



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: February 5, 2010

Approved

Date

2/11/10

COUNCIL DISTRICT: 9
SNI AREA: N/A

SUBJECT: CP09-047 & ABC09-002. Appeal of the Planning Commission's decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol for a new liquor store in a vacant commercial tenant space, located at 1711 Branham Lane, Suite A-8, on 3.7 gross acre site.

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 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 deny the proposed Conditional Use Permit, the vacant tenant space would continue to be unoccupied. Should the City Council approve the subject request, the site would be permitted to acquire an ABC license to allow the ability for the new business to sell a full range of alcoholic beverages.

EXECUTIVE SUMMARY OF OFF-SALE APPROVAL PROCESS

On February 1, 2006, City Council-adopted regulations affecting establishments that sell prepackaged alcohol for off-site consumption ("off-sale alcohol") became effective. The updated regulations revise the approval process and include enhanced findings for approval of an off-sale proposal as part of a Conditional Use Permit, and mandatory findings for a Determination of Public Convenience or Necessity, when such a determination is 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 existing off-sale uses 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 proximate to sensitive uses such as schools and residences has been augmented to add public parks, childcare centers, social service agencies, and residential care and service facilities to the list of sensitive uses. If a new off-sale alcohol establishment is to be located within 150 feet of a residential use or residentially zoned property, or within 500 feet of one of the other specified sensitive uses, it must be determined that the proposed establishment is situated and oriented such that it would not adversely affect the sensitive use(s).

The Department of Alcohol Beverage Control (ABC), prior to licensing of a new off-sale alcohol establishment in an area of undue concentration or high crime (as defined by State law), requires business operators to obtain a Determination of Public Convenience or Necessity from the local jurisdiction. With the new regulations, the process has been renamed consistent with the State terminology. All applications for a Determination of Public Convenience or Necessity are considered by the Planning Commission in conjunction with any associated application for a Conditional Use Permit. The revised regulations include factual findings the Planning Commission is required to make in order to approve a request for a Determination of Public Convenience or Necessity. The four findings are as follows:

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
2. 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
3. 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
4. Alcohol sales would not represent a majority of sales for 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 noted above 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 factual findings not be met. The City Council is the only decision-making 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 for a Determination of Public Convenience or Necessity in that the subject use is within 150 feet of a residential use and alcohol sales represent a majority of the use. Therefore, the Commission was compelled to deny both the request for a Conditional Use Permit and Determination of Public Convenience or Necessity as discussed below. The applicant subsequently appealed the Commission's decision to deny these applications to the City Council.

Based on an analysis of the findings required for the City Council to approve the Conditional Use Permit and Determination of Public Convenience and Necessity in the face of negative factual findings by the Planning Commission, staff believes that the City Council cannot make any of the findings necessary to find that "significant or overriding public benefit or benefits will be served by the proposed use."

BACKGROUND

Planning Commission Hearing

On December 9, 2009, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit and Determination of Public Convenience or Necessity (File Nos. CP09-047 & ABC09-003) for the off-sale of alcohol at a new liquor store. The Director of Planning recommended the mandatory denial of the Conditional Use Permit and request for a Determination of Public Convenience or Necessity because one of the required four findings for the Determination of Public Convenience and Necessity could not be made. As stated in the original staff report (see attached), staff was unable to find that the proposed off-sale use is not located within one hundred and fifty (150) feet of a residential use or residentially zoned property and the alcohol sales is a majority of the proposed use.

The applicant, Josephine Oh, gave testimony stating that the proposed business would not impact other nearby business, the proposal is to relocate an existing alcohol license from Morgan Hill to the proposed location and that the proposed use would bring additional business to a shopping center with vacant tenant spaces. There was no other testimony presented from the public.

Commissioners Zito and Kamkar noted that they are reluctantly obliged to deny such proposals based on the mandatory findings, and recommended that the applicant file an appeal with a recommendation that the City Council consider approval. However, that was not included in the final motion, since other commissioners did not express a similar sentiment. Upon closing the public hearing, the Commission voted 7-0-0 to deny the subject permit request.

Appeal

On December 22, 2009, an appeal was filed by the applicant, Josephine Oh (see attached Notice of Appeal). The applicant stated that 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 and that the City Council find that the proposed off-sale of alcohol proposal at the proposed liquor store would provide overriding public benefits and that the Council could make a Determination of Public Convenience or Necessity to allow the issuance of the ABC licenses required to operate the proposed business.

ANALYSIS

The original staff report (see attached) provides a full analysis of this project with respect to the findings required to be made by the Planning Commission to approve a Conditional Use Permit (CUP) and to make a Determination of Public Convenience or Necessity (PCN). In summary, staff's review provided the Planning Commission with information enabling that body to make all the required findings for the Conditional Use Permit, but enabling them to make only two 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 findings that the subject use was more than 150 feet from a residential property. Upon an appeal, per Title 6 of the San José Municipal Code, where the four required findings cannot be made, the City Council may still make a Determination of Public Convenience or Necessity if it finds that that a "significant or overriding public benefit or benefits will be served by the proposed use." In addition, the City Council would also be required to make at least one of the four special findings as listed below in italics. Following the description of the finding, staff has provided analysis of the finding.

- 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.*

The area is served by three establishments that sell alcohol. The proposal would add a new business to the existing shopping center, and expand the types of alcoholic beverages, in addition to beer and wine, that are already sold at nearby grocery stores.

- 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.*

The first part of this finding cannot be made in that the census tract in which the proposed outlet is located does not have a much lower population density as compared to City average. The subject census tract (5029.08) has a population density of 13.2 persons per acre which is only a 5% difference from the City average of 13.9 persons per acre.

- 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.*

The shape of the subject census tract has a rectangular configuration with no unusual appendages. The neighborhood located in the vicinity of the subject proposal is not underserved by off-sale establish. There was no public concern raised in writing or with testimony at the Planning Commission Public hearing about the impacts of alcohol sales outlets on public health and the ability of the Police Department to provide adequate services as a result of alcohol-related crimes in the area.

- 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.*

The proposed use is for a liquor store, which would not sell a complete array of food items such as fresh produce or meat as would be the case with a grocery store. Therefore, the subject store does not provide a more complete and convenient shopping experience.

