March 1998. An inspection fee for failure to comply has been assessed. Mr. Gonzalez intends to construct a covered trash enclosure that is compatible with the design of the building and will submit revised plans for staff review and approval.

Signs

No sign permits have been issued for the business. However, the building has one small wall sign and a non-conforming pole sign located in a planter facing "A" Street. The pole sign, which is nonconforming, is required to be removed because the building had been vacant for more than six months prior to the onset of the subject business. Storefront windows are painted with business identification signs and merchandise advertisements in excess of the 25 percent maximum coverage requirement.

Staff has informed the owner and the applicant that the pole sign is required to be removed, that the sign area on the windows is to be reduced to 25 percent and that all wall signs require a sign permit (Attachment E).

General Plan, Downtown Plan, Neighborhood Plan and Redevelopment Plan

The property is on the outskirts of the Burbank Neighborhood Plan Area. This Plan, the Downtown Hayward Design Plan and the General Plan promote commercial uses that are compatible with adjacent residential uses and encourage compatible association of uses. However, the addition of an on- and off-sales liquor establishment, in staff's opinion, is not compatible with surrounding uses because the area is over concentrated with these establishments. In addition, it is a policy of the Neighborhood Plan to "eliminate eyesores". This property has had a history of outdoor storage of cardboard, display racks and graffiti.

The central goal of the Redevelopment plan is *to provide an improved physical, social and economic environment which will establish the area as a center of community activity, containing a viable mixture of commercial and residential development, open space, public and related uses.* The addition of another off-sale liquor establishment will further impact an area that has a sufficient number of locations to buy for off-premises.

Environmental Review:

The proposal is defined as a project under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines, however it qualifies for a Categorical Exemption under Section 15031 (Existing Facilities) Class 1 (Operation of a private structure) of the CEQA Guidelines.

Public Notice:

On April 23, 1999, a Notice of Public Hearing was mailed to every property owner, business and resident within 300 feet of the property as noted on the latest assessor's records and appropriate public agencies. Staff has received two letters and one e-mail in opposition (Attachments B, C and D.)

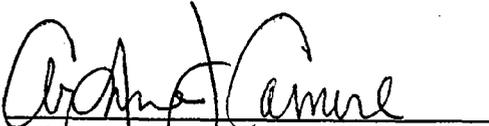
Conclusion:

Staff does not support the approval of the conditional use permit and variance. In addition, staff does not believe that the public convenience or necessity would be served by on- and off-sales of alcoholic beverages in this area, which has an over-concentration of such facilities as determined by the State.

Furthermore, the reasons cited above, including the applicant's disregard for City requirements and requests with regard to signs and outdoor storage, contributes to a lack of confidence that requirements associated with a use permit for off-sale alcoholic beverages would be met.

If the Planning Commission is inclined to approve the applications, staff should be directed to bring back findings for approval, conditions of approval, and a statement that the public convenience or necessity would be served with the sales of alcoholic beverages.

Prepared by:

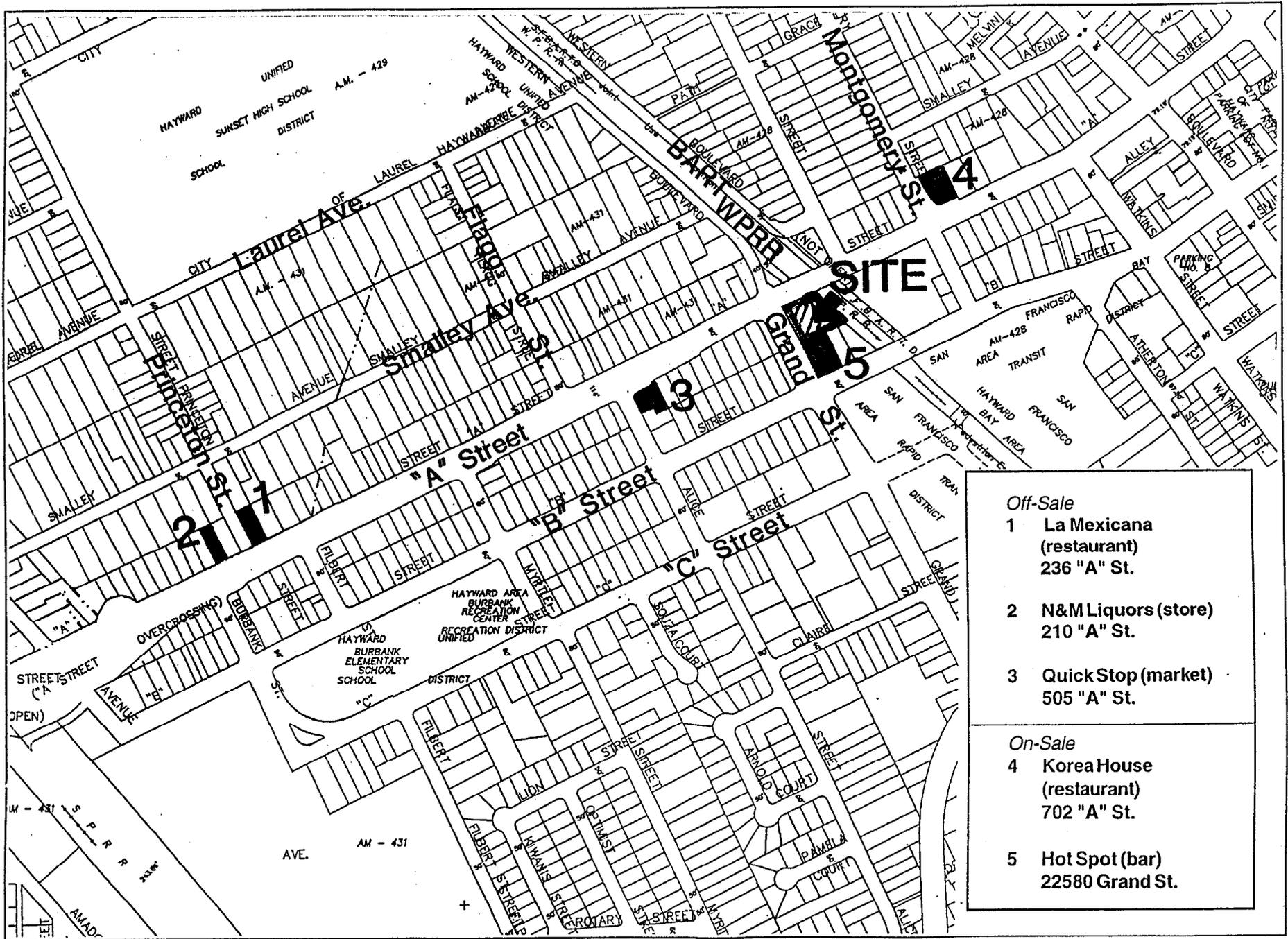

Arlynn J. Camire, AICP
Associate Planner

Recommended by:


Dyana Anderly, AICP
Development Review Services Administrator

Attachments:

- A. Area Map with Locations of Nearby Liquor Establishments
- B. Letter in Opposition from Hayward Citizens for Responsible Liquor Outlets dated April 26, 1999
- C. Letter in Opposition from COMMPRE dated April 26, 1999
- D. E-mail from Ken Kreme dated April 29, 1999
- E. Letter requesting Compliance to the Sign Ordinance dated April 26, 1999
- F. Findings for Denial of Use Permit
- G. Findings for Denial of Variance Plan



<i>Off-Sale</i>	
1	La Mexicana (restaurant) 236 "A" St.
2	N&M Liquors (store) 210 "A" St.
3	Quick Stop (market) 505 "A" St.
<i>On-Sale</i>	
4	Korea House (restaurant) 702 "A" St.
5	Hot Spot (bar) 22580 Grand St.

Hayward Citizens
for Responsible Liquor Outlets
22652 Second Street Hayward, CA 94541
510-247-8207 phone 510-247-8210 fax

April 26, 1999

Arlyne Camire, Associate Planner
Department of Community Economic Development
City of Hayward
777 B Street
Hayward, CA 94541-5007 #

Dear Ms. Camire,

I am writing on behalf of *Hayward Citizens for Responsible Liquor Outlets*, a coalition of Hayward citizens dedicated to reducing alcohol-related problems in our community. We request that the Planning Commission deny variance application 99-180-03 for El Tapatio Carniceria Taqueria.

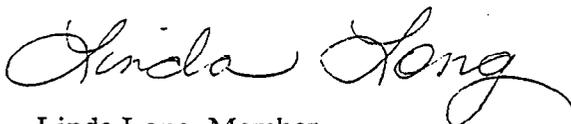
Several years ago, the City of Hayward adopted a Conditional Use Permit, which requires a minimum of 500 feet distance between on-sale and off-sale outlets. It also required this distance from libraries, public parks, schools and other places where children and families traditionally gather. As a supporter of one of the strongest CUP ordinances in the state, I felt confident that further overconcentration of alcohol outlets would be prevented, and public nuisances often created by alcohol outlets would be reduced.

El Tapatio is located in an area that already suffers from overconcentration. Located in census tract 4363, the California Department of Alcoholic Beverage Control (ABC) has authorized only seven on-sale licenses, and four off-sale licenses. Presently, there are ten active on-sale licenses, and eight active off-sale licenses. Also, there is at least one alcohol outlet within 500 feet of El Tapatio, making it ineligible for a CUP.

As a long time resident of the area near El Tapatio, I do not want to see another alcohol outlet allowed to operate in my neighborhood. My street is littered with empty alcohol containers. I watch daily as people with small, brown paper bags presumably filled with bottles of alcohol walk down our sidewalks.

Hayward Citizens for Responsible Liquor Outlets strongly urges the Planning Commission to deny the variance, and uphold the city ordinance.

Sincerely,



Linda Long, Member
Hayward Citizens for Responsible Liquor Outlets

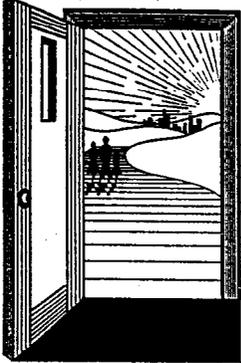
RECEIVED

APR 26 1999

April 22, 1999

DEVELOPMENT REVIEW SERVICES

COMMPRE



Arlyne Camire, Associate Planner
Department of Community Economic Development
City of Hayward
777 B Street
Hayward, CA 94541-5007

Subject: El Tapatio Use Permit Application #99-160-04
Variance Application #99-180-03

Dear Ms. Camire:

This letter represents our request that the Planning Commission denies the above-referenced variance application.

