



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: May 2, 2006

Approved:

Ray Wines

Date:

4/18/06

COUNCIL DISTRICT: 1

SNI AREA: None

SUBJECT: CP06-001 & ABC06-001. APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF BEER AND WINE AT AN EXISTING RETAIL ESTABLISHMENT LOCATED AT 5175 MOORPARK AVENUE (THE NORTH SIDE OF MOORPARK AVENUE, 100 FEET EAST OF LAWRENCE EXPRESSWAY).

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council deny the subject Conditional Use Permit and not make a Determination of Public Convenience or Necessity by finding that all the required findings for a Determination of Public Convenience or Necessity cannot be made and that there is not a significant overriding public benefit served by the proposed off-sale of alcohol.

OUTCOME

Should the City Council approve the subject Conditional Use Permit and Determination of Public Convenience or Necessity, an existing specialty food store will be allowed to sell as incidental to the food sales alcohol for off-site consumption. Should the City Council deny the subject requests, the specialty food store will not be able to add alcohol to its inventory and can continue to operate as it currently exists.

EXECUTIVE SUMMARY

In December 2005, the City Council adopted new regulations affecting establishments that sell prepackaged alcohol for consumption off-site ("off-sale alcohol"). The updated regulations include splitting out the sale of beer and wine from the sale of all other alcohol, enhanced findings necessary for the approval of a Conditional Use Permit, and mandatory findings for making a

Determination of Public Convenience or Necessity (previously referred to as a Liquor License Exception) when required by the State Department of Alcohol Beverage Control (ABC).

The enhanced findings for a Conditional Use Permit include a provision to address the proliferation of establishments in close proximity to others by generally limiting the number of establishments to four (4) within a 1,000-foot radius. Additionally, the existing finding that addresses the location of such establishments to sensitive uses such as schools has been augmented to include uses such as public parks, child care centers, social service agencies, and residential care and service centers. If a new "off-sale alcohol" establishment is to be located within 500 feet of one of the sensitive uses, it must be determined that the proposed establishment is situated and oriented such that it would not adversely affect such use.

In many instances, the licensing of a new "off-sale alcohol" establishment is required by the ABC to secure a Determination of Public Convenience or Necessity from the City due to the location being in an area of undue concentration or an area of increased crime both as defined by the State. The City developed the Liquor License Exception process in the early 1990's to respond to these requests. With the new regulations, the process will be renamed to be consistent with the State terminology, and all requests will be heard by the Planning Commission and in conjunction with an application for a Conditional Use Permit when applicable.

The change of greatest magnitude is the adoption of mandatory findings necessary for the Planning Commission to make when considering a request for a Determination of Public Convenience or Necessity. The four findings that must be met are as follows:

- The proposed use is not located within a targeted law enforcement area; and
- Approval of the proposed use would not result in a grouping of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed use; and
- The proposed use would not be located within five hundred (500) feet of a school site, day care center site, public park, social services agency site, residential care facility site or residential service facility site, or within 150 feet of a site upon which a residential use is conducted or that is residentially zoned; and
- Alcohol sales would not represent a majority of sales, stock or shelving space of the proposed use.

Should the Planning Commission find that the above conditions exist, further consideration of the request is subject to discretionary findings. If the Planning Commission is unable to make all necessary findings in order to consider making a Determination of Public Convenience or Necessity, it is compelled to deny both the request for a Conditional Use Permit and Determination of Public Convenience or Necessity. Appeal of the Planning Commission's decision is heard by the City Council. One of the changes made to the ordinance was to include the opportunity for the City Council to make a finding of overriding public benefit should one of the mandatory findings not be met. The City Council is the only body that can make the finding of greater public benefit.

This report, along with the Planning Commission staff report, includes a discussion of the project and whether the required findings can be made in both the case of the Conditional Use Permit and

in the Determination of Public Convenience or Necessity. The Planning Commission was unable to make all necessary findings in order to consider making a Determination of Public Convenience or Necessity therefore was compelled to deny both the request for a Conditional Use Permit and Determination of Public Convenience or Necessity. The applicant appealed the Planning Commission decision to deny the subject proposal.

BACKGROUND

On March 22, 2006, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit (CUP) and Determination of Public Convenience or Necessity (PCN). The Director of Planning recommended denial of the Conditional Use Permit and request for a Determination of Public Convenience or Necessity for reasons stated in the original staff report (see attached). The applicant spoke in behalf of his request. No one from the public spoke in favor or opposition. The Planning Commission denied the proposed project by a vote of 6-0-0-1 (Commissioner Pham abstained).