Findings of Overriding Public Benefit

Staff does not believe that any of the four findings, described above, can be made by the City Council to approve the proposed Conditional Use Permit and make a Determination of Public Convenience or Necessity to expand the range of alcoholic beverages sold at the subject liquor store. Based on the analysis of the required findings, staff believes that there would not be a significant or overriding public benefit be served by the proposed use. This overall area is already well served by establishments that sell alcohol.

CONCLUSION

Based on evaluation of the number of off-sale establishments within the nearby vicinity, the area appears to already be well served by off-sale establishments. For these reasons and an analysis of the required findings, Staff recommends denial of this application.

ALTERNATIVES

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

1. Uphold the Planning Commission's decision to deny the subject Conditional Use Permit and Determination of Public Convenience or Necessity which would preclude the location of a new liquor store at this location.
2. Approve the project as suggested by the applicant/appellant and permit the off-sale of a full range of alcoholic beverages and spirits at a new liquor store.

PUBLIC OUTREACH

- 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. A notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 1000 feet of the project site. A sign has been posted on the project site. Copies of this staff report have also been posted on the City 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

Exempt


FOR JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Avril Baty at 408-535-7652

Attachments:

- Draft City Council Resolution
- Planning Commission Staff Report & Attachments
- Appeal Application

cc: Applicant/Appellant

To: City Council of San Jose
Re: CP09-047 & ABC09-002
1711 Branham Lane, San Jose, CA
Proposed Retail Store with offsite alcohol sales

Dear City Council Members,

We filed for a Conditional Usage Permit in September 2009 to create a store in San Jose that would sell alcoholic beverages as well as other beverage and snack items. We had a thriving business in Morgan Hill but the property owners decided to sell the property and the new owners were not interested in renewing the lease and so we were forced to find a new location fairly quickly.

We found the ideal location in San Jose and applied for the CUP only to be denied at the public hearing. The findings show that the business will not impact the area in any negative way and we hope to show the city that despite the technicalities that resulted in the original denial, the proposed business will be a positive step.

We are a family owned enterprise with a strong past performance in the same type of business. We have put everything on the line in trying to restart the business- we have all our equipment in storage, have negotiated a lease extension with the landlord and have also received an extension from the ABC board so that we can keep our license alive until we settle this matter. This business is our family's main source of income and thus for the past several months, we have had to put everything on hold.

We are excited at the prospect of running a business in San Jose and we plan to create a business that is in line with the neighborhood, provides excellent service and generate growth in the area.

We hope that the council can share our vision and help us move forward to make it a reality.

Thank you for your time and consideration.