The proposed variance is in direct conflict with Hayward's Conditional Use Permit that specifically establishes a minimum of 500 feet distance requirement between on-sale and off-sale outlets and from schools, libraries, public parks, playgrounds, recreational centers, day care centers and other similar uses.

This requirement was adopted to discourage problems resulting from the sale and use of alcohol and to promote public safety. The spirit of the ordinance also includes preventing the undue concentration of and undesirable impacts on the community stemming from establishments selling alcoholic beverages.

El Tapatio is located in a census tract (#4363) that is already overconcentrated with alcohol licenses. In accordance with California Alcoholic Beverage Control (ABC) laws seven on-sale liquor licenses are authorized for Census Tract #4363. However, there are ten active on-sale licenses. Four off-sale licenses are authorized for #4363, but there are eight.

Currently two establishments with liquor licenses are within two blocks of El Tapatio, with a bar located directly next door. We do not believe the addition of another off-sale license would be in the best interest of the community. A men's shelter and other community programs serving families and children are located in adjacent neighborhoods.

For all of these reasons we respectfully request that the Commissioners uphold the city ordinance and deny this variance.

Very truly yours,

Linda A. Pratt, M.A.
Program Director

22652 Second Street
Hayward, Ca. 94541
(510)247-8207
(510)247-8210 Fax



A program of
Horizon Services, Inc.

From: <KREMERTEAM@aol.com>
To: COHD.CED(ArlynneC)
Date: Thu, Apr 29, 1999 7:17 AM
Subject: 603 A Street, Hayward

Good morning,

My name is Ken Kremer and I am now the sole owner of 590 A Street across the street from the subject property.

I have no problem with the request of on-site beer and wine sales with a restaurant.

I am admittedly opposed to off-site sales.

The approved strip center for my site is currently in for final plan check and could well start to be built in the next 90 days. The approval of off-site sales could hinder potential leasing due to concerns of loitering and other common problems associated with off-sale sites.

I can be reached at 510-881-700 should need to reach me.

Thank you,

Ken Kremer



CITY OF
HAYWARD

HEART OF THE BAY

April 26, 1999

Dorothy Levin and Arthur Zemel, et. al.
c/o Hamburger Property Management
800 Airport Boulevard, Suite 508
Burlingame, CA 94010

**Subject: 603 A Street, Hayward, California: El Tapatio Carniceria and Taqueria
Compliance to Sign Ordinance**

Dear Property Owners:

To be in compliance with the City of Hayward Sign Ordinance, the pole sign at your property is required to be removed because a period of more than 6 months lapsed between tenants. In December 1997, I informed your tenant, Jorge Gonzalez, that the sign is required to be removed to comply with the Sign Ordinance and a sign permit for additional signs would not be approved prior to the removal of the pole sign. However, Mr. Gonzalez was reluctant to comply with the request because he did not agree with the requirements of the Ordinance and felt that the pole sign is necessary to advertise his business. I have had several conversations with Mr. Gonzalez regarding the removal of the sign. Furthermore, a small wall sign has been erected without a sign permit. He is aware that a sign permit will not be issued for new signs prior to the removal of the pole sign.

In addition, the Ordinance allows for not more than 25 percent of the window area to be covered with signs. Currently, the amount of window signage exceeds that percentage. Therefore, I am requesting that signs be removed to bring the windows into compliance with the Ordinance.

I would appreciate your cooperation with this matter. Please call me at (510) 583-4206. Thank you.

Sincerely,

Arlyne J. Camire, AICP
Associate Planner

cc: Jorge Gonzalez, 603 A Street, Hayward, CA, 94541
Ken Jeffery, Community Preservation Inspector

K:\CED2\drs\Work DRS\Project Files 99\Use Permits\A St-603-99-160-04 El Tapatio\Compliance Letter.doc

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DEVELOPMENT REVIEW SERVICES

777 B STREET, HAYWARD, CA 94541-5007

TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

C-14

ATTACHMENT E

FINDINGS FOR DENIAL
Use Permit Application No. 99-160-04
Jorge L Gonzalez for El Tapatio Carniceria and Taqueria (Applicant)
Dorothy Levin and Arthur Zemel Trustees et. al. (Owners)

Based on the staff report and the public hearing record:

1. That the Planning Commission find that the Categorical Exemption is complete and final in accordance with the California Environmental Quality Act Guidelines and reflects the independent judgment of the Planning Commission based on the fact that the project conforms to Section 15301 of CEQA.
2. That a new on- and off-sales liquor establishment is not desirable for the public convenience or welfare since it has the potential to contribute to an increase of the public consumption of alcoholic beverages in an area that is impacted by liquor establishments;
3. That a new on- and off-sales liquor establishment may impair the character and integrity of the Central City - Commercial District (CC-C) in that the addition of a new liquor establishment is not in character with the surrounding development and uses, and will conflict with the established purpose of the CC-C District to promote commercial uses that are compatible to adjacent residential uses and encourage compatible association of uses;
4. That a new off-sale liquor establishment may be detrimental to the public health, safety, or general welfare as evidenced by the fact that additional opportunities to purchase alcoholic beverages to be consumed in public is not in conformance with the intent of the Hayward General Plan land use designation and existing zoning districts.
5. That a new off-sale liquor establishment is not in harmony with applicable City policies as well as the intent and purpose of the zoning district in that the use will not be compatible with adjacent commercial and residential activities.

