



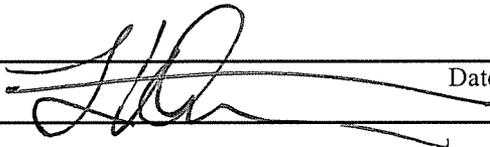
Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 13, 2006

Approved  Date 11/27/06

COUNCIL DISTRICT: 3
SNI AREA: None

SUBJECT: PD06-015 / ABC06-014. APPEAL OF THE PLANNING COMMISSION'S ACTION TO DENY A PLANNED DEVELOPMENT PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOLIC BEVERAGES IN A NEW RETAIL ESTABLISHMENT LOCATED AT 360 E. TAYLOR STREET ON THE SOUTH SIDE OF E. TAYLOR STREET BETWEEN 7TH AND 9TH STREETS.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends that the City Council uphold the Planning Commission's action to deny the Planned Development Permit and Determination of Public Convenience or Necessity.

OUTCOME

The City Council decision to uphold the Planning Commission's action to deny the Planned Development Permit and Determination of Public Convenience or Necessity would result in a new retail market operating on the subject site without alcoholic beverages in its inventory.

BACKGROUND

On October 11, 2006, the Planning Commission held a public hearing to consider the proposed Planned Development Permit and Determination of Public Convenience or Necessity. The Director of Planning recommended denial of the proposed project based on the attached staff report. The applicant, Melsew Berihun, spoke in support of the proposed project. No one spoke in support of, or opposition to, the proposed project.

Commissioner Platten said the Commission could not approve the Determination of Public Convenience or Necessity because the proposed market is located on the ground floor of a mixed-use building beneath a residential unit. He said that under Title 6 of the San Jose Municipal Code, the required findings for a Determination of Public Convenience or Necessity cannot be made since the proposed off-sale of alcohol use is located within 150 feet of a residential use or zoning.

Commissioner Platten said the subject site is appropriately designed for the proposed use. He suggested that the City Council use its discretion to consider approval of the proposal on the site with a mixed-use design and appropriate amenities on site.

The Planning Commission then closed the public hearing. Subsequently, the Planning Commission voted 7-0-0 to deny the proposed project.

On October 23, 2006 the applicant filed an appeal of the Planning Commission action to deny the subject proposal.

The original staff report (attached) provides an analysis of the proposal regarding required findings that must be made by the Planning Commission to approve a Planned Development Permit and Determination of Public Convenience or Necessity. The staff report provided the Planning Commission with information enabling them to make three of the four findings required to approve a Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License.

The Planning Commission was unable to make the required finding that the subject use was more than 150 feet from a residentially zoned property. Upon an appeal, per Title 6 of the San Jose Municipal Code, where the four required findings cannot be made, the City Council could approve a Determination of Public Convenience or Necessity upon finding that a significant and overriding public benefit or benefits will be served by the proposed use only after first making *one* of four *additional* special findings that are discussed in the analysis below under "Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License."

ANALYSIS

The attached Permit Appeal contains five reasons to support the appeal. Each reason to support the appeal is followed by a staff response.

- 1. To sell beer and wine for Public Convenience and Necessity. The proposed site has strong support by the Neighborhood and Residents in the area.*

Staff response: There is no evidence in the record to support this statement because a community meeting was not held, no correspondence was submitted, and no one spoke at the Planning Commission hearing.

2. *The site is currently zoned A(PD) Planned Development. The original planned Development Permit for the site file no. PD98-053 includes development standards, which state that the off-sale alcoholic beverages may be permitted.*

Staff response: The site is zoned A (PD) Planned Development and does allow for the off-sale of alcohol upon issuance of a Planned Development Permit.

3. *The proposed use of this site is a market selling grocery items. The sale of alcohol will be a very small portion of the retail space. The proposed site would not represent a majority of the proposed use.*

Staff response: No information exists in the application or plans to specify the amount of display space that would be devoted to alcoholic beverages. The applicant has verbally indicated that the alcohol sales area will include one cooler and 6 shelves. A dimensioned and labeled floor plan was not provided.

4. *The site is a grocery store selling beer and wine not a liquor store. The store hours are from 7 AM to 9 PM to meet the neighborhood and resident's convenience and necessity.*

Staff response: There is no evidence in the record to support this statement because a community meeting was not held, no correspondence was submitted, and no one spoke at the Planning Commission hearing.

5. *The proposed off-sale license is not within 500 feet of a school, day care center, public parks, social service agency, residential care or service facility.*

Staff response: According to the City's GIS database, the proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility.

Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License

While the San Jose Municipal Code did not afford the Planning Commission the discretion to approve the subject Public Convenience or Necessity application based on the required findings that they were obliged to make, the City Council does have greater discretion. Upon an appeal of a denial of the granting of a Determination of Public Convenience or Necessity, the City Council would need to find conformance with one of the four additional findings noted below in order to approve the proposal.

1. *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.*

The subject census tract is not unusually configured because it is generally rectangular in shape similar to other census tracts in the area. Further, the surrounding community is not underserved with retail establishments that sell alcoholic beverages because there are two retail markets with off-sale licenses, one within 1,000 feet of the subject site and the second within 1,500 feet of the subject site.

- 2. 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.*

The approval of off-sale may help enhance the vitality of the proposed business and the other commercial tenant spaces in the building and surrounding area by filling a vacant tenant space. The Chief of Police is opposed to the issuance of the proposed permit because the site is located in a census tract that is over concentrated.