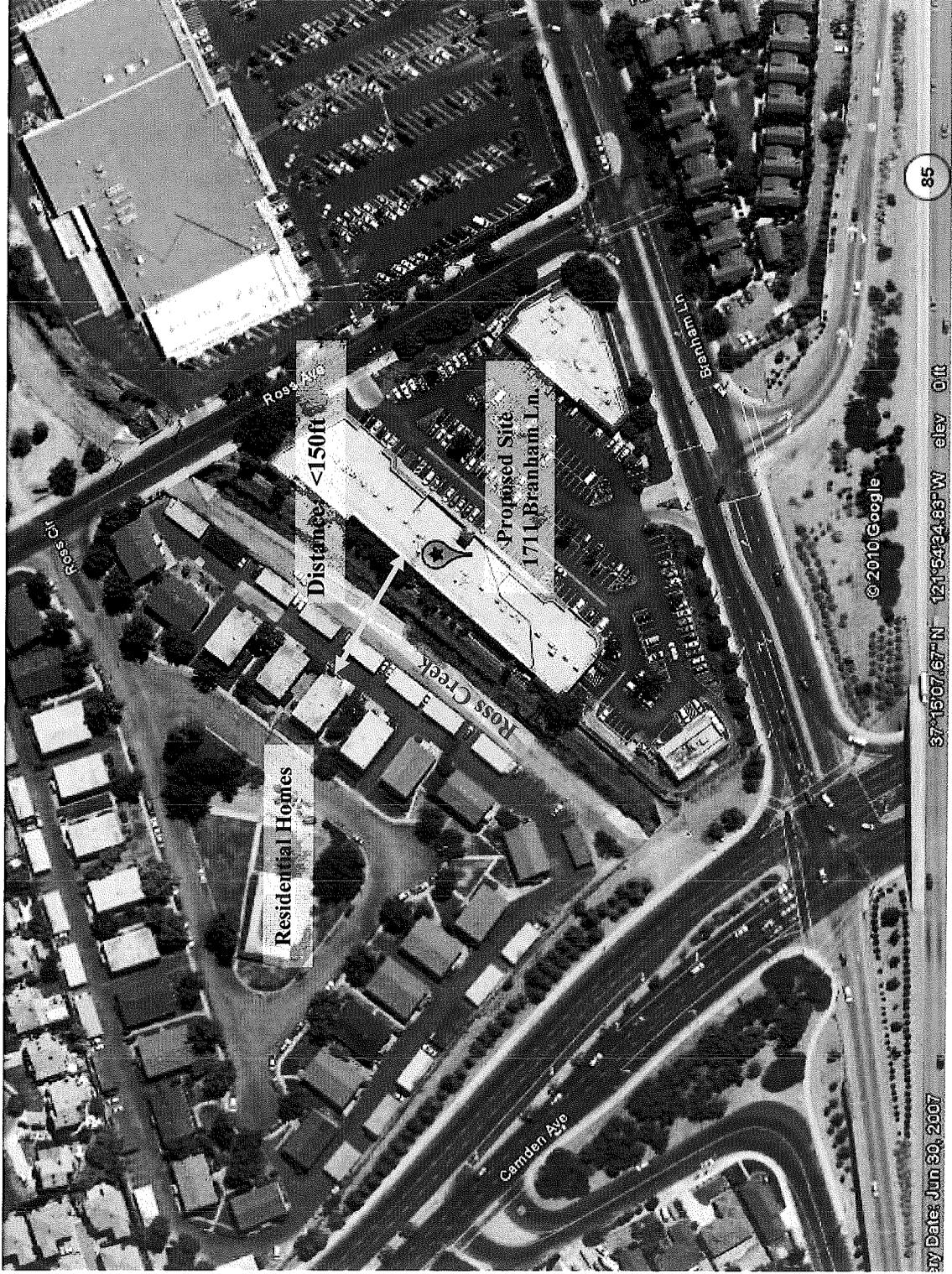
Sincerely,

Andrew and Jason Kim

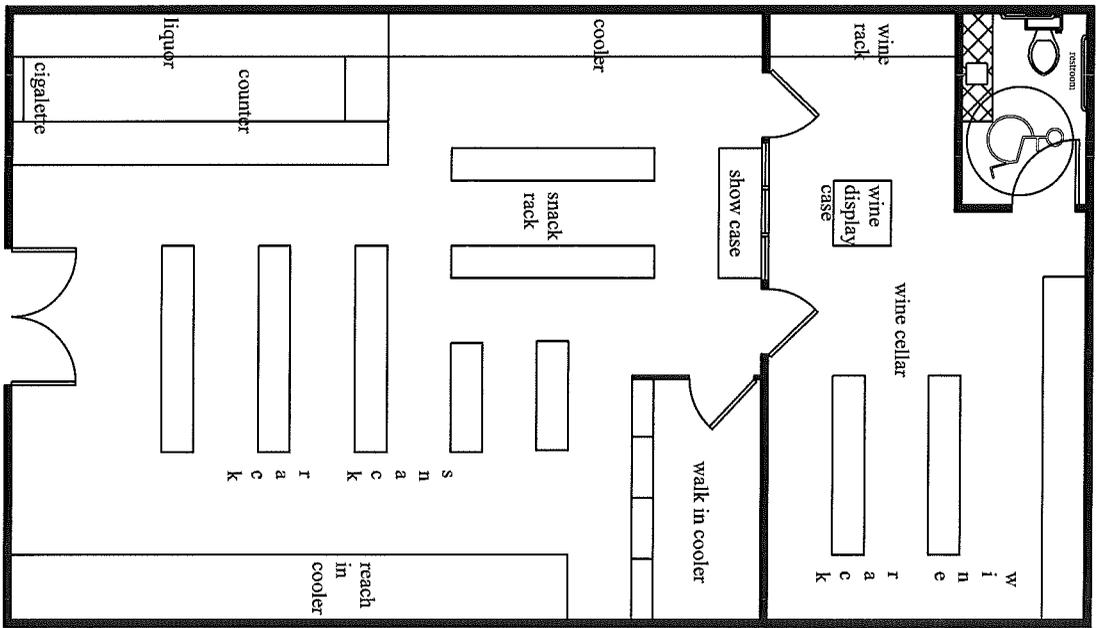
1711 Branham Ln. San Jose, CA Census Map



1711 Branham Ln. Residential Map



*Ross Creek blocks direct passage from residential neighborhood to proposed site. Therefore there is more than 150 square feet distance between residential units and



General Notes

Simple Beverages & Wines.

No. _____ Revision/Issue _____ Date _____

Rev. Dates and values

Project Name and address
Simple Beverages & Wines.

Project	12.20.2009	1 /
Date	3/8" = 1'0"	1 /

STAFF REPORT
PLANNING COMMISSION

FILE NO.: CP09-047 & ABC09-002

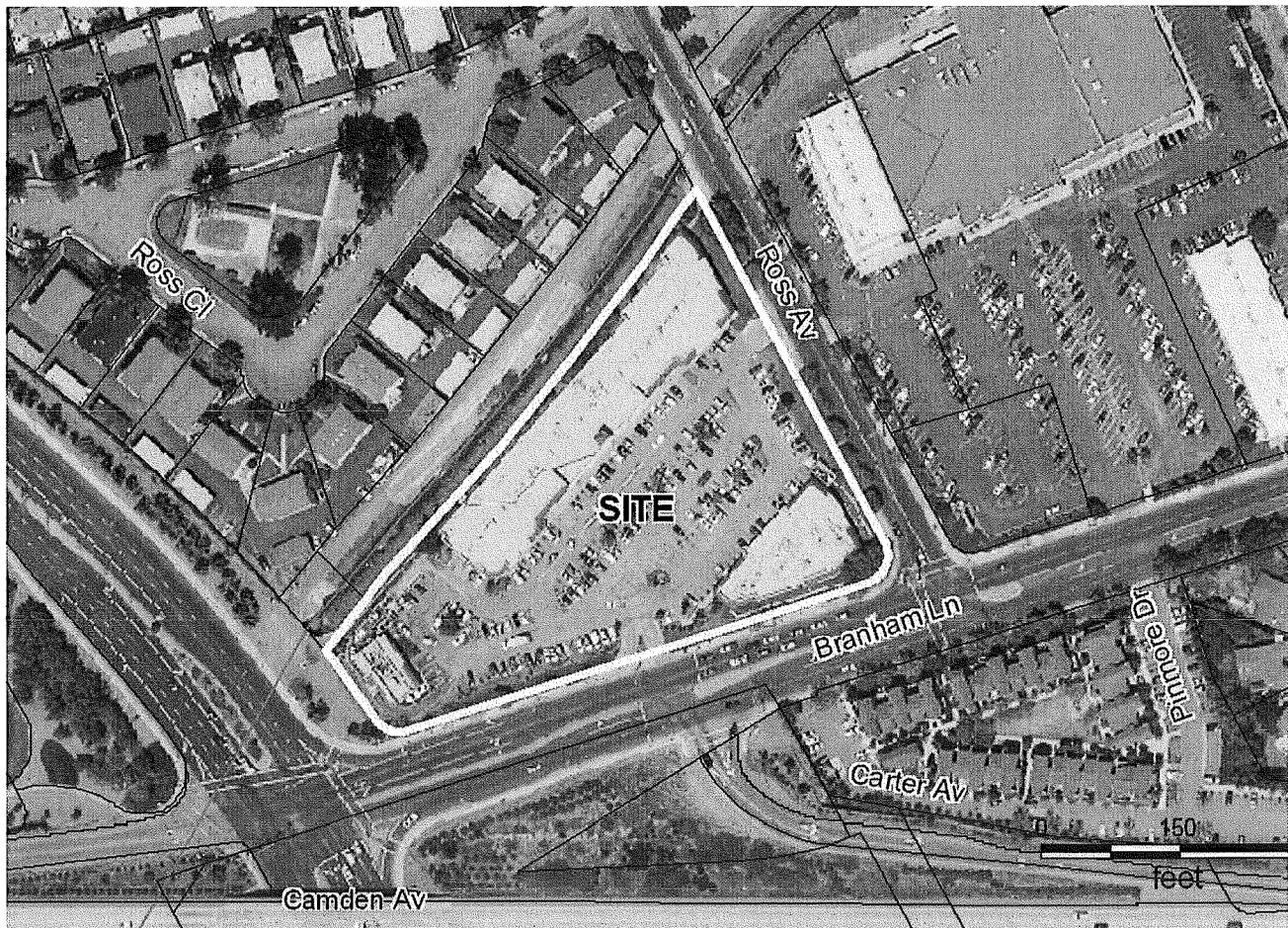
Submitted: September 30, 2009

PROJECT DESCRIPTION: Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol at a proposed liquor store on a 3.7 gross acre site.