The Planning Commission focused on the appropriateness of approving the off-sale of beer and wine at this specific location given its proximity to other existing off-sale alcohol establishments and how only a small amount of the overall floor area for the subject specialty market would be dedicated to the sale of beer and wine. Several members of the Planning Commission, although they understood the City's new regulations related to the approval of off-sale of alcohol establishment, expressed frustration with respect to the rigid findings required, and limited discretion allowed at their level, in order to make a Determination for Public Convenience or Necessity. Several Commissioners encouraged the applicant to file an appeal to the City Council if he still wished to pursue the off-sale proposal. The applicant appealed the Planning Commission decision to deny the subject proposal on March 27, 2006

Subsequent to the Planning Commission hearing, an email was received from Tammy Lee in opposition to the proposed CUP. She "disagrees with selling any alcohol due to the small parking lot and that it is close to a residential area and close to schools and children". Staff attempted to determine Ms. Lee's proximity to the subject property, but never received a response.

ANALYSIS

The Permit Appeal submitted by the applicant simply requested that the project be considered by the City Council. No specific argument or evidence was provided that would specifically lend support to a Determination of Public Convenience or Necessity.

The original staff report (attached) provides a full analysis of this project with respect to the findings required that must be made by the Planning Commission to approve a Conditional Use Permit and make a Determination of Public Convenience or Necessity. In summary, Planning staff's review provided the Planning Commission with information enabling them to make the required findings for the Conditional Use Permit, but only enabling them to make three of the four findings required to make a Determination of Public Convenience or Necessity (PCN). In this

case, approval of both a CUP and PCN is necessary in order for a Liquor License to be issued by the State of California.

The Planning Commission was unable to make the required finding that the subject use was more than 150 feet from a residential property. Upon an appeal, per Title 6 of the San Jose Municipal Code, where the four required findings cannot be made, the City Council may still make a Determination of Public Convenience or Necessity upon finding that a "significant or overriding public benefit or benefits will be served by the proposed use", and making one of four *additional* special findings.

The analysis of the additional finding(s) that must be made in order for the City Council to make a Determination of Public Convenience or Necessity are discussed below. To make such a determination, only one of the four additional findings must be made:

- a) *The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety.*
- b) *The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area.*
- c) *The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety.*
- d) *The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.*

Renata Eurofoods is adjacent to Renata's Café & Bakery. Together, they provide various European and Russian foods, serving members of the public interested in specialty goods. By providing specialty wines as well, Renata Eurofoods will be able to better and more completely supply its customers with the merchandise that suits their needs. Since only five (5) square feet of floor space will be dedicated to the wine sales, there would not be a significant impact on public health or safety. Staff feels that the proposed use is consistent with finding "a" above.

ALTERNATIVES

The City Council in their review of the project can take the following actions:

1. Find that although one of the four mandatory findings for a making a Determination of Public Convenience or Necessity cannot be made, there is a significant overriding public benefit served by the proposed off-sale of alcohol and therefore that the necessary finding of a significant overriding public benefit can be made for approval of a Conditional Use Permit for

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off-sale alcohol sales and adopt a resolution approving the subject Conditional Use Permit and making the Determination of Public Convenience or Necessity; or

2. Find that there is no overriding public benefit served by the proposed off-sale of alcohol and uphold the Planning Commissions decision to deny the subject Conditional Use Permit and not make a Determination of Public Convenience or Necessity.

PUBLIC OUTREACH

Notices for the public hearings for the project and for this appeal were mailed to the owners and tenants of all properties located within 1,000 feet of the project site. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the City Council agenda, on the City's website. Staff has been available to discuss the proposal with members of the public.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

CEQA

Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality.


For JOSEPH HORWEDEL, ACTING DIRECTOR
Planning, Building and Code Enforcement

Attachments:

- Planning Commission Staff Report & Attachments
- Appeal Application
- Supplemental letter from applicant

cc: Applicant/Appellant

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113

Hearing Date/Agenda Number
PC 3/22/06 item: *3b*

File Number
CP06-001 & ABC06-001

Application Type: Conditional Use Permit &
Determination of Public Convenience or
Necessity

Council District: 1

Planning Area: West Valley

Assessor's Parcel Number: 381-51-083

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Avril Baty

Location: North side of Moorpark Avenue 600' Wly. of Gullo Avenue (5175 Moorpark Ave., Suite 3)

Gross Acreage: 0.45

Net Acreage: 0.45

Net Density: N/A

Existing Zoning: CP Commercial Pedestrian

Existing Use: Retail (grocery)

Proposed Zoning: No change

Proposed Use: Same w/off-sale of alcohol beverages

GENERAL PLAN

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8.0 DU/AC)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

North: Single-family detached residential

R-1-8 Single-Family Residence

East: Commercial

CP Commercial Pedestrian

South: Commercial

CP Commercial Pedestrian

West: Commercial

CP Commercial Pedestrian

ENVIRONMENTAL STATUS

Environmental Impact Report
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Annexation Title: Blackford No. 4

Date: May, 3, 1966

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: *3/15/06*

Approved by: *Jean Hanulter*
 Action
 Recommendation

APPLICANT/OWNER

Enry Pogosov
Renata Eurofoods
5175 Moorpark Ave., Suite 3
San Jose, CA 95129

CONTACT PERSON/ DEVELOPER

Enry Pogosov
Renata Eurofoods
5175 Moorpark Ave., Suite 3
San Jose, CA 95129

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: AB

Department of Public Works: None received.

Other Departments and Agencies See attached memorandum from the Police Department

GENERAL CORRESPONDENCE

Department of Alcohol of Beverage Control (ABC)
Police Memo and Crime Report
Planning Department Memorandum regarding amending ordinances pertaining to the provisions of the off-sale of alcoholic beverages.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

Enry Pogosov, on behalf of May Chu, is requesting a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the sale of beer and wine for off-site consumption in a 970 gross square-foot retail space located in an existing 5,176 gross square foot retail building. A Conditional Use permit is required for the sale of alcohol for off-site consumption in the CP Commercial Pedestrian Zoning District. A "Determination of Public Convenience and Necessity" is also required because the project is located within a census tract with a higher ratio of existing liquor licenses to population than is found in the County as a whole.

The existing multi-tenant building in which the European grocery store (Renata Eurofoods) is located also includes Big Tree (Korean Barbeque), Logo Video, A-1 Nail Salon, Farmers Insurance Group, and Renata's Bakery & Café. The subject building is adjacent to a variety of commercial uses (including retail, restaurants, personal service shops and offices) to the south, east and west. Single-family residential uses are located adjacent to the site to the north. The adjacent single-family residences that back up to the subject site share a 7-foot tall fence with the subject property.

Project Description

The applicant has indicated that Renata Eurofoods proposes to sell wine and beer for off-site consumption. The sale of beer and wine is incidental to that of the retail of groceries. The existing shop is operates Mondays through Saturdays from 10:00 am until 8:00 pm and on Sundays from 10:00 am until 6:00 pm.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality.

GENERAL PLAN CONFORMANCE

The project site has a designation of Medium Low Density Residential (8.0 DU/AC) on the San José 2020 General Plan Land Use/Transportation Diagram. General Plan policy specifically indicates that any developed parcel of two acres or less is deemed to be in conformance with the

General Plan regardless of its land use designation. The subject property is less than half an acre in size and is fully developed. No physical expansion of the existing structure is proposed. Therefore, the proposed use is in conformance with the General Plan.

ANALYSIS

In order for the existing retail store to be able to sell alcoholic beverages at the subject location, the applicant needs to secure both a Conditional Use Permit and a Determination of Public Convenience or Necessity. An approval of one without the other is of no value in ultimately facilitating the off-sale alcohol use. For this reason, this staff report links these two required applications together for concurrent consideration. The primary issues for this project include 1) conformance with the Zoning Code requirements for approval of a Conditional Use Permit, and 2) requirements for a Determination of Public Convenience or Necessity.

Zoning Code Requirements for Conditional Use Permits

A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three special findings applicable to the off-sale of alcoholic beverages:

1. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location.

Analysis of Required Finding. There are two existing businesses located within a 1,000 foot radius of the proposed use that provide alcoholic beverages for off-site consumption. These include a convenience store and a drug store located just south of the project site near the southeast corner of Moorpark Avenue and Williams Road. The proposed use together with existing facilities would not result in a total of more than four such establishments within a 1000-foot radius.

2. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, that the resulting excess concentration of such uses will not:

- a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the area; or
- c. Be detrimental to public health, safety or general welfare.

Analysis of Required Finding. As stated above, the proposed use will not result in more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius of the proposed location. Therefore, this finding is not applicable to the consideration of approval of the subject proposal.

3. For such a use at a location closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

Analysis of Required Finding. The proposed use is not located within 500 feet of a childcare center, a social service agency, a residential care facility, a residential service facility, a secondary school or a college or university. The project site is located within 150 feet of residentially zoned properties located to the north on Raintree Court which have a back-up site orientation to the existing subject commercial building. A 7-foot masonry wall with no openings separates the commercial and residential uses. The proposed retail space orients to Moorpark Avenue and is separated from the side parking lot by two other tenant spaces. Based on the layout of the existing site and orientation of the commercial tenants, staff does not anticipate that the use will adversely affect the adjacent residences and meets the intent of this requirement.

Based on the above analysis, staff believes that the Zoning Code findings for approval of a Conditional Use Permit can be made for the proposed off-sale alcohol use.

Finding of Public Convenience and Necessity

The San Jose Municipal Code (SJMC) was recently changed with regards to the approval of Liquor License Exceptions. Until recently, a Liquor License Exception was typically required under certain circumstances in addition to a Conditional Use Permit. Recent changes to the Title 6 of the SJMC have replaced the Liquor License Exception process with a requirement for a "Determination of Public Convenience or Necessity".

The purpose for making a formal Determination of Public Convenience or Necessity is to provide appropriate feedback to the State of California in connection with the issuance of licenses for the off-sale of alcoholic beverages by the State's Department of Alcoholic Beverage Control in areas that are deemed to be over-concentrated with off-sale outlets or in areas that are considered high crime areas as specified by the Business and Professions Code Section 23958.

Unless the City makes a Determination of Public Convenience or Necessity, the State Department of Alcohol Beverage Control (ABC) will not issue a liquor license for off-sale of alcohol if the business is located in an area of high crime or an area of over concentration, defined as follows:

- a) The premises of the proposed license is located in an area that has 20% more reported crimes than the average number of reported crimes for the city as a whole, or
- b) The premises of the proposed license is located in a census tract where the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

The attached Police Department memorandum indicates that the project site is not located within an area of high crime, however, the census tract does have an over-concentration of existing

liquor licenses. For ABC to be able to issue a license for this use, the City must grant a “Determination of Public Convenience or Necessity”. The analysis of the proposal is based on the required findings.

Title 6 of the San Jose Municipal Code specifies that the Planning Commission may issue a Determination of Public Convenience and Necessity only after making the four specified findings identified below:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

Analysis of Required Finding. The proposed use is not within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs. Per the Police Department, the subject property is not located within an area that the proposed use that would be detrimental to the public or increase the severity of public nuisance or existing law enforcement problems.

2. The proposed use would not lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use.

Analysis of Required Finding. The proposed use would only lead to the grouping of three off-sale uses within a one thousand-foot radius from the proposed use.

3. The proposed use would not be located within five hundred feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence.

Analysis of Required Finding. The proposed use is not located within five hundred feet of a school, day care center, public park, social services agency or residential care facility or service facility. However, the proposed use is within 150 feet of residential properties and therefore not consistent with this finding which must be made in order to grant a favorable determination. These residences back-up to the subject property and are a minimum 600 foot walking distance to the proposed use on Gullo Avenue and 700 feet Raintree Court. Unlike the findings required for the Conditional Use Permit, the orientation of the residences to the proposed use does not compensate for the close proximity.



4. Alcohol sales would not represent a majority of the proposed use.

Analysis of Required Finding. For the 970 square-foot retail space, only 5 square-feet will be dedicated to the sale of beer and wine. The proposed use will constitute 0.5% of the grocery store, and is incidental to the existing use. This permit will include a condition to limit the relative percentage of floor area dedicated to the sale of alcoholic beverages to ensure that the off- sale of alcohol remains an incidental component to the existing retail use.

CONCLUSION

Based on the above analysis, staff concludes that the required findings can be made with regard to the Conditional Use Permit. However, staff is only able to make three of the four findings that are required in order for the Planning Commission to consider the approval of a Determination for Public Convenience or Necessity as required by Title 6 of the San Jose Municipal Code. Staff is unable to make the required finding #3 that the proposed use is at least 150 feet from a residential use. Therefore staff is obliged to recommend denial of the project. In instances where not all of the findings can be made, Title 6 provides an opportunity upon appeal whereby the City Council can approve such a proposal. This can only be approved if the City Council identifies and finds that a significant and overriding public benefit or benefits will be served by the proposed use.

RECOMMENDATION

Planning staff recommends that the Planning Commission deny the requested Conditional Use Permit and not make a Determination of Public Convenience or Necessity and include the following facts and findings in its resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. The subject site is located within CP Commercial Pedestrian Zoning District.
2. This site has a designation of Medium Low Density Residential on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The proposal is consistent with the General Plan and Zoning District. The subject site is less than five acres and is surrounding by urban uses. Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality. The site can be adequately served by all required utilities and public services.
4. The existing grocery store occupies a 970 square foot space within a multi-tenant building that includes five other small retail tenants.
5. There are 22 parking spaces for the existing retail center.
6. The Zoning Ordinance requires 22 parking spaces for the existing retail center.

7. The subject retail establishment is a specialized European food market that closes at 8:00 p.m.
8. The existing grocery store proposes to occupy no more than 5 square feet of floor area to the sales of alcoholic beverages.
9. The project is subject to the requirements for a Determination of Public Convenience or Necessity for a liquor license for the off sale of alcohol beverages. The granting of such a determination requires that four specific findings be made as prescribed by Title 6 of the SJMC.
10. The project site is located in a census tract with an existing over-concentration of liquor licenses, although there are only two other off-sale establishments within 1000' of the subject site.
11. The site is not located in an area with a high number of calls for police service or a high crime rate.
12. The site is not located in an existing Project Crackdown /Weed and Seed Area.
13. The proposed use is not within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs.
14. The project site is located adjacent to and with 150 feet of residentially zoned property to the north.
15. The above mentioned residential use is oriented in a manner that backs up to the existing retail building.
16. Based on the orientation of the retail use to residential areas, there is a 600' walking distance to the nearest residence on Gullo Avenue and 700 feet to the nearest residence on Raintree Court.
17. The proposed use is not located within 500 feet of a child care center, a social service agency, a residential care facility, a residential service facility, a secondary school or a college or university.
18. The proposed use is separated from the single-family residences that front onto Raintree Court by a 7-foot masonry wall with no openings. The proposed retail space orients to Moorpark Avenue and is separated from the side parking lot by two other tenant spaces.
19. The Police Department memorandum indicates that the project site is not located within an area of high crime, but that the area does have an over-concentration of existing liquor licenses. For ABC to be able to issue a liquor license for this use, the City must grant a "determination of public convenience or necessity".
20. Police data for a similar wine specialty use indicates that this type of use does not result in crime problems or land use compatibility concerns.

21. The proposed use does not include late night operation. The retail sales of beer and wine is to be in conjunction with the retail of specialty foods.

Based on the above stated facts, the Planning Commission concludes and finds:

1. Based on the findings in the subsection below, the Planning Commission is not able to make a Determination of Public Convenience and Necessity for the subject liquor license:
 - a) The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area; and
 - b) The proposed use would not lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use; and
 - c) The proposed use would not be located within five hundred feet of a school, day care center, public park, social services agency, or residential care or service facility. The proposed use is within one hundred fifty feet of an existing residence and is therefore not in conformance with the requirements of Title 6 of the SJMC.
 - d) Alcohol sales would not represent a majority of the proposed use.
2. Finally, the Planning Commission concludes and finds, based on the analysis of the above facts in regards to the Conditional Use Permit, that:
 - a) For the use located closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location; and
 - b) The use is no closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, that the resulting excess concentration of such uses will not:
 1. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 2. Impair the utility or value of property of other persons located in the vicinity of the area; or
 3. Be detrimental to public health, safety or general welfare.

- c) The use is not located closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, where the proposed use is situated and oriented in such a manner that would not adversely affect such residential use.

Finally, based on the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility of value of the property of other persons located within the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences parking, loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the surrounding area.
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Based on the above findings, this project is hereby denied.

Attachments



Memorandum

TO: Avril Baty
Planning Department

FROM: Ofr. Rick Galea #3495
San Jose Police Vice Unit

SUBJECT: Renata Eurofoods
5175 Moorpark Ave. Suite 3

DATE: January 31, 2006

Approved

Date

I have received your request for input regarding Renata Eurofoods, 5175 Moorpark Ave. Suite #3, San Jose, Ca. 95129. Renata Eurofoods is seeking an ABC License Type 20 – Off-Sale Beer and Wine.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, with certain exceptions as described in B&P Sections 23958.4 (a)(3) and 23958.4 (b)(2). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (a)(3), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is not currently in a Strong Neighborhood Initiative area.

Renata Eurofoods is located in San Jose Police Beat N3. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
N3 (2005)	331	176	507	No
City Average	317	345	661	

A crime analysis indicated a total of 63 calls for service and self- initiated events occurred within a 1000 ft radius of 5175 Moorpark Ave. in a 12 month period (February 1, 2005 – January 23, 2006). Some of the calls are listed in the table below.

Crime Analysis

Number	Nature of Call
33	Vehicle Accidents / Hit and Run
3	Vandalism
2	Disturbances
2	Drunk in Public
1	Assaults
1	DUI

Department of Alcohol Beverage Control (ABC) records indicate Renata Eurofoods is in census track 5062.04. Pursuant to B&P Section 23958.4 (a)(3) ... the ratio of on-sale retail licenses and off-sale retail licenses to population in census tract 5062.04 **does** exceed the ratio of on-sale retail licenses and off-sale retail licenses to population in the county in which the applicant premises are located.

Authorized and Current ABC Licenses in Census Track 5062.04

Census Track	Authorized ABC Licenses as of August 2005		Current ABC Licenses as of December 1, 2005		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5062.04	8	4	10/0	5/0	YES	YES

An exception would have to be granted for ABC to issue this license. The police department remains neutral to the issuance of the exception permit.

Please feel free to contact me at 277-4322 if you have any questions.

Ofr. Rick Galea #3495
Administrative Officer
Special Investigations/Vice

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF	
FILE NUMBER <p style="text-align: center; font-size: 1.2em;">CPO6-001 & ABC06-001</p>	RECEIPT # <u>404865</u>
PROJECT LOCATION <p style="font-size: 1.2em;">N/S of Moorpark Ave, approximately 350ft West of Grullo Ave.</p>	AMOUNT <u>\$ 100</u>
	DATE <u>3/27/06</u>
	BY <u>Rvm</u>

TO BE COMPLETED BY PERSON FILING APPEAL
PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): <p style="font-size: 1.2em;">Because it was denied by planning ^{commission} project should be considered by city council.</p>

PERSON FILING APPEAL	
NAME <p style="font-size: 1.2em;">HOA TRAN</p>	DAYTIME TELEPHONE (408) 257 3111
ADDRESS <p style="font-size: 1.2em;">5155 MOORPARK AVE</p>	CITY <u>SAN JOSE</u> STATE <u>CA</u> ZIP CODE <u>95129</u>
SIGNATURE 	DATE <u>3/24/06</u>
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) <u>NEIGHBOR</u>	

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)		
NAME <p style="font-size: 1.2em;">ENRY POGOSOV</p>		
ADDRESS <p style="font-size: 1.2em;">5175 MOORPARK AVE #3</p>		
CITY <u>SAN JOSE</u> STATE <u>CA</u> ZIP CODE <u>95129</u>		
DAYTIME TELEPHONE (408) 497-3209	FAX NUMBER ()	E-MAIL ADDRESS

PROPERTY OWNER	
NAME <p style="font-size: 1.2em;">MAY CHU</p>	DATE <u>03.23.06</u>
ADDRESS <p style="font-size: 1.2em;">991 POMEROY AVE</p>	
CITY <u>SANTA CLARA</u> STATE <u>CA</u> ZIP CODE <u>95051</u>	

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE DEVELOPMENT SERVICES CENTER, CITY HALL.

MASONRY WALL

159.91'

WALKWAY

130.03'

±20'

±20'

±20'

±20'

±50'

SUITE 1

SUITE 2

SUITE 3

SUITE 4

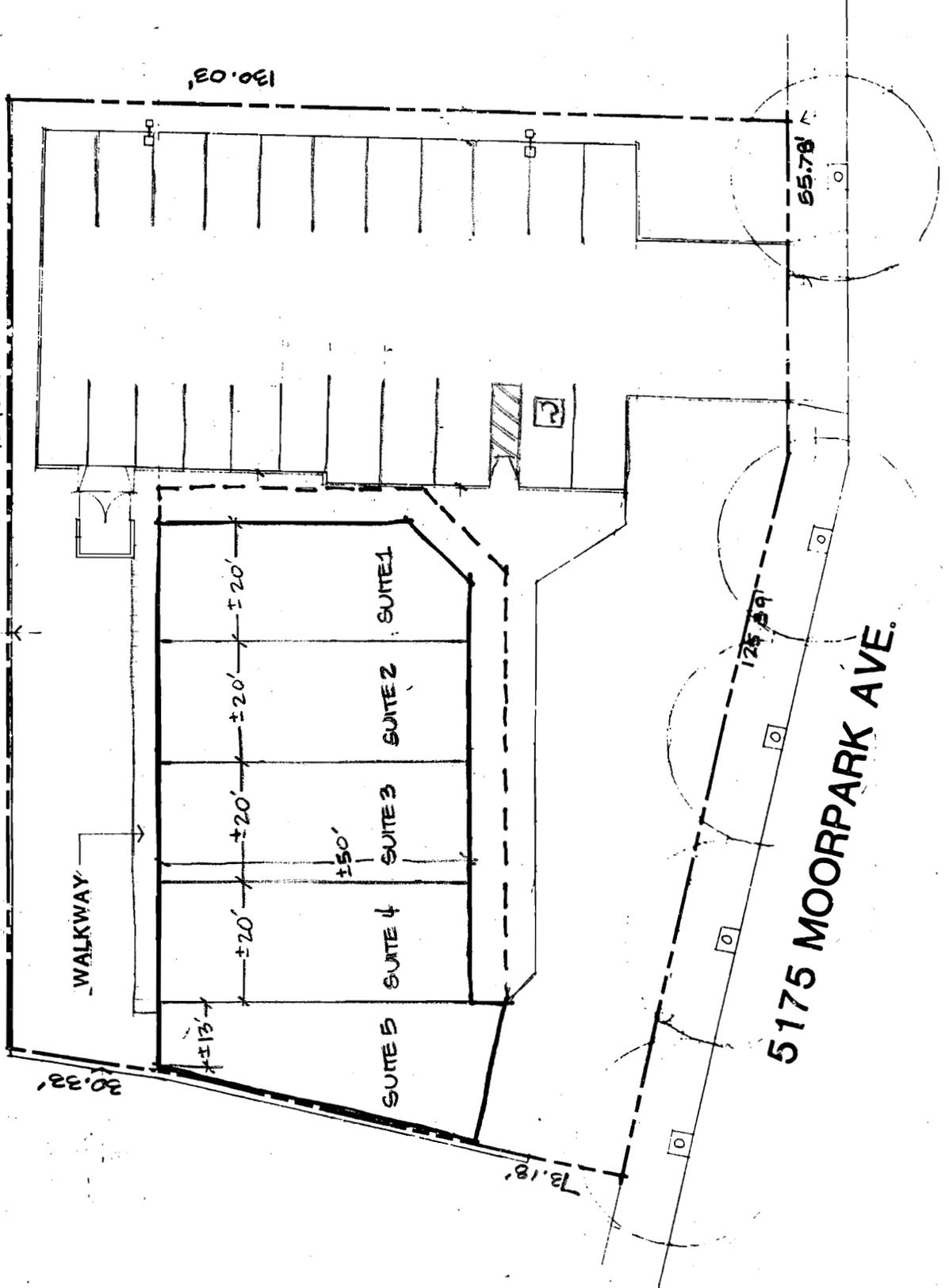
SUITE 5

13.18'

125.59'

55.78'

5175 MOORPARK AVE.



Renata Eurofoods

5175 Moorpark Avenue Suit #3
San Jose, CA 95129
(Main cross street is Lawrence Exp.)

Wednesday, March 22, 2006

Owner: Enry Pogosov

I, Enry Pogosov, will be opening a new mini grocery market at the address above. I plan to sell variety of Russian and European products such as: bakery products, cheeses, specialty foods, dairy products, grocery products, prepared foods, fish, wine and beer.

The purpose of this letter is to observe how many residents within 150 feet will consider letting me to sell wine and beer at this location.

	NAME:	ADDRESS:	SIGNATURE:
1	Wong, B. Lee	906 RAINTREE CT	Wong
2	Ricardo M. Cabrera	889 Raintree St	RMCabrera
3	D. Tran J. M. Tran	873 Raintree Ct	D. Tran
4	K. Seifert	565 Raintree Ct	K. Seifert
5			
6			
7			
8			
9			
10			