- 3. 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.*

Census tract boundaries are redrawn every 10 years to ensure that each tract has about the same population. The subject census tract no. 5011 does exceed the ratio of on-sale and off-sale retail licenses to population in the County. As of March 16, 2006, there are 9 off-sale licenses in the census tract.

- 4. 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.*

The proposed use of the site is a market selling grocery items and alcoholic beverages. The sale of alcohol will be an incidental portion of the retail space because it would not represent a majority of display space for the proposed use.

Conclusion

Taylor Street Market will provide grocery items that will serve members of the public, specifically those living and working within the mixed-use project on the site and those in the surrounding neighborhood. Should the Council decide to approve the Public Convenience or Necessity application, staff recommends that the Resolution include a condition which limits the alcoholic beverage display area at the subject establishment to 15 percent of the overall sales area.

POLICY ALTERNATIVES

While General Plan policies encourage commercial land uses such as small grocery stores within mixed-use buildings, the provisions under Title 6 of the SJMC which regulate off-sale of alcohol do not provide flexibility to implement this specific combination of uses encouraged by

General Plan policies. Therefore, staff or the Planning Commission were not able to consider approval of the subject application. There are no policies alternatives available for consideration that would allow approval of this application without an appeal to the City Council.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Notices for the public hearings for the project and for this appeal were mailed to the owners and tenants of all properties located within 500 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.

FISCAL/POLICY ALIGNMENT

The proposed project is aligned with the Economic Development, Growth Management, and Sustainable City General Plan Major Strategies.

COST SUMMARY/IMPLICATIONS

N/A

BUDGET REFERENCE

N/A

HONORABLE MAYOR AND CITY COUNCIL
November 13, 2006
Subject: File Nos. PD06-015 and ABC06-014 Appeal
Page 6 of 6

CEQA

CEQA: Exempt, PD06-015 and ABC06-014



JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Lesley Xavier, Project Manager, at 535-7852.

Attachments:

- Notice of Permit Appeal
- Planning Commission Staff Report & Attachments
- SJMC Part 6.84 Determination of Public Convenience or Necessity For An Alcoholic Beverage Control License

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF	
FILE NUMBER P006-015 ABC06-014	RECEIPT # 430449
PROJECT LOCATION 350 E. Taylor Street	AMOUNT 1925.00
	DATE 10/23/2006
	BY AT

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: 360 E. TAYLOR STREET SAN JOSE, CALIFORNIA 95112
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): PLEASE SEE THE ATTACHMENT PUBLIC CONVENIENCE AND NECESSITY THIS APPLICATION FULLY SUPPORTED BY PLANNING COMMITTEE ON OCT 11, 2006.

PERSON FILING APPEAL			
NAME MELSEW BERIHUN / MULOGETA SHUMEYE	DAYTIME TELEPHONE (408) 655-9878		
ADDRESS 360 E. TAYLOR STREET	CITY SAN JOSE	STATE CA	ZIP CODE 95112
SIGNATURE	DATE		
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet)			

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME THE SAME AS ABOVE			
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE (408) 655-9878	FAX NUMBER (408) 298-6357	E-MAIL ADDRESS MBERIHUN@SBCGLOBAL.NET	

PROPERTY OWNER	
NAME The Esplanade	DATE 10/23/06
ADDRESS 350 E TAYLOR ST	CITY STATE ZIP CODE San Jose CA 95009

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE 2ND FLOOR OF THE DEVELOPMENT SERVICES CENTER, CITY HALL.

- 1) To sell beer and wine for Public Convenience and Necessity.
The proposed site has strong support by the Neighborhood and Residents in the area.

- 2) The site is currently zoned A (PD) Planned Development.
The Original planned Development permit for the site file no PD98-053 include development standard which states that the off-sale alcoholic beverage may be permitted.

- 3) The proposed use of this site is a market selling grocery items. The sale of alcohol will be a very small portion of the retail space. The proposed site would not represent a majority of the proposed use.

- 4) The site is Grocery store selling beer and wine not a Liquor store. The store hours are from 7 AM to 9 PM to meet the neighborhood and resident's convenience and necessity.

- 5) The proposed off-sale license is not within 500 feet of school, day care center, public parks, social service agency, residential care or service facility.

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

Hearing Date/Agenda Number
P.C 10/11/06 Item No.: 4e

File Number
PD06-015 and ABC06-014

Application Type
Planned Development Permit and Liquor
License Exception Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
249-37-007

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Lesley Xavier

Location: South side of East Taylor Street between 7th and 9th Streets.