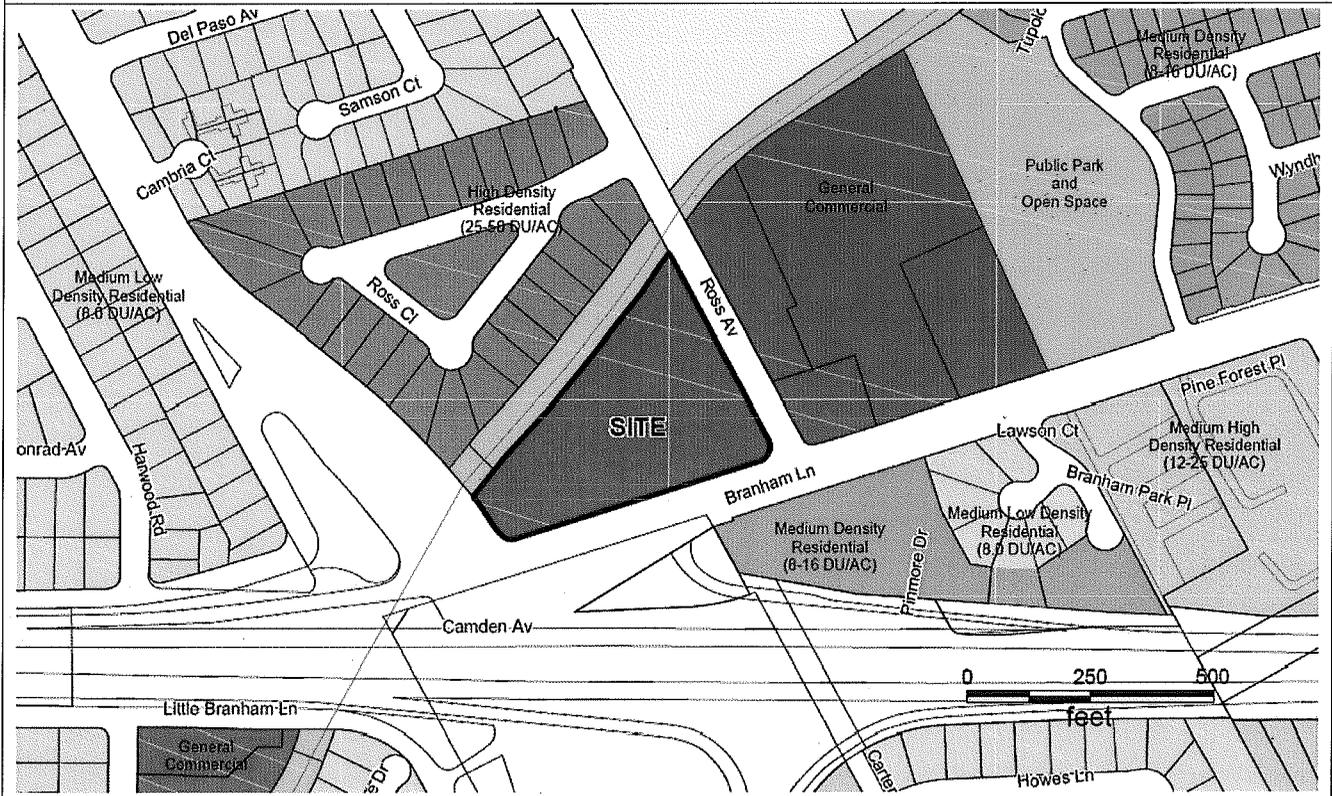
LOCATION: 1711 Branham Lane, Suite A-8

Zoning	CP Commercial Pedestrian
General Plan	General Commercial
Council District	9
Annexation Date	September 16, 1964
SNI	No
Historic Resource	No
Redevelopment Area	No
Specific Plan	No