FINDINGS FOR DENIAL

Variance No.99-180-03

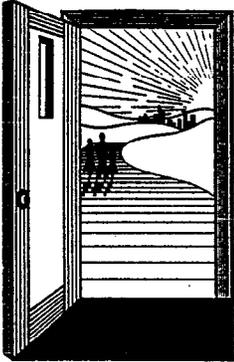
Jorge L Gonzalez for El Tapatio Carniceria and Taqueria (Applicant)

Dorothy Levin and Arthur Zemel Trustees et. al. (Owners)

1. The proposed project to is Catorgically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, Existing Structures.
2. That there are not special circumstances applicable to the property in that the subject property abuts an existing on-sales liquor establishment with a zero-property line distance separation and the Census Tract is impacted by an over concentration of liquor establishments.
3. That strict application of the Zoning Ordinance does not deprive such property of privileges enjoyed by other property in the vicinity under the same zoning classification in that the Zoning Ordinance reflects the State Department of Alcoholic Beverages Control regulations restricting the number of liquor establishments in each census tract.
4. That the variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and Central City Zoning District Commercial Subdistrict in which the property is situated in that other variances have not been approved which would allow less than a 500 foot separation between off-sales liquor establishments and on-sale liquor establishments.

May 27, 1999

COMMPRE



22652 Second Street
Hayward, CA 94541
(510) 247-8207
(510) 247-8210 fax



A program of
Horizon Services, Inc.

Honorable City Council Members
City of Hayward
777 B Street
Hayward, CA 94541-5007

Subject: El Tapatio Use Permit Application #99-160-04
Variance Application #99-180-03

Dear Honorable Council Members:

I am writing to request that the City Council uphold the Hayward Planning Commission's decision on May 6 to deny the above referenced applications.

In accordance with state law, the City of Hayward may conclude that the public convenience or necessity would be served by on and off-sales of alcoholic beverages because El Tapatio is located in an area determined to be over-concentrated with such establishments.

El Tapatio is located in census tract #4363. In accordance with California Alcoholic Beverage Control (ABC) laws seven on-sale liquor licenses are authorized for Census Tract #4363. However, there are ten active licenses. Four off-sale licenses are authorized for #4363, but there are eight.

Currently two establishments with liquor licenses are within two blocks of El Tapatio, with a bar located directly next door. We do not believe the addition of another off-sale license would be in the best interest of the community. In addition to the many residents of the area, a men's shelter and other community programs serving families and children are located in adjacent neighborhoods.

The proposed variance is in direct conflict with Hayward's Conditional Use Permit that specifically establishes a minimum of 500 feet distance requirement between on-sale and off-sale outlets and from schools, libraries, public parks, playgrounds, recreational centers, day care centers and other similar uses.

This requirement was adopted to discourage problems resulting from the sale and use of alcohol and to promote public safety. The spirit of the ordinance also includes preventing the undue concentration of and undesirable impacts on the community stemming from establishments selling alcoholic beverages.

RECEIVED

MAY 28 1999

DEVELOPMENT REVIEW SERVICES

Additionally, El Tapatio's signage and advertising in the windows are out of compliance with state ABC laws and City of Hayward's sign ordinance. The overabundance of signs creates an unsightly appearance, which conflicts with the goals of improving the central business district.

For all of these reasons we respectfully request that the City Council uphold the city ordinance and the Planning Commission's decision to deny these applications.

Very truly yours,

A handwritten signature in cursive script that reads "Linda Pratt".

Linda A. Pratt, M.A.
Program Director

***Hayward Citizens
for Responsible Liquor Outlets***
22652 Second Street Hayward, CA 94541
510-247-8207 phone 510-247-8210 fax

May 25, 1999

Hayward City Council
 City of Hayward
 777 B Street
 Hayward, CA 94541-5007

Honorable Council Members:

I am writing on behalf of *Hayward Citizens for Responsible Liquor Outlets*, a coalition of Hayward citizens dedicated to reducing alcohol-related problems in our community. We request that the City Council deny variance application 99-180-03 for El Tapatio Carniceria Taqueria.

Several years ago, the City of Hayward adopted a Conditional Use Permit, which requires a minimum of 500 feet distance between on-sale and off-sale outlets. It also required this distance from libraries, public parks, schools and other places where children and families traditionally gather. As a supporter of one of the strongest CUP ordinances in the state, I felt confident that further overconcentration of alcohol outlets would be prevented, and public nuisances often created by alcohol outlets would be reduced.

El Tapatio is located in an area that already suffers from overconcentration. Located in census tract 4363, the California Department of Alcoholic Beverage Control (ABC) has authorized only seven on-sale licenses, and four off-sale licenses. Presently, there are **ten** active on-sale licenses, and **eight** active off-sale licenses. Also, there is at least one alcohol outlet within 500 feet of El Tapatio, making it ineligible for a CUP.