Gross Acreage: 9.02

Net Acreage: n/a

Net Density: n/a

Existing Zoning: A (PD) Planned Development

Existing Use: Vacant tenant space

Proposed Zoning: No change

Proposed Use: Retail with off-sale of alcohol

GENERAL PLAN

Completed by: LX

Land Use/Transportation Diagram Designation
Mixed Use #3 (Jackson Taylor Planned Residential Community)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: LX

North: Gordon Biersch Brewery

A(PD) Planned Development

East: Industrial

A(PD) Planned Development

South: Multi-Family Residential

A(PD) Planned Development

West: Vacant parcel zoned for Multi-Family Residential

A(PD) Planned Development

ENVIRONMENTAL STATUS

Completed by: LX

Environmental Impact Report certified on
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete
 Addendum to

FILE HISTORY

Completed by: LX

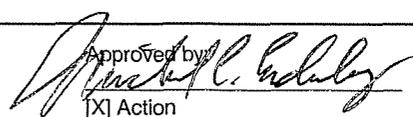
Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: 10/3/06

Approved by:

 Action
 Recommendation

PROPERTY OWNER	APPLICANT/CONTACT	
The Esplanade Attn: Jacque Mazutis 350 E. Taylor Street San Jose, CA 95112	Melsew Berihun & Mulugeta Shumeye 360 E. Taylor Street San Jose, CA 95112	
PUBLIC AGENCY COMMENTS RECEIVED		Completed by: LX
Department of Public Works <ul style="list-style-type: none"> ▪ No comments. 		
Other Departments and Agencies <ul style="list-style-type: none"> ▪ Police Department (See attached) 		
GENERAL CORRESPONDENCE		
<ul style="list-style-type: none"> ▪ None received. 		
ANALYSIS AND RECOMMENDATIONS		

BACKGROUND

The applicant, Taylor Street Market, is requesting a Planned Development Permit and Liquor License Exception Permit (ABC), also referred to as a Determination of Public Convenience or Necessity, to allow for the off-sale of alcohol at a proposed new retail market.

The subject site is located within the A (PD) Planned Development Zoning District. The Planned Development Zoning covers a project commonly known as, "Esplanade". This project included 272 multi-family attached residential units, 6 live/work units, and 6 retail spaces. The original Planned Development Permit for the site, File No. PD98-053, includes a development standard, which states that the off-sale of alcoholic beverages may be permitted on the site upon the issuance of a Planned Development Permit. For sites within a Planned Development Zoning District, a Planned Development Permit takes the place of a Conditional Use Permit, which is typically the process used to approve off-sale of alcohol proposals. Also per the Development Standards, the tenant spaces designated for retail uses in the project do not require any parking.

Site Conditions and Context

The subject site is located on the south side of East Taylor Street between 7th and 9th Streets. The site is bounded by the Gordon Biersch Brewery to the north, an industrial building to the east, multi-family residential to the south, and an undeveloped parcel zoned for multi-family residential uses to the west. The closest residential use is located directly above the subject tenant space. The Santo Market, which has a license for off-sale, is located approximately 2 blocks from the subject site to the west. Grant Elementary School is located within 1,000 feet of the subject site to the

southeast. The subject site is also located just outside of the border of the 13th Street Strong Neighborhoods Initiative Area.

GENERAL PLAN CONFORMANCE

The subject site has a *San Jose 2020 General Plan Land Use/Transportation Diagram* designation of Mixed Use #3 (Jackson Taylor Planned Residential Community). This designation allows High Density Residential (25-50 DU/AC) uses, up to 192,625 square feet of office, and between 7,500 and 18,125 square feet of retail uses. Retail uses should be located on the south side of Taylor Street between Seventh Street and the rail tracks. The proposed project is for a new retail market located on the south side of Taylor Street between Seventh Street and the rail tracks in an existing mixed use (residential and commercial) building. The proposed use is consistent with the General Plan land use designation.

ENVIRONMENTAL REVIEW

The Director of Planning, Building, and Code Enforcement has determined that this project is exempt from environmental review requirements under Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act (CEQA). Pursuant to Section 15303(c) of the CEQA Guidelines, permitting the location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed retail market is located in an existing 1,440 square foot commercial space. The proposed project qualifies for this exemption in that the project does not involve the use of significant amounts of hazardous substances and does not exceed 2,500 square feet in floor area.

ANALYSIS

As of January 1995, the State of California Legislature implemented AB2897 by amending the Business and Professions Code (Section 23958) to require the Department of Alcoholic Beverage Control (ABC) to deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses.” Undue concentration is defined as follows:

- If issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses. Undue concentration is defined as follows: The premises of the proposed license is located in an area that has 20 percent more reported crimes than the average number of reported crimes for the City as a whole, or;
- The premises of the proposed license is located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio of retail off-sale licenses to population in the County of the proposed premise.

The liquor license applicant may request that the City grant an Exception based on "Public Convenience or Necessity." 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 undue over-concentration.

In this case, the subject site is not located in an area with a crime index greater than 20%, but it is located in a census tract that exceeds the ratio of on-sale off-sale outlets in the area. Therefore, a Determination of Public Convenience or Necessity must be made in order for the applicant to obtain an ABC Permit from the State Department of Alcoholic Beverage Control. Such a determination can be made by the Planning Commission or the City Council on appeal.

Municipal Code Section 6.84.030 - Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License

Subject to the provisions of Section 6.84.030(B) of the San Jose Municipal Code, the Planning Commission may issue a determination of Public Convenience or Necessity in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-sale of alcoholic beverages if *all four* of the findings below can be made. A discussion on how the proposed project conforms to the findings follows each finding statement.

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; and

The proposed off-sale license is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area. It is also not 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 would increase the severity of existing law enforcement or public nuisance problems in the area.

2. The proposed use would not lead to the grouping of more than four (4) off-sale uses within a one thousand (1,000) foot radius from the proposed use; and

The proposed off-sale license would not lead to a to the grouping of more than four (4) off-sale uses within a 1,000-foot radius from the proposed use. Currently, one off-sale license, Santo Market, exists within a 1,000-foot radius. The addition of the proposed license would bring the total number of licenses to two within a 1,000-foot radius of the subject site.