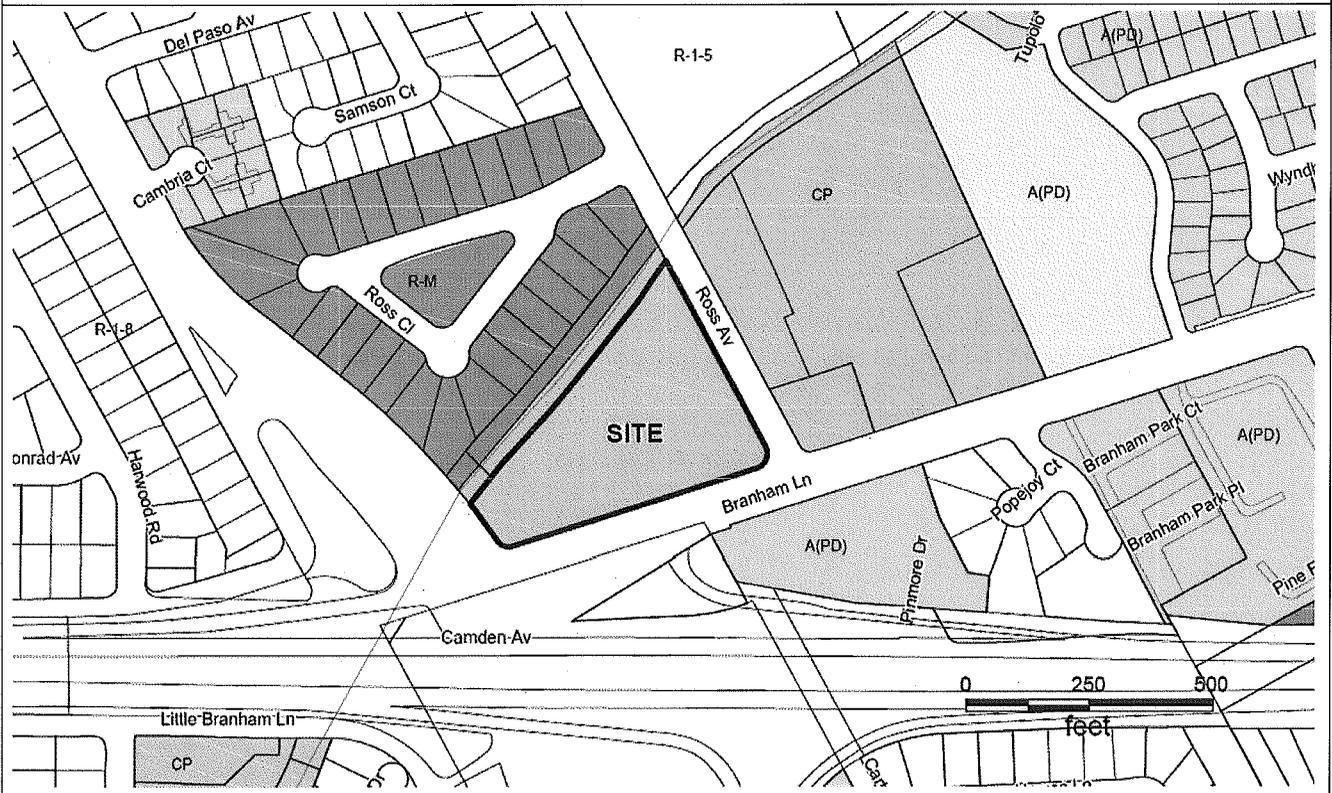
Aerial Map



GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends that the Planning Commission deny the requested Conditional Use Permit and not make a Determination of Public Convenience or Necessity, as mandated by the Municipal Code, and include the facts and findings as included in the attached Resolution.

BACKGROUND

The applicant, Josephine Oh of 8 Plus Inc., representing Jason Kim, is requesting a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the sale of alcohol for off-site consumption at a proposed liquor store. The approximately 1,400 square foot vacant tenant space is located within an existing 38,000 square foot commercial center. The applicant is proposing a retail store to sell alcohol for off-site consumption in the form of a liquor store with incidental retail of grocery items. The store is proposed to operate seven days a week from 6:00 a.m. until 12 midnight.

A Conditional Use Permit is required for the sale of alcohol for off-site consumption (off-sale) 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 that has an over-concentration of off-sale of alcohol licenses.

ANALYSIS

In order for a new liquor store to be established and able to sell alcoholic beverages, the applicant would need 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. Additionally, the application is reviewed with conformance with the San Jose 2020 General Plan and the California Environmental Quality Act (CEQA).

Zoning Code Requirements for Conditional Use Permits for Off-Sale of Alcohol

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 additional off-sale establishments (in addition to the subject site) within 500 feet of the location. One additional off-sale location is located within a 1,000-foot radius of the site. The proposed use together with the existing uses would not result in a total of more than four such establishments within a 1000-foot radius (see attached map).

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, the specific finding under this section 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 childcare 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 from a childcare center, public park, social service agency, residential care facility, residential service facility, secondary school, college, or university. The proposed use is located within 500 feet of a parking lot for the Branham Hills Little League fields located adjacent to an elementary school. Additionally, the proposed use is located within 150 feet of residentially zoned properties. Both the Little League Fields and the residentially zoned property are located to the north of the site across Ross Creek. The shopping center itself is at the corner of Ross Avenue and Branham Lane and the orientation of the buildings on site is towards Branham Lane and not the residences or fields. Based on the layout and orientation of the existing site, staff does not anticipate that the off-sale use will adversely affect the adjacent residences or ball fields 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 of alcohol use.

Required findings Under the Zoning Code for all Conditional Use Permits (CUP)

To approve a Conditional Use Permit the Planning Commission must also make the following findings which are applicable to all types of CUPs. These are as follows:

1. The proposed use at the location requested 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 the property of other persons located within the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare.

The proposed off-sale use is an existing shopping center which currently does not have any establishments licensed for off-sale of alcohol would offer a balance of uses at this center. The subject site abuts a major street with the sensitive receptors such as residential uses and the baseball fields oriented away from it. With respects to these general findings, staff feels that given the existing location and distribution of off-sale licenses, the addition of the proposed liquor store would create an over concentration hence not be detrimental to the health, safety, and welfare of the surrounding area. The Police Department has indicated that they are neutral to the issuance of this off-sale license.

Finding of 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 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, but according to the Planning Department's date, the census tract that the subject site is located in does have an over-concentration of off-sale licenses. For ABC to be able to issue a license for this off-sale 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 José 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 located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area. The Police Department did not state the subject property is located within an area where the proposed use 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 lead to a grouping of exactly four off-sale uses within a one thousand-foot radius from the proposed use, with one of those uses being located south of State Highway 85.

3. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within 150 feet of a residence.

Analysis of Required Finding: As discussed previously, the proposed use is not located within 500 feet from a childcare center, public park, social service agency, residential care facility, residential service facility, secondary school, college, or university. The proposed use is located within 500 feet of a parking lot for the Branham Hills Little League fields located adjacent to an elementary school. Additionally, the proposed use is located within 150 feet of residentially zoned properties, and therefore, not consistent with this required finding which must be made in order to grant a favorable determination. Unlike the findings required for the Conditional Use Permit, the orientation of the proposed use to the residences cannot be recognized as a compensating measure for the close proximity under the Code findings for a Determination of Public Convenience or Necessity. As a result, this required finding cannot be made due to the actual separation distances between the proposed off-sale use and the existing residences to the north of the subject site.

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

Analysis of Required Finding: A majority of the 1,400 square foot tenant space is proposed to be used for the off-sale of alcohol, with a portion to be designated for grocery items.

Two of the required findings for a Determination of Public Convenience and Necessity (PCN) above, Finding 3 and 4, cannot be made by the Planning Commission. Therefore, in accordance with and as mandated by the Municipal Code, the Planning Commission must deny the requested Determination of Public Convenience or Necessity.

General Plan Conformance

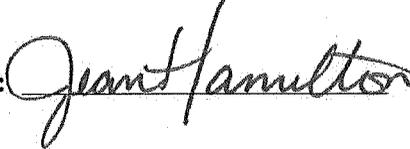
The project site has a designation of General Commercial on the San José 2020 General Plan Land Use/Transportation Diagram. The proposed commercial use is in conformance with the General Plan in that commercial uses, such as the subject retail sales of groceries, are supported by the General Commercial designation.

Environmental Review

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act, 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, in that no significant change in the existing use is proposed. Under this section, proposals that involve only minor modifications to existing facilities can be found to be exempt.