As a long time resident of the area near El Tapatio, I do not want to see another alcohol outlet allowed to operate in my neighborhood. My street is littered with empty alcohol containers. I watch daily as people with small, brown paper bags presumably filled with bottles of alcohol walk down our sidewalks.

Hayward Citizens for Responsible Liquor Outlets strongly urges the Planning Commission to deny the variance, and uphold the city ordinance.

Sincerely,



Linda Long, Member
Hayward Citizens for Responsible Liquor Outlets

RECEIVED

MAY 28 1999

DEVELOPMENT REVIEW SERVICES

We, the undersigned request that the Hayward City Council deny the appeals filed by the owner of El Tapatio: Conditional Use Permit Application #99-160-04, and Variance Application #99-180-03. We do not want any new on-sale or off-sale liquor licenses in this area.

- ◆ Research shows that when there is an over-concentration of alcohol outlets, there is an increase in crime. El Tapatio is in an over-concentrated area.
- ◆ The CUP does not allow alcohol outlets from to be within 500 feet of each other. El Tapatio is located within 500 feet of an existing establishment.

Protect the community and uphold the CUP. Please deny the appeal.

NAME	ADDRESS	PHONE
RONAHE OROSCO	22822 ALICE ST	886-9435
José A LAZO	22838 ^{1/2} A Alice St.	881-8014
Emerita G. Oriola	22838-B ALICE ST.	94541
Juana & Rigo Family	22844 Alice St	94541
Carolina Luna	22846 Alice St.	94541
Lisa Wynne	22856 Alice St.	94541
Jaime Miles	22856 Alice St #1	
Donna M. MARTINI	22868 ALICE ST.	94541
Alexander Beltrami	22878 Alice ST.	
Arnelia B. Gonzalez	22878 Alice St Hayward	
_____	22880 Alice St Hayward	
Kenny Jones		
Fernando Gato	22884 #3 Alice St Hayward	
Melinda T. Robinson	22888 Alice ST Hayward	
Fred Slomski	22906 Alice ST Hayward	

We, the undersigned request that the Hayward City Council deny the appeals filed by the owner of El Tapatio: Conditional Use Permit Application #99-160-04, and Variance Application #99-180-03. We do not want any new on-sale or off-sale liquor licenses in this area.

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Protect the community and uphold the CUP. Please deny the appeal.

NAME	ADDRESS	PHONE
Monica G. Bernardo	22857	510-881-9315
Shelia Jackson		(510) 881-9315
Francisco Hernandez		582-2855
Dennis Mitchell		538-0646
Karen Caspary		538-5683
Patricia Caspary	22807 Alice St. Hayward	538-5683
[Signature]	" "	538-0646
[Signature]	22764 Alice St.	537-4769
Maria Cuevas	77784 Alice St	886-8088
Jeff L	22786 Alice	732-6519
Mike Coch	22798 Alice St.	583-9124
Manuel Gonzalez	22812 - Alice St	
Penny Johnson	22818 Alice St.	583-0412
Michael C. C.	22820 Alice	510 539 4313
Jacklyn [Signature]	22828 Alice	

We, the undersigned request that the Hayward City Council deny the appeals filed by the owner of El Tapatio: Conditional Use Permit Application #99-160-04, and Variance Application #99-180-03. We do not want any new on-sale or off-sale liquor licenses in this area.

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Protect the community and uphold the CUP. Please deny the appeal.

NAME	ADDRESS	PHONE
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Simon Nunez	504 MEEK AV HAYWARD.	
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Dorell Ferguson	503 MEEK AVE. Hayward	
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Rita Boston	487 MEEK AVE #2 Hay.	
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MARCO CROWELL	489 MEEK AVE. Hayward.	
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Aramando Rivas	481 Meek Ave Hayward	
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Marianne Parnow	423 Meek Ave Hayward.	
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Brian Parnow	423 Meek Ave Hayward.	
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[Signature]	407 Meek #4 Hayward	
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Arceli Sanchez	395 Meek Ave.	
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Roxa Manzano	22971 ALICE ST. Hayward	
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Dani Sanchez	22967 Alice St Hayward	
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[Signature]	22943 Alice St Hayward.	
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Cedrick Bean	22941 ALICE ST HAYWARD	
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Joseph H. Joss	22857 Alice Hayward	
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Estelita Paulista	22857 Alice St Hayward CA	
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Protect the community and uphold the CUP. Please deny the appeal.

NAME	ADDRESS	PHONE
RAY WATKINS	349 ROTARY ST.	538 2644
Emilio Valdez	338 ROTARY	537-1024
Andrew Solazano	343 ROTARY	537-0406
ROSA MACHADO	319 ROTARY ST	538-4010
Ramona Barnes	326 ROTARY ST	886-2031
Raul Rosiniger	370 ROTARY ST	889-6291
MARIO FORTIN	22810 OPTIMIST ST	886-6980
Charles Whitte	408 Meek Ave	
T. R. [unclear]	438 MEEK AVE	582-9438
Paul [unclear]	444 MEEK AVE	881-8374
Mirna Ace	456 Meek	
maria [unclear]	458 meek	538-9258
Martha Vardivia	996 Blossom WAY	888-7
Maria de Jesus V. Tejada	476 Meek Ave.	
Sergio L. Tejada	476 Meek Ave	

We, the undersigned request that the Hayward City Council deny the appeals filed by the owner of El Tapatio: Conditional Use Permit Application #99-160-04, and Variance Application #99-180-03. We do not want any new on-sale or off-sale liquor licenses in this area.