3. The proposed use would not be located within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty (150) feet of a residence; and

According to the City's GIS database, the proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility. However, the proposed off-sale license is within one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, because the subject building is a mixed-use (residential and commercial) building. Therefore, this finding may not be made.

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

The proposed use of the site is a market selling grocery items and alcohol. The sale of alcohol will be an incidental portion of the retail space because it would not represent a majority of the proposed use.

Planned Development Permit

To approve the Planned Development Permit, the Planning Commission must find, pursuant to San Jose Municipal Code Section 20.100.940, that (1) the Planned Development Permit furthers General Plan policies, (2) the Planned Development Permit conforms to the Planned Development zoning of the property, (3) the interrelationship between the proposed buildings and other uses on-site are appropriate, compatible, and aesthetically harmonious, and (4) the environmental effects of the project will not have an unacceptable effect on adjacent properties. Although most of the findings for approval of the PD Permit could generally be made on their face, approval of the proposed PD Permit is only of value if a determination of Public Convenience or Necessity (PCN) can be granted for off-sale alcohol. In this case, the PCN findings may not be made. Arguably, it is difficult to predict with any certainty that since a residential unit is located directly above and so close to the subject store, that the sales of alcoholic beverages would not impact the residential use. Therefore, staff recommends the Planning Commission deny the proposed PD Permit application.

Conclusion

Based on the above analysis, staff concludes that the Planning Commission may not make the findings required for a Determination of Public Convenience or Necessity for this proposal pursuant to Municipal Code Section 6.84.030(B) #3, which states that the proposed use would not be located within one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, as the subject building is a mixed-use (residential and commercial) building.

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.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the

subject property. The Planning Commission Agenda is posted on the Planning Divisions' website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission deny the requested Liquor License Exception Permit (Determination of Public Convenience or Necessity) and Planned Development Permit and include the following findings and conditions in its resolution.

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

1. The subject site is located on the south side of East Taylor Street between 7th and 9th Streets.
2. The subject site is a tenant space in one building of a larger mixed-use site that is 9.02 gross acres in size.
3. The subject site has a *San Jose 2020 General Plan* Land Use/Transportation Diagram designation of Mixed Use #3 (Jackson Taylor Planned Residential Community). The proposed use is consistent with this designation.
4. The site is currently zoned A(PD) Planned Development.
5. The original Planned Development Permit for the site, File No. PD98-053, includes a development standard, which states that the off-sale of alcoholic beverages may be permitted on the site upon the issuance of a Planned Development Permit. For sites within a Planned Development Zoning District, a Planned Development Permit takes the place of a Conditional Use Permit, which is typically the process used to approve off-sale of alcohol proposals.
6. The site is bounded by the Gordon Biersch Brewery to the north, an industrial building to the east, multi-family residential to the south, and an undeveloped parcel zoned for Multi-Family Residential the west.
7. A Liquor License Exception Permit (Determination of Public Convenience or Necessity) is required to allow the off-sale of alcohol at a site that is located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio of retail off-sale licenses to population in the County of the proposed premise.
8. The proposed off-sale license is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area. It is also not 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 would increase the severity of existing law enforcement or public nuisance problems in the area.

9. The proposed off-sale license would not lead to a to the grouping of more than four (4) off-sale uses within a 1,000-foot radius from the proposed use. Currently, one off-sale license, Santo Market, exists within a 1,000-foot radius. The addition of the proposed license would bring the total number of licenses to two within a 1,000-foot radius of the subject site.
10. In this case, the subject site is not located in an area with a crime index greater than 20%, but it is located in a census tract that exceeds the ratio of on-sale off-sale outlets in the area.
11. Based on the fact noted above, this proposal is subject to ABC Exception Permit requirements that mandate a finding that the proposed use be located 150 feet from a residential use.
12. According to the City's GIS database, the proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility. However, the proposed off-sale license is within one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, and is situated in a manner that would be incompatible with the proposed off-sale alcohol use.
13. The proposed use of the site is a market selling grocery items and alcohol. The sale of alcohol will be an incidental portion of the retail space because it would not represent a majority of the proposed use.
14. The Police Department has indicated their opposition to the proposal.
15. The Director of Planning, Building, and Code Enforcement has determined that this project is exempt from environmental review requirements under Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act (CEQA), pursuant to Section 15303(c) of the CEQA Guidelines.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