PUBLIC OUTREACH

A notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 1,000 feet of the project site. A sign has been posted on the project site. Copies of this staff report have also been posted on the City website. Staff has been available to discuss the proposal with members of the public.

Project Manager: Avril Baty **Report Approved by:**  **Date:** 11/30/2009

Owner:	Applicant:	Attachments:
Jason Kim 386 Via Primavera Dr. San Jose, CA 95111	Josephine Oh % 8 Plus, Inc. 1746 Junction Ave., #G San Jose, CA 95112	Draft Resolution SJPD Memorandum Plans

RESOLUTION NO. 09-

Resolution of the Planning Commission of the City of San José denying, as mandated by the Municipal Code, a Conditional Use Permit and Determination of Public Convenience or Necessity to use certain real property described herein for the purpose of allowing the sale of beer, wine and liquor for off-site consumption located at 1711 Branham Lane.

FILE NOS. CP09-047 & ABC09-002

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 30, 2009, an application (File Nos. CP09-047 & ABC09-002) was filed for a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the sale of beer, wine and liquor for off-site consumption, on that certain real property (hereinafter referred to as "subject property"), situate in the CP Commercial Pedestrian Zoning District, located at 1711 Branham Lane and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Branham Liquor Store", dated September 30, 2009. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CP Commercial Pedestrian Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review.
4. The project proposes off-sale of alcohol at a 1,400 square foot convenience store located within an existing 38,000 square foot commercial building under construction.
5. The project includes no exterior modifications to the existing building.
6. The site is bordered by multi-family residences to the north.
7. No increase in parking demand results from this proposed project.
8. The subject site is current a vacant tenant space.
9. The Police Department memorandum indicates that the project site is not located within an area of high crime.
10. The proposed site *is* located within a census tract that has an overconcentration of off-sale licenses.
11. Due to the overconcentration of off-sale licenses, the project is subject to the requirements for a Determination of Public Convenience or Necessity for a liquor license for the off-sale of alcoholic beverages. The granting of such a determination requires that four specific findings be made as prescribed by Title 6 of the San José Municipal Code.
12. The proposed use is not within a Strong Neighborhood Initiative area or other area designated by the city for targeted neighborhood enhancement services or programs.
13. The project site is not located within 500 feet of a school.
14. The project site is located adjacent to and within 150 feet of residentially zoned property to the north and west.
15. The above mentioned residential use is oriented in a manner that the front of the residences are not oriented towards the use.
16. There are three other off-sale establishments within 1000' of the subject site.

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 in that:
 - a. The proposed use is not located within a Strong Neighborhoods Initiative 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 represent a majority of the proposed use.
2. 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:
 - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
 - iii. 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. The use is located closer than one hundred fifty (150) feet from a residentially zoned property, but the proposed use is situated and oriented in such a manner that would not adversely affect such residential use in that the building entrance faces south, towards Branham Lane and not towards the residences.

Finally, based on the above-stated findings, with respect to the Conditional Use Permit, the Planning Commission finds that:

1. The proposed use at the location requested 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 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 all of the above findings for both applications, this project for off-sale of alcohol is hereby denied.

DENIED this 2nd day of December 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson

ATTEST:

Joseph Horwedel, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.



Existing Licence
 Pending Applications

150 Ft Radius

500 Ft Radius

1000 Ft Radius

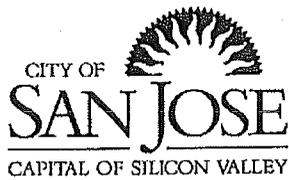
File No: CP09-047 & ABC09-002
 District: 9

Nearby Alcohol Off-Sales

Prepared by the Department of Planning,
 Building, and Code Enforcement
 11/30/2009

RECEIVED

OCT 16 2009



Memorandum

CITY OF SAN JOSE
DEVELOPMENT SERVICES

TO: Avril Baty
Planning Department

FROM: Ofc. Jennifer Dotzler #2453
San Jose Police Vice Unit

SUBJECT: Branham Liquor Store
1711 Branham Ln.

DATE: October 13, 2009

Approved	Date

I have received your request for input regarding Branham Liquor Store, located at 1711 Branham Lane, San Jose, Ca. 95110, who is seeking a Determination of Public Convenience or Necessity for off-sale of alcoholic beverages.

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)(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 (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.

The 1711 Branham Lane. is located in San Jose Police Beat T4. 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
T4 (2008)	308	175	483	No
City Average	322	315	637	

Department of Alcohol Beverage Control (ABC) records indicate that 1711 Branham Lane is in census tract 5029.08. Pursuant to B&P Section 23958.4 (a)(2), the ratio of on-sale retail licenses population in census tract 5029.08 **does** exceed the ratio of on-sale retail licenses retail licenses to population in the county in which the applicant premises are located.

Authorized and Current ABC Licenses in Census Tract 5029.08

Census Tract	Authorized ABC Licenses as of January 1, 2005		Current ABC Licenses as of August 3, 2009		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5029.08	9	4	4	5	No	Yes

The San Jose Police Department is **opposed** to the determination of Public Convenience or Necessity for this location.

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

 #2453

Ofc. Jennifer Dotzler #2453
Administrative Officer
Special Investigations/Vice

Handwritten initials and a circled 'B'.