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Protect the community and uphold the CUP. Please deny the appeal.

NAME	ADDRESS	PHONE
Manuel Parlo		
Gaynell Valrey	22896 Myrtle St	
Cherise Lund	22691 Fuller Ave.	
Tran Huynh	22723 MYRTLE ST	
sandy jin	22725 MYRTLES ST #1	
Felic Gas Picart	22725 Myrtle St. # 3	
Norman Fel	22735 Myrtle St. Hayward	
Shanda Hulletal	22741 Myrtle St. — Hayward	
Odele Borjy	22751 Myrtle St Hayward	
YVONNE GIANNOTTI	22757 MYRTLE ST HAY	
Ann Knos	22821 Myrtle St Hayward	
Gloria Maldonado	22827 Myrtle Hayward 94541	
Balger A 26	22851 Myrtle	
Kari Sardell	22863 Myrtle Hayward 94541	
Tommy Ruy	355 Rotary St Hayward 94541	

We, the undersigned request that the Hayward City Council deny the appeals filed by the owner of El Tapatio: Conditional Use Permit Application #99-160-04, and Variance Application #99-180-03. We do not want any new on-sale or off-sale liquor licenses in this area.

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- ◆ The CUP does not allow alcohol outlets from to be within 500 feet of each other. El Tapatio is located within 500 feet of an existing establishment.

Protect the community and uphold the CUP. Please deny the appeal.

NAME	ADDRESS	PHONE
Dora Guerrero	22741 Souza #5	728-0953
Alfredo Ramirez	22741 Souza #5	728-0953
Ruth Olala	22741 Souza Gl. #7	881-1062
Huberto C. Pineda		881-2881 AF52
María C. Mallada		
Samuel M Wells	495C St	538-2734
Vilma Wells	495C St	538-2734
Fred Wells	495C St	538-2734
Linda Long	411 @ St.	581-8000
Estelle	Armont 405.e St	538-1527
Janira Gonzalez	22737 Myrtle St.	247-1931
Manin Lopez	22632 9th St.	583-0422
Teresa Lopez	370 Smalley Ave -	581-8374
Victor Gonzalez	22730 Myrtle St.	247-1931
Xephera Hall	22774 Myrtle St.	886-7629

We, the undersigned request that the Hayward City Council deny the appeals filed by the owner of El Tapatio: Conditional Use Permit Application #99-160-04, and Variance Application #99-180-03. We do not want any new on-sale or off-sale liquor licenses in this area.

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Protect the community and uphold the CUP. Please deny the appeal.

NAME	ADDRESS	PHONE
------	---------	-------

Jennifer Gonzalez	22774 Myrtle St	880-7629
Rudolph Thomas	412 N ST	581-1530
Rebecca Rodgers	22786 myrtle st	582-7784
Marlene Marr	22792 Myrtle	
Rosa Fernández	22810 myrtle	583-9009
Rosa Fernández	22810 Myrtle St.	(583-9009)
Samuel Fernández	22810 Myrtle St.	(583-9009)
Alicia Robles	22814 myrtle St	(538-0995)
Luis Robles	22814 myrtle St	(538-0995)
Debra Rodriguez	22834 Myrtle St	(583-0740)
Laura Osmya	22856 Myrtle St	(723-0978)
GUADALUPE APODACA	22858 MYRTLE ST	
JOSE A GONZALEZ		
John S. Supra	22884 Myrtle St	HAYWARD 94541

We, the undersigned request that the Hayward City Council deny the appeals filed by the owner of El Tapatio: Conditional Use Permit Application #99-160-04, and Variance Application #99-180-03. We do not want any new on-sale or off-sale liquor licenses in this area.

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- ◆ The CUP does not allow alcohol outlets from to be within 500 feet of each other. El Tapatio is located within 500 feet of an existing establishment.

Protect the community and uphold the CUP. Please deny the appeal.

NAME	ADDRESS	PHONE
Joseph Villarrea	22941 Axtell (Hay. Axtell.)	707-8515
John Wickman	27265 Patrick Av. Hay. 94544	752-9312
Richard Elliott	119 Winton Ave 94544	293-8583
Dana Gallars	119 Winton Ave 94544	293-8583
Katharine D. Barrett	119 Winton Ave 94544	293-8583
E. Villaseñor	3511 Skyline Dr. Hay. ⁹⁴⁵⁴²	733-9900
Nelly Camacho	23851 Fremont Ct Hayward 94541	889-5937
B. [Signature]	119 Winton Ave 94544	
[Signature]	119 W. Winton Ave 94544	889-7481
[Signature]	22652 Second St. Hayward 94541	247-82

We, the undersigned request that the Hayward City Council deny the appeals filed by the owner of El Tapatio: Conditional Use Permit Application #99-160-04, and Variance Application #99-180-03. We do not want any new on-sale or off-sale liquor licenses in this area.