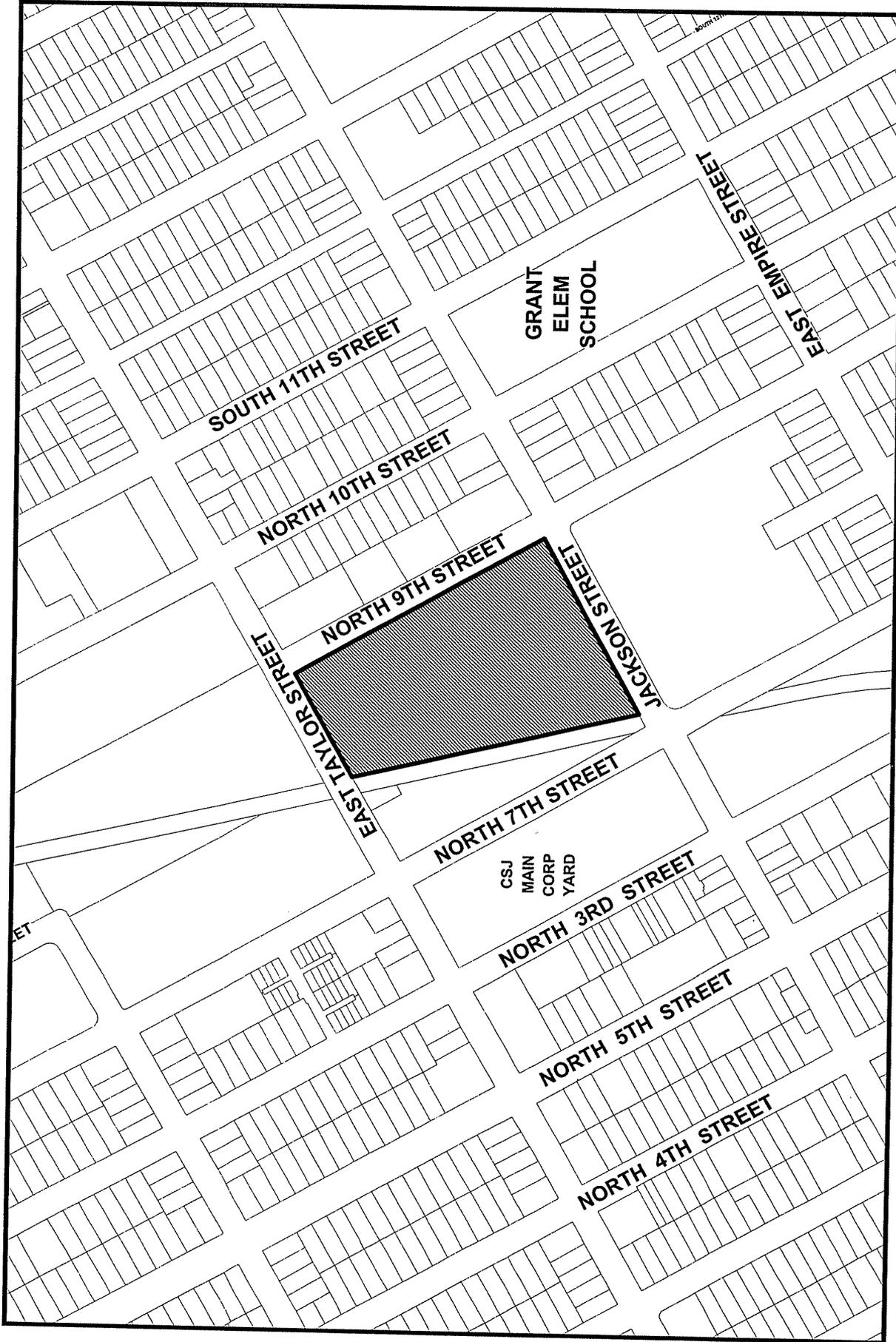
1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed off-sale license is not within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or 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 would increase the severity of existing law enforcement or public nuisance problems in the area.

5. The proposed off-sale license would not lead to a to the grouping of more than four (4) off-sale uses within a 1,000-foot radius from the proposed use. Currently, one off-sale license exists within a 1,000-foot radius. The addition of the proposed license would bring the total to two.
6. The proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility.
7. The proposed off-sale license is within one hundred fifty (150) feet of a residence. The closest of the above-mentioned use is located directly above the subject tenant space.
8. The proposed use of the site is a market and alcohol sales will make up a small percent of the retail space and would not represent a majority of the proposed use.
9. Municipal Code Section 6.84.030(B) 3 states that such a proposed use must be located more than one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, as the subject building is a mixed-use (residential and commercial) building.
10. Findings may not be made for a Determination of Public Convenience and Necessity for the subject liquor license.

Finally, based upon the above-stated facts and findings, the Planning Commission concludes and finds that:

1. The Planned Development Permit generally further the policies of the General Plan;
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property;
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are not appropriate, compatible and aesthetically harmonious;
4. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water run off, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Therefore, the Planning Commission hereby **denies** said Planned Development Permit and Liquor License Exception Permit.



File No: PD06-015

District: 3

Quad No: 67

Scale: 1"= 400'

Map Created On: 06/07/2006

Noticing Radius: 500 feet



**CITY OF SAN JOSÉ, CALIFORNIA
DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT
STATEMENT OF EXEMPTION**

FILE NO. PDA98-053-01

LOCATION OF PROPERTY Southwest corner of East Taylor and North Ninth Streets (350 E. Taylor Street)

PROJECT DESCRIPTION Planned Development Permit Amendment to allow off-sale of alcoholic beverages and a new sign at an existing retail store (Taylor Street Market) on a 9.02 gross acre site.

ASSESSOR'S PARCEL NUMBER 249-37-007

CERTIFICATION

Under the provisions of Section 15303(c) 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.