BRANHAM RETAIL CENTER

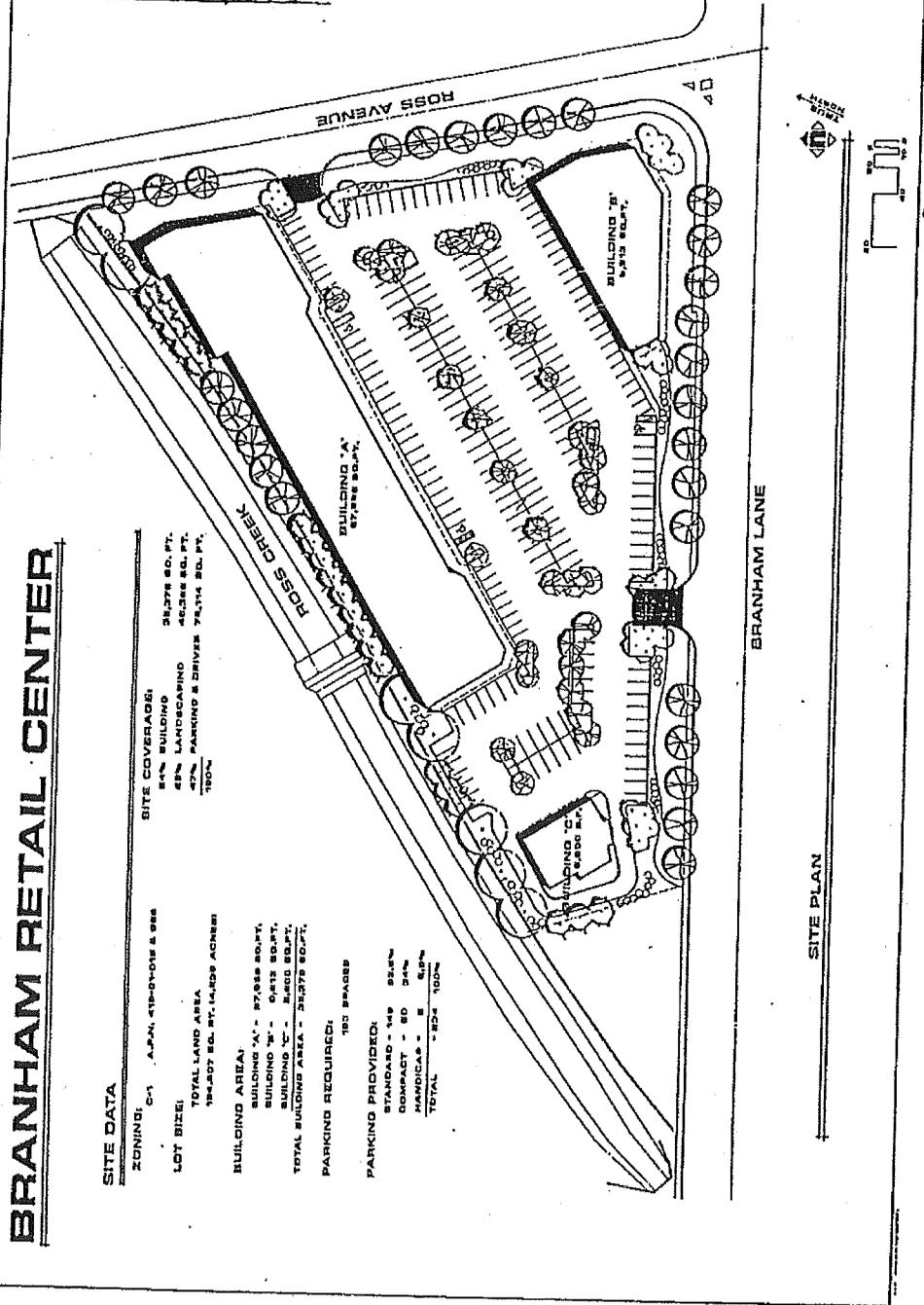
SITE DATA

ZONING: C-1 A.P.A. 415-01018 & 018
 TOTAL LAND AREA: 124,207 SQ. FT. (2.85 ACRES)
 LOT SIZE: 30,375 SQ. FT. (0.70 ACRES)
 48% BUILDING
 48% LANDSCAPING
 40% PARKING & DRIVEWAYS
 100%
 BUILDING AREAS:
 BUILDING 'A' - 27,000 SQ. FT.
 BUILDING 'B' - 27,000 SQ. FT.
 BUILDING 'C' - 27,000 SQ. FT.
 TOTAL BUILDING AREA - 81,000 SQ. FT.
 PARKING REQUIRED: 180 SPACES
 PARKING PROVIDED:
 STANDARD - 149 SPACES
 COMPACT - 80 SPACES
 HANDICAP - 5 SPACES
 TOTAL - 234 SPACES

BRANHAM RETAIL CENTER
 13771 BRANHAM LANE
 BAN JOSE, CALIFORNIA

ANDARCH
 ARCHITECTS
 200 DOWNEY DRIVE, SUITE 112
 DOWNEY, CALIFORNIA 94621
 925 251-1111

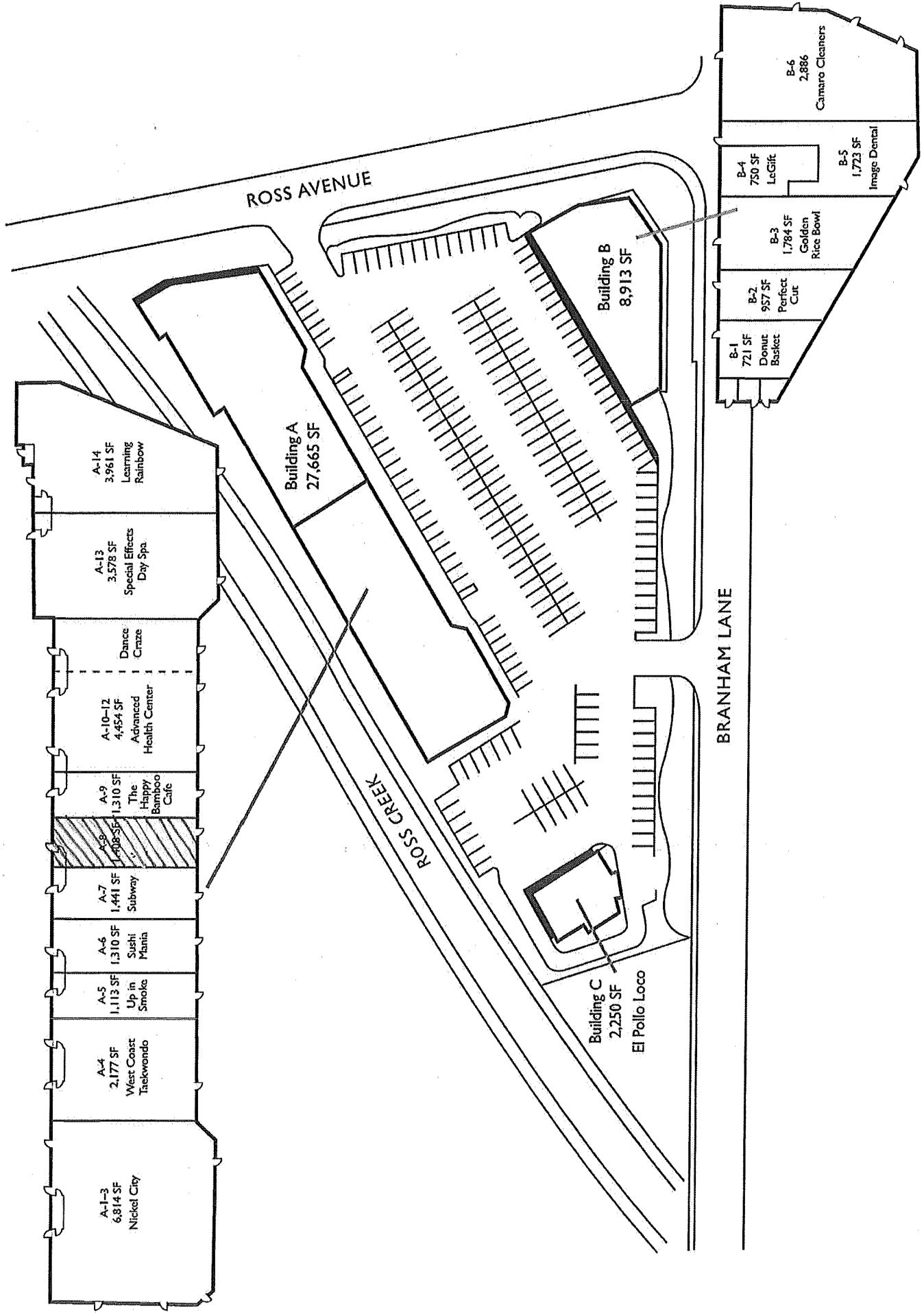
Tenant's Initials



SITE PLAN

9-30-2009

EXHIBIT "B"



ROSS AVENUE

BRANHAM LANE

ROSS CREEK

Building A
27,665 SF

Building B
8,913 SF

Building C
2,250 SF
El Pollo Loco

A-14
3,961 SF
Learning
Rainbow

A-13
3,578 SF
Special Effects
Day Spa

Dance
Craze

A-10-12
4,454 SF
Advanced
Health Center

A-9
1,310 SF
The
Happy
Bamboo
Cafe

A-8
1,408 SF

A-7
1,441 SF
Subway

A-6
1,310 SF
Sushi
Mania

A-5
1,113 SF
Up in
Smoke

A-4
2,177 SF
West Coast
Taekwondo

A-1-3
6,814 SF
Nickel City

B-6
2,886
Camaro Cleaners

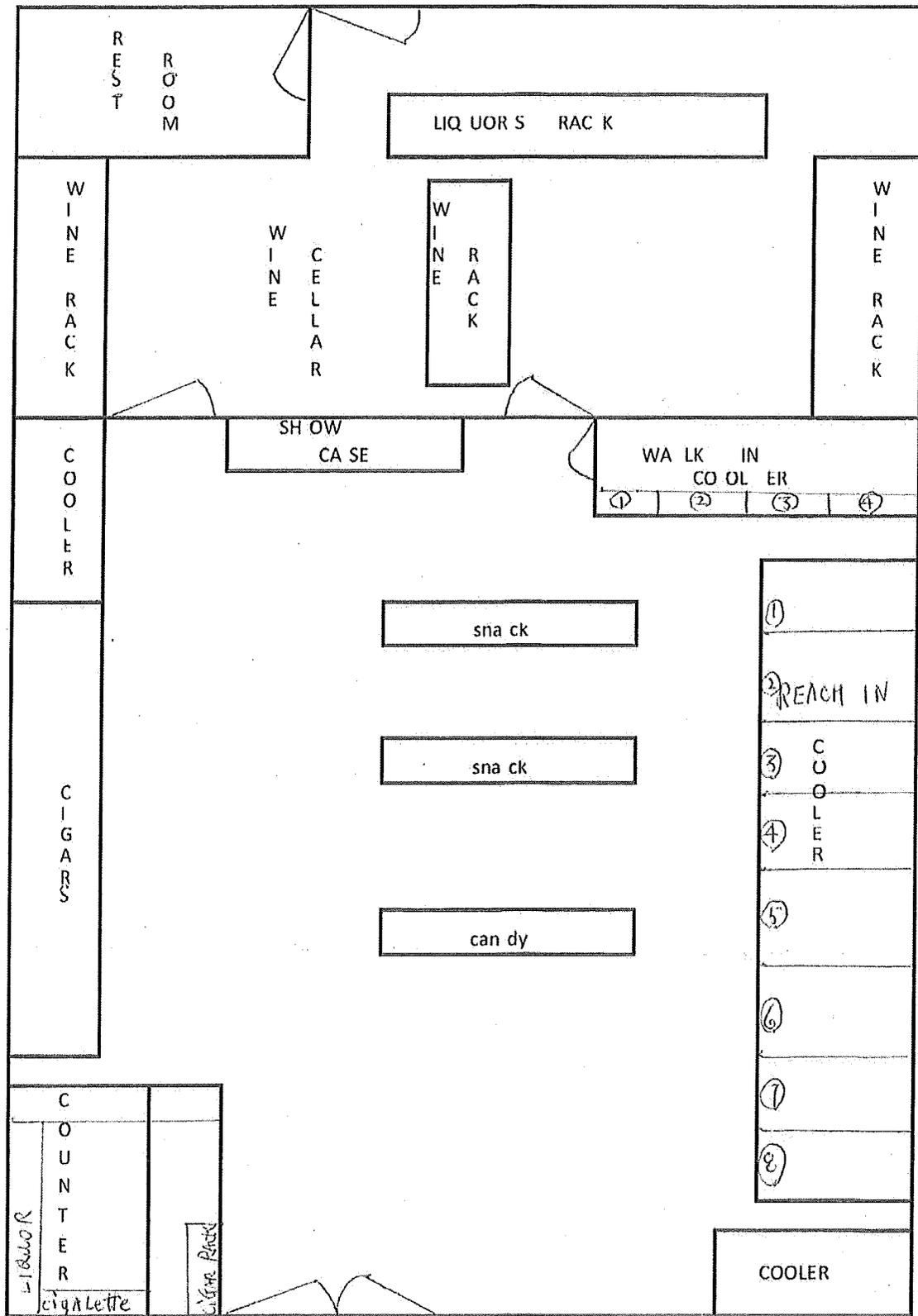
B-4
750 SF
LeCliff

B-5
1,723 SF
Image Dental

B-3
1,784 SF
Golden
Rice Bowl

B-2
957 SF
Perfect
Cut

B-1
721 SF
Donut
Basket



TENANT SPACE A-8