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- ◆ The CUP does not allow alcohol outlets from to be within 500 feet of each other. El Tapatio is located within 500 feet of an existing establishment.

Protect the community and uphold the CUP. Please deny the appeal.

NAME	ADDRESS	PHONE
Carmen V. Flores	#2964 Alice St. Hayward	
Carmen D. Flores	" " "	"
Juan Juan Flores	" " "	"
Juan Juan Flores	22910 Alice St Hayward	
Maria Hicks	22886 Pamela	
Jane L Castro	491 Pamela Ct. Hayward	
GUSTAVO A. GONZALEZ	22883 ARNOLD ST. Hayward	
CR Seibel	22857 ARNOLD CT Hayward	
Theresa A. Lerner	-22835 Arnold Ct. Hayward	
Barrie J. Martinez	22841 Arnold Ct Hayward	
Antonia Martinez	22808 Arnold CT. Hayward	
B.L. Redson	22794 " " Hay	
Felicia Olivares	22793 Arnold Ct Hayward CA	
Rodolfo Olivares	22793 Arnold Ct Hayward CA	
Gayle Boyer	22793 Arnold Ct Hayward CA	

ACTION ALERT!

In May, the owner of El Tapatio Carniceria Taqueria, 603 A Street, asked the City of Hayward Planning Commission to allow his business to obtain both an on-sale and off-sale liquor license. Because of Hayward's Conditional Use Permit (CUP) process, he needed permission from the City before the California Department of Alcoholic Beverage Control would grant the licenses.

The City denied his request for two main reasons. The Census Tract that the business is located in is over-concentrated with alcohol outlets. In addition, it is within 500 feet of other outlets, which is against the CUP. The owner has appealed the decision to the City Council.

Please write or call the City Council against this appeal. The matter will go before the Council on July 13th.

**Hayward City Council
777 B Street
Hayward, CA 94541
583-4341**

Alarma de Acción!

En Mayo, el dueño de la Carnicería y Taquería "El Tapatío" del 603 Calle "A", solicitó a la Comisión de Planificación de la Ciudad Hayward que le permitiera a su negocio obtener licencias de licor para vender bebidas alcohólicas dentro y fuera de su local.

Debido al proceso del Permiso de Uso de Condicional de Hayward (CUP), él necesitaba una autorización de la Ciudad antes que el Departamento de Bebidas Alcohólicas le concediera las licencias.

La Ciudad negó su demanda por dos razones principales. El negocio está localizado dentro de una área del Censo que tiene exceso de negocios de ventas de alcohol. Además, está localizado a menos de 500 pies de otro negocio que vende alcohol lo cual está prohibido por el CUP.

Por favor, escriba o llame al Concilio de la Ciudad y pida que voten en contra de esta apelación. El asunto será tratado por el Concilio el 13 de Julio de 1999

**Hayward City Council
777 B Street
Hayward, CA 94541
583-4341**

LAW OFFICES OF

Mark D. Poniatowski2811 CASTRO VALLEY BOULEVARD, SUITE 208
CASTRO VALLEY, CALIFORNIA 94546

TELEPHONE: (510) 881-8700

FACSIMILE: (510) 881-8702

E-MAIL: PONLAW@AOL.COM

REPLY TO CASTRO VALLEY

THE LEIMERT-OLD OAKLAND

456 EIGHTH STREET

OAKLAND, CA 94607

(510) 839-8700

MARK D. PONIATOWSKI
JASON I. ROBMAN

June 22, 1999

Arlynn J. Camire
Associate Planner
City of Hayward
Development Review
Services Division
777 "B" Street
Hayward, CA 94541-5007VIA FACSIMILE AND
FIRST CLASS MAIL**RE: Appeal Of Use Permit Application #99-160-04, Variance
Application #99-180-03 and Decision By The Planning
Commission****PROPERTY: 603 "A" Street, Hayward, CA 94541
El Tapatio Carniceria & Taqueria**

Dear Ms. Camire:

It has come to my client's attention that two individuals, an African American woman and a Hispanic man, are traveling door to door acquiring signatures in opposition to my client's appeal of the use permit and variance applications. However, these individuals have misrepresented themselves. First, these individuals indicate that my client seeks a permit to sell hard liquor. Second, these individuals are misleading residents into believing that the residents' signatures on the petition support my client's use permit and variance applications when in actuality their signatures are to oppose these applications.

I am not sure what you can do to address this issue; however, this letter is to inform you of the situation. I welcome your comments and/or suggestions to correct this matter and allow both sides to fairly present the issues to the City Council on July 6, 1999.

RECEIVED

JUN 25 1999

DEVELOPMENT REVIEW SERVICES

LAW OFFICES OF

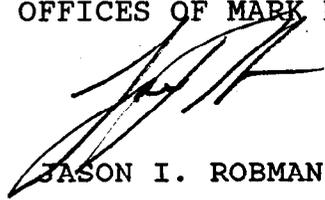
Mark D. Poniatowski

Ms. Arlynn J. Camire
June 22, 1999
Page 2

Thank you for your time and cooperation. Should you have any questions or concerns, please feel free to give me a call at your convenience.