- **15303(c). New Construction or Conversion of Small Structures.** Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to: A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement



Deputy

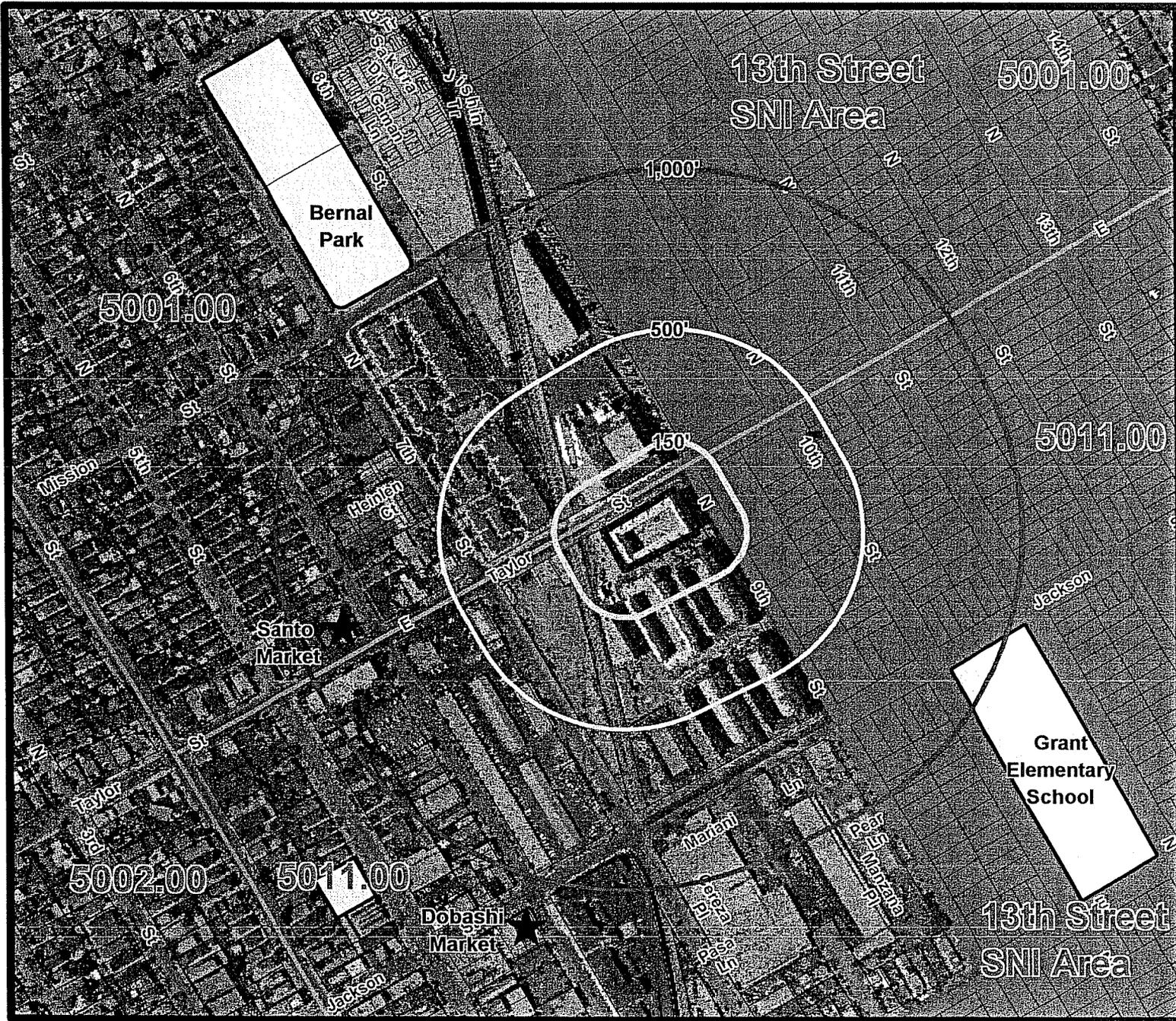
Date September 20, 2006

Project Manager: Lesley Xavier

(Rev. 10/23/02)

PDA98-053-01

ABC06-014



 Proposed Location

 Existing Off-Sale ABC Licenses

 Census Tract

 Parks, Schools, and Residential Care Facilities

 1000 feet from Proposed Location (for license grouping determination)

 500 feet from Proposed Location (for proximity to specified uses)

 150 feet from Proposed Location (for proximity to residential use—may require field verification)



Scale: 1 inch = 450 feet





Memorandum

TO: Leslie Xavier
Planning Department

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

SUBJECT: 350 East Taylor Street

DATE: July 3, 2006

Approved

Date

I have received your request for input regarding a new mini market located at 350 East Taylor Street, San Jose, Ca. 95112. The new mini market is applying for an Off-Sale ABC license to sell beer and wine only. The planning department did not mention the application to sell distilled spirits.

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, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(3). 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 (b)(1), 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 or a Neighborhood Revitalization area but 350 East Taylor Street is one block away from 13th Street Strong Neighborhood.

350 East Taylor Street is located in San Jose Police Beat V3. 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
V3 (2005)	228	401	629	No
City Average	317	345	661	

The United States Census Bureau indicate 350 East Taylor Street is in census tract 5011. 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 5011 **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 Tract 5011

Census Tract	Authorized ABC Licenses as of August 2005		Current ABC Licenses as of March 16, 2006		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5011	10	5	20	9	Yes	Yes

The San Jose Police Department is opposed to the issuance of this permit. Please feel free to contact me at 277-4322 if you have any questions.

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

TAYLOR STREET MARKET

E. TAYLOR STREET AND N. EIGHTH STREET

360 E. TAYLOR STREET

SAN JOSE, CALIFORNIA 95112

Contact Person:

MELSEW BERIHUN

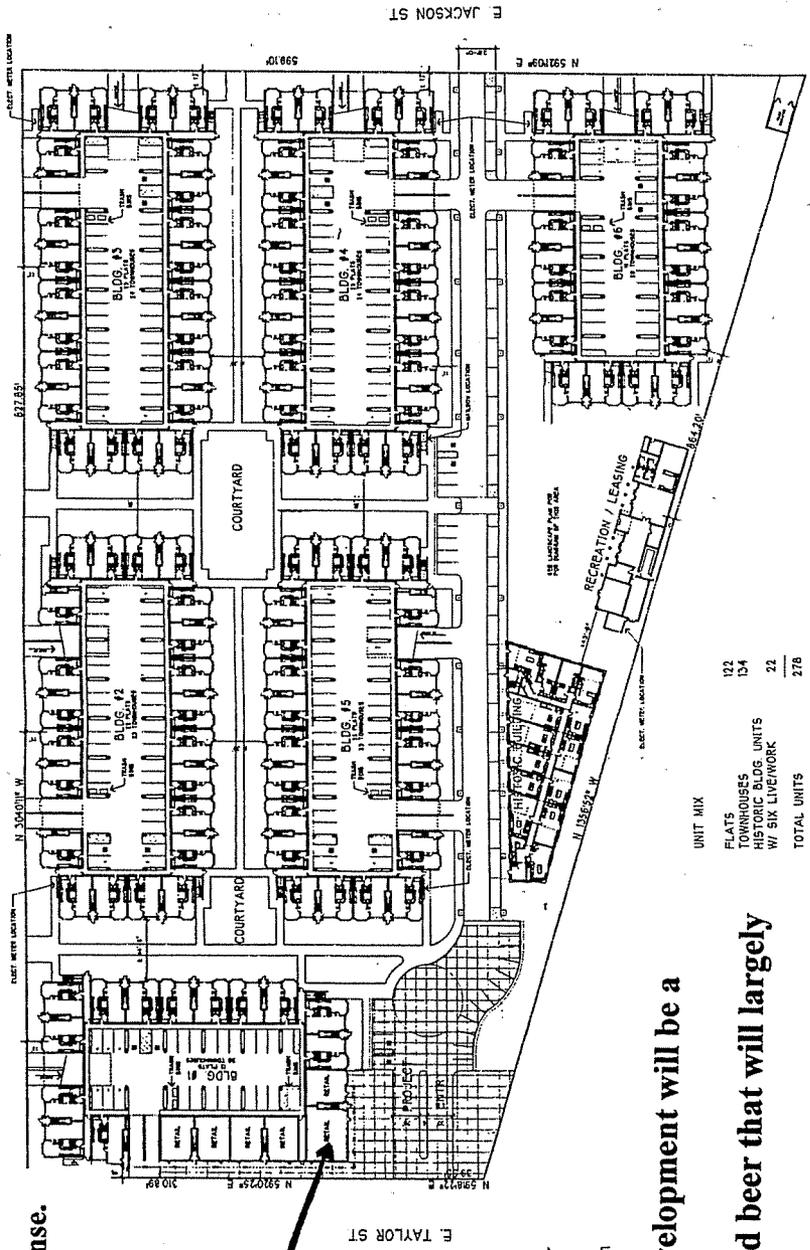
Phone # (408) 655-9878

OR

MULUGETA SHUMEYE

Phone # (408) 515-8877

The type and number of alcoholic beverage license requested to issue on this site will be one that is wine and beer alcoholic beverage license.



The Proposed planned development will be a grocery store with wine and beer that will largely serve the neighborhood and other communities around the area.

UNIT MIX

FLATS	122
TOWNHOUSES	134
HISTORIC BLDG. UNITS	22
W/ SIX LIVE/WORK	278
TOTAL UNITS	

BEST AVAILABLE COPY

05. FT. INFORMATION

TOTAL SQ. FT. (ALL BUILDINGS) 333,124 SQ. FT.
TOTAL LEASABLE SQ. FT. (ALL BUILDINGS) 288,573 QS.FT. 866K.

N. SEVENTH ST.

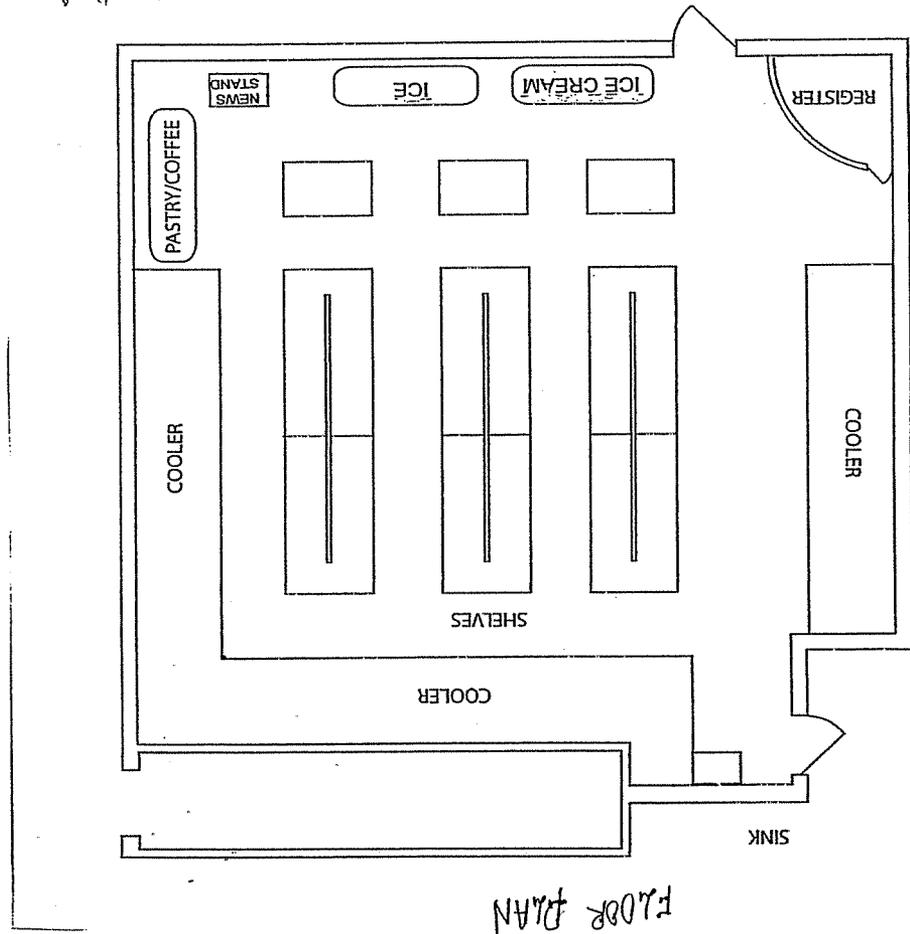
The Steinberg Group
24 West California Street
San Jose, California 95133
415-291-5444
CORPORATE OFFICE

PICERNE DEVELOPMENTS
CORPORATE OFFICE

ESPLANADE
SAN JOSE, CALIFORNIA

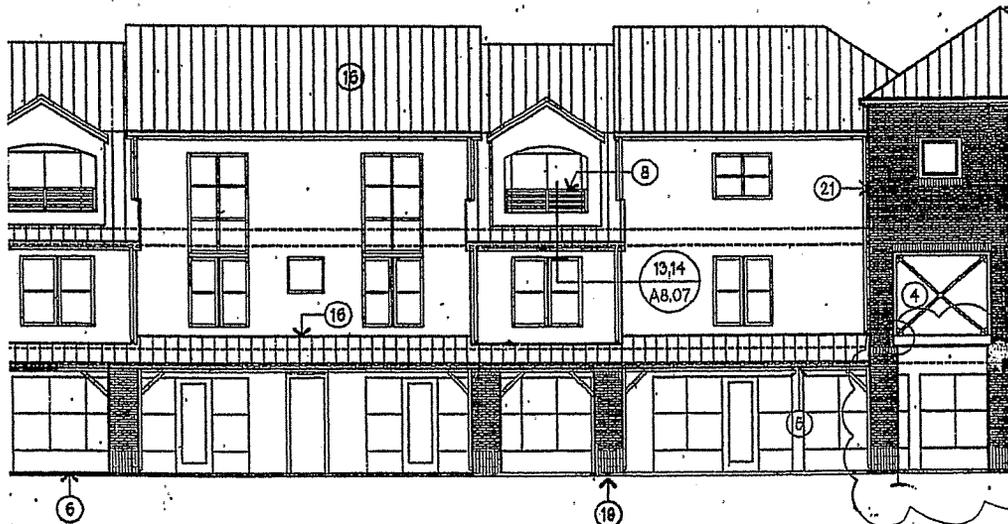
SITE PLAN
PLANNED DEVELOPMENT PERMIT SET
98-058
JAN 1998
3

1440 #
Cooler, dedicated
to alcohol sales
6 shelves, walk in



FLOOR PLAN

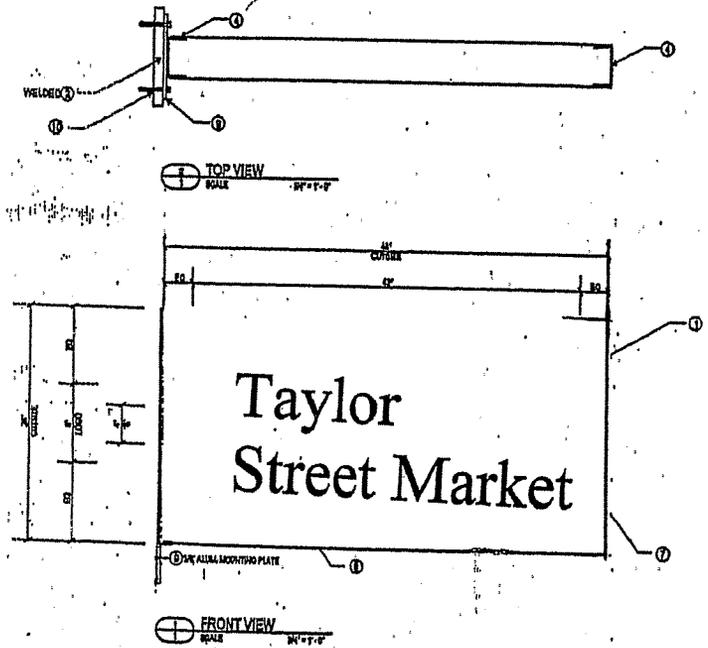
Taylor street market sign



TAYLOR ST. MARKET

360 E. TAYLOR ST.

The signage will be mounted
 At 82.5 inch heights. Look 1
 The building elevation where



Aluminum wall sign
 New install

Height 2'
 Width 4'
 Sq. ft 8

None Illuminations