Very truly yours,

LAW OFFICES OF MARK D. PONIATOWSKI



JASON I. ROBMAN

JIR:sa
cc: Dyan Anderly
Roberta Cooper, Mayor

FINDINGS FOR DENIAL

Use Permit Application No. 99-160-04

Jorge L Gonzalez for El Tapatio Carniceria and Taqueria (Applicant/Appellant)

Dorothy Levin and Arthur Zemel Trustees et. al. (Owners)

Based on the staff report and the public hearing record:

1. That the City Council find that the Categorical Exemption is complete and final in accordance with the California Environmental Quality Act Guidelines and reflects the independent judgment of the City Council based on the fact that the project conforms to Section 15301 of CEQA.
2. That a new off-sales liquor establishment is not desirable for the public convenience or welfare since it has the potential to contribute to an increase of the public consumption of alcoholic beverages in an area that is impacted by liquor establishments.
3. That a new off-sales liquor establishment may impair the character and integrity of the Central City - Commercial District (CC-C) in that the addition of a new liquor establishment is not in character with the surrounding development and uses, and will conflict with the established purpose of the CC-C District to promote commercial uses that are compatible to adjacent residential uses and encourage compatible association of uses.
4. That a new off-sale liquor establishment may be detrimental to the public health, safety, or general welfare as evidenced by the fact that additional opportunities to purchase alcoholic beverages to be consumed in public is not in conformance with the intent of the Hayward General Plan land use designation and existing zoning districts.
5. That a new off-sale liquor establishment is not in harmony with applicable City policies as well as the intent and purpose of the zoning district in that the use will not be compatible with adjacent commercial and residential activities.

FINDINGS FOR DENIAL

Variance No.99-180-03

Jorge L Gonzalez for El Tapatio Carniceria and Taqueria (Applicant)

Dorothy Levin and Arthur Zemel Trustees et. al. (Owners)

1. The proposed project to is Categoricaly Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, Existing Structures.
2. That there are not special circumstances applicable to the property in that the subject property abuts an existing on-sales liquor establishment with a zero-property line distance separation and the Census Tract is impacted by an over concentration of liquor establishments.
3. That strict application of the Zoning Ordinance does not deprive such property of privileges enjoyed by other property in the vicinity under the same zoning classification in that the Zoning Ordinance reflects the State Department of Alcoholic Beverages Control regulations restricting the number of liquor establishments in each census tract.
4. That the variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and Central City Zoning District Commercial Subdistrict in which the property is situated in that other variances have not been approved which would allow less than a 500 foot separation between off-sales liquor establishments and on-sale liquor establishments.

DRAFT 8/5 6/30/99

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION DENYING APPLICANT'S APPEAL OF USE PERMIT APPLICATION NO. 99-160-04 AND VARIANCE APPLICATION NO. 99-180-03 OF JORGE L. GONZALEZ (APPLICANT/APPELLANT), AND DOROTHY LEVIN AND ARTHUR ZEMEL TRUSTEES, ET. AL. (OWNER)

WHEREAS, Use Permit Application No. 99-160-04 and Variance Application No. 99-180-03 concern a request to sell off-sale beer and wine at a 4029-square-foot market and taqueria located at 603 "A" Street in a Central City-Commercial Sub-district (CC-C); along with a request, as required by State alcohol licensing regulations, that the City make a determination that the public convenience and necessity would be served by another off-sales alcoholic beverage outlet in an area determined by the State Department of Alcoholic Beverage Control ("the ABC") to be over-concentrated with such establishments; and

WHEREAS, on May 6, 1999, the Planning Commission considered these matters and denied the Use Permit and Variance applications on the grounds that the market is located within 500 feet of an existing alcohol sales outlet in contravention of the requirements of the City's alcoholic beverage outlet regulations and that there were no applicable circumstances supporting a variance from the regulations; in addition, the Planning Commission determined that the public convenience and necessity would not be served by allowing another alcoholic beverage outlet in the area;

WHEREAS, Mr. Jorge L. Gonzalez, applicant, has appealed the Planning Commission's denial of Use Permit Application No. 99-160-04 and Variance Application No. 99-180-03, along with its determination that the public convenience would not be served by allowing off sale of alcohol from his business; appellant states that his regular customers have requested that off-sale beer and wine be made available in the market and therefore believes that the sale of alcoholic beverages in his market would be a public convenience; and

WHEREAS, the City's alcoholic beverage outlet regulations prohibit new off-sale alcoholic beverage establishment from locating within 500 feet of a preexisting liquor outlet; and appellant's business is located within 500 feet of a preexisting alcohol outlet; and

WHEREAS, the City's Police Department does not support the off-sale application because there are currently an abundance of alcohol outlets in the Downtown and public drunkenness in the Downtown area is a problem; and

WHEREAS, there are no special circumstances connected to the property or business which would justify granting a variance from the City's regulations; and

WHEREAS, there are no facts or circumstances supporting the appellant's request for a determination that the public convenience or necessity would be served by allowing off-sale sales of beer and wine at his business.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward, based upon the aforementioned findings, that the action of the Planning Commission denying Use Permit Application No. 99-160-04 and Variance Application No. 99-180-03 is hereby sustained, and, further, that the City Council determines that the public convenience and necessity would not be served by allowing appellant's business to sell beer and wine for off-site consumption.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 1999

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward