

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: March 16, 2010

RE: A Public Hearing to Consider a Major Conditional Use Permit and Variance for Alcoholic Beverage Sales at 6400 Shattuck Avenue and Adopting One of the Following Two Alternative Resolutions:

- 1) A Resolution Denying the Appeal (A09-220), thereby Upholding the Planning Commission Decision to Approve a Major Conditional Use Permit and Variance at 6400 Shattuck Avenue for Alcoholic Beverage Sales Commercial Activity; Or Alternatively,**
- 2) A Resolution Upholding the Appeal (A09-220), thereby Reversing the Planning Commission Decision and Denying the Major Conditional Use Permit and Variance at 6400 Shattuck Avenue for Alcoholic Beverage Sales Commercial Activity**

SUMMARY

This Major Conditional Use Permit and Variance application involves the request of the owners of an expired Deemed Approved legal nonconforming Alcoholic Beverage Sales Activity at 6400 Shattuck Avenue, at the corner of Alcatraz Avenue, to re-establish the sale of alcohol. On August 5, 2009 the Planning Commission heard a staff recommendation of denial of the Alcoholic Beverage Sales permits (approval for the Convenience Market) and citizen testimony. The Commission expressed intent to adopt findings to approve the Variance and Conditional Use Permit for Alcoholic Beverage Sales, and Conditional Use Permit for Convenience Market with conditions by taking a non-binding "Straw" 4 to 1 vote to bring back findings for and conditions of approval. After the October 7, 2009 public hearing, the Commission voted 4 to 1 to grant the applicant's request for Major Conditional Use Permit and Variance with conditions, for both the Convenience Market and the Alcoholic Beverage Sales activities.

On October 19, 2009, Jeffrey Jensen, representing other appellants, timely filed an Appeal to the City Council (A09-220) of the Planning Commission decision to grant the applicant's request for Alcoholic Beverage Sales. Mr. Jensen did not appeal the permit granted for the Convenience Market activity; that activity is approved, authorized to operate and is not the subject of the appeal. The Appellants claim that: (1) there was no evidence to support the Planning Commission's granting of the Major Conditional Use Permit and Variance application; (2) the Commission's decision was arbitrary and capricious, and expressly conflicted with the original Planning Staff findings; (3) it is devoid of any factual support and fails to meet the findings required by Oakland Planning Code Sections 17.134.050, 17.102.210.B and 17.148.050.

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The detailed appeal is contained in *Attachment A*.

Staff has prepared two resolutions for the City Council's consideration: deny the appeal and uphold the Planning Commission's approval of the project¹, or uphold the appeal and reverse the Planning Commission decision, thereby denying the project.

FISCAL IMPACT

Approval of the Alcoholic Beverage Sales would allow for restoration of the store as it operated prior to closing in 2004. If reopened, the project would be a private development and as such, would not require public funds. Private development provides a modest positive fiscal impact through increased property taxes, utility user taxes and, potentially, business license taxes, while at the same time increasing the level of municipal services that must be provided.

PROJECT DESCRIPTION

JoJo's Market was formerly known as NicNak Liquors. The applicant proposes to operate an approximately 400 square foot Alcoholic Beverage operation within an existing building of approximately 1,200 square feet. *No construction is planned; the facility is already built.* Photographs show approximately 1,000 bottles of liquor on display, plus a cooler with beer and wine. The applicant has posted a sign that no alcohol is being sold at this time. The applicant is reportedly complying with staff's cease-and-desist order regarding Alcoholic Beverage Sales since receiving the City's May 2, 2009 and November 20, 2009 letters. The 800 square foot remaining floor area is used to sell snacks, non-alcoholic beverages and other Convenience Market items, and as vestibule and dormant food service area (former ice cream cooler). The facility is closed Monday and Tuesday, opens at 10:00 AM and closes at 10:00 PM on other days, except Friday and Saturday, when it closes at 12:00 midnight. The two portable barbeque units stored on-site are subject to a requirement for a Conditional Use Permit for Fast Food service, which has not been filed, nor approved, and will be removed from the project site.

PROPERTY DESCRIPTION

The 5,200 square foot (1/8 acre) level site contains a 40-year-old one-story, 11-foot tall, 27 foot by 44 foot building. The approximately 2,600 square foot fenced parking lot can park eight vehicles, accessed through existing 17-foot gates on Shattuck Avenue and on Alcatraz Avenue. Neighboring uses are both commercial and residential, with residential immediately abutting.

¹The City Council can also uphold the Planning Commission's decision, but impose additional or revised conditions on the project and/or modify the project.

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BACKGROUND

The facility was built by the applicant's family approximately 40 years ago as a market and for most of that time operated with Alcoholic Beverage Sales. City regulations permit legal nonconforming alcohol uses to remain in business if they comply with the "Deemed Approved" program, including remaining in the Alcoholic Beverage Sales business continuously without a lapse of 90 days in use.

In 2004, the owner closed the facility (NicNak) and later surrendered the State Alcoholic Beverage Control License. On April 28, 2004 staff sent the property owner and business operator a letter putting them on notice that the property's Deemed Approved (legal, nonconforming) Status had lapsed, that they had ten days to appeal the decision and that a CUP and/or Variance would be needed to resume the sale of alcoholic beverages at the property. No appeal was filed.

In December 2008, the owner obtained a new State Alcoholic Beverage Control license and (by staff error) a City Zoning Clearance and then the store proceeded to reopen. The reopened liquor store operated sporadically for approximately five months and the retail market remains open at various times.

Based upon concerns raised by community members about resumption of alcohol sales after the long period of closure, staff reviewed the situation and determined that the property had been (erroneously) shown on the City's "Deemed Approved" list as a legal nonconforming use, but, as stated above, had in fact had been closed for over four years and its "Deemed Approved" status had lapsed. Therefore, on May 2, 2009, the City Zoning Division sent a letter to the owners, Mr. and Ms. Pannell, that the Zoning Clearance issuance was an error and was therefore rescinded and the owners could either appeal that determination within 10 days or they would need to apply for a Major Conditional Use Permit and Variance. (The State-issued Alcoholic Beverage Control license remained in effect). No appeal was filed on that determination. Therefore, the applicant has waived his rights to contest the City's determination that the Deemed Approved (legal, nonconforming) status has lapsed and there is no legal right to sell alcohol at that location.

On May 11, 2009, Conditional Use Permit and Variance applications were filed. The only issues before the Planning Commission were whether the applicant had met the required findings for a new Alcoholic Beverage Sales Activity.

The applicant's property includes a commercial billboard which provides additional revenue to the site. The billboard is not subject of this application and may continue because the City may not condition the issuance of a land use permit upon billboard removal absent payment of just compensation, pursuant to California law. Two portable barbeque units in the parking lot would constitute Fast Food; no application for this use is submitted and the barbeque units would not be allowed to operate.

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Nearby land uses include automotive (muffler, auto glass, smog check), general food sales (pizza café) and personal care (hair/nail salon) commercial activities; and one- and two-story residential structures of generally pre-WWII vintage. A market selling beer and wine is across the street. A church is one block south on Shattuck Avenue. A charter school and park area are approximately 950 feet west on Shattuck Avenue.

Staff has received e-mails (*Attachment D*) and verbal statements that over a dozen East Lorin and Shattuck area neighbors are very concerned about past and future occupancy by an Alcoholic Beverage Sales Activity. They view it as inconsistent with recent private investments in housing upkeep in surrounding residential areas. Staff met with eight of these neighbors at their request. There are also several neighborhood residents in support of the Alcoholic Beverage Sales Activity.

GENERAL PLAN ANALYSIS

This project is located in the Neighborhood Center General Plan Land Use Classification, under the General Plan Land Use and Transportation Element (LUTE). One intent of this classification is to identify, create, maintain and enhance commercial and residential structures in this area with good access to transportation and other services. Typical uses include "*a mix of retail...office...eating and drinking places, personal and business services...*" Excerpts from LUTE include:

Policy 1/C1.2. Retaining Existing Business. *Existing businesses and jobs within Oakland which are consistent with the long-range objectives of this Plan should, whenever possible, be retained.*

The Planning Commission found that this Policy is fulfilled, since the applicant's facility and activity are existing and provide a limited number of jobs.

Policy 1/C3.2. Enhancing Business Districts. *Retain and enhance clusters of similar types of commercial enterprises as the nucleus of distinctive business districts...*

The Planning Commission found that this Policy is fulfilled, since the applicant's facility and activity serve to retain a commercial enterprise in a business district which is becoming more distinctive.

Policy 1/C3.4. Strengthen Vitality. *The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved. (See also C.3.2 above).*

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The Planning Commission found that the applicant's facility and activity fulfill this Policy because this project has supported neighborhood activity and the vitality and strength of the commercial area for decades as a well-run local business.

Pages 220 and 221 of LUTE discuss North Oakland revitalization as follows:

Community Character and Identity. *Preservation of character and strengthening community identity are key objectives for North Oaklanders....Participants also suggested that enforcement of existing regulations be strengthened to combat blight and deterioration of the community's image.*

The Planning Commission found that the applicant's facility and activity fulfill this statement by the applicant's exceptional efforts to combat blight and deterioration compared to many other alcoholic beverage facilities and activities elsewhere in the City.

Commercial Revitalization. *Some locations need commercial revitalization. Vacant and underutilized commercial properties, and activities that are incompatible with neighborhood shopping, such as auto repair and derelict signs/fencing, detract from the local business climate along certain corridors. Some neighborhoods, such as Golden Gate, lack goods and services for residents.*

The Planning Commission found that the appellant's facility and activity supported this statement because goods and services are being provided for residents, and vacant and underutilized space of the recent past has now been replaced with a viable market. Fencing is not derelict and signs are being repaired or modified as a result of Planning Commission approval.

ZONING ANALYSIS

The project is located in the C-10 Local Retail Commercial Zoning District, consistent with the Neighborhood Center General Plan Land Use Element (LUTE) designation. In order to allow the selling of alcoholic beverages at this location, the regular Conditional Use Permit findings per Section 17.134.050 and special findings for Alcoholic Beverage Sales Commercial Activities per Section 17.102.210 must be made, as well as approval of a Major Variance because the site is within 1,000 feet of another Alcoholic Beverage Sales Commercial Activity.

Planning Code Section 17.09.040 defines: "Alcoholic beverage license overconcentrated areas" as "a police beat with crime rates that exceed the City median by twenty percent or more or a census tract in which the per capita number of on-sale or off-sale retail Alcoholic Beverage Sales licenses exceeds the Alameda County median." The applicant's store is in Police Beat 11-X. In 2008, there were 1,030 crimes in 11-X; the City's "overconcentrated areas" threshold was 1,320. Beat 11-X is approximately 30% below this threshold and is not overconcentrated by that standard.

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In 2008, Census Tract 4005 had three alcoholic beverage licenses other than (exempt) full-service restaurants; the applicant's store would make four, not exceeding the standard threshold of six. Therefore, this site does not meet the definition of overconcentrated area defined in Section 17.09.040. Section 17.102.210(3) requires an activity that is located in an overconcentrated area to make a "Public Convenience or Necessity" finding; since the area is not overconcentrated, no "Public Convenience or Necessity" findings are required for this proposal.

On February 1, 2000, the Oakland City Council passed Resolution No. 75490 C.M.S. establishing a "no net increase" policy in the number of alcoholic beverage sales commercial activities in Oakland neighborhoods to protect the health, safety and welfare of residents. The applicant has obtained a previously approved Oakland liquor license for this use, so no new licenses will be issued.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines list projects which are categorically exempt from environmental review. Section 15301 exempts exterior changes to an existing facility and Section 15303 exempts conversion of small structures. This project involves minimal exterior changes to the building. Therefore, this project is considered categorically exempt from the provisions of CEQA pursuant to Sections 15301 and 15303 of the State CEQA guidelines. In addition, Section 15183 applies as this activity, subject to revised Conditional Use Permit approval, is consistent with a Community Plan, General Plan, or Zoning. In addition, Section 15270 covers projects which are disapproved. If the City Council upholds the appeal and denies the project, such action is also exempt pursuant to Section 15270 of the CEQA Guidelines (Projects which are disapproved).

KEY ISSUES AND IMPACTS

The issues raised by the appellants are provided in the following narrative, with staff responses.

Challenges to General Use Permit Criteria Findings, OPC Section 17.134.050:

Appellants' Contentions:

Appellants argue that the October 7, 2009 findings do not comply with Code requirements to identify the negative effects of the project and the conditions needed to mitigate those effects. Appellants identify signage, fencing, building style, landscaping, parking, traffic and ADA compliance as issues the Planning Commission failed to adequately address. Appellants also assert that Design Review is required by OPC section 7.136.040 and challenges the Planning Commission's "practice" of exempting existing structures from Design Review without explicit authority for the exemption. Appellants argue generally that the Planning Commission failed to "discuss, analyze, assess and address" the harmful and cumulative effects of additional alcohol sales upon the community.

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Staff Response:

Staff finds the allegation without merit. The Planning Commission correctly found that Design Review was not required for the existing facility, which is four decades old. City regulations were uniformly applied in this case as would be applied to any other applicant with similar characteristics. Since the applicant neither requested nor was required upon application to file for Design Review, no Design Review was included in the application. The application for Major Conditional Use Permit and Major Variance was complete and ready for hearing by the Planning Commission without Design Review. In its discretion, the Commission conditioned its approval on small façade modification (which may include fulfillment by nonstructural methods such as daily display of fresh produce in front of the store), with a subsequent Small Project Design Review by staff.

The public record shows that the staff report and the Commission's discussion and findings extensively addressed effects of alcoholic beverage service on the community. Substantial testimony in the record showed that this particular facility and activity, on balance, did not have significant adverse effects on the community.

Convenience, Attractiveness, and Function of Property, OPC 17.134.050(B):**Appellants' Contentions:**

Appellants argue that the October 7, 2009 Planning Commission findings neglect to analyze the location, design, and site planning of the project as required by OPC section 17.134.050(B) and that project contravenes the criteria set forth in that provision due to its awkward, inconvenient and dysfunctional qualities. Appellants cite lack of landscaping, the predominance of hard surfaces and asphalt, a tall wrought iron fence that allegedly encroaches onto the public-right-of-way on Alcatraz Avenue, the building's poor set back from the street and the presence of a large R.V. as examples of its awkward, unsafe and unappealing qualities. Appellants also highlight that the store's entrance does not comply with ADA requirements due to the steepness of the ramp and narrowness of the doorway, and repeat earlier contentions that Design Review is required.

Staff Response:

Staff finds the allegations without merit. The Planning Commission correctly found that the appearance of the landscaping, asphalt and building set-back do not provide grounds for denial of the application. Pedestrian flow is not disrupted by the fence, as shown in file photographs. Regarding the entrance, the Building Inspection Division requires a degree of ADA compliance proportional to the amount of investment and improvement to the building. As discussed above, the project does not include structural changes and full ADA compliance is not required.

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Basic Community Functions and Essential Service Provided to Neighborhood (OPC 17.134.050.02.210C):

Appellants' Contentions:

Appellants argue the adopted findings of October 7, 2009 fail to assess, analyze and mitigate over-concentration of Alcoholic Beverage Sales operations within a 1 mile radius of the project. Approval is not supported by the administrative record and the store does not provide any essential services not already amply provided by other properties as required by subsection C of OPC section 17.134.050. Appellants support this contention by citing 18 existing Alcohol Beverage off-sales outlets that lie within one mile of the project and the presence of one liquor store 80 feet from the project. Appellants argue the Planning Commission failed to recognize the attendant increase in crime and adverse public health effects where there is an over-concentration of Alcohol Beverage Sales establishments. The approval of newly proposed Alcohol Beverage Sales within 1,000 feet of an existing store selling alcohol is contrary to the successful operation of the surrounding area in its basic community functions and contrary to adopted public policy of the City.

Staff Response:

Staff finds that the allegations are without merit. Although there are 18 alcoholic beverage services within a mile of the applicant's facility, there are no other establishments within 1,000 feet of the site that sell distilled spirits. The Oakland Planning Code uses a standard of 1,000 feet rather than a mile for establishing sufficient separation outside designated areas such as Downtown and Hegenberger Road. The Commission correctly found that the small scale Alcoholic Beverage Service functions, which fill less than 1/3 of the floor area of the store, efficiently service a community's alcoholic beverage needs, including home use, hospitality or celebrations. This facility would have less traffic, noise and light than if offered in a larger format, such as a full-size liquor store or drug store.

The appellants provide no data to show that this property, either before, during or after the hiatus/lapse of operation, caused crime. City Police statistics for April to June 2009, when alcohol was sold at 6400 Shattuck Avenue are similar to October to December 2009 when alcohol sales were prohibited at this address.

December 15, 2009: City of Oakland Police Crime Reports for prior 90 days, ¼ Mile Radius, 6400 Shattuck Avenue (No liquor reported sold at applicant facility)

Theft---9	Simple Assault---6	Narcotics---1
Alcohol---0	Robbery---2	Burglary---8
Vehicle Theft---4	Vandalism---1	

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June 17, 2009: City of Oakland Crimewatch Reports for prior 90 days, ¼ mile radius, 6400 Shattuck Avenue (Liquor reported sold at applicant facility)

Theft---7	Simple Assault---6	Narcotics---0
Alcohol-1 (2 blocks from the store)	Robbery---0	Burglary---6
Vehicle Theft-3	Vandalism---1	
Disturbing the Peace---2		

Staff review finds the differences to be negligible with or without liquor sales at this address. In particular, there is almost no change in alcohol related incidents.

The management and fortifications of the applicant's business resulted in less-than-typical crime history for such a business. Staff notes that pages marked 17 to 30 of 38 pages of the "Fight Blight in South Berkeley-North Oakland" portion of *Attachment D* to the appeal actually make the Planning Commission's case for findings. Numerous citizens quoted on these pages point out the fairness and validity of granting the applicant's request as the Commission has done.

Design Review (OPC 17.134.050.D):

Appellants' Contentions:

Appellants argue the Planning Commission erred in failing to require Design Review pursuant to OPC Chapter 17.136. Appellants state that a lack of rigor in vetting the findings and conditions illustrates the poor analysis on the part of the Planning Commission in approving CMVM09-111. Appellants further find that the Planning Commission's failure to require the applicant to formally apply for and obtain approval for regular design review precluded the Planning Commission and the public from adequately addressing whether the proposed use and attendant structures meet all applicable design review criteria.

Staff Response:

Staff finds that the allegations are without merit. The Planning Commission correctly found that a Major Conditional Use Permit and Major Variance may be considered to restore a lapsed activity such as Alcoholic Beverage Sales Activity without requiring Regular Design Review. The reason is that the facility is legal nonconforming, has existed for four decades, and the threshold to invoke Regular Design Review had not been crossed.

Conformity to Oakland General Plan, (OPC 17.134.050-E), Criteria for Variance Findings (OPC17.114.010):

Appellants' Contentions:

Appellants argue that the October 7, 2009 Planning Commission findings neglect to state how the proposed project would actually be an attractive and well-managed commercial operation in conformance with the General Plan, as required by subsection E of OPC Section 17.134.050.

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Appellant cites the Planning Code section 17.114.010 for the principal that: *The purpose of these regulations is to control, ameliorate, or terminate uses which do not conform to the zoning regulations. These regulations shall apply to all nonconforming uses.* Appellants challenge the Planning Commission's application of a theory that equates *historical relevance* to a unique or extraordinary physical characteristic as a basis for approving a Major Variance. Appellants suggest the reliance on an unorthodox and locally unprecedented theory as an abuse of authority and discretion by the Planning Commission.

Staff Response:

Staff finds that the allegations are without merit. The Planning Commission correctly noted the findings of Section 17.134.050 were fulfilled in this case, and that historical associations of owners with sites and neighborhoods are relevant to variances precisely because the uniqueness of circumstances is thus established. Table 2 of the City of Oakland "Guidelines for Determining Project Conformity with the General Plan" is "silent" on whether Alcoholic Beverage Sales activities are allowable in this vicinity; thus a Conditional Use Permit and Variance are needed to fulfill the General Plan. The applicant has obtained these permits from the Planning Commission.

Regarding upkeep of the facility, photographs in the public record were confirmed by a site inspection (interior and exterior) by staff, that this facility is an "attractive and well managed facility." There was no trash, graffiti, deteriorated surfacing or other physical evidence of a poorly managed facility. The fence may need to be moved slightly to respect the property line, but the style and height of the fence is equal to or superior to other fences along this portion of Shattuck Avenue. Staff notes that almost all of the 18 liquor sellers cited in *Attachment C* are over 1000 feet distant from this facility, but not from each other. Crime statistics do not bear out that this facility or the immediate vicinity is a crime "hot spot."

Regarding "historical relevance," which is discussed at length below, this is a suitable characteristic for evaluating projects under the Land Use and Transportation Element of the Oakland General Plan. The appellant is incorrect that this is not relevant to the consideration on the basis that 6400 Shattuck Avenue is not an historic building.

Regarding "historical relevance" as a Variance basis, staff notes sections of the Oakland General Plan Land Use and Transportation that mention historically relevant issues, particularly for African American residents such as the owners of 6400 Shattuck Avenue:

Page 1, "Many African Americans arrived...Oakland's ethnic, racial and cultural diversity cuts across all economic strata and through neighborhoods from the hillsides to the working waterfront..."

Page 5, "...the character of established neighborhoods will be maintained and enhanced...clean and attractive neighborhoods rich in character and diversity, each with its own distinctive identity...the places that make Oakland work are many, because the physical side of the City is

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as varied as its culture and economy. The story of the City's past and its future is captured in an appreciation of the types of places that make Oakland work..."

"A Brief History of Oakland," includes p. 18 a reference to "Oakland's Established African American Community" and to single businesses as important to vitality.

Page 73, Policy D12.1, "Build on and promote Oakland's educational resources, historic importance as an entertainment venue, existing cultural diversity..."

Page 113, Policy N9.8, "Locations that create a sense of history and community within the City should be identified and preserved where feasible..."

Page 144, "The classifications used in the Land Use Diagram...take into account the existing and historical patterns of development in Oakland..."

Over the past 4 decades, some African American owned community businesses have left North Oakland. The 6400 Shattuck Avenue business remains, a remnant of an historical pattern of development in Oakland. The above examples of citations frame the public testimony of October 7, 2009 and earlier hearings, that 6400 Shattuck Avenue has been a part of the City's diversity, economy and cultural identity, particularly for the neighborhood, for four decades. "Historical relevance" is a suitable basis for considering a Variance of this type.

Increase of Alcoholic Beverage Sales Facilities in Area Where Additional Ones Would Be Undesirable, for Crime Problems, Loitering and Traffic Problems, OPC 17.102.210(A)(1):

Appellants' Contentions:

Appellants allege the Planning Commission's October 7, 2009 finding relating to Special Use Permit Criteria set forth in OPC section 17.102.210(A) is flawed in its reliance on crime data comparisons. Appellants cite analysis provided by We Fight Blight identifying a total of 18 existing off-sales facilities within approximately one mile of the proposed project including local, national and international studies showing the causal relationship between the density of alcohol outlets and crime and public health concerns. Appellants also note that the use of recent crime statistics to analyze historical impacts of alcohol sales at the property is undermined by the fact that, during the last five years, the premises sold alcohol only for a few months. Appellants also cite photographs of other nearby alcohol outlets to demonstrate the cumulatively negative impact of unattractive buildings on the neighborhood's character.

Staff Response:

Staff finds that the allegations are without merit. The Planning Commission correctly found that there was no causal relationship of the applicant's site with crime (see crime statistics mentioned above), nor a connection between the 18 other alcohol outlets in the surrounding one mile radius in Oakland and Berkeley with the subject site. Within the 1,000 foot radius provided by Section

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17.102.210 of the OPC for measuring concentration, the combination of TK Market and NikNak/JoJo's at one corner has not produced a spike or "hot spot" of crime, during the recent period when both were selling alcoholic beverages. Two is not overconcentration, as at this corner; six may be overconcentration, as on Telegraph Avenue. Appellants contention that a broader deterioration in area character would result from 400 square feet of alcoholic beverage sales on this one site is without comparable examples or proof. The appellants compare clusters of larger liquor stores with this site, which is not a true comparison. Testimony from many neighbors and clients in the hearing record was that the facility did NOT cause the area's character to suffer with traffic problems or with other types of problems.

Effects on Schools, Parks, Religious Facilities (OPC 17.102.210.A-2):

Appellants' Contentions:

Appellants assert that the adopted Planning Commission finding is inaccurate and that the project is located near several schools, parks and religious facilities including:

- (1) Shattuck United Methodist Church, 6300 Shattuck Avenue, Oakland. Approximately 316 feet;
- (2) Sankofa Academy/Bushrod Park, 581 61st Street, Oakland. Approximately 950 feet;
- (3) The Gnostic Center, 3201 Shattuck Avenue, Berkeley. Approximately 1,000 feet;
- (4) All Nations Church of Christ, 2003 Woolsey Street, Berkeley. Approximately 1,478 feet; and
- (5) Greg Brown Mini-Park, 1907 Harmon Street, Berkeley. Approximately 1,584 feet.

Appellants cite to testimony regarding empty liquor bottles and garbage collected from the nearby United Methodist Church and suggest the Planning Commission erroneously concluded that houses of worship, parks and schools were too distant to experience effects.

Staff Response:

Staff finds that the allegations are without merit. The Planning Commission reasonably concluded that parks, schools and places of worship are too distant from the project to suffer negative impacts and warrant denial of the application. Litter at these properties may be from several sources, many of which are closer than the project. Churches are generally used on weekend mornings and some weekday evenings, being vacant at other times; few patrons would witness events of inebriation, which in any event would not be a result from the typical management and core of the applicant's business; nor do the police report multiple cases of inebriation resulting from this facility.

Movement of People Along Important Pedestrian Street and Traffic (OPC 17.102.210-A-3):

Appellants' Contentions:

The Appellants contend that the Planning Commission failed to require a traffic study or other studies regarding traffic and parking generated from the site. Appellants point out that access to

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6400 Shattuck Avenue is provided by driveway from Alcatraz and Shattuck Avenues at the corners of the intersection. Appellants also argue that the administrative record provides concerns from the Chair of the East Lorin Neighborhood Association, Jeffrey G. Jensen, regarding left hand turns into the facility, lack of one way ingress/egress, lack of disabled parking, and potential inefficient stacking onto Alcatraz and Shattuck Avenues.

Staff Response:

Staff finds that the allegations are without merit. The appellant does not demonstrate that there are enough vehicles moving onto such a small site, contrary to logic and observation, to block pedestrian traffic nearby. 6400 Shattuck Avenue is little different in its driveway access from hundreds of other small businesses in Oakland which have not been reported as blocking pedestrian traffic. The Planning Commission correctly understood that a traffic study for a six to eight space parking lot serving a 1,200 square foot retail store is normally not required in Oakland or other similar cities. There are rarely if ever six to eight customer vehicles using this lot at one time. The alcoholic beverage sales area is only 400 square feet, thus there is very little alcoholic beverage sales area with which to generate traffic. The appellants have produced no evidence to the contrary. Staff received no police communications about this facility blocking pedestrian or vehicular traffic when it was in operation.

Architectural/Visual Quality and Character; Design Review; Fences (OPC 17.102.210.A-4):

Appellants' Contentions:

The Appellant contends that the Planning Commission erred in not requiring Design Review for the fences, existing signs and existing building as part of the Major Conditional Use Permit/Major Variance hearing. The Appellant objects that as conditioned, the approval of the Planning Commission allows the applicant to fortify the property with an excessively high wrought iron fence over 42 inches, retain nonconforming business signs that rise above the roofline and that are faded, retain the nonconforming billboard, and essentially leave intact a 1969 building facade with unfeathered walls and windows. This is contrary to the stated purpose of ameliorating nonconforming uses and ensuring the architectural quality of the site and structures enhances the surrounding area.

Staff Response:

Staff finds that the allegations are without merit. The Planning Commission acted correctly in not requiring Design Review of fencing, signs and the existing building during the hearing. Regarding fencing, both the Appellants and staff erred in referring to maximum fence height as 42 inches. In the C-10 commercial zone, pursuant to Oakland Planning Code Section 17.108.140, 8 feet of see-through fencing is permitted, subject to issuance of a building permit as needed. The 6-foot wrought iron fence replaced an earlier chain link fence and has received favorable commentary from police officers and at least one neighbor. Staff sought lowering the fence to 42 inches as an aesthetic response, to make the site more inviting to pedestrians.

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However, in late evening hours after the store closes, pedestrian entry is exactly what the fence serves to prevent, along with vandalism and graffiti, therefore the Planning Commission allowed it to remain.

Regarding the existing signs and existing building, these are legal nonconforming facilities which under OPC Section 17.114 may remain in place as long as they are not destroyed by 75% or more. The billboard in particular is subject to a private civil contract between the applicant and the media company, and the City may not unduly alienate such an agreement without due process of law. Moreover, the City may not condition the issuance of a land use permit upon billboard removal absent payment of just compensation, pursuant to California law. In addition, almost no testimony at the public hearings objected to the billboard. Since project approval by the Planning Commission, the applicant has reduced the size of the freestanding identification sign pursuant to the approval of condition, and notified the City in writing of this work for compliance.

The appellants are confusing the Design Review process for new facilities associated with a Major Conditional Use Permit and Variance with the process for existing facilities. Many Conditional Use Permits are issued for activities within existing facilities without modifying the exterior or challenging legal nonconforming statuses of existing improvements.

Parking Areas and Signage (OPC17.102.210.A.5 & 17.104):

Appellants' Contentions:

Appellants argue the Planning Commission substantially erred in failing to adopt conditions that would ensure all approved signage is consistent with the requirements of Section 17.104 of the Oakland Planning Code relating to General Limitations on Signs. Appellants cite four examples, including a billboard, in arguing that nonconforming signage should be removed or brought up to code. Appellants also argue there is no existing landscaping of the parking lot and that the parking lot fence is not required to be lowered. Appellants state that existing signs and existing parking are not exempted from Planning Commission review in the hearing process and that modifications can be required.

Staff Response:

Staff finds that the Appellants' contentions are without merit. The Planning Commission correctly noted that legal nonconforming signage was not required to be changed, particularly the billboard which is subject to private/civil contractual rights which are beyond the power of both the applicant and the City (and for the other reasons stated above). However, the applicant agreed to lower the freestanding sign to ten feet in height and this is included in Condition 21. The Planning Commission recognized that sign changes may be limited, and instead concentrated on encouraging the applicant to improve the façade (with subsequent small project design review if needed). Conditions of Approval were considered sufficient to steer the applicant to this objective, while avoiding an impractical, awkward or unduly burdensome

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exaction for design such as mandatory billboard removal. Likewise, the Planning Commission is not required by OPC to modify parking for an existing facility where the activity is not expanding in floor area or intensity. The parking lot existed since the 1960's and served a market building of the same size. The product mix inside the store does not change the parking requirement under OPC.

Additional Litter Containers and Site Maintenance Requirements (OPC 17.102.210.A-6):

Appellants' Contentions:

The Appellant contends that the adopted Planning Commission finding is not consistent with the stated site maintenance condition. While the adopted findings state that there will be trash "containers" installed, the stated condition only requires that the applicant maintain "at least one (1) trash can." The adopted condition is insufficient to ensure that litter and garbage will not be deposited into nearby residential areas.

Staff Response:

Staff finds that the allegations are without merit. The Planning Commission acted correctly in the conditions which were applied. Photographs on file and staff inspections verify that there is no significant litter or garbage at the site. Any litter deposited in nearby residential areas could come from many sources, including fast food restaurants, markets etc. One store cannot be held accountable for the cleanliness of an entire neighborhood, especially when its own site is demonstrably clean. A trash can will be provided under this action at the door of the facility.

Proximate Residential Uses Would Be Subject to Sleep Disruption Between 10 PM and 7 AM, By Project Operation/Late-night Activities, (OPC 17.102.210.A.7):

Appellants' Contentions:

Appellants contend inadequacy in the adopted Planning Commission condition of October 7, 2009, which states that: *The business may be open to the public for business from 7 am to 10 pm daily. Any work outside these hours shall solely be staff preparation and not open to the public.* Appellants contend this adopted Planning Commission condition is vague and potentially allows for deliveries and other noise generating activities after 10 pm such as cleaning up of the site, graffiti removal, movement of product, power washing of the parking lot, painting of the building, etc. Appellants argue, while this statement implies that some remaining noise effects will remain and will not be mitigated, the findings leave silent the magnitude of the estimated noise effects.

Staff Response:

Staff finds that the Appellant's contention is without merit. The Planning Commission correctly found that the language of the condition does not allow painting of the building, graffiti removal or power washing of the building between the 10 pm closing and the 7 am opening. Even if it

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did, it would be highly unusual to execute these activities in the dark. Such activities have never been reported about the store in recent decades. Furthermore, the City has adopted a General Plan Noise Element and a Noise Ordinance, generally setting acceptable noise standards for any property. Exceeding standards can result in a visit from the Police and/or City Code Enforcement officers. Repeated violations would result in fines and potential liens, as with any other property in the City. Such regulations are sufficient to protect neighbors.

1,000 Foot Separation between Alcohol Sales Outlets (OPC 17.102.210.B):

Appellants' Contentions:

Appellants challenge the Planning Commission's use of a theory that uses historical relevance as a basis for a Major Variance, arguing that there is nothing in the administrative record that identifies or analyzes any other existing businesses or sites in Oakland that could qualify under this novel theory of *historical relevance*. Appellants contend closure of the business from 2004 to early 2009 closed this history, in any case. The applicant does not live in the neighborhood and has not been a public figure or pillar of the community. Appellants suggest that because the vast majority of applicant's supporters did not identify where they lived, their testimony as to the applicant's unique historical and ongoing relationship with the neighborhood or Beat 11x is highly suspect. Appellants also argue that the Planning Commission failed to discuss or analyze what constitutes a convenient walking distance, and thus, that the Planning Commission conclusion that, "*spirit liquors cannot be purchased anywhere within convenient walking distance unless restored at this location,*" lacks merit. Appellant refers to 18 Alcoholic Beverage Sales Activities within a mile radius of 6400 Shattuck.

Staff Response:

Staff finds the Appellants' contention is without merit. The Planning Commission acted correctly. The reference to "historical associations" of the facility and activity in the neighborhood result from testimony in the public record that this business was not "an alcoholic beverage service" but was originally "THE alcoholic beverage service" (or at least one of the oldest) for this vicinity, pre-dating many other North Oakland businesses. In addition, the facility has been the nexus or juncture point of a variety of social, philanthropic and business ventures over the years in an African American community, primarily from the applicants who have been law enforcement officials in Alameda County and have a standing in the community. Testimony before two Planning Commission hearings pointed out that this is not only a renaissance neighborhood with new citizens moving in; it is also an established neighborhood with legacy families who were already present. The Planning Commission had a reasonable basis for concluding that the economic vitality resulting from new neighbors does not justify erasing all of the historical antecedents of the older neighborhood.

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Variance; Findings of Difficulty or Unnecessary Hardship, Due to Unique Physical or Topographic Circumstances or Conditions of Design; (OPC 17.148.050.a.1) or To Restore Nonconforming Uses (OPC 17.114):

Appellants' Contentions:

Appellants state that the Planning Commission's novel use of *historical relevance* to justify a Variance, based on unique and extraordinary physical constraints, is a misapplication of the existing Oakland Planning Code. Appellants find nothing in the administrative record that supports a Variance on the basis of a topographic or physical attribute of the site such as an irregular lot size or configuration, steep topography or other natural feature such as a rock outcropping. Additionally, Appellants characterize the evidence testimony and findings analyzing the unique or distinctive historical relationships of the applicant to the community as "very thin" and "suspect." Appellants note that the whole purpose of expiring nonconforming land uses under zoning, as with an expired Deemed Approved alcoholic beverage sales activity, is to remove nuisances, rather than to forever maintain them in place.

Appellants also reject the Planning Commission's assert that design and site layout are unique, insisting instead that thousands of other commercial lots within the City of Oakland exhibit the same characteristics. Appellants argue further that there is nothing that precludes the applicants from demolishing the existing structure or relocating it to the edge of sidewalk to achieve the same exact condition as nearby properties.

Appellants find that crime from this facility and in this area was not invalidated as an issue, due to limited evidence before the Commission and lack of inquiry by the Commission.

Appellants find that the need for a Variance was created by the applicant's abandonment of the Alcoholic Beverage Sales Activity from 2004 to early 2009, rather than experiencing physical or other tangible obstructions to their continued business operations. This is not a basis for a Variance. The applicant can sell the State Alcoholic Beverage license to a more appropriate legal off-site location, protecting North Oakland and leaving the applicant with value for the license.

Staff Response:

Staff finds that the Planning Commission acted correctly and that the Planning Commission made a plausible and viable decision on the Variance. The site and historical associations of the facility are unique in the immediate vicinity. The alcoholic beverage service is small, almost incidental/accessory except to the degree that it supports the remainder of the facility's community service. This is supported by the applicants live testimony that alcohol sales were necessary to the continued operation of the convenience market. The alcoholic beverage service is only 1/3 of the building floor area, which itself covers only 1/3 of the parcel. A Variance is justifiable because this is not a full liquor store, but rather a neighborhood store which also includes some modest liquor sales. The appellant cites the nearby Nomad Café as a desirable and appropriate use in the area, which it is. The Nomad Café serves alcohol and might be less viable in its community meeting function if it only served coffee or bottled water. As with Nomad

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Café, the applicant's store at 6400 Shattuck Avenue needs alcoholic beverage service precisely in order to be relevant and useful in its community.

Regarding other Appellant arguments, phase-out of legal nonconforming uses, such as Deemed Approved alcoholic beverage sales activities, is City Council policy in general. However, Council policy also allows an expired land use (OPC 17.114) to be restored by Conditional Use Permit for cause, and allows a Variance where hardship and public interest justify such action. Public testimony and written records for the Planning Commission hearing provided substantial verification that Conditional Use Permit and Variance findings had been met, though there was also testimony to the contrary.

Appellants challenge the current neighborhood interest of the applicants and their supporters, noting that the Pannells have homes outside the neighborhood and that some supporters could not be verified as neighborhood residents. However, staff notes that the Planning Commission finding related to the *historical associations* of the activity and facility with the neighborhood, established in the public record, as a basis for granting the application. The Pannells continue to own and operate the facility, as verified by personal inspection by Planning staff and numerous photographs in the record.

Historical associations are exemplified, for instance, where a legal nonconforming shop, religious building, or other structure in a residential neighborhood helps to define neighborhood character rather than detract from such character. The former NikNak store (now JoJo's Market) has been a fixture in the neighborhood for four decades, just as a popular café might be a part of another neighborhood. While "Historical Associations" are not known to be cited in Variance cases by such words, the compatibility of a facility and activity with the neighbors is precisely what Variance findings seek to achieve. NikNak has been an island of security in a neighborhood where litter, social ills and crime have been reported; neighbors might naturally support such a facility as unique and appropriate.

Most buildings along the Shattuck corridor are built fronting the thoroughfare, with little set back and no parking. This parcel's set back and parking, features specifically sought out by convenience retailers, make it well-suited for convenience market operations. The Planning Commission acted correctly in finding the physical nature of the site contributed to justification for the Variance.

**Deprivation of Privileges Enjoyed by Owners of Other Similarly Zoned Sites;
Consideration of Alternatives, OPC 17.148.050(a)2:**

Appellants' Contentions:

Appellants challenge the Planning Commission's October 7, 2009 finding in many respects. Appellants argue the Planning Commission artificially limited its analysis to Shattuck Avenue, failing to consider other viable commercial areas on nearby thoroughfares and created a significant internal inconsistency in finding "several competing liquor store" create a hardship

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for the applicant, while other findings in the report state there is no over concentration of alcohol outlets in the area.

Appellants also argue that there is no evidence in the administrative record that denial of the Alcohol Beverage Sales would create an undue hardship. Appellants point out that economic hardship is not a proper grounds for granting a Major Variance and that no facts substantiate the Planning Commission's assumption that the applicant could not operate on convenience store operations alone. Appellants contradict the hardship finding by pointing out that, if the variance were rejected, the applicants retain all equity in the liquor license which they could sell and they retain ownership of 6400 Shattuck Avenue which they could operate as a convenience store or otherwise develop. Appellants also argue the applicant is not being denied any privilege afforded others of a similarly zoned property, but rather, is receiving special privileges in the form of a Major Variance based on the unprecedented theory of "historical relevance."

Staff Response:

The Commission found that the trade area for 6400 Shattuck Avenue is indeed an awkward corner of North Oakland, restricted as to relocation opportunities by streets, surrounding residential zoning and City limits. The applicant's objectives, and the community's objectives for the facility, cannot be better met outside the neighborhood, in Berkeley or on Telegraph/Broadway. There are no other sites in this part of North Oakland which offer commercial zoning, viable parcel size and acquisition costs, and distance from schools and churches.

In addition, moving this Activity closer to Telegraph/Broadway or Berkeley frustrates the Appellant's desire to avoid concentration of Alcoholic Beverage Sales Activities. The 6400 Shattuck Avenue site is one of the MOST remote, not LEAST remote, from other Alcohol businesses in the one-mile radius. Likewise, Oakland should not have to export a tax-paying business serving Oakland customers to Berkeley (where it might increase density of Alcohol businesses in Berkeley) just because it is within 1,000 feet of a market which does not even offer the distilled spirits that JoJo's offers. The Planning Commission found that the Appellant's contentions made no sense.

Whether the Alcoholic Beverage Use Will Adversely Affect the Character, Livability or Appropriate Development in Surrounding Areas and Be Detrimental to Public Welfare (OPC 17.148.050-3):

Appellants' Contentions:

In challenging the third required finding of 17.148.050(a), the Appellants repeat earlier arguments that the historical relevance was neither founded in evidence nor an acceptable basis for granting a Major Variance, and suggests the Planning Commission erroneously assigned great weight to testimony of nonresidents (including the applicant), without assessing its veracity. Appellants also argue the Planning Commission erred in approving the Major Variance because it failed to take into account relevant and substantive information showing the over-

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concentration of Alcohol Beverage Sales within approximately one mile of the 6400 Shattuck Avenue, disregarded testimony from appellants regarding personal negative experiences of the adverse effects of Alcohol Beverage Sales within the community and failed to consider local, national and internationally peer-reviewed studies demonstrating a causal link between the over-concentration of Alcohol Beverage Sales and an increase in crime and adverse public health consequences.

Staff Response:

Staff finds that the allegations are without merit. The Planning Commission acted correctly. The public record at two Planning Commission hearings demonstrated that the facility/activity by itself does not adversely increase crime or blight, or otherwise harm the neighborhood. The owners have worked hard for decades to maintain a clean and safe facility. If the owners can be faulted, it is for installing more fortifications than truly necessary (the metal fence and interior glass walls for example), giving an inaccurate perception to passers-by that this site is unsafe. The public record shows quite the contrary.

Whether Approving the Variance Would Grant A Special Privilege to the Applicant Contrary to -OPC Section 17.148.050(a-4):

Appellants' Contentions:

In challenging the fourth required finding of 17.148.050(a), the Appellants point to a lack of evidence in the administrative record. Appellants argue, by granting the Major Variance and adopting the findings asserting a privilege *to relate to the neighborhood and customer base historically established*, the Planning Commission granted a privilege to the applicants not afforded to other similarly zoned properties--namely the ability to operate within 1,000 feet of another liquor store. Appellants further reiterate that this theory has never before been used by the City of Oakland to approve a Variance.

Staff Response:

Staff finds that the allegations are without merit. The Planning Commission acted correctly. Based on the facility/activity operating for four decades, with an interruption in the middle of the current decade, before restarting The Planning Commission reasonably concluded that no special privilege is conferred with the permit. Moreover, restoring a use to the property will not set a precedent since few other liquor businesses in the vicinity generally have been in operation for four decades by the same families that built such stores; review of zoning clearances for a sample of North and West Oakland alcoholic beverage stores finds turnover between owners occurring several times in the past four decades. Hence, the Planning Commission reasonably believes that the 1,000 foot separation standard should not be applied because the two businesses have proven complementary, and the granting of the permit preserves equity and protects the neighborhood's continuity.

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Whether the Proposal Elements Conform with Regular Design Review Criteria in OPC Section 17.-136.050.A-5:**Appellants' Contentions:**

The appellants contend that, while it may be the "practice" of the Planning Commission not to require existing structures to undergo design review, Chapter 17.136 Design Review does not affirmatively exempt existing structures and Section 17.136.040 provides an exemplary, if not exhaustive, list of projects requiring regular design review. The Planning Commission's failure to require the applicant to undergo regular design review precluded it from adequately addressing the proposed use as it relates to location, size, design and operating characteristics including the parking, signage, fencing and aesthetic and architectural features of the site.

Staff Response:

Staff finds that the allegations are without merit. The Planning Commission acted correctly. As noted above, the applicant did not propose any changes to the facility requiring Design Review. The applicant did stipulate to making improvements to the property by lowering a sign and modifying the fence, subtracting rather than adding to the facility. Design Review would only be invoked by the applicant proposing other physical changes, primarily additions. Compliance with the approved Conditions of Approval does not trigger formal design review.

SUSTAINABLE OPPORTUNITIES

Economic: Approval of the proposed Alcoholic Beverage Sales Commercial Activity would allow the applicant to restore a neighborhood business essentially as it was prior to closing in 2004, providing modest tax and employment benefits to the City.

Environmental: Preservation of business locations in already developed urban environments reduces pressure to build on agricultural and other undeveloped land.

Social Equity: The applicant requests the opportunity to restore sales of convenience goods and alcoholic beverages to the pre-2004 level. The applicant claims that an African American owned business in North Oakland is beneficial to the community, and that social equity requires the permit be granted. Approval would support his request.

DISABILITY AND SENIOR CITIZEN ACCESS

The Building Division of the Community and Economic Development Agency would require any new construction to conform to the Americans with Disability Act (ADA) in all provisions to ensure equal access to the facility.

CITY COUNCIL ACTION ALTERNATIVES

The City Council has the option of taking one of the following alternative actions:

1) A Resolution Denying the Appeal (A09-220), thereby Upholding the Planning Commission Decision to Approve a Major Conditional Use Permit and Variance at 6400 Shattuck Avenue for Alcoholic Beverage Sales Commercial Activity;² Or Alternatively,

2) A Resolution Upholding the Appeal (A09-220), thereby Reversing the Planning Commission Decision and Denying the Major Conditional Use Permit and Variance at 6400 Shattuck Avenue for Alcoholic Beverage Sales Commercial Activity.

Staff recommends Alternative 1, denying the appeal and upholding the Planning Commission decision to approve the project based on the following reasons:

1. Staff has found no record that indicates that the Planning Commission action was in error, that the Commission abused its discretion, or that the decision was not based upon substantial evidence in the record; and
2. For several decades, the applicant operated a convenience market with alcoholic beverage sales with minimal adverse impacts on neighbors. Closure in approximately 2004 was due to applicant illness and other factors beyond the applicant's control. The applicant only seeks to restore Alcohol Sales in conjunction with a neighborhood business of long standing in North Oakland which is unique when compared to any other nearby Alcoholic Beverage Sales Activity.

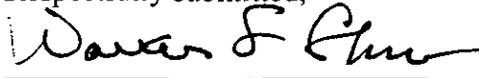
If, in lieu of accepting the Planning Commission's Findings for Approval, the Council instead accepts the Findings for Denial as provided in the August 5, 2009 staff report (*Attachment C*), the Council would be approving Alternative 2.

² The City Council can also uphold the Planning Commission's decision, but impose additional or revised conditions on the project and/or modify the project.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution Denying the Appeal (A09-220), thereby Upholding the Planning Commission Decision to Grant the Major Conditional Use Permit and Variance.

Respectfully submitted,



Walter S. Cohen, Director

Community and Economic Development Agency

Reviewed by:

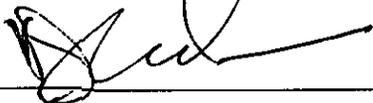
Scott Miller, Zoning Manager

Prepared by:

Edward Manasse, Planner IV
Planning & Zoning

David Valeska, Planner II

FORWARDED
TO THE CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS:

- A. Appeal (A09-220) to City Council of the Planning Commission Decision
- B. Adopted Planning Commission Staff Report- October 7, 2009
- C. First Planning Commission Staff Report - August 5, 2009
- D. Correspondence in Opposition
- E. Correspondence in Support, Including Petition
- F. Maps and Photos associated with CMVM09-111

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OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION DENYING THE APPEAL (A09-220), THEREBY UPHOLDING THE PLANNING COMMISSION DECISION TO APPROVE A MAJOR CONDITIONAL USE PERMIT AND VARIANCE AT 6400 SHATTUCK AVENUE FOR ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY

WHEREAS, the applicants Ashrious and Verniece Pannell ("Owners"), built and opened an alcoholic beverage sales outlet and market at 6400 Shattuck Avenue approximately forty years ago, before adoption of Planning Code requirements regulating Alcoholic Beverage Sales Commercial Activities; and

WHEREAS, sales of alcohol at 6400 Shattuck Avenue were considered to be a legal, nonconforming use/Deemed Approved use; and

WHEREAS, in 2004, the Owners closed the facility and later surrendered the State Alcoholic Beverage Control license; and

WHEREAS, on April 28, 2004 staff sent the Owners a letter putting them on notice that the property's Deemed Approved (legal, non-conforming) Status had lapsed because there was no alcoholic beverage sales activity for more than ninety (90 days) pursuant to the Oakland Planning Code, and that they had ten days to appeal the decision and that a CUP and/or Variance would be needed to resume the sale of alcoholic beverages at the property; and

WHEREAS, no appeal was filed relating to the decision set forth in the April 28, 2004 letter; and

WHEREAS, in December of 2008 Owners obtained a new state Alcoholic Beverage Sales license and, by staff error, a City Zoning Clearance and the store proceeded to open; and

WHEREAS, on May 2, 2009 the City Zoning Division sent a letter to the Owners stating that the Zoning Clearance was issued in error and was therefore rescinded and the Owners could either appeal that determination within 10 days or apply for a Conditional Use Permit and variance for the sale of alcoholic beverages; and

WHEREAS, the Owners voluntarily elected not to appeal the May 2, 2009 decision, and, as a result, the City's decision to lapse the Deemed Approved (legal, non-conforming) Status was final; and

WHEREAS, on May 11, 2009, the Owners (hereafter referred to as the "Applicants") voluntarily applied for a Major Conditional Use Permit for a convenience market and also to allow Alcoholic Beverage Sales Commercial Activity and a Major Variance to allow such Activity within 1000 feet radius of another Alcoholic Beverage Sales Commercial Activity ("Project"); and

WHEREAS, on August 5, 2009 a duly noticed public hearing was held before the City Planning Commission for the Project, accompanied by a Planning staff recommendation for denial of the alcoholic beverage sales component of the Project; and

WHEREAS, on August 5, 2009, after hearing from over two dozen neighbors and interested parties, the Commission directed staff, by a 4 to 1 straw vote, to bring back approval findings and conditions for the Project, including Alcoholic Beverage Sales; and

WHEREAS, on October 7, 2009 a continued, duly noticed public hearing was held before the City Planning Commission for the Project; and

WHEREAS, on October 7, 2009, the Planning Commission independently reviewed, considered and determined that the Project is categorically exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to sections 15301, 15303, and 15183 of the State CEQA Guidelines; and

WHEREAS, on October 7, 2009 the Project was approved by the City Planning Commission to allow a convenience market and approximately 400 square feet or 33% of the store floor, whichever is lesser, of Alcoholic Beverage Sales in the market; and

WHEREAS, on October 19, 2009 an appeal of the Planning Commission's October 7, 2009 decision was filed by Mr. Jeffrey Jensen, representing other individuals, ("Appellants") challenging the approval of the Alcoholic Beverage Sales Commercial Activity, but not the convenience market; and

WHEREAS, the approval of the convenience market constituted a final decision of the City Planning Commission and is not the subject of this appeal; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on February 16, 2010; and

WHEREAS, the Appellants, Applicant and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on February 16, 2010; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is categorically exempt from CEQA pursuant to CEQA Guideline Section 15301 and, as a separate and independent basis, the Project is also exempt from CEQA pursuant to Section 15303 of the State CEQA Guidelines; and Section 153183, "Projects Consistent with a Community Plan, General Plan or Zoning" of the State CEQA Guidelines. The Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has not shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, and/or that the Commission's decision was not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the February 16, 2010, City Council Agenda Report and the October 7, 2009, Approved Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's decision approving a Major Conditional Use Permit for Alcoholic Beverage Sales Commercial Activity and a Major Variance to waive the 1000 foot separation between such uses required by the Oakland Planning Code, is upheld and the application is approved; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts as its findings and determinations (i) the February 16, 2010, City Council Agenda Report including without limitation the discussion, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full), and (ii) the October 7, 2009, Approved City Planning Commission Report, including without limitation the discussion, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full), except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Project application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;

5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, (c) Oakland Fire Code; (d) Oakland Planning Code; (e) other applicable City policies and regulations; and, (f) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION UPHOLDING AND APPROVING THE APPEAL (CASE NO. A09-220), THEREBY REVERSING THE PLANNING COMMISSION DECISION AND DENYING THE MAJOR CONDITIONAL USE PERMIT AND VARIANCE AT 6400 SHATTUCK AVENUE FOR ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY

WHEREAS, the applicants Ashrious and Verniece Pannell (“Owners”), built and opened an alcoholic beverage sales outlet and market at 6400 Shattuck Avenue approximately forty years ago, before adoption of Planning Code requirements regulating Alcoholic Beverage Sales Commercial Activities; and

WHEREAS, sales of alcohol at 6400 Shattuck Avenue were considered to be a legal, nonconforming use/Deemed Approved use; and

WHEREAS, in 2004, the Owners closed the facility and later surrendered the State Alcoholic Beverage Control license; and

WHEREAS, on April 28, 2004 staff sent the Owners a letter putting them on notice that the property’s Deemed Approved (legal, non-conforming) Status had lapsed because there was no alcoholic beverage sales activity for more than ninety (90 days) pursuant to the Oakland Planning Code,, and that they had ten days to appeal the decision and that a CUP and/or Variance would be needed to resume the sale of alcoholic beverages at the property; and

WHEREAS, no appeal was filed relating to the decision set forth in the April 28, 2004 letter; and

WHEREAS, in December of 2008 Owners obtained a new state Alcoholic Beverage Sales license and, by staff error, a City Zoning Clearance and the store proceeded to open; and

WHEREAS, on May 2, 2009 the City Zoning Division sent a letter to the Owners stating that the Zoning Clearance was issued in error and was therefore rescinded and the Owners could either appeal that determination within 10 days or apply for a Conditional Use Permit for the sale of alcoholic beverages; and

WHEREAS, the Owners voluntarily elected not to appeal the May 2, 2009 decision, and, as a result, the City's decision to lapse the Deemed Approved (legal, non-conforming) Status was final; and

WHEREAS, on May 11, 2009, the Owners (hereafter referred to as the "Applicants") voluntarily applied for a Major Conditional Use Permit for a convenience market and also to allow Alcoholic Beverage Sales Commercial Activity and a Major Variance to allow such Activity within 1000 feet radius of another Alcoholic Beverage Sales Commercial Activity ("Project"); and

WHEREAS, on August 5, 2009 a duly noticed public hearing was held before the City Planning Commission for the Project, accompanied by a Planning staff recommendation for denial of the alcoholic beverage sales component of the Project; and

WHEREAS, on August 5, 2009, after hearing from over two dozen neighbors and interested parties, the Commission directed staff, by a 4 to 1 straw vote, to bring back approval findings and conditions for the Project, including Alcoholic Beverage Sales; and

WHEREAS, on October 7, 2009 a continued, duly noticed public hearing was held before the City Planning Commission for the Project; and

WHEREAS, on October 7, 2009, the Planning Commission independently reviewed, considered and determined that the Project is categorically exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to sections 15301, 15303, and 15183 of the State CEQA Guidelines; and

WHEREAS, on October 7, 2009 the Project was approved by the City Planning Commission to allow a convenience market and approximately 400 square feet or 33% of the store floor, whichever is lesser, of Alcoholic Beverage Sales in the market; and

WHEREAS, on October 19, 2009 an appeal of the Planning Commission's October 7, 2009 decision was filed by Mr. Jeffrey Jensen, representing other individuals, ("Appellants") challenging the approval of the Alcoholic Beverage Sales Commercial Activity, but not the convenience market; and

WHEREAS, the approval of the convenience market constituted a final decision of the City Planning Commission and is not the subject of this appeal; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on February 16, 2010; and

WHEREAS, the Appellants, Applicant and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on February 16, 2010; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with CEQA, as the Disapproved Project is categorically exempt from CEQA pursuant to CEQA Guideline Section 15270, Projects which are disapproved; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, and/or that the Commission's decision was not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the staff prepared August 5, 2009, Planning Commission Report, which is hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is approved, the Planning Commission's decision approving a Major Conditional Use Permit for Alcoholic Beverage Sales Commercial Activity and a Major Variance to waive the 1000 foot separation between such uses required by the Oakland Planning Code, is reversed and the alcoholic beverage sales portion of the application is denied; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to deny the alcoholic beverage sales portion of the Project, the City Council affirms and adopts as its findings and determinations the staff prepared August 5, 2009, Planning Commission Report, [including without limitation the discussion, findings, and conclusions, each of which is hereby separately and independently adopted by this Council in full]; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Project application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations; (c) Oakland Fire Code; (d) Oakland Planning Code; (e) other applicable City policies and regulations; and, (f) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.

APPEAL, 6400 SHATTUCK AVENUE

ATTACHMENT A: APPEAL A09-220



CITY OF OAKLAND
REQUEST FOR APPEAL OF DECISION TO
PLANNING COMMISSION OR CITY COUNCIL

(REVISED 8/14/02)

PROJECT INFORMATION

Case No. of Appealed Project: CMVM 09-111

Project Address of Appealed Project: 6400 Shattuck Ave. Oakland Ca 94609

APPELLANT INFORMATION: See Attachment "A"

Printed Name: Jeffrey Jensen Phone Number: 510-290-1444

Mailing Address: 6501 Tremont St. Alternate Contact Number:

City/Zip Code Oakland Ca 94609 Representing:

An appeal is hereby submitted on:

- AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION)**

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application for an Administrative Project
- Denying an application for an Administrative Project
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify)

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- Hearing Officer's revocation/impose or amend conditions (OPC Secs. 15.152.150 & 15.156.160)
- Other (please specify)

RECEIVED

OCT 19 2009

**CITY PLANNING COMMISSION
ZONING DIVISION**

- A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)** Granting an application to: **OR** Denying an application to:

Approve CMVM-09-111, Major Conditional Use Permit and Major Variance, for Convenience and Alcohol Beverage Sales at 6400 Shattuck Avenue, Oakland Ca. (continued on reverse)

(Continued)

A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) CEQA Exemption (OPC Sec. 17.158.250)

An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Request for Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Request for Appeal Form (or attached additional sheets), and provide supporting documentation along with this Request for Appeal Form, may preclude you from raising such issues during your appeal and/or in court.

The appeal is based on the following: (Attach additional sheets as needed.)

See Attachment "B".

Supporting Evidence or Documents Attached. (The appellant must submit all supporting evidence along with this Appeal Form.) See Attachment "C"



Signature of Appellant or Representative of Appealing Organization

10/19/09

Date

Below For Staff Use Only

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

8/14/02

**Appeal of Planning Commission Decision to City Council
Case File No. CMVM09-111; 6400 Shattuck Avenue (APN 016-1427-024-00)**

ATTACHMENT "A" Additional Appellants

Elliott Abrams
Elise Ackerman
Jeff & Shelly Barnett
Sondra Beck
Stephanie Challberg
Margaret Crayton
Cheryl A Fulton
John Gatewood
Guita Boostani
Stephen Glaudemans
Michelle Gray
Chia Hamilton
Brian Hill
John Hykes
Alden Jenks
Chad & Heesoo Jennings
Sherman Kassof
Don Link
Amanda & Nigel Lucas
Ian Martin
Sean McGrath
Gita Meckel
Deborah Mikuteit
Erika Miranda
Roland Moore
Carrie Moulton
Tom Nemeth
Melody Noll
Susan Parker
Barbara Patterson
Judy Pope
Dawn Rubin
Janet Rahn
Cynthia Barnes Slater
Zoe Smith
Britt & Bryce Tanner
Russell Uman
David Vartanoff
Christopher Waters
Jeff Weiner & Delores Dwyer
Kitty Whiteside

**Appeal of Planning Commission Decision to City Council
Case File No. CMVM09-111; 6400 Shattuck Avenue (APN 016-1427-024-00)**

ATTACHMENT "B"

ISSUES RAISED

1. All issues raised in the administrative record for CMVM09-111, 6400 Shattuck Avenue, Oakland CA 94609, APN 016-1427-024-00.
2. All issues raised in the letters and correspondence attached as Attachment "C" previously submitted by appellants, which are incorporated herein by reference as though set forth in full.
3. All issues raised by or on behalf of the appellants at the Planning Commission hearing dated August 5, 2009.
4. All issues raised by or on behalf of the appellants at the Planning Commission hearing dated October 7, 2009.
5. All issues raised by or on behalf of the appellants through the submittal of written correspondence, electronic mail, public comments and/or telephonic, recorded or verbal comments to either the Planning Commission, the staff of the Community and Economic Development Agency, or other staff of the City of Oakland or otherwise documented in the administrative record.
6. In approving the application, CMVM09-111, for a Major Conditional Use Permit Application and a Major Variance for Alcoholic Beverage Sales, the Planning Commission substantially erred in its responsibility, abused its discretion by making findings and conclusions that failed to accurately incorporate the entirety of the administrative record, had no supporting or evidentiary basis, and failed to correctly apply and enforce the existing Oakland Planning Code and established public policy of the City of Oakland.
7. In approving the application, CMVM09-111, for a Major Conditional Use Permit Application and a Major Variance for Alcoholic Beverage Sales, the Planning Commission substantially erred in its responsibility by imposing conditions that will not adequately ameliorate the potential adverse effects of the Alcohol Beverage Sales and ensure that such a non-conforming use would not be a detriment and nuisance to the North Oakland community. The findings are also inadequate in and of themselves because the Planning Commission failed to identify in the findings the specific conditions that are intended to mitigate for specific project effects and/or to ensure consistency with specific requirements of the Oakland Planning Code. As a result, it is difficult, if not impossible, for decision makers and the public to adequately determine the nexus between the project effects and the imposed conditions, the proportionality of the mitigation or conditions in relationship to the project effects and whether the effectiveness of the conditions can be reasonably measured to assess their relative success in ameliorating the negative effects of the approved nonconforming use and attendant structures. Moreover, there is no comprehensive monitoring and reporting requirement to ensure adequate follow-up and corrective action if the applicant fails to meet the imposed conditions.

8. More specifically as noted below, the Planning Commission findings for approval of CMVM09-111 for a Major Conditional Use Permit and Major Variance are faulty, contrary to the public interest and not legally sustainable. The adopted Planning Commission findings of October 7, 2009 have no evidentiary basis in the administrative record and constitute an abuse of authority and discretion by the Planning Commission. Legal findings are required to bridge the gap between raw data and conclusions. The adopted Planning Commission findings rely largely on unsubstantiated assertions not supported by any factual underpinning or evidence provided by the applicant, the City Planning Staff, the Planning Commission or any other data source. Legally relevant and substantial data supporting denial of CMVM09-111 and provided by the appellants was disregarded and ignored by the Planning Commission in its review and approval of the application.

Section 17.134.050 (General Use Permit Criteria):

Required Finding

- A. **That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of development.**

Adopted Planning Commission Finding of October 7, 2009

An attractive and properly managed Alcoholic Beverage Sales operation could satisfy a community need which does not affect livability of the surrounding neighborhood, and is operated in a scale which is compatible with neighborhood character. The store provides convenient purchases for neighbors, many of whom are inclined to walk to the facility rather than drive to a larger store. Staff has recommended several conditions to mitigate potential negative effects of alcohol sales.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of October 7, 2009 fails to address the requirements of the required finding specifically related to design and operating characteristics, harmful effects upon desirable neighborhood character and generation of traffic. The conclusion of the adopted Planning Commission finding is not supported by factual evidence in the administrative record. The finding fails to identify the specific harmful effects of the proposed use, Alcohol Beverage Sales, and the specific conditions that are intended to mitigate the potential negative effects. Because the finding does not specifically identify the negative effects and the attendant conditions to mitigate the effects, it is unclear whether the conditions are actually appropriate and measurable. In part, the adopted finding is simply a statement that *Staff has recommended several conditions to mitigate potential effects of alcohol sales.*

Because the applicants had voluntarily allowed their deemed approved status as a legal non-conforming use for Alcoholic Beverage Sales to lapse for greater than 90 days, the applicants are required to submit a Major Conditional Use Permit and Major Variance for the newly proposed Alcoholic Beverage Sales. While the Planning Commission's review of such an application must include a fresh review of all existing structures, signs, fences and other appurtenant structures that support the newly proposed use of Alcoholic Beverage Sales, as if the existing facilities were being proposed for the first time, the Planning Commission failed to do so. The Planning Commission's own adopted findings for approval note that: *The building at 6400 Shattuck Avenue is existing, with a facade covered with non-historical materials which do little to enhance the surrounding commercial and residential area. The fortified appearance of the site reflects obsolete design standards which do not reflect the ongoing reinvestment of the neighborhood by private property owners.* As noted in the administrative record, the existing structure is an unremarkable 1960's era building, with nonconforming signage that rises above the roof line, an illegally constructed fence that is higher than the maximum allowable 42-inches, no landscaping, parking and ingress/egress that fails to adequately address efficient circulation, and parking and interior floor layout that fail to meet the requirements of the Americans with Disabilities Act. The applicants failed to apply for regular design review for the newly proposed use and attendant structures, signs, fences, etc. Because the applicants failed to apply for regular design review as required under Chapter 17.136 of the Oakland Planning Code, this aspect of the project was not properly noticed to the public and therefore was never ripe for any evaluation, review and/or approval by the Planning Commission. As such, the Planning Commission failed to adequately review these design aspects through regular design review to ensure consistency with current design and operating standards. Consequently, the Planning Commission approval of a nonconforming use of Alcohol Beverage Sales will adversely affect the livability of the surrounding neighborhood because these design features are not in conformance with existing standards in the Oakland Planning Code.

The Planning Commission erred in failing to require the applicants to formally complete Design Review pursuant to Chapter 17.136 Design Review of the Oakland Planning Code. Section 17.136.025 specifically notes that: *... a proposal will be exempt from design review if it meets each of the provisions set forth below ... the proposal does not require a conditional use permit or variance, pursuant to Title 17 of the Oakland Planning code.* The operative words are *each of the provisions*. The proposed use requires a major conditional use permit and a major variance, and therefore does not meet the requirements for an exemption from regular design review. In addition, the proposed use is not considered a small project design review. The applicant is required to meet the requirements of Section 17.136.040. While it may be the "practice" of the Planning Commission not to require existing structures to undergo design review, Chapter 17.136 Design Review does not affirmatively exempt existing structures and Section 17.136.040 provides an exemplary, not exhaustive, list of projects requiring regular design review. The Planning Commission's failure to require the applicant to formally apply for and obtain approval for regular design review precluded the Planning Commission and the public from adequately addressing the proposed use as it relates to location, size, design and operating characteristics.

As provided by We Fight Blight, the administrative record has an abundance of peer-reviewed studies that show the relationship between the concentration of alcohol outlets and an increase in crime and adverse public health consequences. We Fight Blight also specifically identified 18 existing alcohol outlets within approximately one mile of the newly proposed Alcohol Beverage

Sales. Yet, the adopted Planning Commission finding of October 7, 2009 fails in all respects to discuss, analyze, assess and address the harmful and cumulative effects of additional Alcohol Beverage Sales upon the community. Consequently any specific conditions that are intended to ameliorate such harmful effects are inadequate because they fail to be informed by the entirety of the administrative record.

The adopted Planning Commission finding also fails to adequately address the generation of traffic and the capacity of the surrounding streets to absorb such traffic. No baseline data on existing traffic conditions, traffic generation studies, circulation or parking studies or any other information or data related to traffic generation and the efficient ingress/egress and parking can be found in the administrative record. Moreover, the Planning Commission's finding above is totally silent on the issue of traffic.

The Planning Commission finding notes that: *The store provides convenient purchases for neighbors, many of whom are inclined to walk to the facility rather than drive to a larger store.* This unsubstantiated finding fails to recognize that there are already 18 existing Alcohol Beverage Sales within one mile of the newly proposed Alcohol Beverage Sales at 6400 Shattuck Avenue and that an existing liquor store, T and K Market, is located only 80 feet from 6400 Shattuck Street across Alcatraz Avenue; thereby negating any purported claims of added value due to enhanced convenience for neighbors and the potential to minimize generation of auto traffic.

Required Finding

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

Adopted Planning Commission Finding of October 7, 2009

An attractive and properly managed Alcoholic Beverage Sales operation promotes availability of items and enhances the convenience of functional living environment of its customers.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of October 7, 2009 fails to address the requirements of the required finding specifically related to the location, design, and site planning of the proposed development being as attractive as the nature of the use and its location and setting warrant. The adopted Planning Commission finding is merely a statement and does not explain how the proposed use will be attractive and properly managed such that it would actually enhance the convenience of functional living environment of its customers. In fact, several building and site plan features actually serve to create an inconvenient, awkward and dysfunctional living experience: the six-foot tall wrought iron fence encroaches onto the public-right-of-way on a major street (Alcatraz Avenue) where it constricts pedestrian flow adjacent to a bus stop; the building is set far back from the street behind a large R.V. and across a sea of asphalt where it is awkward and potentially dangerous for pedestrians to access since there is no separation of pedestrians and autos; the entrance to the building is along a steep ramp and

narrow doorway which do not comply with handicap accessibility requirements; and the lack of landscaping and predominance of hard surfaces such as the building, driveway, and metal fence, create a harsh visual quality that is unattractive and detracts from a thriving, pedestrian-oriented neighborhood. Furthermore, the adopted Planning Commission finding fails to recognize there are already 18 existing Alcohol Beverage Sales within one mile of the proposed Alcohol Beverage Sales at the former Nic Nak liquor store site and that an existing liquor store, T and K Market, is located only 80 feet away across Alcatraz Avenue; thereby negating any purported claims of added value due to enhanced convenience for neighbors.

The Planning Commission erred in failing to require the applicants to formally complete Design Review pursuant to Chapter 17.136 Design Review of the Oakland Planning Code. Section 17.136.025 specifically notes that: ... *a proposal will be exempt from design review if it meets each of the provisions set forth below ... the proposal does not require a conditional use permit or variance, pursuant to Title 17 of the Oakland Planning code.* The operative word is "each of the provisions". The proposed use requires a major conditional use permit and a major variance, and therefore does not meet the requirements for an exemption from regular design review. In addition, the proposed use is not considered a small project design review. The applicant is required to meet the requirements of Section 17.136.040. While it may be the "practice" of the Planning Commission not to require existing structures to undergo design review, Chapter 17.136 Design Review does not affirmatively exempt existing structures and Section 17.136.040 provides an exemplary, not exhaustive, list of projects requiring regular design review. The Planning Commission's failure to require the applicant to formally apply for and obtain regular design review precluded the Planning Commission and the public from adequately addressing whether the location, design, and site planning of the proposed development will provide convenient shopping and will be as attractive as the nature of the site and its location and setting warrant.

Required Finding

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

Adopted Planning Commission Finding of October 7, 2009

The small scale Alcoholic Beverage Service functions, which fill less than 1/3 of the floor area of the store, efficiently service a community's alcoholic beverage needs, including home use, hospitality or celebrations. This facility would have less traffic, noise and light than if offered in a larger format, such as a full-size liquor store or drug store.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of October 7, 2009 fails to adequately address the required finding and fails to assess, analyze and mitigate the over-concentration of existing Alcohol Beverage Sales within approximately one mile from the newly proposed Alcohol Beverage Sales at 6400 Shattuck Avenue. The administrative record does not support the adopted conclusion of the Planning Commission. While the proposed use of Alcohol Beverage

Sales may serve home use, hospitality or celebrations, the adopted findings fail to recognize that within one mile of the newly proposed Alcohol Beverage Sales there are already 18 existing Alcohol Beverage Sales (off-sale, not including onsite consumption such as bars and restaurants) and fails to recognize the attendant increase in crime and adverse public health effects when there is an over-concentration of Alcohol Beverage Sales.

The proposed Alcohol Beverage Sales will not provide an essential service to the community or the region as there is already an over-concentration of Alcohol Beverage Sales that sell beer, wine, hard liquor and convenience items in North Oakland and South Berkeley. This has been thoroughly documented in the administrative record by the appellants and We Fight Blight. An additional Alcohol Beverage Sales outlet will not enhance the successful operation of the surrounding area in its basic community functions. There is already an existing liquor and convenience store, T and K Market, 80 feet away from the newly proposed Alcohol Beverage Sales. On the contrary, the cumulative effects of an additional Alcohol Beverage Sales will increase crime and contribute to the existing adverse health effects of the surrounding area. This causal relationship between an over-concentration of alcohol outlets and crime and adverse health effects has been well-documented locally, nationally and internationally in peer-reviewed studies. Many of these studies were entered into the administrative record for Planning Commission consideration, but were ignored and never analyzed in relationship to the newly proposed Alcohol Beverage Sales and the already existing 18 off-sale Alcohol Beverage Sales within 1 mile of the Nic Nak.

Recognizing the detrimental effects of liquor outlets on the City of Oakland, the City Council has developed policies and regulations in the Oakland Planning Code to further limit and control the number of liquor stores within Oakland and has established the deemed approved status for non-conforming liquor outlets with the specific intention of reducing and eliminating non-conforming liquor outlets and ensuring that new liquor outlets meet all applicable standards, including not being located within 1,000 feet of an existing liquor store. See Chapters 17.156 and 17.114 for Deemed Approved Status and Nonconforming Uses respectively. The policies of the Oakland Planning Code are intended to prevent over-concentration of liquor outlets due to their adverse effects on neighborhoods. The approval of newly proposed Alcohol Beverage Sales within 1,000 feet of existing liquor store is inherently contrary to the successful operation of the surrounding area in its basic community functions and by its very nature, being located within 1,000 feet of another liquor store, does not provide an essential service to the community as that service is already well-provided for. Rather it further serves to over-concentrate Alcohol Beverage Sales contrary to adopted public policy of the City.

Required Finding

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

Adopted Planning Commission Finding of October 7, 2009

The building at 6400 Shattuck Avenue is existing, with a facade covered with non-historical materials which do little to enhance the surrounding commercial and residential area. The fortified appearance of the site reflects obsolete design standards which do not reflect the

ongoing reinvestment of the neighborhood by private property owners. Any approval should be conditioned on enhancing the fencing and landscaping of the store to appear more like a traditional neighborhood market. Staff has recommended several conditions to enhance aesthetics of the site.

Inadequacy of Planning Commission Finding

Section 17.136.070 relates to special regulations for designated landmarks. The existing structures onsite are not designated landmarks. Consequently, this specific finding is not applicable. Nevertheless, the finding is also inadequate in and of itself because the Planning Commission failed to identify the specific conditions that are intended to enhance the aesthetics of the site. As a result, it is difficult, if not impossible, to assess the appropriate nexus between the project effects and the imposed conditions, the proportionality of the mitigation or conditions in relationship to the effects and whether the conditions and mitigating measures can be reasonably measured to assess their relative effectiveness in ameliorating the negative effects of the proposed use and structures. While this finding is not applicable, the lack of rigor in vetting the finding and conditions illustrates the poor analysis on the part of the Planning Commission in approving CMVM09-111.

Fundamentally, the Planning Commission erred in failing to require the applicants to formally complete Design Review pursuant to Chapter 17.136 Design Review of the Oakland Planning Code. Section 17.136.025 specifically notes that: *... a proposal will be exempt from design review if it meets each of the provisions set forth below ... the proposal does not require a conditional use permit or variance, pursuant to Title 17 of the Oakland Planning code.* The operative word is "each of the provisions". The proposed use requires a major conditional use permit and a major variance, and therefore does not meet the requirements for an exemption from regular design review. In addition, the proposed use is not considered a small project design review. The applicant is required to meet the requirements of Section 17.136.040. While it may be the "practice" of the Planning Commission not to require existing structures to undergo design review, Chapter 17.136 Design Review does not affirmatively exempt existing structures and Section 17.136.040 provides an exemplary, not exhaustive, list of projects requiring regular design review. The Planning Commission's failure to require the applicant to formally apply for and obtain approval for regular design review precluded the Planning Commission and the public from adequately addressing whether the proposed use and attendant structures meet all applicable design review criteria.

Required Finding

- E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

Adopted Planning Commission Finding of October 7, 2009

The General Plan allows for approval of Alcoholic Beverage Sales uses by Conditional Use Permit and in this case, Variance. The General Plan allows for businesses that will not cause undue nuisance activity. The Neighborhood Center Commercial land use category envisions a wide

range of retail, restaurant and specialty stores along with promoting mixed-used developments. An attractive and well-managed commercial operation at this location will conform to the General Plan.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate because it failed to consider the entirety of the administrative record in reaching its conclusion and failed to affirmatively determine that the proposed use of Alcohol Beverage Sales would, in fact, be an attractive and well-managed commercial operation free of nuisances and consistent with all applicable plans, policies and regulations. The Planning Commission finding states that: *An attractive and well-managed commercial operation at this location will conform to the General Plan.* This is simply a statement with no supporting factual evidence. The finding does not explain or discuss how the proposed project would actually be an attractive and well-managed commercial operation in conformance with the General Plan. Findings are intended to bridge the gap between raw data and conclusions so that the public, decision makers, and the courts can understand the rationale for the conclusions. In this case, the Planning Commission has jumped to a statement of conclusion with no factual underpinning evidenced in the administrative record.

The proposed use of Alcohol Beverage Sales is in direct conflict with the Oakland Planning Code in that it is located within 1,000 feet of an existing liquor store. The stated intention of the Oakland Planning Code Section 17.114.010 as it relates to non-conforming uses, such as Nic Nak liquors, is that: *The purpose of these regulations is to control, ameliorate, or terminate uses which do not conform to the zoning regulations. These regulations shall apply to all nonconforming uses.* The Planning Commission's approval of Alcohol Beverage Sales that allows and legitimizes a nonconforming use which had a lapsed Deemed Approved Status for at least five years is contrary to the stated intentions and purpose of the Oakland Planning Code relating to nonconforming uses. Moreover, the use of a highly unusual, and unorthodox planning theory, never before used in the history of the City, that equates *historical relevance* to a unique or extraordinary physical constraint as the fundamental basis for approving a Major Variance stands existing planning law, theory and practice as well as the Oakland Planning Code on its head. This is a clear and substantial misapplication of the Oakland Planning Code wherein approval of Major Variances are limited to unusual or extraordinary physical site constraints such as topography, irregular lot configurations, or natural obstacles such as rock outcroppings. Using a theory of *historical relevance* that appears to be based in Section 106 of the National Historic Preservation Act as a rationale to approve a Major Variance is an abuse of authority and discretion by the Planning Commission.

The Planning Commission has erred in not requiring regular design review as discussed in detail above and, consequently, the project is not consistent with the requirements of regular design review of the Oakland Planning Code.

In addition, the Planning Commission has not properly evaluated CMVM09-111 for consistency with the requirements of the Americans with Disabilities Act in relationship to the parking, ingress/egress, interior layout of the store and bathroom facilities. In fact, the administrative record shows written public comments provided by Jeffrey G. Jensen, Chair of the East Lorin Neighborhood Association, on October 7, 2009. Mr. Jensen which noted that: ... *there are no*

provisions to require disabled parking and to make sure the floor area of the store is disabled accessible and that the service counter is disabled accessible (particularly given the retention of the security windows/counter). We see the lack of disabled accessibility as a fundamental problem given the Ed Robert's Campus for the disabled that is currently being built at the Ashby Bart Station. We request that this project be required to meet the Americans with Disabilities Act and any other applicable local, state or federal laws governing disabled access. If the City does not believe the property must meet such laws, the findings for approval should discuss why

The Planning Commission also failed to require the applicants to remove the illegally installed 6-foot-high fence and to replace it with a 42-inch fence that is consistent with the existing Oakland regulations governing fences at commercial facilities, the intention of which is to minimize fortification of such sites. Consequently, the proposed development is not consistent with the City requirements governing fences.

The adopted Planning Commission finding failed to adequately address the potential nuisance activities associated with Alcohol Beverage Sales at 6400 Shattuck Avenue including increased crime and adverse public health consequences. The adopted Planning Commission finding fails to include, assess, analyze and address the over-saturation of existing Alcohol Beverage Sales within a short distance from the newly proposed Alcohol Beverage Sales. The administrative record does not support the implied conclusion of the Planning Commission that the proposed Alcohol Beverage Sales will not result in a nuisance to the community. Importantly, the adopted findings fail to recognize that within one mile of the newly proposed Alcohol Beverage Sales there are already 18 existing Alcohol Beverage Sales (off-sale, not including onsite consumption such as bars and restaurants) and fails to recognize the attendant increase in crime and adverse public health effects when there is an over-concentration of Alcohol Beverage Sales as validated by local, national and internationally peer-reviewed studies.

The cumulative effects of additional Alcohol Beverage Sales will increase crime and contribute to the existing adverse health effects of the surrounding area. This causal relationship between an over-concentration of alcohol outlets and crime and adverse health effects has been well-documented, locally, nationally and internationally in peer-reviewed studies. Many of these studies were entered into the administrative record for Planning Commission consideration by We Fight Blight, but were ignored and never analyzed in relationship to the newly proposed Alcohol Beverage Sales and the already existing 18 off-sale Alcohol Beverage Sales within one mile of the former Nic Nak Liquor Store.

Recognizing the detrimental effects of liquor outlets on the City of Oakland, the City Council has developed policies and regulations in the Oakland Planning Code to further limit and control the number of liquor stores within Oakland and has established the Deemed Approved Status for non-conforming liquor outlets with the specific intention of reducing and eliminating non-conforming liquor outlets and ensuring that new liquor outlets meet all applicable standards, including not being located within 1,000 feet of an existing liquor store. See Chapters 17.156 and 17.114 of the Oakland Planning Code for Deemed Approved Status and Nonconforming Uses respectively. This is intended to prevent over-concentration of liquor outlets due to their adverse effects on neighborhoods. The approval of newly proposed Alcohol Beverage Sales within 1,000 feet of another liquor store is inherently contrary to the elimination, amelioration

and mitigation of nuisance activities associated with conditional uses and nonconforming uses and consequently is not consistent with the Oakland Planning Code.

Section 17.102.210 (A)-Special Use Permit Criteria:

Required Finding

- 1. That the proposal will not contribute to undue proliferation of such uses in a area where additional ones would be undesirable, with consideration to the be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.**

Adopted Planning Commission Finding of October 7, 2009

Such an Alcoholic Beverage Sales Activity, managed like this one has been for decades, does not tend to provide the same types of loitering and other problems as do many other small markets with Alcoholic Beverage Sales. City crime statistics for recent months show that overall crime rates near the applicant's store are similar to commercial areas elsewhere in the City which do not have an image as crime locations, such as Rockridge, Temescal and Montclair. The neighborhood streets have sufficient capacity to support this small facility without causing undue traffic or other problems.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate and fails to accurately consider and take into account the entirety of the administrative record as it relates to the undue proliferation of Alcohol Beverage Sales. Furthermore, the Planning Commission's use of crime data comparisons is based on a faulty analysis. As previously noted, We Fight Blight has provided a detailed analysis as part of the administrative record identifying a total of 18 existing off-sales facilities within approximately one mile of the proposed Alcohol Beverage Sales at 6400 Shattuck Avenue and the problems that such Alcohol Beverage Sales have had in terms of crime and nuisance activities. In addition, We Fight Blight has provided local, national and international studies showing the causal relationship between the density of alcohol outlets and crime and public health concerns.

The adopted Planning Commission finding failed to address or consider in any meaningful way the information provided by We Fight Blight and the effects the proliferation of Alcohol Beverage Sales would have on the area's character. As noted in the administrative record, the area around the former Nic Nak Liquor Store has changed significantly over the years with ongoing reinvestment by private property owners including the development of the Nomad Cafe and other new neighborhood serving businesses along Shattuck Avenue. The Planning Commission's own adopted findings recognize that: *The building at 6400 Shattuck Avenue is existing, with a facade covered with non-historical materials which do little to enhance the surrounding commercial and residential area. The fortified appearance of the site reflects obsolete design standards which do not reflect the ongoing reinvestment of the neighborhood by private property owners.* We Fight Blight provided photographs of the 18 existing alcohol outlets within one mile of Nic Nak showing that the vast majority of these existing outlets exhibit a similar aesthetic as the former Nic Nak Liquor Store and have a cumulatively negative effect on

the area's character. Communities such as Rockridge, Temescal and Claremont do not have the proliferation of such alcohol outlets contributing to aesthetic blight and the cumulative negative effect on their area's character. The Planning Commission failed to consider the entirety of the administrative record in their findings to approve CMVM09-111.

The adopted Planning Commission finding notes that: *Such an Alcoholic Beverage Sales Activity, managed like this one has been for decades, does not tend to provide the same types of loitering and other problems as do many other small markets with Alcoholic Beverage Sales.* This conclusion of the Planning Commission is faulty in that it makes a determination regarding management of the facility over decades, without consulting or analyzing historical crime statistics or police records except for *City crime statistics for recent months* (see below). Moreover, the Alcohol Beverage Sales had ceased for at least a five-year period thereby eliminating or substantially minimizing alcohol related nuisances that could possibly be generated from the site and spilling over into the nearby neighborhood for that duration of time.

The adopted Planning Commission finding notes that: *City crime statistics for recent months show that overall crime rates near the applicant's store are similar to commercial areas elsewhere in the City which do not have an image as crime locations, such as Rockridge, Temescal and Montclair.* The adopted finding failed to identify what specific crime statistics were being compared and over what specific timeframe. The term *recent months* suggests the Planning Commission used several months of police crime statistics prior to the submittal of CMVM09-111. The use of only several data points at one juncture in time, however, does not provide a statistically valid method of comparison. Crime statistics are subject to a high degree of variability and numerous influences requiring a more sophisticated statistical analysis over a longer time frame to assess causal relationships. There is nothing in the administrative record from the Planning Staff, the Planning Commission or the applicants that analyzes the crime statistics in any meaningful way to allow for such a comparison. Moreover, the applicants had ceased selling alcohol for at least five years and were only open and selling alcohol (illegally) for several months before the City required them to cease alcohol sales and obtain a Major Conditional Use Permit and Major Variance. Thus, the use of recent crime statistics or even those within the last five years or so do not provide an appropriate comparison since the site has been substantially free of Alcohol Beverage Sales. Consequently, the adopted Planning Commission finding is faulty.

The adopted Planning Commission finding states that: *The neighborhood streets have sufficient capacity to support this small facility without causing undue traffic or other problems.* This conclusion has no evidentiary basis in the administrative record. No traffic studies, trip generation analyses or baseline information on existing traffic conditions were provided by the Oakland Planning Staff, the applicants or anyone else to adequately assess the potential traffic impacts of the proposed project. Consequently, the conclusion regarding sufficient street capacity is simply an unsubstantiated assertion.

The administrative record shows written public comments provided by Jeffrey G. Jensen, Chair of the East Lorin Neighborhood Association, on October 7, 2009 that noted: *The existing parking layout is inappropriate and will cause adverse traffic conditions that have not been properly evaluated by the City. We requested previously that the parking layout be reviewed and revised.*

Currently, on the Alcatraz entrance a stripped parking slot sits within the entrance driveway. The lack of appropriate one way ingress and egress may cause inappropriate stacking within the Shattuck and Alcatraz Avenue intersection and attempts at left hand turns that contribute to congestion and inefficient movements through the intersection. Despite these comments, the Planning Commission failed to adequately address or analyze any traffic or parking issues. Consequently, the adopted Planning Commission finding that this small facility will not cause any traffic issues is inadequate and without foundation.

Required Finding

- 2. That the proposal will not adversely affect adjacent or nearby churches, temples or synagogues; public or parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds.**

Adopted Planning Commission Finding of October 7, 2009

The facility is approximately 960 feet from a community park/former school site on Shattuck Avenue and is unlikely to adversely affect it. Likewise, houses of worship are likely too distant to experience effects. This facility design has built-in sound attenuation characteristics within the structure. Staff believes that the convenience market use will protect nearby uses from adverse effects.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inaccurate and the conclusions are without foundation. The proposed Alcohol Beverage Sales are located near several schools, parks and religious facilities including:

- (1) Shattuck United Methodist Church, 6300 Shattuck Avenue, Oakland. Approximately 316 feet;
- (2) Sankofa Academy/Bushrod Park, 581 61st Street, Oakland. Approximately 950 feet;
- (3) The Gnostic Center, 3201 Shattuck Avenue, Berkeley. Approximately 1,000 feet;
- (4) All Nations Church of Christ, 2003 Woolsey Street, Berkeley. Approximately 1,478 feet; and
- (5) Greg Brown Mini-Park, 1907 Harmon Street, Berkeley. Approximately 1,584 feet.

The Planning Commission failed to adequately analyze potential impacts to schools, parks and religious facilities. As noted in the administrative record by We Fight Blight, nuisance effects from over-concentration of alcohol outlets are not limited to the actual site of sales, but can be spread throughout the neighborhood and community. The Chair of the Shattuck Crime Prevention Council, Don Link, also provided comments that empty liquor bottles and garbage from nearby convenience facilities have historically been found on the property of the Shattuck United Methodist Church, which is approximately 316 feet from the newly proposed Alcohol Beverage Sales. However, the Planning Commission discounted and disregarded this testimony when assessing the effects to nearby houses of worship. Other appellants, living much further than 316 feet from the former Nic Nak Liquor Store provided testimony about the adverse effects they have experienced from drunken patrons of other liquor stores such as litter, vomit, urine, and feces. However, the Planning Commission also disregarded this testimony and

erroneously concluded that houses of worship were likely too distant to experience effects. There is nothing in the administrative record to actually support the Planning Commission's conclusion that there would be no effect on houses of worship. The weight of evidence and testimony actually pointed otherwise. We Fight Blight provided several local, national, and international peer reviewed studies showing the causal relationship between the density of alcohol outlets and an increase in crime and adverse public health consequences. However, the Planning Commission also ignored this information in assessing the effects on nearby schools, parks and religious facilities. Consequently, the adopted Planning Commission erred by not accurately consider the entirety of the administrative record.

Required Finding

- 3. That the proposal will not interfere with the movement of people along an important pedestrian street.**

Adopted Planning Commission Finding of October 7, 2009

The facility parking lot provides two sites of entrance, on Shattuck and Alcatraz Avenues, spaced apart, minimizes the crowd management issues of the building tenant. The building entry does not impede pedestrian corridors. Aesthetic improvements are recommended in conditions to enhance the pedestrian character of the site.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate and not supported by the administrative record. Both Alcatraz Avenue and Shattuck Avenue are important pedestrian streets and serve as major transportation corridors with significant public transportation and bus stops at the intersection. Access to 6400 Shattuck Avenue is provided by driveway from Alcatraz and Shattuck Avenues at the corners of the intersection. The administrative record provides concerns from the Chair of the East Lorin Neighborhood Association, Jeffrey G. Jensen, regarding left hand turns into the facility, lack of one way ingress/egress, lack of disabled parking, and potential inefficient stacking onto Alcatraz and Shattuck Avenues. Mr. Jensen requested a better analysis of these issues. Despite these relevant public comments and recommendations, the Planning Commission failed to require any traffic studies, any trip generation studies, parking studies or any analysis of circulation to better understand whether the use would provide for efficient ingress/egress and parking so as not to interfere with the movement of people along Shattuck and Alcatraz Avenues.

The adopted Planning Commission finding of October 7, 2009 states that: *Aesthetic improvements are recommended in conditions to enhance the pedestrian character of the site.* The finding is inadequate in and of itself because the Planning Commission failed to identify in the findings the specific conditions that are intended to enhance the pedestrian character of the site. As a result, it is difficult, if not impossible, for the public to determine and evaluate the nexus between the project effects and the imposed conditions, the proportionality of the mitigation or conditions in relationship to the project effects and whether the effectiveness of the conditions to improve the pedestrian character of the site can be reasonably measured to assess their relative success.

Required Finding

4. That the proposed development will be of an architectural and visual quality and character, which harmonizes with, or where appropriate enhances the surrounding area.

Adopted Planning Commission Finding of October 7, 2009

The 1969 building's facade is plain with unfeatured walls and windows, with little landscaping and a fenced paved lot, doing little to enhance or harmonize with the area. Retrofitting and improvement to fencing, signs and interior fortifications are necessary, and have been recommended in the Conditions of Approval.

Inadequacy of Planning Commission Finding

The adopted finding of the Planning Commission is inadequate. Fundamentally, the Planning Commission erred in failing to require the applicants to formally complete Design Review pursuant to Chapter 17.136 Design Review of the Oakland Planning Code. Section 17.136.025 specifically notes that: ... a proposal will be exempt from design review if it meets each of the provisions set forth below ... the proposal does not require a conditional use permit or variance, pursuant to Title 17 of the Oakland Planning code. The operative words are *each of the provisions*. The proposed use requires a major conditional use permit and a major variance, and therefore does not meet the requirements for an exemption from regular design review. In addition, the proposed use is not considered a small project design review. The applicant is required to meet the requirements of Section 17.136.040. While it may be the "practice" of the Planning Commission not to require existing structures to undergo design review, Chapter 17.136 Design Review does not affirmatively exempt existing structures and Section 17.136.040 provides an exemplary, not exhaustive, list of projects requiring regular design review. The Planning Commission's failure to require the applicant to undergo regular design review precluded the Planning Commission and the public from adequately addressing whether the proposed development will be of an architectural and visual quality and character that harmonizes with, or where appropriate enhances the surrounding area.

As conditioned, the approval of the Planning Commission allows the applicant to fortify the property with an excessively high wrought iron fence, retain nonconforming business signs that rise above the roofline and that are faded, retain the nonconforming billboard, and essentially leave intact a 1969 building facade with unfeatured walls and windows. This is contrary to the stated purpose of ameliorating nonconforming uses and ensuring the architectural quality of the of the site and structures enhances the surrounding area. The Planning Commission failed in its fundamental duty to ensure the attendant structures meet current design and aesthetic standards.

The adopted Planning Commission finding of October 7, 2009 states that: *Retrofitting and improvement to fencing, signs and interior fortifications are necessary, and have been recommended in the Conditions of Approval.* The adopted finding is inadequate. As noted in the administrative record, the applicants had an existing chain link fence that they replaced with a new wrought iron fence. The previous chain link fence was built prior to 2001. In 2001 the City Council adopted new fence regulations limiting the height of front yard fences to 42-inches.

There is also a requirement to limit the fence heights to 42-inches where the side yard abuts a street and/or the front yard of an adjacent property. The applicants removed the legal nonconforming chain link fence and replaced it with a wrought iron fence after the City Council passed and adopted the new regulations in 2001 to limit fence heights. This was done without the benefit of a required fence permit that allows the City to evaluate location, height and materials of the fence. A neighbor complained to the City about the new wrought iron fence location, as it was placed within the public right of way, and the City erroneously only required the fence to be relocated off the public right of way, but did not require the applicants to lower the fence to 42-inches. Because the fence was a legal nonconforming fence and had been removed and replaced and then relocated, the applicants are required to meet current City fence requirements. The changes in Oakland fence regulations regarding fence heights were specifically to prevent the fortification of commercial and residential properties. The six-foot-high wrought iron fence perpetuates a sense of fortification, exactly what the City Council was attempting to prevent, and fails to harmonize with the surrounding area by creating a harsh urban fortress.

The original August 5, 2009 Staff recommendation had a condition requiring the removal of the six-foot-high wrought iron fence and allowing it to be replaced with a 42-inch fence. This is consistent with the existing requirements and treatment for the removal, replacement and relocation of a legal nonconforming fence. However, in the adopted Planning Commission findings and conditions for approval of October 7, 2009, the Planning Commission allowed the applicants to retain the illegally placed six-foot-high wrought iron fence. Erroneously, the Planning Commission failed to articulate any rational basis rooted in existing regulations as to why such a fence is allowable, particularly given its history as a legal nonconforming use and its removal and illegal replacement by the applicants without the benefit of a fence permit. The fortification of the site with a six-foot high fence is contrary to adopted City fence regulations. The adopted Planning Commission finding is inadequate because it failed to take into account the entirety of the administrative record and failed to rationalize its decision to allow a nonconforming fence to remain in place to the detriment of the community.

Required Finding

- 5. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression.**

Adopted Planning Commission Finding of October 7, 2009

Existing signage is legal nonconforming and exceeds the minimum allowed by code. No change in signs is proposed by the applicant, except to make good faith efforts to remove the legal nonconforming billboard within the next 6 months. Staff recommends the attached Conditions of Approval to require modification of the freestanding pole sign and introduction and/or maintenance of certain signs required by state law regarding alcohol sales and consumption.

No additional parking areas would be built and the existing parking, while giving a plain appearance, provides sufficient parking spaces for this use. Either use should require retrofitting of the parking lot with a lower fence, trimmed at the corner, additional landscaping and other enhancements to remove the bleak view.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate and failed to take into account the entirety of the administrative record in reaching its conclusion. Furthermore, the required conditions failed to adequately address and ensure compliance with the required findings.

The adopted Planning Commission finding of October 7, 2009 correctly notes that: ... *existing signage is legal nonconforming and exceeds the minimum allowed by code*. However, the finding fails to specifically identify each sign and the aggregate area of the signs, and the adopted conditions failed to ensure that all nonconforming signs are removed and replaced with conforming signs or are altered to become conforming signs. Because all of the existing signs, except the billboard, are signage related directly to the lapsed deemed approved status for former Alcohol Beverage Sales, and would be used as part of the newly proposed Major Conditional Use Permit and Major Variance for Alcohol Beverage Sales, the Planning Commission must evaluate such signs for consistency with existing sign standards in the Oakland Planning Code.

As noted in photos provided for the administrative record by We Fight Blight there are currently several nonconforming signs on the property:

- (1) a pole sign (Nic Nak) that is taller than 10 feet;
- (2) a billboard;
- (3) a faded sign attached to the front of the property identifying Pepsi and Groceries and Liquors which rests above the roofline; and
- (4) a faded sign attached to the rooftop identifying liquors and Fresca.

The Planning Commission substantially erred in failing to adopt conditions that would ensure all approved signage (existing or otherwise) is consistent with the requirements of Section 17.104 of the Oakland Planning Code relating to General Limitations on Signs. The existing pole sign projects over the sidewalk. Section 17.104.020 of the Planning Code only allows signs attached perpendicularly to the face of a building to project over the sidewalk. There are no provisions for pole signs to project over the sidewalk. While the Planning Commission adopted a condition requiring the pole sign be reduced to ten feet in height, the adopted Planning Commission conditions failed to address and ensure that the pole sign does not encroach over the public right of way. However by requiring the pole sign, which is located to the front of the property near the intersection of Shattuck and Alcatraz, to be lowered to ten feet in height the Planning Commission may have inadvertently caused a line of sight problem for motorists entering the intersection. No effort was made by the Planning Commission to address this potential concern.

Section 17.104.020 also notes the maximum height of any sign that is attached to a building may not exceed the height of the building wall that it is attached to. In this case, there are two existing signs that project over the roofline higher than the wall to which they are attached. However, the adopted findings and the conditions of the Planning Commission fail to identify and ameliorate these nonconforming signs.

As noted in the administrative record, the applicant, Mr. Pannell, proposed to remove the billboard on his property at the public hearing of August 5, 2009. This was but one inducement to convince the Planning Commissioners to approve the project. However, the adopted Planning Commission Conditions state that: *The applicant has voluntarily agreed to make reasonable good faith efforts to remove the existing freestanding billboard by March 31, 2010 at his own expense, with any required permits unless time is extended by the Zoning Manager for cause up to an additional 90 (ninety) days.* As written, the condition only requires a good faith effort on behalf of the applicants. The condition fails to expressly require the removal of the nonconforming sign. This is contrary to existing public policy and the stated intent of the Oakland Planning Code to ensure nonconforming uses disappear or become fully conforming with all applicable laws and policies of the City of Oakland.

The adopted Planning Commission finding relative to parking and the adopted Planning Commission conditions to ensure that *bleak unlandscaped parking areas* are avoided are inadequate. While the parking is an existing feature of the site, the lapse of the prior Alcohol Beverage Sales Deemed Approved Status as a legal nonconforming use and the submittal of a Major Conditional Use Permit and Major Variance for newly proposed Alcohol Beverage Sales requires the Planning Commission to review and evaluate all existing facilities that would support the newly proposed Alcohol Beverage Sales as if they were new. Consequently, the parking is subject to all existing City regulations governing parking.

Written public comments provided by Jeffrey G. Jensen, Chair of the East Lorin Neighborhood Association, on October 7, 2009 noted that: *The existing parking layout is inappropriate and will cause adverse traffic conditions that have not been properly evaluated by the City. We requested previously that the parking layout be reviewed and revised. Currently, on the Alcatraz entrance a stripped parking slot sits within the entrance driveway. The lack of appropriate one way ingress and egress may cause inappropriate stacking within the Shattuck and Alcatraz Avenue intersection and attempts at left hand turns that contribute to congestion and efficient movements through the intersection. Also, there are no provisions to require disabled parking and to make sure the floor area of the store is disabled accessible and that the service counter is disabled accessible (particularly given the retention of the security windows/counter). We see the lack of disabled accessibility as a fundamental problem given the Ed Robert's Campus for the disabled that is currently being built at the Ashby Bart Station. We request that this project be required to meet the Americans with Disabilities Act and any other applicable local, state or federal laws governing disabled access. If the City does not believe the property must meet such laws, the findings for approval should discuss why.* Despite these public comments, the Planning Commission failed to analyze and assess the adequacy of the parking.

There is currently no existing landscaping within the parking lot. The adopted Planning Commission Conditions state that: *... at the corner of Shattuck and Alcatraz Avenues, to provide an **inset parallel to the side Avenue, along that portion into which the existing gates do not open,** with landscaping added outside of the **inset**....* There are no other requirements for landscaping, there is no site plan showing the location and area of landscaping and irrigation, there is no plant palette showing the types of plants to be provided, and there is no quantification or other assessment to show precisely how much landscaping will actually be provided to avoid the appearance of *bleak unlandscaped parking areas*. Furthermore, there is

no requirement for the applicants to actually maintain the meager amount of landscaping, but only to provide it.

The adopted Planning Commission finding states that: *Either use should require retrofitting of the parking lot with a lower fence, trimmed at the corner* However, the adopted Planning Commission conditions relating to the fence relocation and adjustment fail to actually require the fence to be lowered. As discussed previously, the entire chain link fence was removed and replaced illegally with a black wrought iron fence, without the benefit of a required City fence permit. The removal and replacement occurred after the adoption in 2001 of new fence requirements limiting such fences to 42-inches in height. The entire fence does not conform to existing fence regulations that are intended to prevent fortification of commercial sites. Consequently, the excessively high fence contributes to the bleak unlandscaped parking areas. The applicants have never requested a Variance from the Planning Commission for the fence as part of their new application for Alcohol Beverage Service. The Planning Commission's action to approve the fence and impose conditions that essentially legitimize its excessive height, contrary to existing Planning regulations, is an abuse of discretion and decision-making authority.

Required Finding

- 6. That adequate litter receptacles will be provided where appropriate.**

Adopted Planning Commission Finding of October 7, 2009

As conditioned, there will be non-flammable trash containers installed proximate to the entrance of the facility and litter will be removed from the sidewalk and gutter in front of and to twenty feet beyond the premises.

Inadequacy of Finding

The adopted Planning Commission finding is not consistent with the stated condition. The adopted findings state that: *... there will be non-flammable trash containers installed proximate to the entrance of the facility ...* The adopted finding states there will be more than one trash container. However, the condition only requires the applicant to maintain at least one (1) non-flammable trash can located near the entrance of the store. The adopted condition is insufficient to ensure that litter and garbage will not be deposited into nearby residential areas.

Required Finding

- 7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten PM and seven AM.**

Adopted Planning Commission Finding of October 7, 2009

The walls and windows of the dwelling are near the store building and parking lot, establishing the potential for late night sound impacts on residences. Attached conditions are provided to

ameliorate some of the noise effects, including reduced hours of evening operations and lighting controls.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate and the adopted Planning Commission conditions relating to hours of operation do not adequately preclude the generation of noise to avoid disruption of residents' sleep between the hours of ten PM and Seven AM.

The adopted Planning Commission condition of October 7, 2009 states that: *The business may be open to the public for business from 7 am to 10 pm daily. Any work outside these hours shall solely be staff preparation and not open to the public.* This adopted Planning Commission condition is vague and potentially allows for deliveries and other noise generating activities after 10 pm such as cleaning up of the site, graffiti removal, movement of product, power washing of the parking lot, painting of the building, etc. The term *staff preparation* is ill-defined and subject to an open-ended interpretation that defeats the principal purpose of the requirement to avoid disruption of residents' sleep between the hours of 10 pm and 7 am. Moreover, the finding in and of itself indicates an inadequacy in meeting the reduction of noise by stating that: *Attached conditions are provided to ameliorate some of the noise effects.* While this statement implies that some remaining noise effects will remain and will not be mitigated, the findings leave silent the magnitude of the estimated noise effects. Because the condition is ill-defined and unenforceable as it relates to *staff preparation* and will not meet the intent of the Planning requirement, the Planning Commission erred in adopting the condition.

Section 17.102.210(B)-Special Use Permit Criteria

Required Finding

C. Special Restrictions on Establishments Selling Alcoholic Beverages.

- 1. No Alcoholic Beverage Sales Commercial Activity shall be located closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Commercial Activity except;**
 - a. On-sale retail licenses located in the Central District (defined as within the boundaries of I-980 and Brush Street to the west; 27th Street to the north; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south); or**
 - b. Activity is in conjunction with a Full-Service Restaurant; or**
 - c. Establishments with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more.**

Adopted Planning Commission Finding of October 7, 2009

This proposed location is within 80 feet of a market across the street selling beer and wine. A Variance has been requested to allow this Alcoholic Beverage Sales Commercial Activity closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Activity. This is not an adverse precedent for other such uses, due to the distinctive historical association over several

decades between this facility and this neighborhood, which is not present for many other Alcoholic Beverage Sales facilities in West and North Oakland.

This store will provide for an otherwise unmet Alcoholic Beverage Sales need for a population in the immediate Oakland Community. While beer and wine can be purchased across Alcatraz Avenue, spirit liquors cannot be purchased anywhere within convenient walking distance unless restored at this location.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate as it failed to consider the entirety of the administrative record and its conclusions rely on unsubstantiated assertions that have no evidentiary basis. Moreover, the Planning Commission's use of a novel and unorthodox planning theory that uses *historical relevance* (historical association) as a basis for a Major Variance is an abuse of discretion and authority. This theory of historical relevance has never been used in the history of Oakland to justify a Major Variance and is a patent misapplication and misinterpretation of the requirements of a Major Variance.

The adopted Planning Commission finding notes that: *This proposed location is within 80 feet of a market across the street selling beer and wine. A Variance has been requested to allow this Alcoholic Beverage Sales Commercial Activity closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Activity. This is not an adverse precedent for other such uses, due to the distinctive historical association over several decades between this facility and this neighborhood, which is not present for many other Alcoholic Beverage Sales facilities in West and North Oakland.*

There is nothing in the administrative record that identifies or analyzes any other existing businesses or sites in Oakland that could qualify under this novel theory of *historical relevance*. There is no basis in the administrative record to conclude that other Alcohol Beverage Sales, or even other undesirable legal non-conforming land uses, could not fall under this unique theory. Hence, the Planning Commission's conclusion this would not set a precedent is faulty because it has no foundation or evidentiary basis whatsoever. The Planning Commission's conclusion is simply an unsubstantiated assertion. Moreover, the use of West and North Oakland as the baseline by which to assess whether a precedent may be established is inherently faulty. The Oakland Planning Code governing variances and the application of the unique and unorthodox planning theory of *historical relevance* would apply not only to West and North Oakland, but to the entire City of Oakland. Therefore, any assessment of a potential precedent must include an evaluation of businesses city-wide that currently have a Deemed Approved legal nonconforming and/or lapsed Deemed Approved legal nonconforming status. This would involve not only Alcohol Beverage Sales, but any other land uses with such Deemed Approved Status. The adopted Planning Commission finding alludes to distinctive historical associations over several decades between the former Nic Nak Liquor Store and this North Oakland neighborhood. However, the facts as noted in the administrative record are that the applicants had shut down their Alcohol Beverage Sales for at least five years, if not longer, thereby severing any historical relationships with their customer base and the neighborhood. The applicants themselves do not live in North Oakland. Rather, the applicants live in the Trestle Glen neighborhood of Oakland and they also own a vacation home in Clear Lake, California.

Testimony from supporters of the applicants at the August 5, 2009 public hearing show the vast majority of the supporters did not identify where they actually reside. Thus, the ability of the applicant's supporters to accurately testify that the applicants had any specific and unique historical and ongoing relationship with the East Lorin Neighborhood, the Halcyon Neighborhood or Beat 11x for that matter is highly suspect. This is because it is unclear whether the supporters themselves live in North Oakland and participate in North Oakland community events to the degree they can testify to the applicants' unique ongoing and historical association and participation in North Oakland leadership, social, and community functions. Nevertheless, the Planning Commission erroneously assigned the testimony of the applicant's supporters great weight in their decision.

The applicants also claimed to have a list of 300 plus signatures from supporters in the neighborhood. While the Planning Commission used the list to gauge support for the applicant, the Planning Commission never verified the authenticity of the signatures and that the supporters actually resided in North Oakland where the applicants claim to have a historical association. The administrative record shows that neither the applicants nor their supporters pointed to any specific historical or existing community organizations within North Oakland, such as houses of worship, neighborhood associations, business associations, crime prevention councils, city boards or commissions, educational institutions or youth groups for which the applicants or their former Nic Nak Liquor Store has historically participated. Moreover, there was nothing in the administrative record to distinguish such participation as being unique. Anecdotally, the Chair of the East Lorin Neighborhood Association, Jeffrey G. Jensen, noted for the administrative record that: *I have owned my home several blocks from the Nik Nak Liquor Store for the past nine years. I have been the Chair of the East Lorin Neighborhood Association for the past four years of which the Association boundary abuts the Nic Nak Liquor Store. I have been appointed by the City of Berkeley as a member of the Ashby Task Force. I have been a member of the Shattuck Crime Prevention Council for Beat 11-X for the past four years. I have been active on various community, crime, economic development, city budget and other functions. I have attended hundreds of community meetings for North Oakland and South Berkeley. During this time, I had never heard of Mr. Pannell until he re-opened his liquor store. None of the neighbors I know, with few exceptions, know Mr. Pannell. His self proclamation that he is a "pillar of the community" and that his liquor store has a distinctive historical association to the neighborhood is based on sheer fabrication and a romantic notion and has little to no foundation in the administrative record.* However, this type of testimony was ignored by the Planning Commission in reaching its decision to approve CMVM09-111.

A careful reading of the administrative record reveals there is no real evidentiary basis supporting the idea of historical association or relevance on the part of the applicants. This idea, which is totally irrelevant to the approval of a Major Variance, was used inappropriately and without any legal or historical precedent by the Planning Commission to approve a Major Variance for Alcohol Beverage Sales at 6400 Shattuck Avenue. The Planning Commission took this affirmative action even though the adopted public policy of the City is to limit and ameliorate nonconforming uses such as Alcohol Beverage Sales. This is a clear abuse of authority and discretion by the Planning Commission.

The adopted Planning Commission finding states that: *This store will provide for an otherwise unmet Alcoholic Beverage Sales need for a population in the immediate Oakland Community.*

*While beer and wine can be purchased across Alcatraz Avenue, spirit liquors cannot be purchased anywhere within convenient walking distance unless restored at this location. Again, there is no foundation in the administrative record to support this Planning Commission conclusion. First, there has been absolutely no discussion or evaluation by the Planning Commission as to what constitutes a convenient walking distance. Is one block, one mile, one census tract, one census block convenient? Secondly, there is no factual or regulatory basis for asserting that an unmet need must be assessed solely on the basis of accessibility for pedestrians. Ease of accessibility depends on many factors including, but not limited to, mode of travel, terrain and the location of other similar facilities in both North Oakland and South Berkeley. There has been a wholly inadequate evaluation by the Planning Commission of the existing alcohol outlets within a reasonable distance that are accessible by public transportation, personal auto, walking, bicycling and other conveyances. We Fight Blight has provided, as part of the administrative record, an excellent evaluation of the over-concentration of alcohol outlets within approximately one mile from the Nic Nak site at :
<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-case-for-over.html>*

We Fight Blight states that: There are a total of 18 existing off-sale liquor outlets within an approximately 1 mile radius of Nic Nak. If Nic Nak is granted a Major Variance to peddle liquor it will make 19.

We chose an approximately 1 mile geographic limitation for our assessment as it takes only 15-20 minutes to walk one mile, 5-7 minutes to bicycle one mile and 1-2 minutes to drive one mile (not counting wait times at lights). A one mile geographic boundary gives a reasonably convenient radius for all modes of travel and provides a more comprehensive assessment of over-concentration than does a much smaller census tract.

This assessment does not include the many on-sales liquor outlets such as the Starry Plough, the White Horse Bar and Inn, Valparaiso, Dorsey's Lockers and Nick's Lounge where disturbances have included everything from people being drunk in public, to drunken bar fights, shootings, stabbings and even murders (Dorsey's Lounge and Nick's Lounge). This assessment also does not include the liquor stores that have already been shut down as public nuisances.

At the public hearing of August 5, 2009, Stephen Glaudeman also presented a similar analysis (though with a different geographic focus of approximately one-half a mile) with a poster board and entered it into the administrative record. The analysis of We Fight Blight makes it abundantly clear that there are many other liquor stores that are readily accessible within a short distance that are meeting the hard liquor needs of the community. The Planning Commission erred in its decision by disregarding the entirety of the administrative record that clearly shows there is an over-concentration of liquor outlets within approximately one mile of 6400 Shattuck Avenue and that many of these liquor outlets provide all of the same products the applicants propose to sell including hard liquor. Consequently, the Planning Commission conclusion that: *spirit liquors cannot be purchased anywhere within convenient walking distance unless restored at this location* is factually incorrect and not substantiated by evidence in the administrative record.

SECTION 17.148.050(a)--VARIANCE FINDINGS:

Required Finding

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency or appearance.

Adopted Planning Commission Finding of October 7, 2009

Historical Relevance of the 6400 Shattuck Avenue property constitutes a unique physical circumstance. The facility and activity cannot be moved while retaining these historical associations, including neighborhood, social and leadership activities. Without a variance the business may be forced to close, because it is not economically viable to have a convenience market without alcohol sales in such a site where the building is setback/hidden in a commercial row and is in a small building. Preventing an economically viable product mix, including alcoholic beverages, makes this site unsuitable for the type of commercial which has occupied the site for decades. This results in an unnecessary hardship inconsistent with the purposes of zoning regulations. Rather than protecting the neighborhood, denying the variance could adversely change the historical relationships in this part of the neighborhood.

In addition, the physical aspects of the property are unique: the building is nearly the only commercial building in the adjacent blocks which is set back this much from the commercial street. The position of other buildings blocks visibility of the building, perhaps reducing its commercial viability and making it more difficult to sustain commerce on convenience sales alone; alcoholic beverage sales are needed to offset this condition of design in the existing commercial structure.

The internal physical aspects of the building are also unique: unlike other alcohol sales facilities, a customer cannot walk up to a liquor shelf and remove a bottle or can. Alcohol must be passed through protective windows at this location. Thus some potential adverse secondary effects of alcoholic beverage service are prevented by the long-existing physical aspects of the building which are different than many other West and North Oakland liquor services. The lack of history of criminal behavior associated with the site has been confirmed by consulting Police records; this unique design may contribute to the unusually low criminal history.

Inadequacy of Planning Commission Finding

The adopted Planning Commission Finding is inadequate in that is inconsistent with the adopted public policy of the City. The Planning Commission's novel use of *historical relevance* to justify a Variance, which is related to unique and extraordinary physical constraints, is a misapplication of the existing Oakland Planning Ordinance. The use of *historical relevance* to justify and approve a Major Variance is an abuse of authority and discretion by the Planning. In addition, the Planning Commission's adopted findings are based on a misreading of the administrative

record and unsubstantiated assertions related to the characterization of the physical aspects of the property being unique.

As noted in the administrative record, the applicants developed the site approximately 40 years ago. At various times, they have operated the site as the former Nic Nak Liquor Store. Selling liquor requires a license from the State Alcohol Beverage Control (ABC). Alcohol Beverage Sales also requires a Major Conditional Use Permit and a Major Variance if the proposed liquor store is within 1,000 feet of an existing liquor store.

In recognition of the significant and ongoing quality of life issues liquor stores have created in Oakland, the City Council enacted changes to the regulations governing off-sale alcohol outlets (liquor stores not bars/restaurants). The adopted public policy of the City Council relating to nonconforming Alcohol Beverage Sales is to limit and control the proliferation of such. A number of stores, including the Nic Nak Liquor Store, were granted a Deemed Approved Status as a legal non-conforming use. As an existing liquor store, Nic Nak did not meet the new Planning requirements, particularly since it is located within 1,000 feet of another liquor store, T and K Market. But because Nic Nak had been in existence prior to the new regulations, it was grandfathered as long as the applicants operated it without documented nuisance activities and did not stop the continuous sales of alcohol for 90 days or more.

A stated purpose of the Oakland Planning Code, Chapter 17.114, is to eliminate nonconforming uses by not allowing them to re-establish once they go out of business or eventually requiring them to come into conformance with the most current Planning Codes. By their nature, nonconforming uses are problematic in that they do not meet the most current zoning and planning regulations.

In 2004, the applicants voluntarily closed Nic Nak Liquors and surrendered their State ABC liquor license. On April 28, 2004, the City of Oakland notified the applicants by letter that the City regulations permit legal nonconforming alcohol uses to remain in business if they comply with the Deemed Approved program, including remaining in the alcohol sales business continuously without a lapse of 90 days in sales. They were given ten days to appeal the decision and notified that a Major Conditional Use Permit and Major Variance would be required to re-open with liquor sales. They never did.

Five years later, in December 2008, the applicants obtained a new State ABC liquor license and applied for a Zoning Clearance under the new name of Jo Jo's. The City Planner at that time erroneously issued an approval and the applicants reopened the liquor store with their new state liquor license. Several neighbors, including the Chair of the East Lorin Neighborhood Association, contacted the City and requested they investigate the re-opening of the liquor store. It was found that the City Zoning Clearance was issued in error and the applicants were told to cease liquor sales and once again apply for a Major Conditional Use Permit and Major Variance.

After evaluating the history of the liquor store and the legal requirements for a Variance, the City Planning Staff on August 5, 2009 recommended to the Planning Commission the Alcohol Beverage Sales be denied. The August 5, 2009 staff report noted that: *The proposed Variance to the 1,000 foot separation standard in a neighborhood could set a precedent for other alcohol*

sales applications in the area ... Allowing alcohol sales uses to cluster closer than the 1,000 foot radius could be detrimental to the vitality of an emerging commercial and mixed-node ... Staff recommends denial of the Major Variance and Conditional Use Permit for Alcoholic Beverage Sales. The findings required by the Oakland Planning Code are not fulfilled in this case. Granting the request would cause an adverse precedent. The liquor store lost its legal status 5 years ago and community demand has been well-served by other Alcoholic Beverage Sales locations. A neighboring market already provides beer and wine services to the immediate Shattuck neighborhood. Several other liquor stores provide services near the edge of the 1,000 foot radius from this store; and this additional venue for liquor is not necessary. The potential for adverse secondary effects, such as loitering and littering, would likely increase with another operator in the future.

The City of Oakland website that provides information to the public and potential applicants states that: *A Variance is permission to depart from the development standards, or setbacks, of the zoning district. Variances provide the discretion and flexibility to resolve difficulties or hardships that may be inappropriate where special or extraordinary circumstances occur on the property. These circumstances do not mean economic hardship; rather, they refer to topographic or physical attributes of the site that do not allow for the development standards of the Zoning District to be applied.*

The key here is that under the Oakland Planning Code the Major Variance relates to a topographic or physical attribute of the site that would not allow for the normal development standards to be applied--in this case a 1,000 foot separation from another liquor store. There is nothing in the administrative record that supports a Variance on the basis of a topographic or physical attribute of the site such as an irregular lot size or configuration, steep topography or other natural feature such as a rock outcropping.

The City Planning Commission, despite the Planning Staff recommendation for denial of Alcohol Beverage Sales and opposition by the Shattuck Crime Prevention Council, the East Lorin Neighborhood Association and several business owners, adopted findings on October 7, 2009 to approve a Major Variance using a unique planning theory that *historical relevance* is equivalent to a unique physical circumstance. The adopted Planning Commission findings state: *Historical relevance of the 6400 Shattuck Avenue property constitutes a unique physical circumstance. The facility and activity cannot be moved while retaining these historical associations, including neighborhood, social and leadership activities.* In other words, because the applicants had owned the site for 40 years and testified that they were pillars of the community they should be allowed to re-open a nonconforming liquor store that had been shuttered for five years. This is the case even though the City regulations provide that if you are closed for 90 days you lose your Deemed Approved Status as a legal nonconforming use and a stated purpose of the Oakland Planning Code is to eliminate nonconforming uses.

Essentially, the Planning Commission abused its authority by establishing a new threshold that is not currently recognized in the Oakland Planning Ordinance by equating historical relevance to unique physical circumstances. The City Planner II, David Valeska, and the Zoning Manager, Scott Miller, have both verbally acknowledged to the appellants that there has never been a single Variance in the history of the City of Oakland that has ever been approved using this unique planning theory of historical relevance. In fact, the idea of historical relevance appears to be

erroneously adopted from Section 106 of the National Historic Preservation Act wherein a structure, which may in and of itself have no redeeming historic characteristics or value, can be deemed historic due to the association of a famous person in local, state or national history to the structure. For Major Variances, the key threshold in the Oakland Planning Ordinance is a unique or extraordinary physical constraint, not a historical association of an individual to the property.

Even so, as previously noted, the fabrication of historical relevance is based on very thin and suspect testimony provided by the applicants and their supporters. The findings for approval point to distinctive and unique historical associations over several decades between this facility and this neighborhood. However, the facts as noted in the administrative record are that the applicants had shut down their Alcohol Beverage Sales for at least 5 years, if not longer, thereby severing any historical relationships with their customer base and the neighborhood. The applicants themselves do not live in North Oakland. Rather, the applicants live in the Trestle Glen neighborhood of Oakland and they also own a vacation home in Clear Lake, California. Testimony from supporters of the applicants at the August 5, 2009 public hearing show the vast majority of the supporters did not identify where they actually reside within Oakland. Thus, the ability of the applicant's supporters to accurately testify that the applicants had any specific and unique historical or ongoing relationship with the East Lorin Neighborhood, the Halcyon Neighborhood, North Oakland or Beat 11x for that matter is highly suspect. This is because it is unclear whether the supporters themselves live in North Oakland and participate in North Oakland community events to the degree they can reasonably and accurately testify to the applicants' unique and distinctive historical association with the neighborhood. The Planning Commission erroneously assigned great weight to this testimony, without determining its veracity.

A key element here in the Planning Commission's creation of *historical relevance* as a new threshold is the characterization of the historical relationships as somehow being unique or distinctive. However, there was no evidence or testimony or any description in the adopted Planning Commission findings identifying why and how the historical relationships of the applicant to the community were unique or distinctive. In fact, there are hundreds, if not thousands of other business owners in the City of Oakland who have a long history of operation and a more stellar record of community and public participation than do the applicants. While the use of *historical relevance* is a clear misapplication of existing City Planning regulations, the Planning Commission further erred in adopting its findings because it did not have any factual basis in the administrative record to distinguish the applicants' historical associations as being unique or distinctive from any other John or Jane Doe operating in the City of Oakland.

The adopted Planning Commission Findings also noted that: ... *Without a variance the business may be forced to close, resulting in unnecessary hardship inconsistent with the purpose of zoning regulations. Rather than protecting the neighborhood, denying the Variance could adversely change the historical relationships of this part of the neighborhood.*

In essence the Planning Commission adopted a finding that argues the approval of the Major Variance is necessary to avoid an economic hardship on behalf of the applicants, which is exactly what the adopted City policy says is not to be considered in approving a Major Variance. Further the Planning Commission adopted a finding that argued such hardship would be inconsistent

with the purpose of zoning regulations. In doing so, the Planning Commission substantially erred by ignoring another more fundamental purpose of the Oakland Planning Code Section 17.114.010 as it relates to nonconforming uses which is *to control, ameliorate, or terminate uses which do not conform to the zoning regulations*. In inappropriately using an economic hardship as a basis for supporting a Variance, the Planning Commission further erred in failing to substantiate whether a hardship would in fact occur and the magnitude of the hardship. There is no evidence in the administrative record affirmatively demonstrating the applicants could not profitably operate the convenience aspects of the site without alcohol sales. Furthermore, the applicants would still retain ownership of the land, which could be put to more dense and acceptable uses to the community, such as mixed-used retail/commercial, and would still have the ability to sell or transfer his ABC liquor license. Operation of Alcohol Beverage Sales was not shown to be the key supporting factor in the historical association of the former Nic Nak liquor store to the community. The applicant's alleged historical associations, although disputed herein, could be retained by operating a convenience use at the site or another approved economic use, thereby mitigating the alleged economic hardship and the alleged loss of historical relationships in the community. Meanwhile, it has already been shown that these so called historical relationships were severed by the applicants when they voluntarily and on their own accord ceased Alcohol Beverage Sales at 6400 Shattuck Avenue and surrendered their liquor license.

Another fundamental purpose of the Oakland Planning Code is to protect property values and ensure that approved uses do not cause nuisances. As noted in the administrative record, there are already 18 existing liquor outlets within one mile of the former Nic Nak Liquor Store and there is a demonstrated link between the concentration of liquor outlets and an increase in crime as noted in many local, national and international peer-reviewed studies that We Fight Blight submitted as part of the administrative record. Denial of the Major Variance would serve to protect property values and prevent nuisance activities. Nevertheless, the Planning Commission erred in not considering the entirety of the administrative record and weighing the relative purposes of the zoning code.

As required in Section 17.148.050 of the Oakland Planning Code, the finding for a Major Variance relates specifically to a unique or extraordinary physical or topographic constraints or conditions of design. The adopted Planning Commission finding states that: *... the physical aspects of the property are unique: the building is nearly the only commercial building in the adjacent blocks which is set back this much from the commercial street.*

Importantly, the administrative record shows the applicants themselves developed the site approximately 40 years ago. The applicants created the set back with parking at the front of their site. This condition, to which the Planning Commission refers as a unique physical aspect (condition of design) was created by the applicants themselves and is not at all related to a unique physical or topographic constraint. Moreover, the design and site layout are in no way unique as there are thousands of other commercial lots within the City of Oakland that exhibit the same characteristics of a building set back on the lot with parking towards the front of the lot. The applicant's lot is a standard size and shape and is located on a corner. The applicants created and implemented a site plan with off-site parking 40 years ago because it was considered to be a major competitive advantage to provide off-site parking. Even today, off-site parking at the front of a commercial lot is deemed by most business and development models to

be a competitive advantage even though urban planners may feel that it adversely affects the streetscape and the pedestrian experience. Moreover, there is nothing that precludes the applicants from demolishing the existing structure or relocating it to the edge of the sidewalk to achieve the same exact condition as nearby properties.

The adopted Planning Commission finding states that: *The position of other buildings blocks visibility of the building, perhaps reducing its commercial viability and making it more difficult to sustain commerce on convenience sales alone; alcoholic beverage sales are needed to offset this condition of design in the existing commercial structure.* As noted in the administrative record, no analysis or visual assessment has been introduced into the administrative record by anyone discussing or proving the lack of visibility at this site and its relationship to a potential reduction of sales. Nor has anyone introduced any evidence in the administrative record identifying the necessity for alcohol sales to make the site profitable. No evidence has been submitted in the administrative record showing the operational costs, carrying costs of business or real estate loans, personnel costs, insurance costs, maintenance or any other costs and/or the projected revenues for convenience sales or alcohol sales to determine the financial viability of convenience sales alone. Consequently, the finding adopted by the Planning Commission concluding that *alcoholic beverage sales are needed to offset this condition of design in the existing commercial structure* is without any evidentiary basis and is simply an unsubstantiated assertion.

As noted in the administrative record, the site at 6400 Shattuck Avenue is located on a corner of a very busy intersection, Shattuck Avenue and Alcatraz Avenue. Both Shattuck Avenue and Alcatraz Avenue are major transportation corridors that are traversed by autos, bicyclists, pedestrians, skaters, and those on public transportation. Both serve as major corridors into and out of North Oakland and to Highway 24 and 80. The site and building are clearly visible from all four corners of the intersection. The only direction the site is not clearly visible is if one is moving along Shattuck Avenue in a southerly direction from the Berkeley border towards Temescal. At approximately 65th Street, it is difficult to see the former Nic Nak structure itself because it is set back further than the adjacent residential structure just to the north. However, as you approach the intersection of Shattuck and Alcatraz it becomes visible, and in any case, the pole-mounted sign at Shattuck edge of the property announces the presence of the former Nic Nak Liquor Store to all passing motorists, pedestrians and bicyclists. The four way intersection of Shattuck and Alcatraz is controlled by stoplights requiring motorists to stop at the intersection. This gives an opportunity for pedestrians, bicyclists and motorists and passengers alike to view the former Nic Nak Liquor Store without hindrance. Nevertheless, the adopted findings of the Planning Commission never established that the alleged unique external design features of the existing structure and site layout constituted a unique or extraordinary physical constraint that precluded the applicants from locating their use 1,000 feet away from another liquor store as required by the Oakland Planning Code. Consequently, the Planning Commission abused its authority in approving the Major Variance for Alcohol Beverage Sales. The adopted Commission finding also notes that: *The internal physical aspects of the building are also unique: unlike other alcohol sales facilities, a customer cannot walk up to a liquor shelf and remove a bottle or can. Alcohol must be passed through protective windows at this location. Thus some potential adverse secondary effects of alcoholic beverage service are prevented by the long-existing physical aspects of the building which are different than many other West and North Oakland liquor services. The lack of history of criminal behavior associated with the site*

has been confirmed by consulting Police records; this unique design may contribute to the unusually low criminal history.

The correlation between lack of history of criminal behavior associated with the site and the internal physical aspects of the building, which are alleged to be unique, are without foundation. The adopted Planning Commission finding notes that: *The lack of history of criminal behavior associated with the site has been confirmed by consulting Police records.* However, as noted previously, it is entirely unclear from the administrative record what police records were consulted, for what time period they were consulted and what the actual crime statistics showed. The Planning Commission never disclosed the specific records, but alluded that they were recent. If in fact the records were recent, and the property had been shut down for five years without alcohol beverage sales, then it would be reasonable to conclude that there were no police records because the commercial activity had ceased. However, the lack of criminal history could not be ascribed to the internal physical aspects of the building because it was closed. What is unclear in the administrative record is whether the police records that were consulted by the Planning Commission also coincided with a time frame during which alcohol sales were in fact taking place. Even so, crime statistics are subject to a wide variety of influences and without appropriate statistical analysis, which the Planning Commission failed to undertake, the conclusion reached by the Planning Commission that *this unique design may contribute to the unusually low criminal history* would be inherently suspect. Nevertheless, the adopted findings of the Planning Commission never established that the alleged unique internal design features of the existing structure constituted a unique or extraordinary physical constraint that precluded the applicants from locating their use 1,000 feet away from another liquor store as required by the Oakland Planning Code. Consequently, the Planning Commission abused its authority in approving the Major Variance for Alcohol Beverage Sales.

Required Finding

- 2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicant regulation.**

Adopted Planning Commission Finding of October 7, 2009

Due to the proximity of the Berkeley city limits on 2 sides, and the proximity of surrounding residential areas, with only a thin strip of commercial zoning along Shattuck Avenue, most sites are within 1,000 feet of existing alcohol outlets, churches, schools, etc.

Likewise, the nearest commercial street to the east, Telegraph Avenue, already has several competing liquor service locations in close proximity to each other, so it is not easy for this applicant to relocate to a nearby neighborhood either. This places a burden on the owner of this 6400 Shattuck Avenue liquor license which does not exist in many other parts of the City. Requiring relocation of this facility and activity would deprive the owner of a privilege enjoyed by other similar uses, to relate to the neighborhood and customer base historically established.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of October 7, 2009 is inadequate as it does not consider the entirety of the administrative record and relies on unsubstantiated assertions to support its conclusions.

The adopted Planning Commission finding states that: *Due to the proximity of the Berkeley city limits on 2 sides, and the proximity of surrounding residential areas, with only a thin strip of commercial zoning along Shattuck Avenue, most sites are within 1,000 feet of existing alcohol outlets, churches, schools, etc.* The Planning Commission erred in not providing any maps or graphics supporting this contention. In the administrative record there is no quantification of the sites that are not within 1,000 feet of existing alcohol outlets, churches, schools, etc with the City of Oakland. Thus, the Planning Commission analysis is incomplete in failing to accurately and factually assess whether there are sufficient sites to which the applicant could relocate. Moreover, limiting the consideration of potential sites only to Shattuck Avenue is not appropriate. The neighborhood to which the applicants allege a unique historical association spans the Oakland-Berkeley border. In fact, the East Lorin Neighborhood Association reflects this unique neighborhood location. Consequently, because the Planning Commission artificially limited its analysis to Shattuck Avenue it failed to consider other viable commercial areas along Telegraph Avenue, Alcatraz Avenue, Adeline Avenue, and Ashby Avenue both within the City of Oakland and within the City of Berkeley that could potentially support legal Alcohol Beverage Sales and allow the applicant to retain the alleged historical associations with the neighborhood.

This adopted Planning Commission finding also demonstrates a fundamental and significant internal inconsistency in the adopted findings of the Planning Commission. In one section of the adopted findings, the Planning Commission concludes that there are no other liquor stores within walking distance to the Nic Nak that would provide hard liquor. Yet, in the above finding, the Planning Commission concludes that there are several competing liquor stores in close proximity. These internal inconsistencies render direct evidence that the Planning Commission's approval of Alcohol Beverage Sales is faulty.

Furthermore, there is no data, analysis or other information in the administrative record evaluating and demonstrating the applicants would suffer a hardship if they were denied the Alcohol Beverage Sales at 6400 Shattuck and would need to relocate their liquor sales. No analysis has been done to identify all existing vacant retail outlets in North Oakland and show the applicant could not reasonably relocate. Existing regulations governing Major Variances and the City website specifically note that economic hardship is not a basis for a Major Variance. Yet, the adopted Planning Commission findings conclude contrary to the stated policy and direction of the City regulations the applicant would suffer an economic hardship. The applicant has not provided any information to show that he cannot make a reasonable profit from the operation of a convenience store and has not provided any evidence that denial of the Alcohol Beverage Sales would create an undue hardship. The applicants would still retain an economic interest in his liquor license which they could sell and they would still retain ownership of 6400 Shattuck Avenue which they could operate as a convenience store, or develop as other approvable land uses, or could redevelop at a higher density with pedestrian-oriented uses supported by the North Oakland Community.

Importantly, the applicant is not being denied any privilege afforded others of a similarly zoned property. Previously, the Nic Nak Liquor Store was recognized by the City of Oakland as a legal nonconforming use with a Deemed Approved Status for alcohol beverage sales. The applicants, like any other property owner with a Deemed Approved Status, enjoyed the benefits of continued operation as defined in Chapter 17.156 of the Oakland Planning Code. The applicants voluntarily and on their own accord ceased continuous alcohol beverage sales for greater than 90 days and surrendered their ABC liquor license to the state, thereby allowing their Deemed Approve Status as a legal nonconforming use to lapse. As with any other similarly zoned property, the applicants are required to obtain a Major Conditional Use Permit and a Major Variance for Alcohol Beverage Sales because they are located within 1,000 feet of another liquor store.

On the other hand, the Oakland Planning Code does not afford an explicit privilege *to relate to the neighborhood and customer base historically established*. The ability to relate to a specific neighborhood and customer base is proscribed, limited and regulated by the police power of the City and codified in existing regulations, including those related to a Variance. By granting the application for a Major Variance and adopting the findings asserting a privilege *to relate to the neighborhood and customer base historically established*, the Planning Commission has abused its discretion and decision-making authority. In approving the Variance, the Planning Commission has granted a privilege to the applicants not afforded to other similarly zoned properties--namely the ability to operate Alcohol Beverage Sales within 1,000 feet of another liquor store based on the unorthodox and highly unusual theory that: *Historical Relevance of the 6400 Shattuck Avenue property constitutes a unique physical circumstance*. This theory has never before been used by the City of Oakland to approve a Variance and has no basis in established planning theory in the United States as it relates to Variances. Consequently and perversely, the applicants have been afforded by the Planning Commission a privilege not available to other similarly zoned properties. The Planning Commission has abused its authority in granting a privilege to the applicants.

Required Finding

- 3. The variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.**

Adopted Planning Commission Finding of October 7, 2009

Unlike some other Alcoholic Beverage Service facilities and activities in Oakland, this use at 6400 Shattuck Avenue has historically been part of the character, livability and appropriate development of the surrounding area, as testified at the public hearing by some neighbors. While other neighbors dispute this, the balance and weight of testimony is that this applicant has contributed to the neighborhood, both via this business and by other business and charitable activities, in a historically unique manner which would be lost if relocated to another area. In addition, the area of liquor product is a small part of a larger convenience market, without significant adverse crime, litter, noise or traffic effects as evidenced by many years of prior operation.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of October 7, 2009 is inadequate as it fails to take into account the entirety of the administrative record. As previously noted, the fabrication of historical relevance is based on very thin and suspect testimony provided by the applicants and their supporters. The findings for approval point to distinctive and unique historical associations over several decades between this facility and this neighborhood. However, the facts as noted in the administrative record are that the applicants had shut down their Alcohol Beverage Sales for at least five years, if not longer, thereby severing any historical relationships with their customer base and the neighborhood. The applicants themselves do not live in North Oakland. Rather, the applicants live in the Trestle Glen neighborhood of Oakland and they also own a vacation home in Clear Lake, California. Testimony from supporters of the applicants at the August 5, 2009 public hearing show the vast majority of the supporters did not identify where they actually reside within Oakland. Thus, the ability of the applicant's supporters to accurately testify that the applicants had any specific and unique historical or ongoing relationship with the East Lorin Neighborhood, the Halcyon Neighborhood, North Oakland or Beat 11x for that matter is highly suspect. This is because it is unclear whether the supporters themselves live in North Oakland and participate in North Oakland community events to the degree they can reasonably and accurately testify to the applicants' unique and distinctive historical association with the neighborhood. The Planning Commission erroneously assigned great weight to this testimony, without determining its veracity.

A key element here in the Planning Commission's creation of *historical relevance* as a new threshold is the characterization of the historical relationships as somehow being unique or distinctive. However, there was no evidence or testimony or any description in the adopted Planning Commission findings identifying why and how the historical relationships of the applicant to the community were unique or distinctive. In fact, there are hundreds, if not thousands of other business owners in the City of Oakland who have a long history of operation and a more stellar record of community and public participation than do the applicants. While the use of *historical relevance* is a clear misapplication of existing City Planning regulations, the Planning Commission further erred in adopting its findings because it did not have any factual basis in the administrative record to distinguish the applicants' historical associations as being unique or distinctive from any other John or Jane Doe operating in the City of Oakland.

The Planning Commission erred in approving the Major Variance because it failed to take into account relevant and substantive information showing the over-concentration of Alcohol Beverage Sales within approximately one mile of the 6400 Shattuck Avenue, disregarded testimony from appellants regarding personal negative experiences of the adverse effects of Alcohol Beverage Sales within the community and failed to consider local, national and internationally peer-reviewed studies demonstrating a causal link between the over-concentration of Alcohol Beverage Sales and an increase in crime and adverse public health consequences.

Furthermore, the Planning Commission failed to adequately assess the true adverse effects of the Alcohol Beverage Sales at 6400 Shattuck Avenue by only consulting recent crime statistics during which Alcohol Beverage Sales were not likely taking place, not disclosing the actual crime data, and only completing a perfunctory and statistically irrelevant analysis of the data.

Required Finding

4. That the variance will not constitute a grant of a special privilege inconsistent with the limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.

Adopted Planning Commission Finding of October 7, 2009

The store at 6400 Shattuck Avenue has a unique history regarding land use entitlements which does not grant a special privilege to this site, but which does justify special modification of land use limitations. After losing Deemed Approved legal nonconforming status due to owner illness and other reasons, in 2004 the right to sell alcohol lapsed and the California Alcoholic Beverage Control license became inactive. The applicant was re-issued his liquor license from the Department of Alcoholic Beverage Control. The applicant has applied for this Conditional Use Permit and Variance to allow Alcoholic Beverage Sales, as required by the Zoning Code. Other similarly zoned properties do not have the extensive history of previous operation that this site has, and hence a special privilege would not be evident with the granting of a Variance.

There are very few other Alcoholic Beverage Service locations in North Oakland which have the continuity over decades of use and the positive secondary effects of this use at 6400 Shattuck Avenue. Therefore, granting restoration of a facility and activity which has been active in the neighborhood for decades would not grant a special privilege inconsistent with the purpose of zoning regulations, because one purpose of zoning regulations is to preserve equity and protect neighborhood continuity.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate because it relies on unsubstantiated assertions to support its conclusion. The adopted Planning Commission finding states: *There are very few other Alcoholic Beverage Service locations in North Oakland which have the continuity over decades of use and the positive secondary effects of this use at 6400 Shattuck Avenue. Therefore, granting restoration of a facility and activity which has been active in the neighborhood for decades would not grant a special privilege inconsistent with the purpose of zoning regulations, because one purpose of zoning regulations is to preserve equity and protect neighborhood continuity.*

There is no evidence in the administrative record to support either of these Planning Commission conclusions. The Planning Commission has not conducted any survey of other liquor stores or legal nonconforming land uses or of any other Alcoholic Beverage Service locations in North Oakland to determine if they have a similar history as that which the Planning Commission has determined makes the former Nic Nak Liquor Store unique. These are simply conclusions with no foundation.

As already noted above, the Oakland Planning Code does not afford an explicit privilege to *relate to the neighborhood and customer base historically established*. The ability to relate to a specific neighborhood and customer base is proscribed, limited and regulated by the police power of the

City and codified in existing regulations, including those related to a Variance. By granting the application for a Major Variance and adopting the findings asserting a privilege *to relate to the neighborhood and customer base historically established*, the Planning Commission has abused its discretion and decision-making authority. This has essentially granted a privilege to the applicants not afforded to other similarly zoned properties--namely the ability operate within 1,000 feet of another liquor store based on the unorthodox and highly unusual theory that: *Historical Relevance of the 6400 Shattuck Avenue property constitutes a unique physical circumstance*. This theory has never before been used by the City of Oakland to approve a Variance. Consequently and perversely, the applicants have been afforded by the Planning Commission a privilege not available to other similarly zoned properties.

Required Finding

5. **That the elements of the proposal requiring the variance (e.g. elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.**

Adopted Planning Commission Finding of October 7, 2009

With changes described in the conditions of approval, the applicant's facility and activity would conform to regular design review criteria and would retain modest-scale and open site area which has marked this use for several decades, without expansion.

Inadequacy of Planning Commission Finding

As already noted above, the Planning Commission erred in failing to require the applicants to formally complete Design Review pursuant to Chapter 17.136 Design Review of the Oakland Planning Code. Section 17.136.025 specifically notes that: *... a proposal will be exempt from design review if it meets each of the provisions set forth below ... the proposal does not require a conditional use permit or variance, pursuant to Title 17 of the Oakland Planning code*. The operative words are *each of the provisions*. The proposed use requires a major conditional use permit and a major variance, and therefore does not meet the requirements for an exemption from regular design review. In addition, the proposed use is not considered a small project design review. The applicant is required to meet the requirements of Section 17.136.040. While it may be the "practice" of the Planning Commission not to require existing structures to undergo design review, Chapter 17.136 Design Review does not affirmatively exempt existing structures and Section 17.136.040 provides an exemplary, not exhaustive, list of projects requiring regular design review. The Planning Commission's failure to require the applicant to undergo regular design review precluded it from adequately addressing the proposed use as it relates to location, size, design and operating characteristics including the parking, signage, fencing and aesthetic and architectural features of the site.

9. The City Planning Commission erred in its determination pursuant to Sections 15301 and 15303 of the California Environmental Quality Act that the proposed use for liquor sales is exempt from CEQA review by failing to adequately address, discuss, and analyze the potential adverse cumulative effects of approving an additional Alcohol Beverage Sales in a geographic area (one mile from 6400

Shattuck Avenue) that is already oversaturated with 18 liquor outlets and by failing to assess the potential adverse effects of such alcohol sales on crime and public health.

10. The applicants are currently violating existing building codes and blight conditions the resolution of which are not adequately addressed in the adopted Planning Commission findings for approval. As noted in the administrative record, sometime between the August 5, 2009 public hearing and the October 7, 2009 public hearing, the applicants installed new lighting on the front of the store as well as a new electrical line extending from the service panel to the front of the store. This new electrical service is located on the south side of the building facing Alcatraz. This work was done without the benefit of a Building Permit or Planning Commission review even though the applicants were well aware of the need for City approvals. As well, there is graffiti on the rear wooden fence facing applicant's building and has been there for months. This is contrary to the City Blight Ordinance. The Planning Commission failed in its fundamental responsibilities to enforce the Oakland Planning Code and ensure such work is properly evaluated and permitted.
11. The October 7, 2009 adopted Planning Commission findings for approval fail to adequately discuss, analyze and address compliance with the Americans with Disabilities Act. Moreover, the adopted conditions fail to ensure that the Alcohol Beverage Sales in all aspects will conform to the Americans with Disabilities Act related to parking, curb cuts, entry ramps, bathroom facilities, counter heights, aisle widths, etc.

**Appeal of Planning Commission Decision to City Council
Case File No. CMVM09-111; 6400 Shattuck Avenue (APN 016-1427-024-00)**

ATTACHMENT "C" Supporting Documentation

September 24, 2009
Mr. David Valeska
Planner II
City of Oakland Planning Department

RE: Proposed Approval of a Major Variance for Nic Nak Liquors, 6400 Shattuck Avenue, North Oakland; CVM09-111

We wish to submit the following as part of the administrative record.

We bring your attention to the following articles (see links below and the attached articles, color copies for the Planning Commissioners) prepared by We Fight Blight, which is dedicated to eliminating blight in North Oakland and South Berkeley. The interest here of We Fight Blight is the link between liquor stores, blight and crime and the oversaturation of liquor stores in North Oakland and South Berkeley that have caused a significant quality of life issue for neighbors and residents.

As the Planning Commission prepares to approve a Major Variance for Nic Nak Liquors to locate within 1000 feet of another liquor store, we have to wonder whether the City of Oakland really wants to be a party to a lawsuit defending a property owner's ability to open yet another liquor store in North Oakland when: (1) North Oakland (and South Berkeley) is already over-concentrated with liquor stores; (2) it is the stated public policy of the City of Oakland to limit and control the proliferation of alcohol outlets; (3) the applicant has lost his deemed approved status as a legal nonconforming use since it has been out of operation for at least 5 years and possibly longer; (4) the basis for approval of a Major Variance uses a unique and unprecedented theory that "historical relevance constitutes a unique physical constraint" when the theory has no basis in land use law or court decisions, and will be the first time the City of Oakland has ever used the theory to approve a liquor store, let alone any land use through a Major Variance; (5) "historical relevance" is a misapplication and misinterpretation of the existing regulations governing Major Variances; and (6) the overwhelming body of peer reviewed studies the City has ignored show a clear nexus between the concentration and density of alcohol outlets and crime and public health concerns.

While Commissioners Mudge and Boxer led the charge to suggest using this idea of "historical relevance", and do not believe it will set a precedent, it will. The legal findings proposed to approve this project are wholly inadequate and would never pass muster with the courts since they fail to bridge the gap between the raw data and the conclusions. Unsubstantiated assertions are not adequate as findings and would never pass judicial scrutiny.

We invite you to read the following articles as they highlight the concerns of the East Lorin Neighborhood Association, the Shattuck Crime Prevention Council, residents, neighbors and business owners as they relate to the approval of the Nic Nak Liquor Store through a Major Variance. This matter comes back before the Planning Commission at its October Commission Meeting.

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-case-for-over.html>

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-at-what-cost-to-our.html>

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-community-in.html>

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-community-in.html>

We strongly urge you to deny CVM09-111. This project is not good for North Oakland and is not good for Oakland.

Sincerely

We Fight Blight!

Executive Director

We Fight Blight



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Create Blog | Sign In

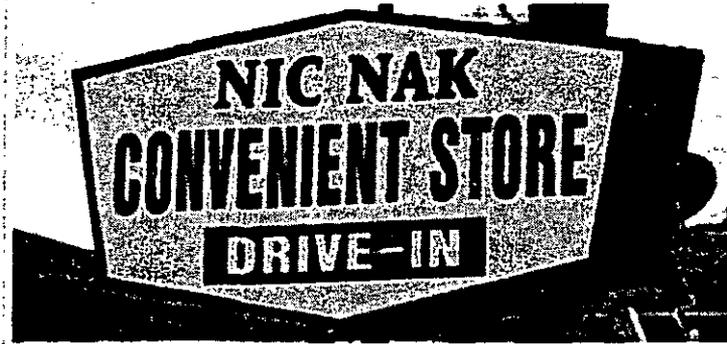
Fight Blight in South Berkeley-North Oakland

BLIGHT: The state or result of being blighted or deteriorated; dilapidation; decay; urban blight. Something that impairs growth, withers hopes and ambitions, or impedes progress and prosperity. To have a deleterious effect on; ruin. wefightblight@yahoo.com

SUNDAY, SEPTEMBER 13, 2009

Nic Nak Liquors---A Liquor Store Coming to Your Neighborhood Soon

North Oakland and South Berkeley are littered with liquor stores. The blighting effect of these car-oriented businesses is far and wide-- litter, graffiti, loitering, boom cars, drug dealing, vandalism, and even murder. Neighbors living near liquor stores in North Oakland and South Berkeley have had their quality of life greatly diminished by



liquor stores and their patrons. Neighbors have reported drunks passed out on their lawns, bottles and cans strewn about, cars broken into and rifled through for change, and fear of alcohol-fueled disputes that end in violence, sometimes even in death.

South Berkeley and North Oakland residents have fought hard to severely limit and shut down several nuisance liquor stores. The Shattuck Crime Prevention Council has worked diligently to address crime and nuisance activities that emanate from these outlets, such as Uptown Market on Shattuck Avenue. There is little doubt that liquor stores and the ubiquitous mini-markets that sell alcohol are magnets for problems. Owners and operators have little incentive or ability to police those patrons who cause significant quality of life issues in the community because they are fearful of reprisals from violent drunks and gang members. Moreover, the owners make significant money selling single serving alcohol and fortified liquors to these patrons.

Given the problematic nature of liquor stores and mini-markets that sell alcohol, why on earth would the Oakland Planning Commission bend over backwards to approve a Major Conditional Use Permit and Variance to allow another liquor store in North Oakland--particularly when the City's own Planning and Legal Staff were set to recommend



OAKLAND BLIGHT ORDINANCES

Oakland Anti-Blight Ordinance, OMC 8.24

OAKLAND ANTI-BLIGHT PROGRAMS

Oakland Blighted Properties Program

Oakland Code Enforcement

Oakland Crime Mapping

Oakland Police Abandoned Auto Detail

Public Works Call Center Program

Report a Blight Problem in Oakland

OAKLAND BLIGHT CONTACTS

Abandoned/Inoperable Autos on Private Property 510-777-8538

Abandoned/Inoperable Autos on Public Streets 510-777-8622 or 510-238-6030

Blight on Private Property 510-238-3381

Drug Houses/Drug Dealing Hotline 510-238-3784

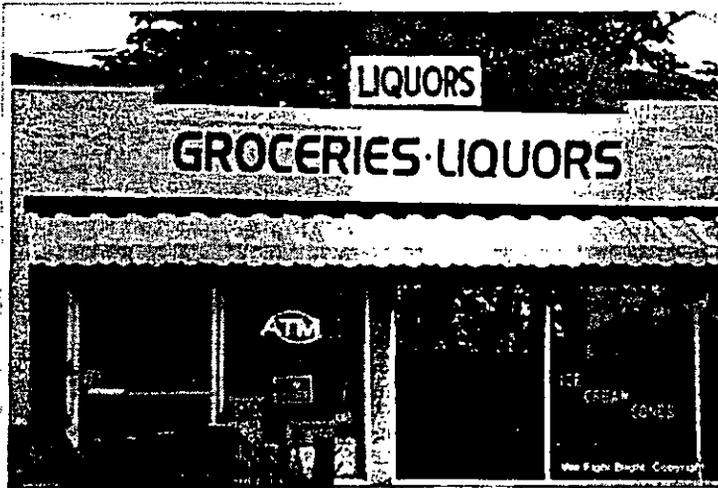
Graffiti Removal 510-615-5566

Illegal Dumping 510-434-5101

Neighborhood Law Corps 510-238-3601

denial of the alcohol sales? Why? Because of race, gentrification and an outcry to retain black-owned businesses. Nothing in the administrative record, testimony from members of the community at the public hearing, analysis by City Planning and Legal Staff or discussion by the City Planning Commission provides a legal or factual basis to support findings for a Major Conditional Use Permit and Variance to allow another liquor store.

Nic Nak Liquors, which is located at 6400 Shattuck Avenue on the corner of Shattuck and Alcatraz is owned by Ashrious Pannell Sr. He has owned the property for the last forty years and has at times operated a convenience and liquor store at that location. In 2004, Mr. Pannell of his own accord, shut down his convenience and liquor store. According to Mr. Pannell, he did so because he was ill. One fact



is incontrovertible; Mr. Pannell was completely shut down and out of the liquor business for at least five years. On April 28, 2004, the City Planning Department informed Mr. Pannell (the property owner and business operator) by letter, that because he had shut down for more than 90 days his permit for liquor sales had been revoked and he would have to renew his permit. In essence, his Deemed Approved Status as a legal nonconforming use had lapsed. During the 10-day appeal period, Mr. Pannell failed to appeal the Planning Department's revocation and during the five year period he was shut down failed to apply for a Major Conditional Use Permit and Variance to continue the liquor sales. All the while, Mr. Pannell retained his liquor license, which is governed by State regulation and the Alcohol Beverage Control. Several times he attempted to sell his liquor license, but the buyers backed out. Most likely because Mr. Pannell had lost his Deemed Approved Status as a legal nonconforming use.

In Spring of 2009, Mr. Pannell, using a different business name, JO Jo's, applied for an over the counter permit from the City of Oakland Planning Department to re-establish his liquor sales as if it were a Deemed Approved, legal nonconforming use. City Staff erroneously then issued Mr. Pannell a permit and he re-opened and began selling liquor. When residents and neighbors, including the East Lorin Neighborhood Association and the Shattuck Crime Prevention Council,

Oakland Police 510-777-3211

Parking Enforcement 510-238-3099

Shattuck Neighborhood Crime Prevention Council 510-764-2077

BERKELEY BLIGHT ORDINANCES

Abandoned/Inoperable Vehicles, BMC 12.98

Berkeley Anti-Blight Ordinance, BMC 12.92

BERKELEY BLIGHT PROGRAMS

Berkeley Housing Code Enforcement

Berkeley Neighborhood Services

Berkeley Blight/Code Enforcement

Berkeley Abandoned Vehicle Program

BERKELEY BLIGHT CONTACTS

Berkeley Police Department 510-981-5911

Councilmember Max Anderson, MAnderson@ci.berkeley.ca.us, 510-981-7130

Drug Houses/Drug Dealing 510-843-2677

Graffiti Removal Private Property 510-981-2489

Graffiti Removal Public Property 510-644-6620

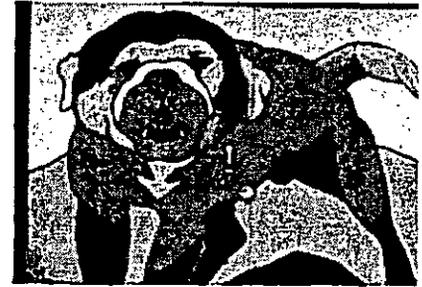
Neighborhood Services Liaison Jim Hynes, jhynes@ci.berkeley.ca.us, 510-981-2493

Public Works Customer Service-- Streets, Sidewalks, Sewers, Litter, Storm Drains, Street Lights 510-981-6620

Tree Trimming/Planting Forestry/Parks 510-981-6660

A Better Oakland

realized that Mr. Pannell was selling liquor, they contacted the City Planning Department and requested an evaluation of his permit. The City, under Zoning Administrator Scott Miller, determined the over the counter permit had been issued in error, rescinded the permit and requested that Mr. Pannell cease liquor sales and apply for a Major Conditional Use Permit and a Variance since his Deemed Approved Status had lapsed and his business is located within 1,000 feet of an existing liquor store.



What is critical here is that the approved public policy of the City Council is to limit the establishment of new liquor stores, prevent the over saturation of liquor stores in certain areas that already have an abundance of liquor outlets, and prevent liquor stores from clustering.

<http://www.abetteroakland.com>

The City states that: *The prevalence of retail liquor sales is an important public policy issue in Oakland. The City Council has determined that there is an over-concentration of off-sale liquor facilities and that there has been a great deal of documented*



nuisance and other public safety problems due to the prevalence of retail liquor outlets and the conditions under which some of these stores operate. Therefore, the Council has decided to invoke its police power to control the manner, extent, type and other operational characteristics of this type of activity through the Conditional Use Permit procedure in Planning Code Section 17.134. All commercial zones,

require that a use permit be approved prior to allowing retail liquor sales. This use permit process provides for public notification and hearing, assessment of extent and nature of liquor sales activity in relation to other retail sales and the conditions and requirements within which the sales will occur including type of liquor sold, extent of floor area devoted to liquor sales, hours of operation, security and anti-loitering provisions, etc.

The requirements of a Variance are specifically related to topography and physical constraints and are somewhat difficult to meet. This link

Blight in the News

to the City of Oakland website provides detailed information to applicants as to what findings an applicant must meet for the City to approve a Variance.

[http://www.oaklandnet.com/government/ceda/revise/planningzoning/ZoningSection/Forms/Variance%20findings%20\(07-13-04\).pdf](http://www.oaklandnet.com/government/ceda/revise/planningzoning/ZoningSection/Forms/Variance%20findings%20(07-13-04).pdf)

The City website states that: *A Variance is permission to depart from the development standards, or setbacks, of the zoning district. Variances provide the discretion and flexibility to resolve difficulties or hardships that may be inappropriate where special or extraordinary circumstances occur on the property. These circumstances do not mean economic hardship; rather, they refer to topographic or physical attributes of the site that do not allow for the development standards of the Zoning District to be applied.*

According to the City, Variances in circumstances like the Nic Nak Liquor Store are granted only when all four of the following findings can be made:

Unique Circumstance that is Specific to the Property

The strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency or appearance.

Minimizes the Differences Between Properties in the Same Zoning District

That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.

No Adverse Impacts to the Neighborhood

That the Variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties of the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.

No Special Privilege

That the Variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.

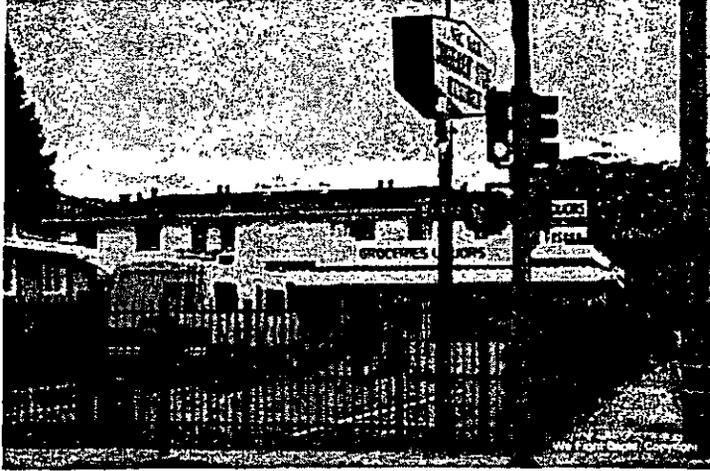
The City Planning Staff in their original staff report dated August 5, 2009, recommended denial of the liquor sales, but approval of the convenience market.

<http://www.oaklandnet.com/government/ceda/revise/planningzoning>

- Oakland and Caltrans Reach Agreement on Maintenance of Caltrans Right-of-Way
- Art Installations Fight Blight in San Francisco
- Richmond to Fight Blight
- The Right Way to Fight Blight
- Quotas Spur City Code Citations to Fight Blight in Fort Lauderdale
- Abandoned Cars Litter Oakland
- A Crack in the Broken Window Theory?
- Neighbors Try to Wipe Out Blight in South Berkeley
- Oakland's Ban on "Visual Blight" Upheld by Court
- Oakland Fights Fast Food Restaurants
- Federal Court Rejects Legal Attacks Against Oakland Blight Ordinance

[g/Commission/August-5-2009/Item4/6400shattuck1.pdf](http://www.commission.org/Commission/August-5-2009/Item4/6400shattuck1.pdf)

The staff report noted that: *The proposed Variance to the 1,000 foot separation standard in a neighborhood could set a precedent for other alcohol sales applications in the area...Allowing alcohol sales uses to cluster closer than the 1,000 foot radius could be detrimental to the vitality of an emerging commercial and mixed-node....Staff recommends denial of the Major Variance and Conditional Use Permit*



for Alcoholic Beverage Sales. The findings required by the Oakland Planning Code are not fulfilled in this case. Granting the request would cause an adverse precedent. The liquor store lost its legal status 5 years ago and community demand has been well-served by other Alcoholic Beverage Sales locations. A neighboring market already provides beer and wine services to the immediate Shattuck neighborhood. Several other liquor stores provide services near the edge of the 1,000 foot radius from this store; and this additional venue for liquor is not necessary. The potential for adverse secondary effects, such as loitering and littering, would likely increase with another operator in the future.

This appeared to an open and shut case for denial. However, the public hearing turned the tide. Mr. Pannell, who is an elderly African-American, brought a legion of supporters to the Planning Commission, almost all, with a few exceptions were African-American, including family members, his minister, members of his church, the Black Chamber of Commerce, and members of the controversial Uhuru Group. Most, but not all, of his supporters are not residents of the East Lorin Neighborhood. Those opposing his application to sell liquor were almost all white and included members of the East Lorin Neighborhood Association, the Shattuck Crime Prevention Council and other neighborhood business owners.

In introducing the matter, the City Planner, David Valeska, noted to the Planning Commissioners that they were likely to hear much testimony that was irrelevant to the issue at hand and that they needed to focus on the legal requirements for meeting a Major Conditional Use Permit and a Variance..

Blog Archive

▼ 2009 (22)

▼ September (5)

Nic Nak Liquors--A Case for Over-Concentration of ...

Nic Nak Liquors--At What Cost to Our Youth

Nic Nak Liquors--A Community in Disagreement

Nic Nak Liquors---A Liquor Store Coming to Your Ne...

Update on College Avenue Safeway

► August (2)

► July (1)

► June (1)

► May (1)

► April (3)

► March (3)

► February (1)

► January (5)

► 2008 (45)

Those opposed to another liquor store testified about the over saturation of liquor stores in North Oakland and South Berkeley



identifying approximately 19 off-sale liquor outlets within walking distance or a short drive from the proposed Nic Nak-Liquors. The Chair of the Shattuck Crime Prevention Council testified about the extensive and sustained efforts the community has taken to make Beat 11x in North Oakland safer and how detrimental another liquor store would be. The Chair of the East Lorin Neighborhood Association noted that the only issue before the Planning Commission was whether the proposed alcohol sales met the requirements of a Variance. He also noted that the neighborhood and community was changing and that additional liquor stores were not what the community wanted to see. He also pointed out that there had been a significant community effort to curtail nuisance liquor stores in North Oakland and South Berkeley.

On the other hand, Mr. Pannell and his legion of supporters did not provide any factual evidence or any supporting basis as to why his property and business should be granted a Variance from the requirements of the City Ordinances for liquor sales. What he and his supporters did testify to was Mr. Pannell's life story as a war veteran, as someone who put himself through college on the GI Bill, as an Alameda County Sheriff, as a responsible business owner, and as a "pillar of the community". He also testified that he and his family had been the single largest African-American property and business owner in North Oakland.

Then, Mr. Pannell and his entourage testified that he was a victim of City bureaucracy. That the City was somehow out to get him since they revoked his permit to sell liquor. He suggested that the opposition, which was largely white, was racist. He and his entourage testified that he was a victim of gentrification that was not only pushing out African-Americans from North Oakland, but actively working to shut down African-American businesses. He lamented at all of the convenience stores now owned by those of Middle Eastern descent and the demise of black-owned businesses. At one point, in

an attempt to discredit the City Planner assigned to the case, Mr. Pannell and his entourage even claimed that the City Planner, Mr. Valeska, had been disrespectful to him suggesting that an elderly man should not be running such a business. In an odd moment, this accusation elicited a spirited rebuttal from Mr. Valeska denying the claims and a rebuke from the Planning Commission to the Pannell supporters not to make this personal. Mr. Pannell also threatened to sue the City if he was not granted his liquor sales. When queried about the acceptability of certain conditions such as not selling fortified liquors, single servings of alcohol or high octane beer, a feisty Mr. Pannell demanded that unless all existing liquor stores in Oakland be held to the same exact conditions it would be unfair to impose them upon his upstanding business.

At one point Mr. Pannell even claimed that he never got the City's letter revoking his Deemed Approved Status, then upon further questioning claimed that he did not understand the notice. One has to wonder how Mr. Pannell, a self proclaimed "pillar of the community", a former Alameda County Sheriff's Deputy, and an educated businessman could not understand a simple notice from the City. Either he got the notice or he didn't.

In short, Mr. Pannell and his entourage painted him alternately as a "pillar of the community" and as a victim of the City bureaucracy, racism and gentrification. What is strange is that We Fight Blight, despite being very active in the North Oakland community for the past nine years, had never heard of Mr. Pannell until he re-opened his liquor store in the Spring of 2009 and has never encountered Mr. Pannell at any community functions.

Several Planning Commissioners, led by the now departed Anne E. Mudge, who is an attorney at Cox, Castle, and Nicholson with 20 years of land use law under her belt

<http://www.coxcastle.com/lawyers/bio.cfm?attorneyID=180>, correctly noted that it is the adopted public policy of the City of Oakland to limit and control liquor stores. Then in a complete turnaround that was both shocking and surprising, Commissioner Mudge posited that the findings for a Variance could be made based on the proposition that Mr. Pannell was a "pillar of the community" and the longevity of his business. What was so strange about her position was that the requirements of a Variance do not speak to the issue of a person's character or the longevity of their business. Variances within the context of land use law and the Oakland Planning Regulations are limited to unique physical or topographic circumstances or conditions of design. Commissioner Mudge, nor any of the other Commissioners, were able to provide any other basis for meeting the findings of a Variance. In a 4-1 straw vote, the Planning Commissioners sent the Planning Staff back to prepare findings and conditions for approval.

Mr. Pannell and his entourage played the community and the City Planning Commission. It is very disappointing that someone, such as

Anne E. Mudge, with such a distinguished career as a land use attorney could not make the right decision. She could not see her way through the emotion and through the irrelevant arguments advanced by Mr. Pannell, failed to do her duty as a Planning Commissioner and treat Mr. Pannell as any other applicant by denying his application for a Variance and actually led the charge to approve his application despite the significant problems of not being able to make the appropriate findings to approve a Variance.

The City Planning Staff were left with the unenviable position of trying to fashion an approval for a project they were recommending be denied. Obviously, the City Planning Staff has struggled considerably to rewrite the staff recommendation and make the appropriate findings as there is little to no factual underpinnings to support approval. What the City Planning Commission asked the City Planning Staff to do has no precedent in Oakland or in land use law to which we are aware. They are moving into significantly uncharted territory.

<http://www.oaklandnet.com/government/ceda/revised/planningzoning/Commission/September-16-09/Item1/6400shattuckreport.pdf>

The staff findings for approval states that: *Historical relevance of the 6400 Shattuck Avenue property constitutes a unique physical circumstance. The facility and activity cannot be moved while retaining these historical associations, including neighborhood, social and leadership activities. Without a variance, the business may be forced to close, resulting in unnecessary hardship inconsistent with the purpose of the zoning regulations. Rather than protecting the neighborhood, denying the variance could adversely change the historical relationships in this part of the neighborhood. In addition, the physical aspects of the property are unique: the building is nearly the only commercial building in the adjacent blocks which is set back*



this much from the commercial street. The positions of other buildings blocks visibility of the building, perhaps reducing its commercial viability and making it more difficult to sustain sufficient commerce on convenience sales alone; alcoholic beverage sales may be needed to offset this condition of design in the existing

commercial structure.

What is so laughable about this finding is that City Policy explicitly notes that: *A Variance is permission to depart from the development standards, or setbacks, of the zoning district. Variances provide the discretion and flexibility to resolve difficulties or hardships that may be inappropriate where special or extraordinary circumstances occur on the property. These circumstances do not mean economic hardship; rather, they refer to topographic or physical attributes of the site that do not allow for the development standards of the Zoning District to be applied.* What Planning Staff notes is that the business may be forced to close if it does not have liquor sales--This would be an economic hardship, not one of topography or physical attributes. The site is flat and is located at the corner of a major city intersection. Moreover, the Planning Staff's claim that the business may close if it does not have liquor sales is an unsubstantiated assertion not supported by the Administrative Record since Mr. Pannell and his supporters have not provided any financial data or *business pro-forma to prove this. Moreover, if the business failed, which is unlikely since Mr. Pannell has owned the property outright for many years and his operational and personnel costs appear to be relatively low as this is a family-owned business, this would be an economic hardship, not one of topography or physical attributes.*

The notion that historical relevance constitutes a unique physical circumstance is absurd and turns land use law on its head. The fact that some type of store has been in operation at 6400 Shattuck for some 40 years and that the property owner is a self proclaimed "pillar of the community" does not constitute a special or extraordinary circumstance related to topography or physical attributes. There are any number of nonconforming legal land uses that have existed for some time in Oakland with a proprietor that could claim to be a "pillar of the community". That denying the Variance could somehow cause historic relationships to be severed is preposterous and unsubstantiated by the Administrative Record. Mr. Pannell himself does not even live in the community, although some of his family does. He reportedly has a home in Clear Lake California and a residence in the Trestle Glen neighborhood of Oakland. The majority of his supporters are not from the East Lorin Neighborhood. His business has been shut down for five years. Since that time, a wave of new residents have moved to the East Lorin Neighborhood and to North Oakland, the majority of whom do not even know Mr. Pannell and have never even set foot into his shuttered business.

The idea that because the store is set back from the sidewalk along Shattuck is somehow a special or extraordinary circumstance related to topography or physical attributes that somehow makes this property less viable and, therefore, requires alcohol sales to make it profitable is not factually supported by the Administrative Record. Remember that this store is located at the cross-roads of Shattuck Avenue and Alcatraz Avenue. Both Shattuck and Alcatraz Avenue are major transportation corridors that bring significant traffic into and

out of North Oakland and Berkeley and to Highway 24 and 580. There are also AC Transit bus stops on three of the four corners. It is also a major pedestrian corridor for those walking to BART and a major bicycle thoroughfare. There is simply no way not to see the Nic Nak Liquor Store from this major intersection. It is highly visible from three of the four corners of this intersection. The notion that it is hidden or blocked by other structures is simply not true given the major intersection and the pole signage and the signage on the building. The setback to which the Planning Staff refers provides off-street parking. Most retailers and shop owners would view a corner lot with off-street parking as a competitive advantage, not a topographic or physical disadvantage. Moreover, the setback is not related to topography or a physical attribute of the site, but a choice by the property owner to develop his site with the setback for parking. Had Mr. Pannell chosen to do so, he could have developed the property similar to other historic building structures by pulling the building to the corner. This was a site design choice, not a result of some special or extraordinary topographic or physical constraint. The lot is of a standard depth, is flat and is located on a corner. Nothing unusual.

Remember all four of the findings must be made to approve a Variance. The Planning Staff cannot even reasonably justify the first finding for Nic Nak because there is no evidence or factual basis to support findings of approval. There is no extraordinary or unusual circumstances related to topography or the physical characteristics of the site.

According to the Urban Strategies Council, *there are 325 stores in the City of Oakland that sell liquor. With a population of 411,775 residents, that means that there is one liquor store for every 1,267 people.* North Oakland does not need more liquor stores. Oakland does not need more liquor stores. Despite the claims of some Planning Commissioners to the contrary, approval of this Major Conditional Use Permit and Variance means that it will set a precedent not only for North Oakland but the entire City.

Why does the City needlessly encourage such poor decisions that cry out for lawsuits? This case is ripe not only for appeal to the City Council, but may also be subject to litigation in the courts. The staff findings for approval are at best weak, and have no basis in the Administrative Record. You can thank former Planning Commissioner, Anne E. Mudge, for this morass. What a departing gift!

Although this matter has been highly controversial both in the community and at the hearing for denial of the liquor sales, the findings for approval of the Conditional Use Permit and Variance is scheduled as a consent calendar item for the September 16, 2009 Planning Commission Meeting. Sadly, this effectively eliminates the public's ability to weigh in on the precedent setting nature of this approval and the incredibly weak staff findings.

Posted by Fight Blight at 10:45 AM 

Labels: [Anne E. Mudge](#), [gentrification](#), [liquor](#), [race](#)

e

56 comments:

East of Alameda said...

phenomenal write up. Standing the precedents of land use on their head because of external considerations weakens the entire system of zoning regulation. This is why people are so wary of the awarding of variances and CUPs.

September 13, 2009 9:00 PM

withinONEblock said...

Well done!

I attended the meeting and was horrified at the OPEN racism toward both Caucasian and Middle Eastern people exhibited by the members of the Pannell entourage. It was quite clear their strategy was to play to "White guilt" in the hopes that all logic and LAW would be ignored - and guess what? It worked.

The mostly White Planners nodded their heads while hatred was spewed and bowed to their guilt in voting 4-1.

The TRUTH is that the neighbors DONT want this license to go through. But, with many Oakland policies, it looks as tho' *cronyism and blatant disregard for the law will once again win out.*

It will be a sad, sad day for the neighborhood, a neighborhood having worked so hard to climb out of it's difficult years, if this does pass.

My only hope is that the new members will see clearly how the law is being disrespected by even considering approving this license.

Sigh. So I guess THIS whole debacle is a prime example of why Oakland isn't the city it "should be!

September 13, 2009 11:40 PM

Anonymous said...

I grew up in this neighborhood, my mom, grandmother, an aunt and uncle remain. The term used by an "East Lorin Neighborhood Assn. member" was, "the neighborhood is changing", someone else said "a neighborhood that worked so hard to climb out of its difficulties". I know as well as anyone the challenges this neighborhood has faced with blight, violence and little to no collective resolve by the neighborhood in the past to remedy the problems. And although I agree there should not be yet another liquor store, there or anywhere for that matter, what I struggle with is the way, middle class

E caucasians have come to this neighborhood, virtually taking advantage of lower and middle class African-Americans' inability - for whatever the reason to come together and save their neighborhood, and in essence gentrified it, now stand as it's saviors. But these who know how to come together, and stand up to city government, and stand for the neighborhood, didn't come here to help those already here to do it for themselves, like "real" good neighbors, friends and caring citizens of Oakland should do for each other, making all our lives better where we live. But now come, and underneath it all, intimate the problems were because African-Americans lived here. There was no "vested interest", to help, and now the interest seems to be to keep African-Americans out of the "changed neighborhood". And that's what's caused a sad day, long before this issue with Nic-Nac Liquors.

September 14, 2009 7:53 AM

Fight Blight said...

Thank you Anonymous for your perspective. Gentrification is an economic phenomena that happens to all residents in an area, not just to African-Americans and it has the potential to affect those with lower socio-economic standing the most. The notion that caucasians are somehow deliberately targeting African-Americans in North Oakland to impose their will of gentrification upon them is unfounded. Rather, the cumulative actions of many in a free market are what largely drive gentrification. In North Oakland there is no large-scale targeted government redevelopment efforts driving these changes. They are market driven. No one is trying to keep African-Americans out. In fact, African-Americans who are long-time residents and property owners have benefited from gentrification just like any other property owner through a rise in property values. Many older residents, including African-Americans, have decided to cash in, sell their homes, and take their equity elsewhere. When their homes go up for sale, they are being purchased largely by younger families, most often white. These new residents locate in North Oakland because home prices, compared to other areas like Rockridge and North Berkeley, are reasonable and North Oakland is located near some of the best restaurants and shopping in the East Bay, has great BART access for commuting and easy connections to the freeways, not to mention many cultural and educational opportunities and Berkeley Bowl. The neighborhood institutions that are in place in North Oakland and South Berkeley to deal with crime, drug dealing, over-saturation of liquor stores, and community building are open to any and all residents with very few exceptions. Individual residents have an individual responsibility to help themselves and their community. In my humble opinion, they should not rely on someone else to do it. The they is us. All too often I hear in public meetings and community events, "they should do something...the City should

Ⓔ do something..." There is no doubt the neighborhood is changing and will continue to change even in this economic downturn. Communities and cities are not static. Oakland itself throughout it's history has seen dramatic changes in its demographics. In the case of Nic Nak liquors, it is sad that the public hearing was turned into an us against them, white versus black, newcomers versus oldtimers, when the real issue is whether the community really needs and wants another liquor store. Mr. Pannell is no victim here. He is a savvy businessman who used all manner and purpose to get something that is not beneficial to our collective community. Race and gentrification were, are, and should be irrelevant to the decision of the City to deny him a permit to sell liquor.

September 14, 2009 8:30 AM

Anonymous said...

As a 38+ year resident of this neighborhood, I am hardly a newcomer. Nor am I a well off yuppie. Rather, I have been involved in raising a couple of kids now 35+ and more recently their teen aged cousins. In the past, I have cooperated with both long term and more recent residents to get speed bumps, prevent junk food restaurants, and prevent a senior housing building which was poorly designed for the site in question. In each of these and a more recent neighborhood effort to modify a condo project, blacks and whites were involved. I am outraged at seeing the effort to control availability of alcohol cast as a race and class issue--the empty bottles on the lawn have no such ID. As to who owns which retail enterprise, I patronise those who stock what I wish to buy.

September 14, 2009 3:15 PM

Patrick said...

Then please direct your outrage at the property owner, Mr. Pannell: he is the one who cast this as a race and class issue.

September 14, 2009 7:15 PM

Anonymous said...

Nic Nak Liquors "liquor store coming to your neighborhood soon. Its always been here SO GET OVER IT!!!!THERE IS NO CHANGE IN OWNERSHIP.I can understand if they where new people but its SAME PEOPLE for 35 years. I was upset when I heard he was sick and had to close. I been living here most of my life except college and I patronize Mr. Pannell. I feel safe there. I send my kids there to that store. I rather have them go to Nic Naks than the place across the street. I watched the hearing on T.V. HE DIDNT RECEIVE THE NOTICE about the whole 90 day closing. If it was certified then it would be different but it wasnt...Dont you think if he got it he would've done something about it or let it sit there THINK logical. So you guys are going off a

technicality???pathetic.....During the hearing his daughter had around 280 signatures from supporters in the immediate area which means people who live near the store. That means there are 280 people who doesn't mind or likes going to this liquor store WHO LIVE IN THE AREA.Since Aug 5 he probably has even more supporters me included. For the people who think it is racism. It was the Truth not racism. Like this store is really going to affect the neighborhood??lets be serious. I am a White woman and I go there all the time and if you don't like going there, fine you don't have to, you can go somewhere else. The reason why i like going there the most is because prices are affordable. Whats wrong with a family attempting to make a living. If you know business my guess for the people who oppose dont, In order to maintain a small footprint business you have to sale items other than just groceries and ice cream to be stable business ok now stop and think about it.....ok moving on.. Lets say if he decided to sale just groceries and ice cream the opposers still wont go patronize him so what does that tell you.?? furthermore, you have a retired Alameda County Sheriff running the place. Wouldn't you want someone like him to run a liquor store??? Its not like he doesn't know whats going on in the streets. Mr. Pannell been patrolling the streets and fighting crime. Most of you guys look at a crime through your window and then write about it on blog and yahoo groups. If you want to really be heard instead of blogging about it or yahoo groups. Find a police officer in your area flag him down and tell him/or her that there not putting effort job patrolling our streets Other than him and other peace officer you probably don't really know whats going on the streets He seems like a very responsible man.I FULLY SUPPORT HIS STORE :)

September 15, 2009 2:17 AM

Anonymous said...

Look at his place he is NOT pushing alcohol. Do you see a signs that say 6 pack of beer 5.99...NO!!! or PATRON and VODKA sold here NO!!! In addition you have to realize this is OAKLAND, NOT Tracy, Pleasaton, San Leandro, Berkeley. It will always be Oakland In this neighborhood there is a lot of low income housing. I cant imagine this neighborhood not having zero crimes and Im being realistic you should too. If you want a home where there is ZERO crime move to a suburb or make an attempt to kick out low income families out the neighborhood. I am ok living here I like living on Alcatraz Ave. If you dont like it you can leave. If you want to lower crime push the police, to get the drug dealers off the streets. You guys watch to much T.V. drug dealers hanging out in front drinking 40.oz and Hennessy, NOT AT THIS STORE. In my years of seeing him operate his business before the closure. If I was throwing a little get together i would go some beer and some tequila to make margaritas. If you ever go inside which you probably don't you can see that he was not that much liquor when you compare

other stores that has different flavor vodkas etc. Now i got to go all the way to Alcatel to get something. For the people that act like they never DRINK Alcohol you guys are a bunch of Hippocrates. Jumping on this stupid bandwagon acting like some wannabe playing neighborhood activist I have never seen not one hang out around his business or any drug dealings around his business. I also never seen OPD(Oakland Police Department) at his place for any reason. Ask any other store the that question. I don't know the family personally but when I see them they always smile. In addition his daughter and grandson live right around the corner so there are not outsiders to this community.He wants is what is rightfully his.in closing you people are really pathetic... Trying to nip pick at every little thing, the gate, bullet proof glass and the RV etc. The RV doesn't hurt anybody and the lady said on the tape who lives directly next door all her life want the RV to remain there as well as the fence.hmmmm???Oh and the fence drive down Shattuck Ave between Alcatraz and 66th everyone has fences why he cant have one .Its not hurting you is it STOP and think.....ok moving forward. if owned that business I would want a glass up too so i can feel protected. Think of it like a concierge service where you ask what you want and the give it to you. whats wrong with that, I like it. I go there to get potatoes, orange pear apple and other fruits and vegetable for my house instead of going all the way to Berkeley bowl whats next complaining about security cameras?? Focus your energy toward something else like the repavement of the streets or other.liquor stores who do wrong with violations(Nic Nak has zero violations according to the Aug 5, hearing) Please Stop wasting his time and your time and go plant a tree or something...

I support his store..

September 15, 2009 2:18 AM

Kevin said...

As for most of us looking at crime through windows and then blogging...interesting that the individual who wrote that was anonymous. OF COURSE people look at it through windows (from behind curtains and shades!). Like yourself, they want anonymity for protection. They could be killed for interfering in established crime syndicates and their hang-outs (Liquor Stores). And flagging down cops to tell them they are not patrolling the streets sufficiently? Where have you been? There has been an OPD under-staffing issue in Oakland throughout this decade--since city council established a hiring freeze. After the freeze, large numbers of older cops retired, with insufficient numbers of new cops to fill their shoes. Now the situation has been exacerbated by the budget/economy.

The market is saturated--SATURATED with liquor stores in North Oakland. We don't need them. For the ones in existence, if we



have to live with them, we demand accountability. As for new proposed stores... "NO!" Neighbors need food and dry goods and other services--not booze. Al's Liquor on West Street was a horrific crime scene until Oakland pulled its liquor permit. Now they sell food and dry goods. No more shootings that I've heard; the neighborhood there improved. If you want to serve the community.....fewer liquor stores...more of what we need....and it ain't booze.

For those panicked that their supply will dry up, be assured: Pak N' Save is on the edge of N. Oakland on San Pablo. You will find booze at half the cost.

I'm not against alcohol consumption. I am not against any particular race. As others have noted, these stores attract crime that threatens the safety and well being of all colors.

Let's blend our colors and speak up.

September 15, 2009 9:16 AM

salmonmoose said...

This would be hilarious if it weren't so pathetic. As a former cop, Mr. Pannell should KNOW that applying the law equally to everyone is paramount to civilized society! Yet here he is, trotting out the tired old race card and demanding that he be exempt from the rules because he's a "pillar of the community"?! LMAO! If he really did give a rats ass about the community, he would know that super-saturating it with liquor stores is not the way to go. He would understand that the law applies to EVERYONE, not just the Middle Eastern and white people that he appears to dislike so much, and the law says NO NEW LIQUOR OUTLETS W//IN 1000 FEET OF EXISTING. He let his license lapse when he shut down, so now he does not pass GO, does not collect \$200. What about that is so hard to understand? Even if he never got the notice as he "claimed" (yeah right), has that excuse ever stopped the court from jacking up fees on your traffic tickets? Does the judge care? No! You are still responsible and have to pay the consequences. Mr. Pannell is an ex-cop, he should KNOW this stuff.

I drive by Uptown Market every single day and no matter what time of the day or night, what's hanging out in the parking lot? Thugs and losers. I don't want thugs and losers hanging around less than five blocks away from my home while they drink up their courage to go do some crimes.

Mr. Pannell claims to own property all over the place, has a retired sheriff's pension and clearly doesn't need the money. So I have to ask: what's his motivation? Does he just want to thumb his nose at the neighborhood and laugh all the way to the bank?



And @ the person who posted twice pretending to be two people: first, you are not fooling anyone, and you really need to get a grip on reality.... oh, and a few rudimentary English classes wouldn't hurt either, but that's another topic. Second, telling those of us who rightfully object to Mr. Pannell's ridiculous behavior that we can "leave if we don't like it"... sorry, I'm not going anywhere. I'm invested here, and as such have a definitive interest in seeing things improve in my neighborhood, not worsen. That means I am going to stand up when something is not right and I'm going to do something about it. What Mr. Pannell wants is not legal, it's not just and not defensible. So, to quote you... "Get over it".

September 15, 2009 10:53 AM

Jonathan said...

So what should with the store? If you had a license that was worth a lot of money would you give it away?

September 15, 2009 11:59 AM

salmonmoose said...

Of course he shouldn't give it away, no one is telling him to do that. But to capitalize on his investment in this manner is deplorable and contradicts the picture he's painted of himself as an "old timer" and "pillar of the community." I have no issue with people making a buck off their property but to paraphrase Oliver Wendell Holmes, their right to swing their fist ends where my nose begins. He can't be allowed to take a figurative dump on this neighborhood with his surplus liquor store and then sell it and walk away. With that, all his posturing and bleating and whining evaporates like.... well, like the fizz out of a 40-ounce. If he is the "savvy businessman" he claims to be, let him employ a little out-of-box thinking and create a new niche for his store that will be a positive influence, not a *negative one*. *THAT is what a truly good neighbor would do.*

September 15, 2009 1:35 PM

Jonathan said...

But I am asking people if they have an idea? What else can you do with an off-sale liquor license other than just letting it go and losing his money. He probably does not have money to do some big time construction renovation. I bet he is not even making 40 dollars a day on average currently ,especially if you add the monthly overhead (bills).What could be a new niche for his store that will be a positive influence on the community that can generate equal revenue as the alcohol. What can make a positive influence on the community without making his family live check to check?

Any Ideas??



September 15, 2009 2:33 PM

salmonmoose said...

He doesn't have to "let it go and lose his money." A state liquor license is not tied to a particular property or address. He could sell that to any buyer who had a properly zoned and city-permitted location to sell alcohol. Then, as I said, he could get creative and figure out some other way to make money at his location, or he could sell it and move on.

As previously mentioned, Mr. Parnell is clearly not hurting for cash. He owns multiple properties and has a county sheriff's retirement pension. Clearly, he earned that and I don't begrudge him. But lots of folks who had their 401k's implode in the last few years would be mighty grateful for that. I'm not seeing any reason to worry he'll be out on the street any time soon because he can't sell 40-ouncers to thugs.

September 15, 2009 2:49 PM

Jonathan said...

Why you would think he would want to sale such a prime property like that. You know he is not alone, he has a wife, kids and a grandson at college. Wouldn't you want to keep it in the family? Didn't he attempt to already sale the license but was turned down by the city? Should he build a retirement home or park with the of money he has left?

September 15, 2009 3:13 PM

Dr. S Rockwell said...

It seems to me that the majority of you are believing in a stereotype or idea set up by media rather than the real world. Movies and television paint a bad light on small places like this because it grabs your attention and benefits personal ratings; for these reasons I can understand where your genuine concerns and fears are generated. However, what you are failing to realize is that this is not always the case in life. As is this particular one. You are baring your "facts" on fiction resulting in negative propaganda targeting and elderly man and his family. The history surrounding this store speaks for itself with no to minimal crime surrounding. Do not misunderstand me; no one person is innocent. In that statement "NO ONE PERSON is innocent"(this includes all of us and you) crime arises from the substance abusers not the substance itself, and until the product is made illegal (which it wont be)The best thing to do would be to handle the abusers. If not they will find another place to find their substance and bring it home (the neighborhood). If you want to fix the issue of alcohol take down the large companies first. Tell Safe Way, Lucky's, and BevMo to stop selling. On that note, suppose a shopping center was built in it's place and a big name grocery store aforementioned is

built would there be nearly as many complaints? No. But the store sells liquor so why is this not unacceptable? What I think is happening is that the majority of these new neighbors that have moved in have done so with the intent to resale for a profit and really have NO (0.0000%) concern for the neighborhood itself. This would explain the lies concerning neighboring safety, and the fear. Others will offer their opinion as have I, but I will speak no longer on the topic. Just keep in mind that this whole discussion board/ thread is nothing more than opinion.

End Result:

1. Stop hiding your true agenda behind local shops regardless of the kind.
2. If you want to stop crime in neighborhoods then stop the ILLEGAL circumstances that define CRIME.
3. If you do not like the neighborhood, you probably should not have moved there to begin with, so move out.
4. Take the time to learn the truth of the history of where you live instead of an ideal set on by other circumstances.
5. Stop using RACE as your excuse for a loss in court and accept that you were wrong. (it only reveals YOUR OWN true hidden racism)
6. BE HAPPY! You live in a neighborhood with liquor store owners who have reportedly kept crime out of the neighborhood for 35 years.
7. Stop complaining and reexamine yourself before bashing others, and keep in mind that these owners are most likely more a part of this neighborhood than yourself.

Peace and love from a non drinker/ non smoker/ non violence etc. gentleman.

September 15, 2009 3:34 PM

Vicky B said...

Thugs do not drink 40oz.(stereotype) That was so 1990 lol. Where you get your info from the media? Thugs rather get high and use swishers and blunt wraps rather than 40oz beer.

September 15, 2009 3:45 PM

Anonymous said...

My neighbor has repeatedly stated that our corner was filled with prostitutes and drug dealers when she moved into the neighborhood.

I wonder if part of the reason they are gone is due to the NikNak being closed for the last 5 years?

Maybe? or more likely the neighborhood is changing for the better? Maybe the people (of all races and lifestyles)



moving/buying into this neighborhood see it as a place they'd like to stay for a while, precisely because it is a great neighborhood.

Regardless of what happens at this meeting, the neighbors (old and new) not wanting negative influences easily accessible will prevail. It will only be a matter of time.

September 15, 2009 5:45 PM

Ryan said...

prostitutes? I lived here for 17 years and I have not seen one Prostitute. Come on, Stop the he say, she say, my neighbor say lies. I seen d boys(drug dealers) in front of the wash house but never a Prostitute haha. stop lying.

September 15, 2009 6:58 PM

salmonmoose said...

@ Vicky B

Where do I get my information? Honey, I don't watch TV. My dirt comes straight from the empty Colt 45, Schlitz and Evil Eye I am always picking up out of my bushes and front lawn after the pigs toss them out their car windows. Just cuz they have the rest of the stuff you call out doesn't mean they don't need something to wash it all down with.

September 15, 2009 8:48 PM

Fight Blight said...

Mr. Pannell would retain his liquor license even if he loses the permit to operate at the site. The liquor license is controlled by the State of California Alcohol Beverage Control. The location and manner in which he can sell is governed largely by the local government through its land use authority. Mr. Pannell would have several options if the City denied the Major Conditional Use Permit and Variance to sell alcohol: (1) he could sell the liquor license to another party who would then have to locate an acceptable site consistent with the zoning requirements (2) Mr. Pannell could take his liquor license and relocate to another location consistent with zoning regulations and operate the convenience store at the 6400 Shattuck site; (3) He could give up his liquor license and redevelop his outdated site with a higher density, pedestrian friendly building and seek another type of tenant, possibly creating housing on the top two or three floors (in this market such a development may not be feasible). Importantly, the value is largely in the liquor license, but you need an acceptable location to put it into play. Mr. Pannell has attempted to sell his liquor license several times only to have the potential buyer back out. We suspect it is related to the lapse of his Deemed Approved Status at 6400 Shattuck for a nonconforming use and the fact that the buyers

B did not have an acceptable alternative location from which to sell liquor. Mr. Pannell's claims that he is a responsible business owner and that he will keep the license in the family rings hollow by his past actions to sell the license. Once he gets approval at the site, we suspect he will sell the license and the site to a new owner and walk away with the cash. The Community then ends up with a huge unknown in terms of who owns and operates the site as a liquor store. It is better not to have liquor store there to begin with.

September 15, 2009 10:15 PM

Fight Blight said...

Liquor stores in North Oakland and South Berkeley attract well-documented problems. Black and White Liquors in South Berkeley on Adeline has been the subject of numerous nuisance complaints and the City of Berkeley imposed very strict conditions on its continued operation. They are lucky to still be in business. The mini-mart on the corner of MLK and Ashby across from the BART Station was shut down as a public nuisance by the City of Berkeley. It returned as a mini-mart only on the condition of no alcohol sales. Stanford Liquors on the corner of Stanford and Adeline has been well-documented as a hang out for gang members. The area in front of and down the street just south of T and K Market on Shattuck Avenue across from Nic Nak is a known drug dealer hangout with the attendant loitering. Uptown Market down the street on Shattuck Avenue has been a plague to the Community for years and years--including a major, illegal, gangster rap promotion of hard liquor right out of the parking lot that required significant police response to quell the disturbance. Dorsey's Locker, while not a liquor store, has been a magnet for gang members, loitering, public drunkenness, gun play, and shootings. East Bay Liquors on the corner of MLK and 54th has had multiple shootings, and a murder, not to mention the various habitual loiterers and drug dealers. The liquor store on the corner of 59th and Telegraph has had drive-by shootings, loitering from gangsters housed at the Oakland Housing Authority complex down the street, and boom cars parked in the neighborhood. These are well-documented problems by the Oakland and Berkeley Police, the Shattuck Crime Prevention Council, the Berkeley Alcohol Policy Advisory Coalition (BAPAC), numerous homeowner and neighborhood associations as well as frustrated citizens tired of the problems these land uses cause. People of all color, all ages, all socio-economic backgrounds, newcomers as well as old-timers have participated to identify and remedy these problem liquor outlets. These are not made up and they are not fiction inspired by too much TV. They are the day to day reality of North Oakland and South Berkeley. That is why many of us are not interested in another liquor store.

We got word late today that Mr. Pannell has requested that the

e City of Oakland delay the vote to approve his project via a Consent Calendar item. We suspect Mr. Pannell is unwilling to live up to the conditions imposed by the City in its approval. The matter, at the request of the Mr. Pannell, has been continued to the October 7th Planning Commission Meeting.

September 15, 2009 10:23 PM

Mike said...

"we suspect he will sell the license and the site to a new owner and walk away with the cash."

Are you serious. Like I said you need to cut it out with the Lying,, its getting on my nerves. You suspect this, you suspect that.WTF!! He said hes going to keep the license and if he closes he will never sale again cant you trust the man. You think hes out to get you or something ?

September 15, 2009 11:10 PM

Anonymous said...

Maybe he should make it a store that sales marijuana?

September 16, 2009 12:05 AM

Fight Blight said...

This post has been removed by the author.

September 16, 2009 7:32 AM

Fight Blight said...

We have noticed on multiple posts the repeated use of the word sale or sales when the proper term is sell or sells. Those using the incorrect term might take note.

Mike if Mr. Pannell wants to put his money where his mouth is he can propose to the City of Oakland and accept a condition that he will never sell the property and it will forever remain in the hands of his heirs. This can be enforced with a condition that requires him to restrict the sale by covenant that is recorded with the County Recorder and runs with the land forever and ever. Mr. Pannell is elderly. He won't be in a position to own or operate the store forever. The Community cannot rely on his word that he will never sell the property or the license or even lease out the store with the license to a different operator. Moreover, if he transfers the property to his heirs at some future date, there is no guarantee that those heirs will be good neighbors. His claims that the property and the liquor sales will forever be properly managed because he is an upstanding ex Sheriff ring hollow. The only way to guarantee that this property and use as a liquor store do not become a nuisance is to deny the Major Conditional Use Permit and Variance. If the City is inclined to approved the Permit and

Variance, then the only way to legally guarantee that when it becomes a nuisance it can be managed and controlled is to impose robust conditions on its operation. Conditions, some of which, that Mr. Pannell expressly refused to agree to at the Public Hearing. The Community cannot rely on Mr. Pannell's word. That's not how land use approvals work. His word is not legally binding. Even so, he refuses to accept reasonable conditions on the use of his property. A Conditional Use Permit is just that--a permit with conditions because it involves a land use with the potential to create problems.

As for the site's use as marijuana sales, we already have an approved cannabis buyers club just over the border at the corner of Shattuck and Essex. There is also a cannabis buyer's club on San Pablo and several more in downtown Oakland. There is also an informal buyers club on the corner of Shattuck and Alcatraz across the street near T and K market--drug dealers have set up shop. Not likely the community would support more marijuana sales.

September 16, 2009 7:36 AM

Anonymous said...

Ok so there is no POSSIBLE way he can make equal revenue like the alcohol sales. So he has to lose money and family be broke while we all still have our jobs. We know hes old but we know his daughter who is a Deputy Probation Officer for 26 years and here son is going to take over.He has a family people But like Jonathan said does anyone have ideas????..Guess Not. See I am not a business person I don't know business neither people on this blog. Everybody on here acting is like they have entrepreneur skills. I work for someone, probably everyone on here does as well. If these people writing about him knew about going into retail business they might understand. Its hard to be your own boss. I ask the people who has a family owned business. Do you deal with people like us too?

September 16, 2009 10:57 AM

Ryan said...

See Fight Blight, your talking about stores that have crime but THIS STORE DOES NOT HAVE ANY CRIME TO DATE. If the business is ran right which it is your not going to have that type of problems. You cant forecast crime. Why do the sub woofers of the car bother you. You don't live next door to nic nak. The lady he lives directly who lives directly next door wanted the store to open so what does this tell you? Like I said everyone who lives in the immediate are for it. (1 house down, two houses down, three houses down etc.) Dont you think they are the ones who are going to be effected the most. You don't live in the immediate area so your not effected if you live 2 to 3 blocks away its not hurting you. What are you going to say next

the people who live next door to him doesn't know any better?
and why do you have to make lies to get people on your side..

September 16, 2009 11:19 AM

GoodNeighbor said...

Sorry, Ryan, but I completely disagree and it is VERY clear that you don't live in the neighborhood.

I have cleaned the blood of Black men off the sidewalk in front of my property when there was a dispute, fueled by alcohol. I have called the police many times to report crimes that I witnessed including breaking and entering, battery, drug dealing, and prostitution. I daily remove liquor bottles from my yard, and I DO worry for the young black men in the neighborhood who are obviously without employment.

I've also spoken with many (+50) neighbors within ONE block who are furious that this family has turned their back on us. The problem is that Black folks living in the area are afraid to speak up against this family. (Why? I don't care to speculate as I don't know them.)

The Pannells only want to make money, and DO NOT care about the neighborhood. If they did, they'd be willing to put restrictions on this license including things like future ownership (it should remain +50% Black, IMHO) employment FOR Black men living nearby, and restrictions on the size of liquor bottles sold and the hours liquor is available.

None of these restrictions would decrease the profitability of the location, btw.

This situation is clearly a case where the physical safety of many is being sacrificed for the financial success of one (family).

September 16, 2009 2:03 PM

Mike said...

I guess the neighborhood would be happy if he is broke and can not provide for his family in order to make a few neighbor satisfied. This has been a long standing business with no problems to report such as loitering, disturbing the peace, battery, drug dealing, prostitution and etc
It should be noted that Mr. Pannell has received 300 plus signatures from the neighbors in the immediate area. Not from Raymond, Tremont, Whitney, Claremont, or South Berkeley. Many of the signatures reside on Shattuck and Alcatraz.

September 16, 2009 5:42 PM

Anonymous said...

I seen a Ferrari on his lot and I think his wife drive a brand new Bentley. THE PANNELLS ONLY WANTS TO MAKE MONEY AND NOTHING ELSE... They shouldn't be making money.

September 16, 2009 6:31 PM

GoodNeighbor said...

Mike;

It is NOT a long standing business, as it has been closed for 5 years.

The average retail consumer has a 'memory' of 2 years, which means, business wise, it has been dead for 3 years. It will take a year, minimally, to build back the lost business, if the demographics of the area hadn't changed so dramatically in the last 5 years.

But, as his business stands, it will fail because he has failed to move with the times. It is basic Darwinian theory, evolve or die. The problem is that Mr. Pannell refuses to evolve.

If he were willing to bend a bit, there would be developers lining up to help him make a fortune. The location should be a mixed use property with retail on the bottom, housing on the top. Based on my knowledge of rents in the area, it would be bringing in, minimally \$10K/mo in income and having equity in excess of \$1.5M.

But don't feel sorry for Mr. Pannell as he is far from broke being a long time real estate owner (having multiple properties), a great pension, and an obviously educated and successful family.

As I stated before:

This situation is clearly a case where the physical safety of many is being sacrificed for the financial success of one (family).

September 16, 2009 6:32 PM

Mike said...

How do you know if he has a Great Pension(retired in the 70's) and he makes good money Good Neighbor. Your acting like you his banker and his family has PHD's.You don't know what the mans funds are. You don't know what the hell is situation. Maybe he had to reopen so he can pay for a dying Family member hospital bill.You dont know this family personal life. you don't know why Stop playing a guessings game about whats he has, what he is going to do,and why is he doing this?

"If he were willing to bend a bit, there would be developers

lining up to help him make a fortune. The location should be a mixed use property with retail on the bottom, housing on the top. Based on my knowledge of rents in the area, it would be bringing in, minimally \$10K/mo in income and having equity in excess of \$1.5M."

One way or another developers still need money. Where would he get the money to build something like that and if he had the money he would probably put affordable housing there for people who need a home. Instead of some high rise lavish condo where only a few can afford to live in. In addition once it was built he would probably have to deal with the same neighbors complaining; oh its too big, i don't like the windows, I don't like the colors of the wall when I pass buy and so on. They put a el pollo loco there and i like Chipotle. To many people are hanging out in the restaurant, Complaints complaints and complaints Like I said, I dont think he is a sell out if you say his family is so educated. If it was me I would want to keep it.

September 16, 2009 7:00 PM

Consuelo said...

I was opposing this place for a while, however after reading this blog I changed my mind. I also watched the hearing on channel 10 KTOP and I know whats going on. I am bothered by the lies the opposing side is generating. At first I was on the liquor store hating band wagon. I am ok that it its there now. You keep saying it was closed for 5 years however, they have 35 years of running this business under there belt, the opposing side didn't tell me that. They also didn't tell me about the 0 violation of the license and the excellent police record. Really I am so upset with these false accusations and lies. Why you must do that just to get people on your side? I am sorry but I cant participate in the opposition side no longer.

September 16, 2009 7:32 PM

Jonathan said...

I have some ideas.

1. Bookstore = positive except No money there. His Family would be broke in that idea. "Sorry kids I cant afford to send you to Howard University in Washington D.C. which cost 30k a year to attend but I own a bookstore and its positive for the community so you can sit here and get your university education by reading books at the store. im sorry I make hardly ends meat selling books."
2. Restaurant with a bar = wait.. no alcohol right, gosh darnit.
3. Coffee Shop = over saturation of coffee shops people are going to complain about that too lol 40oz coffees cups.
4. Day care = come on lets be realistic. who is going to want to

drop there kids off at that intersection.

5. Marijuana = People are going to complain again about the over saturation (I guess there is a over saturation of everything since it is on a very busy street)

6. fast food = people are going to complain about how its not healthy

7. Aquarium shop = Going for broke

8. Smoke shop = People complain about that bringing in the wrong element.

9. Pet shop = there is a huge pet shop up the street scratch that idea

10. BBQ shop = Oh wait Its going to bring in the wrong people too right...

Nothing that will maintain his revenue basically.

I feel even if he was to put something different up you still wont go and patronize him.... why????? you tell me..

Any more Ideas? where he doesn't have to a big renovation on the property and spend a lot of money doing it?

September 16, 2009 8:17 PM

Anonymous said...

I guess nobody has an explanation for Dr S Rockell's comment. So it must be TRUE....

September 16, 2009 8:57 PM

Anonymous said...

Dr. S. Rockwell's comment was apparently such utter nonsense it didn't warrant a response.

So very sad to see so many people here so far off topic, not getting it, or just plain "out there." It's as if they are going out of their way to be obtuse.

You typically see "justice" embodied as a blindfolded woman with the scales in one hand and a sword in the other. The bottom line is just as FightBlight said: There is no legal justification to give this person a liquor license. It doesn't matter who he is, what he is, or what history he has. Things have changed in the five years since he was last open for business and unfortunately he didn't keep up. Now he expects a free pass? Nuh-uh. Moving on.

September 16, 2009 10:39 PM

Anonymous said...

He is not asking for a free pass. When he first reopened in April the gave him authorization to sell liquor. He was selling it for 2 months with no problem. Then people started to complain to the city. Then the city told him that they made a mistake by

E giving him permission to sell. It's not his fault the city are the ones that made the mistake to begin with. So mr. Pannell stocked his store cause city said it was ok 2 months passed. Oh wait we the city of Oakland made a mistake oops. That's a big mistake to make. The city is saying it was a mistake instead people complained about the place re opening.

September 16, 2009 11:27 PM

Anonymous said...

It's like you won a 5 million jackpot. You have it For 2 months you buy a fancy cars, and large luxurious house on the hill. Then California lottery people say oh we made an error, we need your 5 million dollars back. So what are you going to do fight for your 5 million you rightfully won or give it back? are you going to give back the house, car and the money? wouldn't

September 16, 2009 11:45 PM

Anonymous said...

If you were in mr Pannell shoes would you do the same thing? Be honest.

September 16, 2009 11:54 PM

Fight Blight said...

When Mr. Pannell submitted his request to the City to open his liquor store after he was notified about the lapse in his Deemed Approved Status, he submitted it under the name of Jo Jo's rather than Nic Nak.

Now why would he do that?

To this day, the sign at the front of the property notes Nic Nak. The only reason he did this is that he wanted the City Planning Department to think this was a totally different business, one that had not had its Deemed Approved Status revoked. Subterfuge.

I invite Mr. Pannell to clear this up and to tell the community why he submitted a permit under a different name and why he operates under the name of Nic Nak rather than Jo Jo's when he applied for a permit under Jo Jo's. Can he please come forward and tell us whether he is doing business as Nic Nak or Jo Jo's? If he is doing business as Jo Jo's has he filed a fictitious business name and is he paying local, state and federal taxes under the name of Jo Jo's? Please step forward and speak to the community.

The fact that the City made a mistake does not mean that Mr. Pannell reaps the reward. That is like saying that if the Bank mistakenly deposited a million dollars in your account you are

entitled to the million dollars. If you take the million dollars and spend it you are guilty of theft. The money is not yours. Mr. Pannell is in effect stealing from the community since he misrepresented his business name.

Not only did Mr. Pannell misrepresent his project to the City, he expected to profit from it. What does that say about his intentions?

So Mr. Pannell, do you wish to step and tell the Community what your are your intentions?

September 17, 2009 12:33 AM

Mike said...

The city of Oakland knew what it was previously according to the hearing. Its on file. The previous planner knew the original name and why he changed it. A person cant change the name of his business without others thinking he is up to something. Why wont you go to nic nak park on the lot and talk to him. He will be happy to talk to and explain why he simply wanted to change the name to his grandsons nick name "jojo's" . You invite him to talk to the community??? Why wont the community come to him, instead of being scared to approach the man.

September 17, 2009 1:17 AM

Ryan said...

Good Neighbor you said.

"The problem is that Black folks living in the area are afraid to speak up against this family." You cant be serious. Wait I remember, he is drug lord kingpin right? No no no, his family is in the black mafia and everyone who talks bad about him he takes them out? No wait, maybe he just pumps fear into every black person hearts in the everywhere. Or maybe Black folks know bullshit when they see it. Your acting like he is Frank Lucas. They know its been there for a long time they go to the store to buy items from him, they patronize him.

To the person who said that they own a Bentley and Ferrari do us a favor and throw your computer out the window. You are an idiot. He shouldn't make money? Sad how far people are willing to go to make the family look bad. Whats next they own a private G4 jet and they have a private island in the Caribbean, and if he did so what!

You think he is evil cause he is making money. Stop hating on the damn family and be about yours. Anyone stopping you from making your money to feed your family, and if they did would you just run away or fight? What now, your going to be satisfied when his family moves into a cardboard box and all ride bicycles. Maybe he should turn in whatever he has and buy a

ugly Toyota Prius, that a positive investment right. Will you then shut up about his lifestyle, YOU DONT KNOW THE MAN PERSONALLY, so shut up about his bank account, pension, how many cars and property he owns. Mr. Pannell is not worried about your personal lifestyle so stop worrying about his!

Since we all want to pretend we are business professionals or work for the city planning department
Like the anonymous person said

"If you were in Mr.Pannell shoes would you do the same thing?
Be honest."
What would you do if it was you?

September 17, 2009 2:27 AM

Fight Blight said...

Mike when referring to the fact that Mr. Pannell applied for a permit under the name of Jo Jo's rather than Nic Nak we are talking about this past Spring when the City erroneously issued him an over the counter permit. The Planner at that time was mislead. It was only after residents brought this error to the attention of the City did they realize Jo Jo's was Nic Nak. You are right that a business owner has every right to change their business name. We are just wondering why Mr. Pannell changed the business name for purposes of his initial pplication, then never changed his sign or provided any other indicators that he is now operating as Jo Jo's.

Normally, it is an applicant with a development or land use proposal that does outreach to the community not the other way around. The applicant, such as Mr. Pannell, is asking for permission to do something that could affect the community. It becomes his obligation, and frankly it is in his own best interest, to reach out to the community. We invite him to do so.

Ryan, please do not personalize your comments by calling people idiots. If you disagree with their position then argue against their position, but do not call them names or your posts will be summarily deleted. That goes for anyone else. We are not trying to suppress opposition, we are just asking you to be civil and dignified. If you believe someone is misrepresenting the facts, please by all means correct the record and support your position, but do not personalize this disagreement.

According to the Oakland land use law governing Major Variances, Mr. Pannell's financial status and/or economic hardship resulting from the denial of a Major Variance is irrelevant. Please stop posting about Mr. Pannell and his financial situation. Unless you are his accountant, you have little factual basis to support your claims as to the financial effect on Mr. Pannell.

B would like to have a store like Nic Nak with an owner like Mr. Pannell in East Oakland. Then on the other hand you say you have never seen anything like this at Nic Nak, which is located in North Oakland. You also imply that you attended the public hearing. If you live in East Oakland, how on earth do you have enough day to day experience observing the Nic Nak liquors, particularly since it has been closed for the better part of 5 years? Do you work in North Oakland nearby of stay with family here? Just asking because your post seems to raise some questions. How can you speak for neighbors or have more knowledge of the local situation than neighbors who have lived in the neighborhood for ten or more years and have witnessed the problems on a day to day basis?

September 18, 2009 1:57 PM

Fight Blight said...

We appreciate everyone's interest and comments. The comments are getting too long. Please move any new comments to the new post:

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-community-in.html>

Thank you!

September 18, 2009 2:04 PM

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dealers and the thugs hanging out outside... I live in East Oakland where we do have liquor stores on just about every corner and gangsters just hanging out outside and shooting happening just about every week but just like Daniel from East Oakland said I would love to have stores like this in my neighborhood!... Most of the time I don't even like going into a liquor store where there are people just hanging out because all they do is bother you trying to get your number and just harass you... I have never seen anything like this happen at Nic Nak. You can't just assume that because crime happened at most liquor stores it's going to happen at Nic Nak. Nic Nak was selling liquor when it firsts open and there were NEVER any thugs or drug dealers just hanging outside... So everyone really needs to stop saying that most liquor stores brings this and that because Nic Nak isn't like most liquor stores!

September 18, 2009 1:17 PM

Anonymous said...

Claudia,

The problem is that the Nik Nak's case was an emotional appeal, not a legal or relevant reason for a liquor license. If there weren't 5 other locations to purchase liquor, including 30 feet away from the Nik Nak, there might be a case for a 'need'. But, the truth is that the neighborhood is already saturated with liquor outlets and that adding a new one will only serve to damage the existing businesses.

And as far as your comment about never having any issues, I can tell you that is not true. Talk to anyone within a one block radius and they will tell you the neighborhood *was rampant with crime. Whether that crime was occurring on the Nik Nak's property, is irrelevant because Mr. Pannell can't control what people do when they leave his property.

It is a fact that alcohol sales do not contribute to a positive neighborhood environment. If it did, all those richie-rich people in Elmwood would want one on their corner.

So my question to you is what *positive results would you expect from having this liquor license granted? Maybe I'm not seeing clearly. Explain to me why I, as a neighbor living across the street from Nik Nak should be desperately desiring for Mr. Pannell to get his license.

September 18, 2009 1:35 PM

Concerned Neighbor said...

Claudia,

I am a little confused. You say you live in East Oakland and

If neighbors were to tell you your blue colored house had loitering and prostitution on the property while you were inside your house, and personally knew for a fact that no one has ever done that in front of your house? But neighbors say, well statistics show that blue houses attract prostitution and loitering.

Would you believe them? HELL NO

Would you buy that mess?

Don't be naive

September 18, 2009 1:05 AM

Concerned Neighbor said...

So everyone is a liar but Mr. Pannell and his supporters. Everything those who do not want a liquor store say is a lie. Don't believe your neighbors because they are liars. Clearly you do not live in this neighborhood and do not know my neighbors who are honest and have been working hard to improve this community. Why can't you accept that many people find liquor stores problematic. If you cannot argue your case, you just call everyone a liar. Nice tactic. I see that We Fight Blight has been attempting to engage you and others in a honest dialogue, only to be peppered with irrelevant diatribes in which you paint everyone as liars. Perhaps you should come to North Oakland, attend a community event, and get to know all the people you accuse of being liars. Why on earth would so many neighbors spend so much time out of their busy lives to fight the approval of another liquor store if they did not have first hand knowledge of the problems that liquor stores pose. You provide a point by point rebuttal that failed to even comprehend We Fight Blights last response. Perhaps you should go back and re-read it very carefully. I did and I cannot understand your rambling response.

September 18, 2009 6:54 AM

Claudia said...

It is to my understanding that many people find liquor stores to be problematic, but if you attended the hearing and listened, you would know that NEVER happened at Mr. Pannell's store. The Commissioners said this is a special case that's why it was a 4-1 vote... Why can't any of you see what the Commissioners saw?... They said if this was any other situation it would have been denied!... This particular store is not problematic and that is a fact! Mr. Pannell ran his store for 35 years+ with NO PROBLEMS and they saw that was true... Instead of trying to bring Mr. Pannell down why don't you go after the liquor stores that don't know how to control what happens on and around their property? Complain about the stores that do have the drug

would be the one affected the most. Dont you think
? I think people who are in a 300 radius would be affected the most out instead of someone who lives on 65th, 66th and all those little side streets. If you drive by while the light is green and driving 25 mph your going to see the store for now more than 5 seconds. If the light is red, get a timer out and tell us how much you spend near the store daily actually seeing stuff or maybe all of you opposing neighbors just have real-time spying satellites looking down at the store 24/7.

"As a former Alameda County Deputy Sheriff, the owner has attempted to control on-site crime with a security fence, protective glass wall inside the store, security cameras, and other methods."

You forgot to add, therefore his methods to control crime works.

"Realistically, it is neighbors that are most likely to witness and report the nuisance activity from a liquor store."

Honestly, would you believe everything a neighbor says. Ok neighbors report a nuisance they witness. Ok where are the police reports for this store? Not other stores, this store! Not one ?

"In this case, the City Planning Staff report that neighbors have provided them those reports."

Again any neighbors can lie about what they seen and make up a story so they can just get their way with the store. There is no evidence of crime people say. You cant believe and trust everyone. If I was to trust everyone including my neighbors I would be out of money, cheated, stolen from everything else. I can write 1000 different letters talking about what I saw there and how there is so much crime and how much of a nuisance it is however are my letters true? or did I just write them so city can change there mind so I can have my way. Anyone can write an email to the city. I'm just simply asking people not to be so naive.

Why cant you go and get a list report for crime in the past three to four decades?

If he is doing a good job the police are not going to be worried about him causing problems.

DO YOU BELIEVE WHAT EVERY PERSON SAYS TO YOU IS TRUE?

patrol car is sent out to investigate, there is not likely to be any write-up of the incident. Furthermore, the store owner has a strong disincentive not to call the police when there are nuisance problems at their store for fear their liquor store will be tagged as a nuisance property. It is a common tactic by liquor stores not to call the police unless they are being robbed or there is a serious violent incident. Realistically, it is neighbors that are most likely to witness and report the nuisance activity from a liquor store. In this case, the City Planning Staff report that neighbors have provided them those reports.

Just because nuisance activities go under-reported by the neighborhood or under-investigated by the police, doesn't mean they don't occur and don't affect the quality of life of residents.

September 17, 2009 9:57 PM

Anonymous said...

"Furthermore, the store owner has a strong disincentive not to call the police when there are nuisance problems at their store for fear their liquor store will be tagged as a nuisance property."

You don't have any evidence of that so its just speculation. Still lies no evidence. HOW DO YOU KNOW THAT? What is your proof? or is it just he say, she say, they say?

"It is a common tactic by liquor stores not to call the police unless they are being robbed or there is a serious violent incident. "

Again, speculation. How do you know this liquor store does this. The answer is you don't know. Neighbors say they seen loitering, drug dealers prostitution however they never seen any cops at the store. If neighbors are so involved in the community why the never seen one police officer there. How you are going to see all that stuff and see not one cop. I see BPD and OPD go up and down Shattuck and Alcatraz all the time and your trying to tell me they have not stopped once for any of those things you say. I thought the neighbors were looking at this place like if the had surveillance cameras pointed at your place

For the most part people who live more than one block away, the only time you see this place is when you are, walking, riding and driving by. Thats it. Its not like you open the door to your house and its across the street or right next door. I forgot, didn't that lady from the hearing who lived next door for her entire life was fine with it being open and she likes the store being there. Replay the tape. I think out of everybody, she

According to the City of Oakland "Neighbors advise that this operation prior to 2004 had a reputation for attracting loitering and other concerns. However, recent police statistics and reports have not singled out Jo Jo's (former Nic Nak) as a high crime generator. As a former Alameda County Deputy Sheriff, the owner has attempted to control on-site crime with a security fence, protective glass wall inside the store, security cameras, and other methods. Despite these precautions, neighbors have complained about crime concerns; this owner has owned the property for several decades. However, for much of the past five years, the market has been closed, and only reopened with limited hours since December 2008. Liquor sales stopped in April 2009, though a Convenience Market continued. There may not have been sufficient operational time for safety issues to become manifest in statistics with the most recent activity. The applicant's site does not appear to contribute to alcohol, robbery or narcotics cases at a level much higher than Rockridge or Montclair shopping districts. However, neighbors of 6400 Shattuck Avenue give anecdotal evidence of past loitering and drinking near the site."

The City is saying two things: (1) the property does not have a recently demonstrated crime problem any worse than Rockridge or Claremont; and (2) according to neighbors, there is a history of loitering and drinking and during the past five years when the liquor store was closed and/or liquor was only being sold for approximately 2 months there was not enough time for problems to show up in the crime statistics.

Both statements have merit.

If neighbors are reporting problems, and who better to understand whether there are problems, there were likely significant enough problems that were affecting their quality of life. Our experience is that most people are reluctant to get involved in community improvement issues unless there is something that really bothers them.

The Oakland Planning Department only evaluated recent crime statistics. They did not go back 35-40 years. We would not be surprised if police response records only go back 4-5 years which is the time period Nic Nak has been out of business.

Activities such as public drunkenness, loitering, drug dealing, graffiti, and littering are often under-reported to the police by the community--they are nuisances that may be ignored because many neighbors do not want to get involved or think the police won't respond. Even if a concerned neighbor reports these nuisance activities, they are likely to go without a police response. In Oakland, due to the shortage of police and some of the highest violent crime rates in the country, police priorities have historically not included nuisance activities. Even if a

E himself told me he is so sick that the hospital refuses to perform necessary surgery.

No disrespect to the family, but I do not want a young kid with no experience, or respect, running the liquor store.

September 17, 2009 6:27 PM

Mike said...

Here we go with the lies again. I know Mr. Pannell personally and he is NOT TERMINALLY ILL and if something were to happen, his daughter who is a Alameda County Deputy Probation Officer for 26 years will. I know his grandson he is a very nice, well mannered, young man (not a kid) with a smile always on his face when you see him. This kid you say, is the son of Mr. Pannell's daughter (Peace Officer). He wont be running the store because he is pursuing his own career. The young man, told me how we wasnt able to accept his internship at Yahoo inc. because of this store situation . for the family. Maybe you think he has no respect because you approach him with some BS. If you know this young man then you know how respectful he is. If you had a name instead of being anonymous I can tell if your worth receiving respect or not.

I ask again, please stop with the lies.

September 17, 2009 7:26 PM

Mike said...

I forgot to ask, How do you know if he is inexperienced or not. Do you have his resume on file. Do you know his age, education, lifestyle and what he likes to do in his spare time? You apparently don't have the slightest idea therefore I don't think you know if he is experienced or not. Whats the requirements for him that will make him experienced. Doctorate Degree, Navy Seal Training, and Chief of the Oakland Police.

September 17, 2009 7:43 PM

Fight Blight said...

Daniel,

As noted in the blog, Mr. Pannell has owned the property for forty years and has at times operated a convenience and liquor store. If you read the blog and the Planning Staff report carefully you would picked that up. No one is trying to mislead you--just read the information. It is all there.

The statement that Mr. Pannell has operated the liquor store for 35 to 40 years without incident is not correct.

Again, rather than having your supporter post a lot of irrelevant information that is intended to cloud the issue at hand, Mr. Pannell we invite you to set the record straight and post on We Fight Blight. Thank you.

September 17, 2009 7:27 AM

Claudia said...

I am pretty sure Mr. Pannell is not wasting his time reading this BS that is being said about his store!!.... If any of you really want to know why he did some things the way he did THEN GO ASK HIM!!! I know everyone on here that has being talking about his store knows where it's at... If not, just look for the "Ferrari and the new Bentley" in the parking lot!...

September 17, 2009 10:38 AM

Daniel said...

I just clicked on the link from the sfgate website. I live in East Oakland where its a lot worse. After reading the introduction and comments posted by others. Someone said that we was in business for 35 years without one incident. Compared to other parts of Oakland you guys in the North have it easy. I know I know, he has closed for 5 years, so are you going to forget about the 35? seems like you are forgetting that fact. Seems like everyone who are opposed to this store has selective hearing and reading. I live in East Oakland, however if I knew I had a guy like this in my neighborhood. I would not be mad. Someone also said he was selling alcohol in the beginning for 2 months. During those 2 months of him selling liquor did you see a spike in crime. No but, you forecast that its going to happen. It also seem like Black people respects him and respects his business does anybody realize that?. If they respect his business which they do, people are not going to hang out there. Trust me on that From my understanding this place not a New business, just a change in name, however same owners and same building. 35 years not including the 5 years he was closed. I think that's pretty damn good. I think other liquor stores in the entire county should look at the way he does business. You can get all technical with the planning terms and use technical words about the matter however . We need to emphasize on this point, 35 years with no violation or problem with police, I trust that fact alone. Doesn't that mean something? Instead of bashing him at least thank Mr. Pannell for having a Excellent business without problems and hopes he keeps up the good work in the future

September 17, 2009 2:01 PM

Anonymous said...

If Mr. Pannell were in good health, I'd support this. But he

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Fight Blight in South Berkeley-North Oakland

BLIGHT: The state or result of being blighted or deteriorated; dilapidation; decay; urban blight. Something that impairs growth, withers hopes and ambitions, or impedes progress and prosperity. To have a deleterious effect on; ruin. wefightblight@yahoo.com

WEDNESDAY, SEPTEMBER 16, 2009

Nic Nak Liquors--A Community in Disagreement



Our recent blog about Mr. Pannell's efforts to get a Major Conditional Use Permit and Major Variance to sell liquor at 6400 Shattuck seems to have generated quite a few of comments. More than any other We Fight Blight Blog, this post, like Mr. Pannell's proposal, has garnered quite a bite of controversy. There are now 50 comments on the original post.

Mr. Pannell, for unknown reasons, requested the City continue his item until October 7, 2009. As you may recall, the City had placed this matter on the Planning Commission's Consent Calendar. However, the Planning Department has now advised us that based on several requests from the Community, the matter will no longer be placed on the Consent Calendar, but will require a full public hearing. This will allow the public to weigh in on the proposed conditions and findings of approval, both of which are inadequate. Several theories have been advanced as to why Mr. Pannell requested a continuance including the following: (1) Mr. Pannell is unwilling to accept some of



the City's conditions for approval and is trying to lobby Planning Commissioners through ex-parte discussion to remove several of the conditions; and/or (2) Mr. Pannell is feeling the heat and wants to get some space between the media attention and his Planning Commission vote. There are two new Commissioners who have not



OAKLAND BLIGHT ORDINANCES

Oakland Anti-Blight Ordinance, OMC 8.24

OAKLAND ANTI-BLIGHT PROGRAMS

Oakland Blighted Properties Program

Oakland Code Enforcement

Oakland Crime Mapping

Oakland Police Abandoned Auto Detail

Public Works Call Center Program

Report a Blight Problem in Oakland

OAKLAND BLIGHT CONTACTS

Abandoned/Inoperable Autos on Private Property 510-777-8538

Abandoned/Inoperable Autos on Public Streets 510-777-8622 or 510-238-6030

Blight on Private Property 510-238-3381

Drug Houses/Drug Dealing Hotline 510-238-3784

Graffiti Removal 510-615-5566

Illegal Dumping 510-434-5101

Neighborhood Law Corps 510-238-3601

indicated where they stand on this matter and their vote will be crucial as to whether Mr. Pannell is allowed to peddle liquor in North Oakland. What we do know is that Mr. Pannell has already begun to implement several of the conditions that are under consideration for his permit, including modifying the Nic Nak pole sign and installing security lighting. Whether these are being done with the approval of the City and appropriate building and demolition permits is unclear.

Between now and the next Planning Commission Meeting on October 7, We Fight Blight will be posting several follow-up articles that explore the over-saturation of problem liquor stores in North Oakland and deconstructs the unorthodox and highly unusual findings that "historical relevance equates to a unique or extraordinary physical condition" necessitating a Major Variance.

We do have to note that when rereading the comments to date, there seems to be consistent and repeated approach by those who support Mr. Pannell in his effort to sell liquor. These comments appear to be written by the same person or by the same small group of people posting as different members of the community. One of the ideas presented by these posters is that the author of this blog and those that support the denial of Mr. Pannell's liquor license are liars. That we are purposefully and collectively propagating lies about Mr. Pannell and his business--apparently, if you cannot provide a rational argument for your case, then smear the opposition as liars. While We Fight Blight does not support this liquor store because of the inextricable link in North Oakland between liquor stores, blight and crime, we have endeavored to report what is factually correct, what has been stated by Mr. Pannell and his supporters, and to make it clear where we are lending our opinion or our inferences.

Rather than foisting the term liar upon those who argue against Mr. Pannell's ability to peddle liquor, we would appreciate a more



civilized dialogue that avoids personalizing this disagreement. We felt it was inappropriate for Mr. Pannell, at the public hearing, to suggest and state that those who opposed his permit were racist, gentrifiers, and newcomers who were opposed to black-owned businesses. That is simply not true. Those opposed to Mr. Pannell's request to sell liquor are concerned about the over-saturation of liquor stores in North Oakland and South Berkeley, and the

Oakland Police 510-777-3211

Parking Enforcement 510-238-3099

Shattuck Neighborhood Crime Prevention Council 510-764-2077

BERKELEY BLIGHT ORDINANCES

Abandoned/Inoperable Vehicles, BMC 12.98

Berkeley Anti-Blight Ordinance, BMC 12.92

BERKELEY BLIGHT PROGRAMS

Berkeley Housing Code Enforcement

Berkeley Neighborhood Services

Berkeley Blight/Code Enforcement

Berkeley Abandoned Vehicle Program

BERKELEY BLIGHT CONTACTS

Berkeley Police Department 510-981-5911

Councilmember Max Anderson, MAnderson@ci.berkeley.ca.us, 510-981-7130

Drug Houses/Drug Dealing 510-843-2677

Graffiti Removal Private Property 510-981-2489

Graffiti Removal Public Property 510-644-6620

Neighborhood Services Liaison Jim Hynes, jhynes@ci.berkeley.ca.us, 510-981-2493

Public Works Customer Service-- Streets, Sidewalks, Sewers, Litter, Storm Drains, Street Lights 510-981-6620

Tree Trimming/Planting Forestry/Parks 510-981-6660

A Better Oakland

fact that, on the whole, liquor stores have been magnets for crime, litter, graffiti, loitering and drug dealing. This linkage has been abundantly and consistently documented in North Oakland and South Berkeley by the Oakland and Berkeley Police, the Shattuck Crime Prevention Council, neighborhood associations, the Berkeley Alcohol Policy Action Network and by those neighbors who suffer daily the consequences of liquor stores. Those opposing the liquor store do not oppose Mr. Pannell. They simply don't want another liquor store because of the quality of life issues associated with liquor stores. It has nothing to do with Mr. Pannell as a person and everything to do with the problems that liquor stores attract.

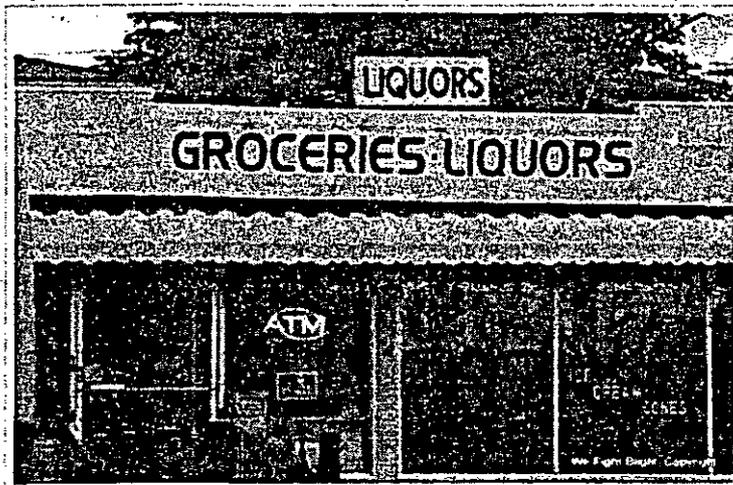


<http://www.abetteroakland.com>

We had hoped Mr. Pannell and his supporters would argue the merits of his case based on the requirements of Oakland land use regulations and law. The laws apply to all equally. Unfortunately, he and his entourage chose to make this personal by framing this disagreement over a proposed land use in ways that are irrelevant to the legal question at hand which is whether his proposed use of 6400 Shattuck meet the findings and requirements of a Major Conditional Use Permit and Major Variance. Neither Mr. Pannell nor any of his supporters have provided any evidence whatsoever to support that his lot suffers from a unique or extraordinary physical or topographic constraint that merits an exception to existing land use requirements. Hence the City's legal gymnastics to create some justification to approve this use as the City Planning Commission directed. In all of the posts, his supporters continue to use irrelevant and extraneous arguments that frankly have no merit when it comes to judging the validity of his application or they attack the posters and this author as being liars.

Please argue the merits of the case, do not smear each other or personalize this issue. At the end of the day, we all will continue to live in North Oakland--at least most of us.

One of the issues brought up consistently is that somehow the denial of the Major Conditional Use Permit and Major Variance is going to be an economic hardship on Mr. Pannell. The fact is that unless Mr. Pannell has opened his personal and business accounting books to anyone, no one knows the financial repercussions a denial of liquor



Blight in the News

sales will have on Mr. Pannell. To our knowledge, Mr. Pannell has not provided a business plan or business pro-forma that shows he cannot operate a convenience store without liquor sales profitably. We do not know if Mr. Pannell has the capital to develop the site for another use acceptable to the community. What we do know is that Mr. Pannell owns a home in Clear Lake and a residence in Trestle Glen neighborhood of Oakland. We know that he owns the property at 6400 Shattuck and owns a liquor license. We know that he is a retired Alameda County Sheriff and it is likely that he has a pension from the County. We also know that he owns a recreational vehicle that is parked in front of Nic Nak. We also know that he claims his family once controlled 30% of all black-owned businesses in North Oakland. We have no idea what his current liabilities are and what his balance sheet shows. Frankly, the discussion about his financial situation is totally irrelevant.

According to the City of Oakland, A Variance is permission to depart from the development standards, or setbacks, of the zoning district. Variances provide the discretion and flexibility to resolve difficulties or hardships that may be inappropriate where special or extraordinary circumstances occur on the property. These circumstances do not mean economic hardship; rather, they refer to topographic or physical attributes of the site that do not allow for the development standards of the Zoning District to be applied.

Note: Economic hardship is not a criteria for approval or denial. It is irrelevant to the decision at hand. So all of the conjecture about his financial situation is irrelevant. Moreover, it is irrelevant as to whether Mr. Pannell can make some other viable use of his property. It is not the Community's responsibility to plan his site and ensure that he makes a profit. A financial investment does not guarantee a profit. Mr. Pannell has a fundamental responsibility to show why his project meets the requirements for a Major Condition Use Permit and Variance for liquor sales. We believe that he and his supporters have not met this burden. They have talked and talked about everything under the sun to create a distraction from the fundamental legal question. That is a good strategy when you have no legal foundation for your proposed land use. But it is not a basis to approve the project as the Planning Commission suggests. Their flawed reasoning will only invite legal scrutiny.

Speaking about distractions, Dr. Rockwell has posted that we are baring the facts based on fiction and that we are making judgements based on stereotypes and too much TV. Perhaps Mr. Rockwell is interested in speaking directly with the Shattuck Crime Prevention Council or the Berkeley Alcohol Policy Action Network or the Berkeley and Oakland Police as to the effect liquor stores have on public health and blight and crime. This is not TV or fiction. This is the reality of North Oakland and liquor stores.

Both the City of Oakland and the City of Berkeley have taken rather drastic action to declare some liquor stores a public nuisance and shut

- Oakland and Caltrans Reach Agreement on Maintenance of Caltrans Right-of-Way
- Art Installations Fight Blight in San Francisco
- Richmond to Fight Blight
- The Right Way to Fight Blight
- Quotas Spur City Code Citations to Fight Blight in Fort Lauderdale
- Abandoned Cars Litter Oakland
- A Crack in the Broken Window Theory?
- Neighbors Try to Wipe Out Blight in South Berkeley
- Oakland's Ban on "Visual Blight" Upheld by Court
- Oakland Fights Fast Food Restaurants
- Federal Court Rejects Legal Attacks Against Oakland Blight Ordinance

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Nic Nak Liquors--A Case for Over-Concentration of ...

Nic Nak Liquors--At What Cost to Our Youth

Nic Nak Liquors--A Community in Disagreement

Nic Nak Liquors--A Liquor Store Coming to Your Ne...

Update on College Avenue Safeway

► August (2)

► July (1)

► June (1)

► May (1)

► April (3)

► March (3)

► February (1)

► January (5)

► 2008 (45)

them down. We agree that not all liquor stores are nuisances. However, we are not interested in additional liquor stores in our Community because North Oakland and South Berkeley already have an abundance of liquor stores selling hard liquor and a good number of these are problem outlets. The cost of liquor stores goes well beyond the immediate impact to the nearest neighbors. The whole community suffers. There is a cost to taxpayers in increased police (if you can get it in Oakland) and emergency medical responses for alcohol related crimes and the devastating effects of alcoholism on families. Who should know this more than Mr. Pannell? We find it surprising that a former Alameda County Sheriff and a self-proclaimed pillar of the African-American community would not know or at least not seem to understand or care about the concerns neighbors have about the nuisance activities caused by liquor stores and the public health damage to the African-American Community in Oakland caused, in part, by abundantly available liquor. Clearly, this is a situation where an individual is expecting that the economic return on his investment is more important than any cost he imposes on the Community.

So Mr. Pannell, who pays the cost and who reaps the profit?

We invite you, Mr. Pannell, to submit a guest post on We Fight Blight. We want to hear your story. We will give you an unedited platform to address our readers and the community. Just send your post to wefightblight@yahoo.com and we will post it for you.

Posted by Fight Blight at 9:27 PM 

Labels: [Anne E. Mudge](#), [crime and blight](#), [Nic Nak Liquors](#), [Oakland Planning Commission](#), [over concentration of liquor stores](#)

25 comments:

Living in the Hood said...

Thank you We Fight Blight for providing information and commentary on this proposal for a liquor store. My partner and I have lived in North Oakland since the mid 1990's. We consider ourselves to be relatively aware of what is going on in our "hood". While we have lived here for almost 15 years we have never set foot into the Nick Nac store. We have never heard of Mr. Pannell. In fact, we always thought the site was simply used as a parking lot for RVs and other vehicles. We would never be enticed into his store since it appears so drab and fortified. Much has been said about the need to maintain the corner convenience store in Oakland because it provides food security for the disadvantaged. However, while living in North Oakland we have come to realize that most convenience/liquors stores prey on the poor, disabled, elderly and those without transportation. Go into just about any convenience/liquor store and you can see that the focus and the money are in sales of alcohol, lotto tickets and cigarettes. The food they sell not only is overpriced compared to Berkeley

Bowl, but tends to be primarily overprocessed junk food. It is often argued that we need to let these convenience stores sell alcohol in order to survive and provide food security for some Oakland residents. While that argument could have merit in some locations, this argument is baloney in North Oakland. There is an abundance of public transportation along MLK/Adeline, San Pablo, Shattuck, Telegraph, Claremont, Ashby, and Alcatraz. Not to mention multiple BART stations. We are blessed with an abundance of nearby grocery stores (some affordable others not so affordable)--Berkeley Bowl, Safeway, Whole Foods, Andronico's, Market Hall and Trader Joe's as well as farmer's markets in downtown Berkeley, South Berkeley, and Temescal. There are also multiple convenience stores in North Oakland that exist quite profitably without selling alcohol. In this case, there is a convenience store across the street from Nic Nak. We continue to wonder why there is such an effort to site another liquor store with a convenience component given all the existing food sources. The only thing we can think of is that Mr. Pannell's liquor license is not as valuable unless there is a city approved location to sell liquor. The liquor license coupled with the land use entitlement are far more valuable as a package than a liquor license with no approved location and the property with just a convenience store. We don't begrudge Mr. Pannell's efforts to maximize the value of his property and liquor license as that is the good old American Way. We just wonder though who is going to shop at this store and whether his intention is really to maximize the value with the land use entitlements and then sell. Maybe Mr. Pannell or one of his supporters can clarify this for the North Oakland community? Thank you.

September 18, 2009 11:49 AM

claudia said...

To the "ANONYMOUS" writer,
Well as far as I can remember at the hearing many neighbors went up to speak and said they lived next door, two houses down, directly in front of the store, one or two blocks away for many years even back when it was open and NEVER I repeat NEVER had any problems... Not once did I hear someone that was opposing the store say that wasn't true.. So why now on this blog all of the sudden people are saying that's a lie??... Why didn't anyone stand up at the hearing and address that?? I know crime happens around any neighborhood but don't blame that crime on Mr. Pannell store... Did you ever think that crime that happened two blocks away is because of the drug dealers not the liquor stores. Maybe you just aren't seeing this store as a positive thing to the community but many other people do... The 300+ signatures that were in favor not count for anything? Do all the supporters they had at the hearing not count?... This store is something positive to a lot of people in your community you just don't want to realize that. They have affordable

ⓔ prices, it's a safe environment, they provide work for college students. Maybe you don't have to worry about the affordable prices or don't care that a college student has a job to pay for his books and tuition but with this economy I'm sure many people in your neighborhood do care and are grateful for that!

To the "Concerned Neighbor"

Yes, I stay with family in that area half of the time... They have lived there for many years back when Nic Nak was open. I'm going by the facts that were said at the hearing from people that had been living there for 20-35+ years...

September 18, 2009 2:50 PM

Fight Blight said...

Claudia

Much has been stated about the 300 plus signatures that Mr. Pannell allegedly obtained in support of his liquor store. We are not aware that anyone, including the City of Oakland, has verified the authenticity of the signatures as being valid and that they are actually 300 people from the neighborhood or even North Oakland who would be most affected by his proposal to operate a liquor store within 1000 feet of an existing liquor store.

We did note that at the public hearing, Mr. Pannell brought a large entourage that does not live in North Oakland, although some of his contingent does. Nevertheless, the approval of a Major Conditional Use Permit and a Major Variance is not a beauty contest based on the number of signatures one obtains from the community. Land use law, which applies to all regardless of race, color, creed, national origin or any other protected class, requires Mr. Pannell to meet certain legal findings and requirements before he is granted a Major Conditional Use Permit and Major Variance.

There is nothing in the administrative record that supports the position that Mr. Pannell's lot has a unique or extraordinary physical or topographic constraint that makes the strict application of the general plan and zoning requirements burdensome. For the first time in its history, the City of Oakland proposes to approve this application for a Major Variance on the basis that historical relevance constitutes a unique or extraordinary physical constraint and, therefore, warrants approval of a Major Variance. This is uncharted legal territory that is not supported by the administrative record, has no basis in existing City land use law and regulation, and has never been validated by the Courts. In other words, the City of Oakland is making a new precedent and essentially creating new law through an overly broad misinterpretation and misapplication of the administrative record and the existing

land use regulations governing Major Variances.

Claudia, perhaps you could discuss why you believe Mr. Pannell's proposal to peddle liquor in North Oakland is consistent with the law and policies of the City of Oakland?

September 18, 2009 3:22 PM

Michael said...

Living in the Hood,

"While we have lived here for almost 15 years we have never set foot into the Nick Nac store."

Ok, no one is forcing you and your partner to go there. That's what competition is all about, apparently you rather pay 5 dollars to get laundry detergent somewhere else than step foot inside his store and buy it for 2 dollars.

Parking lot for RVs?

You seen more than one RV on his lot now? Why are people so bothered by his RV. It's his property and vehicle why do you care? At the hearing they said it is used as an office and is fully functional. So again, Why do you care? .

Like that person said he had a Ferrari and Bentley, Tell Mr. Pannell to put his new Bentley there in place of the RV. Would you feel better then?

If extra space was on my property I would put a RV vehicle as well.

"However, while living in North Oakland we have come to realize that most convenience/liquor stores prey on the poor, disabled, elderly and those without transportation. Go into just about any convenience/liquor store and you can see that the focus and the money are in sales of alcohol, lotto tickets and cigarettes."

So if I go inside of the store I have to be poor, disabled, elderly and without transportation?

What do grocery stores prey on the HUNGRY?

Does this store prey on the poor, disabled and elderly?

Again, how do you know if this store does such things. Another Assumption. YOU NEVER BEEN INSIDE

One thing that is different about this store in comparison to other stores is, it has an ice cream parlor in the front area, fruits and some vegetables why go to Berkeley Bowl to get potatoes for dinner? If you know they have what you want at better prices why go all the way to Safeway for it. The keyword is "convenience". Plus, You never been inside.

"The food they sell not only is overpriced compared to Berkeley Bowl, but tends to be primarily over processed junk food. It is often argued that we need to let these convenience stores sell alcohol in order to survive and provide food security for some Oakland residents."

If you never been there how do you know what they have.

(Another speculation)

Have you ever been inside the store to know food is overpriced?

The answer is NO. Again assuming because most liquor stores are over priced this one is too, right?

September 18, 2009 4:35 PM

Michael said...

Continuing....

"It is often argued that we need to let these convenience stores sell alcohol in order to survive and provide food security for some Oakland residents. "

You cant make money off grocery sales alone. You have Overhead (bills) pay employees etc. Think about it, if they are selling a can of 7up for 80cents how much do you think they will make per soda can 15-20cents. When you have groceries especially affordable groceries, the profit margin is minimal. The reason why safeway and other large stores like this can have a cheap products because they buy in bulk(100 cases +) So the more cases you buy the cheaper it would be. Manufactures rather pay for the shipping or deliver cost for one large shipment than sending out one case per month.(operations management). If he is making around an average of 40 dollars a day, that is a lot considering only groceries and ice cream sales. and the store is open 5 DAYS A WEEK, Average 40 dollars net per day (not gross) that is averaging 200 dollars a week. Four weeks in a month = 800 dollars average per month. Then, the constraints or overhead are not even calculated yet. Electric Bill which he has commercial refrigerator systems that have to stay on thru out the night 24/7.

Lets say = \$375 a for gas and electric bill

Phone bill = \$25

Ok, thats = 400\$ already

Now you have to pay your employees, which i know he had only one.

I dont know, lets say he pays him 150 a week.

That means after all the monthly deductions(-\$500) he is only making 250 per month wow!!!! that's a lot of money there.

Any one who studied business finance can account to that. Nic Nak would not make money enough money with just groceries. But your case you are the consumers where consumer are ill advised about how much things really cost.

September 18, 2009 4:36 PM

GoodNeighbor said...

Mike,

Your post just answered why so many of us are against this - his business is not economically viable, so the only reason for this pursuit of a license is to sell it.

If he sells it, the safety of the neighborhood is in jeopardy and all the positive things he offers (Black ownership and employment for young Black men, for instance) will disappear.

September 18, 2009 5:07 PM

Mike said...

He said in the hearing that he wouldn't sell and if he was to sell he wouldn't have no more alcohol sales remember? Plus the property will remain with the family

September 18, 2009 5:55 PM

Anonymous said...

I don't care what he said at the previous hearing. You said it yourself: there's no point in keeping the store unless he's got the liquor license and the location to go with it.

All your other BS is also totally irrelevant. If you start going off like this at the public hearing, you will be told to sit down and STFU if you have nothing to contribute that is pertinent to the issue at hand. Say it with me now, I know it's hard to grasp:

IS IT LEGAL OR NOT FOR HIM TO SELL BOOZE AT THIS STORE?

ASKED AND ANSWERED: NO.

If y'all love liquor stores so much, find him someplace to move to, in YOUR neighborhood. We're all full up here.

September 18, 2009 6:29 PM

Jennifer said...

I am now borderline against it and for it. Jonathan asked any ideas for what he can do with the store. Are there any? Another thing I am asking myself is if I was in Mr. Pannell shoes would do the same thing?

No one has said anything about that.

I have come to conclusion that if it was me I would Fight. I think we are all acting like we would not defend our selves if it was us getting attacked by neighbors. Lately, I went in on a Thursday, and I can honestly say It wasn't all that bad. He greeted me with a smile and asked how can he help me. I must say his store is very clean. I can now understand why now people rather go to Nic Nak than T&K's now. One thing I see at the store that is really wanting me to change my mind is he has no alcohol signs in the front. I dont like all the signs in the front of stores. Lately, I see that he put up some nice plants in the front and a juniper trees on the side which I think is very cool. There is even a money tree inside (I like money because of how they twist and they are for good luck). Many other stores have advertisement in the front window however this store doesn't. If it wasn't for that one liquor store sign above the building I wouldn't even know they sell alcohol. I think we the opposed is taking this out of hand. My neighbor next door was telling me about how bad it was, and how there is litter everywhere however when I went on his lot I did not see anything. I suggest some people should go and take a look for yourself, It might change you mind. I decided to investigated my self to see what was really going on. The store hours aren't that bad and he is only open 5 days a week. From my Alcohol knowledge sale liquor until 2am of he want to how ever he opens and closes at 10 on Wednesday, Thursday, and Sunday. Friday and Saturdays (you know the im off work and school lets party days lol) are from 10 to 12 midnight, that is not bad. My Neighbor told me different telling me they close at 2am. I looked at his alcohol and he doesnt have much on the shelf in comparison to uptown, alcatel and definitely white horse

The anonymous write was saying how its the law and its illegal however I don't think he is doing something illegal. City told him to stop selling so he stop selling. In addition the store has been here for a long time. My neighbor said it was a new store but its not. I admit, I drink with friends from time to time and there is nothing wrong with that I think TK's and Nic Nak should be seen as to different types of licensees. One day I wanted to get some Jack Daniels Whiskey so i went to T&K's thinking they sell liquor. T&K only sell beer and wine and that's it. I didn't know that. My neighbor told me they sold Stuff like Whiskey. I know its not some high classy place but, I feel where they are coming from. I think we should meet him half way on this.

Its really not that bad of a store you should go check it out.

September 18, 2009 7:56 PM

Concerned Neighbor said...

Jennifer,



We understand the instinct to fight. But when what you are fighting for is potentially so destructive to the community, you have to question why you are fighting for it. As We Fight Blight asked, who profits and who pays the cost? In this case, Mr. Pannell profits at the expense of the community. All of the neighbors I know support Mr. Pannell's right to operate a convenience store. None of them support his proposal to operate a liquor store. Whether his store is clean and well run is *not relevant to the primary legal issue*. We all have preferences as to where we shop and why. I, however, do not support another liquor store since there are already so many in our community, both in Oakland and Berkeley. By the way, just for context, how close to Nic Nak do you live and how long have you lived in the neighborhood? I don't recognize your name. Thanks.

September 18, 2009 9:16 PM

Fight Blight said...

Michael,

We understand that using an RV as an office in the parking lot of a retail/commercial outlet is not legal under City regulations. Hence, the City has proposed a condition requiring Mr. Pannell to remove the RV. Furthermore, with the RV parked in the parking lot, it effectively eliminates one of the parking spaces from use by potential patrons and may inhibit handicap access/parking. City laws and regulations apply to all equally. We hope Mr. Pannell would agree to this condition and comply with the law.

September 18, 2009 9:23 PM

Michael said...

Fight Blight,

My mistake, I didn't know there was a law for having an RV on his property. I guess there is a law for pretty much everything. Has the RV always been there or is this something new in the past 5 years?

Last time I drove by the place, I saw a 5 to 6 parking spots including one right in front of the store.

September 18, 2009 11:21 PM

Fight Blight said...

Michael,

Land use laws govern pretty much everything we can do with a property, including the number and manner of parking spaces and handicap spaces. Anyone who opens a business is obligated to know, understand and comply with the laws governing their

ⓔ use and development. Mr. Pannell is a retired Alameda County Sheriff, a college graduate, an astute businessman that has controlled 30% of all black-owned businesses in North Oakland. I find it hard to believe that he does not understand the laws and policies of the City of Oakland. If he doesn't know, all he has to do is consult with the City Planning Staff and find out what the requirements are. Failing to do so indicates that he is not the responsible owner some are painting him to be.

September 18, 2009 11:35 PM

Ryan said...

Flight Blight, you said he controls 30% of black owned businesses in North Oakland? Flight Blight what are other those businesses? Does that 30% count for one liquor store, therefore he owns 1 out of 3 black businesses in North Oakland. What are the other businesses? I would like to know.

September 19, 2009 11:11 AM

Fight Blight said...

Ryan,

If you were at the public hearing, reviewed the meeting minutes, or the DVD of the meeting you will find that Mr. Pannell and his supporters claimed that he and his family controlled 30% of all black-owned businesses in North Oakland. We are only repeating what Mr. Pannell and his supporters have stated. We have no specific knowledge of his other business enterprises. Frankly, they are irrelevant to the specific legal question at hand--does his project site have a unique or extraordinary physical and topographic constraint that precludes him from meeting the requirements of the zoning code that a liquor shall not be sited closer than 1000 feet from another liquor store?

Mr. Pannell and his entourage provided the statement about his ownership of black-owned businesses as a way to present an image of a responsible businessman. However, what it also revealed is that Mr. Pannell is not the victim he and his entourage claims that he is. As I previously stated, he is an astute businessman.

Knowing that he had no legal basis for a Major Variance, he proceeded with the assistance of his family, friends, Minister, the Black Chamber of Commerce and the controversial Uhuru Group to present to the Planning Commission that the opposition were fascists, gentrifiers, and newcomers who were opposed to black-owned businesses. He and his supporters provided not a shred of evidence how his proposed sales of alcohol met the findings for a Major Variance. He and his supporters even went so far as to personally attack Mr. David

E Valeska, the City Planner assigned to this project, and was admonished by the Planning Commission not to personalize the matter. Clearly, he had no case to argue so he went on the attack against his opponents and the City Planner who was proposing denial of his application--much the same as his supporters have recently in the comments of this blog by broadly painting anyone who opposes the liquor store as liars.

We have invited Mr. Pannell an unedited platform to present his case to the community any misconceptions. So far he has not accepted the invitation, but he has allowed and encouraged his supporters to continue to paint the opposition as liars by his own silence. That is unfortunate.

September 19, 2009 11:38 AM

Fight Blight said...

Ryan,

By the way--To provide our readers context, how far from the Nic Nak site do you live and how long have you lived in the neighborhood?

Thanks

September 19, 2009 11:45 AM

Ryan said...

Why cant you go to him? You know where he is? He is not hiding. He probably doesn't even know about his blog or even has a computer. Go to 6400 shattuck and see him. Opposing Neighbors Stop being scared to approach him and go to his business and talk to him. Its so easy to do. Have anyone went to go talk to the man?You expect an elderly man to go type about it? Go

September 19, 2009 12:15 PM

Ryan said...

8 years and two blocks away how about yourself?

September 19, 2009 12:26 PM

Ryan said...

Nobody knows your name concerned neighbor and good neighbor

September 19, 2009 1:22 PM

Fight Blight said...

Ryan

As we have noted before, when a property owner or business

proposes to develop a property or create a new use or continue a use that requires a permit, it is traditionally the property or business that comes to the neighbors and the community to present their project and address the concerns of neighbors. In this way, the property owner can work directly with the neighbors to create a project that garners the support of the neighbors before they go before the City in public hearings. It is in the best interest of an applicant to work with the neighbors, particularly when you propose a controversial land use.

In this case, Mr. Pannell said nothing to the neighbors or Community, applied for an over the counter permit under the name of Jo Jo's father than Nic Nak, even though he got a letter from the City saying he needed to apply for a Major Conditional Use Permit and Major Variance (both of which require public hearings), and began selling liquor. When the neighbors noticed that he began selling liquor and realized that the City had erroneously issued a permit, they contacted the City and complained. The City correctly rescinded his Deemed Approved Status.

If Mr. Pannell had done some outreach to the Community, the outcome might be different. At least, the Community would have felt that Mr. Pannell was being upfront about his intentions. While we don't know for certain, it feels as if Mr. Pannell attempted to get his approvals under the radar screen of the City and the Community.

As we have stated before, we have offered Mr. Pannell an unedited platform to clear up any misconceptions the Community might have about his proposed land use and to address the Community directly about why he wants to open a liquor store at 6400 Shattuck.

Mr. Pannell has an entourage that includes his immediate family, his Minister, members of the Black Chamber of Commerce and the Uhuru Group that could assist him in preparing a written statement for the We Fight Blight Blog. Mr. Pannell has a college degree and is an astute businessman. We certainly don't underestimate his ability to prepare a written statement as you do.

Our offer still stands Mr. Pannell. Please send your post to wefightblight@yahoo.com

Thank you.

September 19, 2009 1:53 PM

Shanda said...

let's see
it's his responsibility to do outreach to the community, not the

other way around. I was really offended by him going on and on at the hearing about "racist, gentrifying neighbors opposing black businesses" he did not make himself any new friends by talking crap like that. personally I would never patronize the store because it doesn't sell anything I want, I want fresh fruit i go to berkeley bowl. and since he made it very clear how he feels about his neighbors I would not feel welcome at his place anyway.

and regardless, it doesn't matter. The question is not whether he is a good person, runs a clean store or how long he has been here. The question is whether or not he can legally sell alcohol at that particular location. I guess we will just have to keep ramming that point home for those who still seem to have such a tough time understanding.

I don't want any more liquor stores in my hood. I took a little stroll around for maybe an hour or hour and a half and I counted six mini markets within walking distance of my house but I probaly missed a few. Not to mention all the cigarette butts, potato chip bags, used napkins and other trash tossed around, which increased in volume the closer I got to one of the markets. If anyone within a square mile of Alcatraz and Shattuck suddenly get a craving for a Mickey's bigmouth or a sixpack of Michelob then there are plenty of options, we don't need more. I don't care if your Mother Teresa I don't want another place selling booze six blocks away from my house.

September 19, 2009 1:54 PM

Ryan said...

So I guess the option to go see him is no, He has to get to a computer to write something up. Its Sad you that refuse to go see him

September 19, 2009 4:01 PM

GoodNeighbor said...

LOL, no one knows your real name either - "Ryan", "Jonathan", and "Mike"

GoodNeighbor (me) and Concerned Neighbor are different people, btw.

I HAVE gone to see Mr. P and got the same spiel he gives to everyone. Then I went to the Planning meeting, because I have a house a block away and am concerned about what will happen in our neighborhood.

I've yet to hear ONE reason I should support Mr. P's liquor license plans. Since you seem to know him personally, why should I, in your opinion support the sales of liquor in MY

neighborhood?

September 19, 2009 4:53 PM

Shanda said...

hey Ryan

You seem to have internet. You seem to know everything about him and his buisness. Why cant he just write something, give it to you and you put it up for him?

September 19, 2009 5:27 PM

Supportive Neighbor said...

The problem this blog has isn't with the liquor store itself, but with the impression that it will draw an undesirable population. If this was not a run-down old store but a new Trader Joe's opening up (which sells a full assortment of beer, wine and liquor), it might face opposition, but it is unimaginable that it would be facing this kind of fear. The salient difference here is that a Trader Joe's is a middle class establishment. Thus, the class of the store's owner and expected customers is an integral part of the judgment linking it to the possibility of crime. But class alone would not do it. The image of crime pictured here -- now be honest with yourself -- is of groups of young black men gathering in front of the store. While there may be in fact a statistical association between liquor stores, young blacks, and crime in North Oakland, using this association to make a preemptive judgment against a business is the very definition of racism and class prejudice. Of course you can frame it in the language of blight, crime, and quality-of-life ordinances -- but that is the very stuff by which prejudice turns into gentrification.

September 23, 2009 9:54 PM

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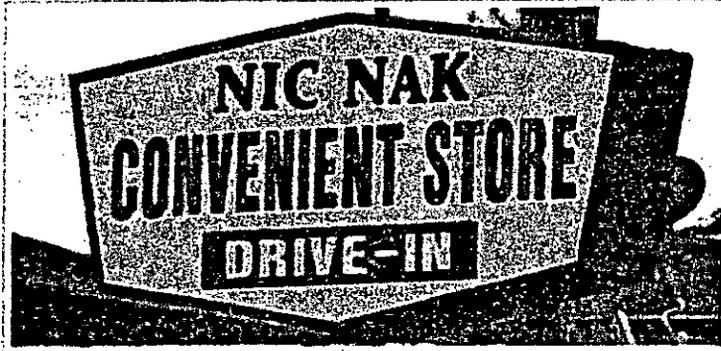
Fight Blight in South Berkeley-North Oakland

BLIGHT: The state or result of being blighted or deteriorated; dilapidation; decay; urban blight. Something that impairs growth, withers hopes and ambitions, or impedes progress and prosperity. To have a deleterious effect on; ruin. wefightblight@yahoo.com

SATURDAY, SEPTEMBER 19, 2009

Nic Nak Liquors--At What Cost to Our Youth

As many of you know, the proposal to open Nic Nak Liquors at 6400 Shattuck Avenue has stirred a tremendous amount of controversy in North Oakland. Many of those opposed to Mr. Ashrious Pannell's proposed liquor store cite an over abundance of existing liquor stores



in North Oakland and the nuisance many have become in terms of loitering, public drunkenness, litter, graffiti, drug dealing and violence. They point to the many existing liquor stores, such as T and K Market which is less than 80 feet away from Nic Nak, and note that North Oakland and South Berkeley do not need more liquor stores. Those in support of Mr. Pannell's application praise him as a good businessman and former Alameda County Sheriff that runs a tidy store and will not tolerate any of the problems that typically plague other liquor stores and convenience markets.

Nevertheless, we have raised the question--who profits and who pays the cost of another liquor store in our community? Our conclusion is that if Mr. Pannell is granted a Major Variance to locate another liquor store within 1000 feet of an existing liquor store, he will reap the profit at the expense of the community. As you will see, the costs to the Community include our children.

In researching the link between crime and the concentration of liquor stores, we came across a really interesting study, [Oakland on the rocks, Surveying Teens about Alcohol in Oakland](#). This report was published in 2005 by the Environmental Prevention in Communities (EPIC) and Alameda County Public Health Department.

The report concludes that *Alcohol use among Oakland youth is a serious problem that requires creative environmental prevention*



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Drug Houses/Drug Dealing Hotline 510-238-3784

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interventions. Oakland youth are significantly influenced by media messages and over-concentration of alcohol outlets. There are major disparities by race, gender and age such that older boys are likely to



drink more often and binge drink; and White and Hispanic youth drink more often than Black or Asian youth. The good news is that young people (87%) are aware of the consequences of drinking and driving and perceive it as dangerous. The difficulty is that underage drinking is still considered a rite of passage, a lesser evil than drugs and a social norm. The mixed messages young people receive about drinking are prolific. TV, billboards, peers, sports events, movies and possibly even parental behavior all contribute to mixed signals. More environmental prevention efforts are necessary to challenge the media and alcohol industry's dominance over our youth's sensory environment. Strategies include limiting access to alcohol, and providing creative options for healthy youth development.

Drinking Patterns

- About 1 in 4 Oakland youth has had a drink in the last 30 days.
- Boys drink more often than girls (22% vs. 13%).
- White & Hispanic youth have significantly higher rates of drinking than Black and Asian youth.
- Binge drinking is a major concern. The majority (42%) say it takes 5 or more drinks to get drunk.
- On average, 22% of Oakland youth started drinking alcohol before the age of 11. More than 50% had their first drink by the time they were 13.

Access to Alcohol

- Most youth in Oakland report getting their alcohol from a liquor store or supermarket (46%), friends or at party(33%), or parents/house (25%). Many report that relatives/siblings (20%) or older adults (18%) also play a major role in providing access to alcohol.

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Shattuck Neighborhood Crime Prevention Council 510-764-2077

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Reasons for drinking

- Most young people drink because of stress (59%), because it feels good (57%), or peer pressure (56%).
- Most say that being aware of the consequences (38%), accidents (38%) or the stories they have heard (33%) related to alcohol use would prevent them from drinking at all or too much.



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Environmental influences

- More than 60% of youth on average have seen alcohol ads on TV or magazines and sporting events.
- Youth report most parents (62%) are not comfortable with their youth drinking anywhere.

Consequences of Drinking

- An astonishing 41% have gone for a ride in a car with a drunk driver. A significantly higher proportion of youth who have had a drink in the last 30 days have ridden in a car with a drunk driver (58%), compared to 34% of non-drinkers.

Recommendations

The youth at EPIC have put together these recommendations for local communities to take into consideration:

- Reduce young people's access to alcohol through their parents and other adults by developing an educational media campaign on underage drinking directed at adults.
- Reduce young people's access to alcohol through the retail environment by requiring strong enforcement of laws against selling alcohol to minors.
- Provide funding for grassroots youth organizations to take action on community alcohol problems. Support and expand youth programs that foster youth empowerment and education.
- Limit alcohol ads in the media, especially on radio stations that play popular music. Promote alcohol-free sponsorship at community events.
- Place store liquor ads away from the clear sight of children and youth. These ads should be at least 4 feet high, and out of windows and doors to improve visibility into and out of stores.



- Raise awareness among government and lawmakers that alcohol use is a serious problem. Make it a priority to educate adults and young people about the consequences of drinking.

What is interesting about the study is the conclusion that Oakland youth are significantly influenced by media messages and over-concentration of alcohol outlets. Additionally, an astonishing 46% of youth report getting their alcohol from a liquor store or supermarket. The recommendations include limiting access to alcohol and educating government and lawmakers about the serious problem of alcohol use among Oakland youth. Despite these type of studies, the City wants to add to the already overwhelming number of liquor stores in North Oakland and South Berkeley.

The City of Oakland Planning Staff had proposed approving the convenience store, but denying Mr. Pannell a Major Variance to peddle liquor in North Oakland. Then the Planning Commission, led by the now departed Commissioner Anne E. Mudge, requested the Planning Staff return with findings for approval of the alcohol sales, despite opposition by the East Lorin Neighborhood, the Shattuck Crime Prevention Council and nearby business owners. This was based on Mr. Pannell's portrayal of himself as a victim of the City bureaucracy, racism, and gentrification. While there is not a shred of evidence in the administrative record that the property qualifies for a Major Variance, the Planning Commission is poised to approved this project and add to the already overwhelming number of liquor stores in North Oakland and South Berkeley.

Mr. Pannell, we ask again, who pays the cost and who profits? As a self-proclaimed pillar of the community and a former Sheriff, you of all people should know the cost to our community and to our youth.

Posted by Fight Blight at 8:26 PM 

Labels: [Anne E. Mudge](#), [crime and alcohol](#), [Major Variance](#), [Nic Nak Liquors](#), [Oakland Planning Commission](#), [problem liquor stores](#), [youth and alcohol in oakland](#)

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Fight Blight in South Berkeley-North Oakland

BLIGHT: The state or result of being blighted or deteriorated; dilapidation; decay; urban blight. Something that impairs growth, withers hopes and ambitions, or impedes progress and prosperity. To have a deleterious effect on; ruin. wefightblight@yahoo.com

WEDNESDAY, SEPTEMBER 23, 2009

Nic Nak Liquors--A Case for Over-Concentration of Liquor Outlets in North Oakland/South Berkeley



Nic Nak Liquors at 6400 Shattuck Avenue is attempting to obtain a Major Conditional Use Permit and a Major Variance from the Oakland Planning Commission for liquor sales. Approval of this land use activity would create a major and significant precedent in the ability for liquor stores that have lost their Deemed Approved Status as a non-conforming legal use to re-open in Oakland.

Because the property is located 80 feet away from an existing liquor store, T and K Market, and continuous liquor sales at Nic Nak ceased for more than 90 days, the City of Oakland requires Nic Nak to obtain a Major Variance. A Major Variance relates to a unique or extraordinary physical or topographic constraint which Nic Nak does not have. There is nothing in the Administrative Record that currently supports approval of another liquor store in North Oakland. Not even if former Commissioner Anne E. Mudge and Commissioner Boxer fabricate out of thin air the notion that "historic relevance" is equivalent to a unique physical constraint does this mean the courts will validate their misapplication and misinterpretation of the City requirements for a Variance. We note this because if the City of Oakland approves this land use, contrary to its own adopted public policy and regulations, it will likely receive judicial scrutiny according to some neighbors.

North Oakland is already over saturated with liquor stores, many of which create significant nuisances for North Oakland neighborhoods. The City Staff Report, dated August 5, 2009, recommended denying Mr. Pannell's proposal to peddle liquor and stated that: *This proposed location [Nic Nak] is within 80 feet of a market across the street*



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selling beer and wine. A Variance has been requested to allow this Alcoholic Beverage Sales Commercial Activity closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Activity. This is an adverse precedent for other such uses. This store will not provide an unmet Alcoholic Beverage Sales need for a population in the immediate Oakland Community, since beer and wine can be purchased across Alcatraz Avenue and spirit liquors can be purchased at several locations within a 5-minute drive. The store will not serve as a catalyst for other desirable businesses in the area, such as retail or restaurant uses; rather, the store is planned to operate like liquor stores from 40 years ago.

The August 5, 2009 Staff Report also noted that: *the Planning Code Section 17.09.040 defines: "Alcoholic beverage licenses over concentrated areas" as "a police beat with crime rates that exceed the City median by twenty percent or more or a census tract in which the per capita number of on-sale or off-sale retail Alcoholic Beverage Sales licenses exceeds the Alameda County median" The applicant's store is in Police Beat 11-X. In 2008, there were 1,030 crimes in 11-X. the City's "over-concentrated areas" threshold was 1,320. Beat 11-X is thus approximately 30% below this threshold and is thus not over-concentrated by that standard.*

In Census Tract 4005, in 2008 there were three alcoholic beverage licenses other than (exempt) full-service restaurants; the applicant's store would make 4, not exceeding the standard threshold of 6. Therefore, this site does not meet the definition of over-concentrated area defined in Section 17.09.040.

We submit that the definition of over-concentrated areas using a threshold that exceeds the median crime rate by 20% or more and/or a census tract is fundamentally defective in capturing the true blight and nuisance activities associated with liquor stores. Using crime rates that exceed the City median by 20% or more is a blunt metric that does not accurately target or identify the most specific crimes associated with liquor stores in a particular community such as North Oakland--loitering, littering, vandalism, public drunkenness, driving while under the influence, etc. It is blunt because it includes all crimes and then establishes that over-concentration is a threshold of 20% or more of the City median. The City of Oakland, by most accepted measures, has some of the highest crime rates in the entire United States. These high crime rates are driven by some of the most blighted, poverty-stricken, depressed, violent neighborhoods in the country. To use a threshold that is 20% or more of the median crime rate of one of the worst crime-plagued cities in the country as a metric for success results in the unbearable tolerance of an incredibly high number of nuisance crimes associated with liquor stores within a police beat as compared to the vast majority of cities of a comparable size in the United States. The fact that Beat 11-X is 30% below the threshold for crime in Oakland is actually a testament to the years of hard, dedicated and focused work of the Shattuck Crime Prevention Council, neighborhood associations, businesses and the Oakland Police. Crime that is 30% less than the Oakland median crime rate

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would not be tolerated in the vast majority of communities in the United States. To penalize this hard work with the addition of yet another liquor store is contrary to the public interest, the stated public policy of the City, and the health and welfare of the residents of North Oakland particularly when considering the body of research and evidence that establishes an incontrovertible link between the density of alcohol outlets, crime and adverse public health consequences.



The analysis by the Oakland Planning Staff in their report and findings for approval are troubling and highly deficient in that it did not consider or evaluate any liquor stores in North Oakland and South Berkeley, except Nic Nak, for their cumulative contribution to crime, nuisance activities and detriments to quality of life and public health. No assessment was done to map out and show the location of such liquor stores in North Oakland and South Berkeley. Hence no accurate baseline was defined as to the adverse effects liquor outlets are currently having in North Oakland. It is critical, since Nic Nak liquors is located less than 1/4 a mile away from South Berkeley, that liquor stores in South Berkeley also be considered. The absence of any reasonable assessment of the cumulative effects of existing liquor stores fails to properly place the approval of Nic Nak liquors in an appropriate context for decision makers and essentially encourages them to disregard the over-concentration of liquor outlets in their decision tree.

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The use of a census tract, while a relatively standardized and efficient unit for comparing and measuring changes from one small geographic area to another, does not adequately assess the over-concentration of liquor stores and, in fact, underestimates the cumulative adverse effects these stores are having on geographically distinct neighborhoods that are larger than a census tract in North Oakland and South Berkeley. The use of a census tract as a geographic demarcation for the assessment of effects on a neighborhood or community is artificial and politically expedient with no real scientific basis or nexus to assess the true public health effects and increases in crime related to the availability of alcohol. In the case of North Oakland, census tract 4005 is also artificially constrained by city boundaries, effectively negating a true assessment of the cumulative effects and over-concentration of liquor stores in the vicinity of the proposed Nic Nak Liquor Store which spans the Oakland Berkeley City boundaries. This is true particularly in our highly mobile community where movement of people and alcohol is facilitated by an abundance of public transportation including AC Transit, BART, personal autos, bicycles and other conveyance methods. This allows the nuisance effects of alcohol outlets to be dispersed over a relatively wide area rather quickly such that the use of a census tract to assess over-concentration of alcohol outlets would fail to adequately capture the true societal costs of increased crime and public health issues. While liquor stores are the epicenter and causation of the problem, the problems and effects are dispersed throughout a community.

Blight in the News

There is a wide and growing body of evidence nationally and internationally that shows an incontrovertible link between a concentration of liquor stores, crime and public health concerns. One study in Richmond California, Liquor Stores and Community Health, prepared by the Pacific Institute,

http://www.pacinst.org/reports/measuring_what_matters/issues/liquor_store.pdf

notes that: *A high density of liquor stores can contribute to a variety of health and safety problems. Studies show that neighborhoods with higher concentrations of liquor stores also have higher rates of alcohol-related hospitalizations, drunk driving accidents, and pedestrian injuries. A recent study across all California zip codes found that neighborhoods with a higher density of liquor stores had higher numbers of childhood accidents, assaults, and child abuse injuries. Liquor stores become places where social controls are weaker, increasing the likelihood of criminal and nuisance activities. A high density of liquor stores is linked to higher levels of crime and violence. A study conducted in Los Angeles found that each new liquor store in a neighborhood resulted in 3.4 more assaults per year. In New Jersey, researchers found that the number of liquor stores was the single most important environmental predictor of why some neighborhoods have higher crime rates than others--a stronger predictor than unemployment rate or median household income.*

The Pacific Institutes Study also noted that: *A high density of liquor stores also contributes to economic and social disintegration. Similar to power plants and refineries, alcohol outlets represent a form of locally unwanted land use that conflicts with desirable land uses such as schools, parks, and residences. The over-concentration of liquor stores increases the perceived lack of safety and limits walkability in the community. Moreover, concentrations of liquor stores in a neighborhood can constrain economic opportunities for current and new businesses and therefore are both a symptom and accelerator of economic decline.*

Recognizing the importance of educating decision makers, the Hermosa Beach Neighborhood Association has compiled a significant list of research on alcohol outlet densities at <http://www.hbneighborhood.org/My%20Web/1%20HB%20CrimeNews%202004%202.htm>.

These various national and international peer reviewed studies collated by the Hermosa Beach Neighborhood Association conclude or provide significant evidence that: (1) alcohol availability is related to violent assaults at the local level; (2) alcohol outlet density was the single most important environmental factor explaining why violent crime rates are higher in certain parts of the city than in others; (3) neighborhoods with higher alcohol outlet density have higher rates of alcohol-related problems than a neighborhood's racial or ethnic makeup; (4) localities with more alcohol sales had more assaults per capita; (5) the more off-site alcohol outlets a neighborhood has, the

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more likely it is to have more homicides; (6) three northern California cities with a higher density of alcohol outlets had significantly higher levels of crime among Mexican American youth; (7) there was more youth violence in neighborhoods that had more off-site alcohol outlets than those that did not; (8) areas with more alcohol outlets experience more violent crime; and (9) blocks having more bars had higher crime rates.

None of this body of incontrovertible evidence was either reviewed, evaluated or consulted by the Planning Staff or the Planning Commission in preparing its findings to approve a Major Variance to allow yet another liquor store in North Oakland even though it is readily available on the internet. The approval for the Nic Nak is moving forward despite significant objections from the Shattuck Crime Prevention Council, the East Lorin Neighborhood Association, and local business owners that an additional liquor store in an already over-concentrated North Oakland community will increase alcohol related crimes and public nuisances. In dismissing community concerns, one Commissioner, Sandra Galvez, even went so far as to characterize the predominantly white residents who were objecting to additional liquor stores as fostering "institutionalized racism." The body of peer-reviewed scientific evidence and the actual experience of the Shattuck Crime Prevention Council, the East Lorin Neighborhood Association and local business owners in North Oakland is diametrically opposed to the personal beliefs and political leanings of those Planning Commissioners who are loathe to deny the Nic Nak's application for a Major Variance for fear of opposing a black-owned business and looking very un PC, no matter how detrimental it is to the community.

Since former Commissioner Mudge and existing Commissioner Doug Boxer led the charge for approving another liquor store in North Oakland, and seem to think more liquor stores are a good and positive thing to maintain and retain historic associations including neighborhood, social and leadership activities, and because Commissioner Galvez believes the opposition to another liquor store in North Oakland somehow is the result of "institutionalized racism", we decided to show them and others just how many liquor stores and other off-sales alcohol outlets there are within an approximately 1 mile radius of the proposed Nic Nak Liquor Store. There are a total of 18 existing off-sale liquor outlets within an approximately 1 mile radius of Nic Nak. If Nic Nak is granted a Major Variance to peddle liquor it will make 19.

We chose an approximately 1 mile geographic limitation for our assessment as it takes only 15-20 minutes to walk one mile, 5-7 minutes to bicycle one mile and 1-2 minutes to drive one mile (not counting wait times at lights). A one mile geographic boundary gives a reasonably convenient radius for all modes of travel and provides a more comprehensive assessment of over-concentration than does a much smaller census tract.

Blog Archive

▼ 2009 (22)

▼ September (5)

Nic Nak Liquors--A Case for Over-Concentration of ...

Nic Nak Liquors--At What Cost to Our Youth

Nic Nak Liquors--A Community in Disagreement

Nic Nak Liquors---A Liquor Store Coming to Your Ne...

Update on College Avenue Safeway

► August (2)

► July (1)

► June (1)

► May (1)

► April (3)

► March (3)

► February (1)

► January (5)

► 2008 (45)

This assessment does not include the many on-sales liquor outlets such as the Starry Plough, the White Horse Bar and Inn, Valparaiso, Dorsey's Lockers and Nick's Lounge where disturbances have included everything from people being drunk in public, to drunken bar fights, shootings, stabbings and even murders (Dorsey's Lounge and Nick's Lounge). This assesment also does not include the liquor stores that have already been shut down as public nuisances.



T and K Market

6342 Shattuck Avenue, Oakland

Approximately 0.04 miles from Nic Nak.

Sells beer, wine, junk food and processed foods.

Documented problems include: Loitering, drug sales, littering, and graffiti. Frequented by North Oakland gang members from nearby Oakland Housing Authority complex.



Alcatel

6363 Shattuck Avenue, Oakland

Approximately 0.04 miles from Nic Nak.

Sells beer, wine, hard liquor, junk food and processed foods.

Documented problems include: None.



Aiban Market

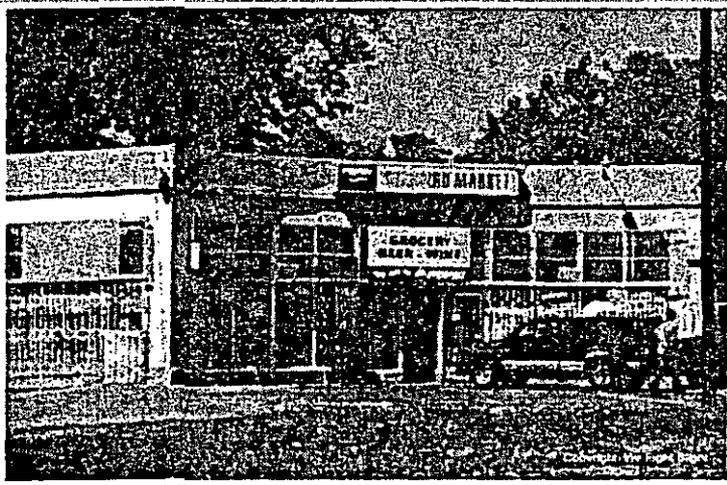
701 60th Street, Oakland

Approximately 0.45 miles from Nic Nak.

Sells beer, wine, junk food and processed foods.

Documented problems include: According to the City of Oakland it is considered a bad liquor store with several minor violations or at least one serious violation. Loitering, drug dealing, and public drinking.

Three confirmed sales to underage minors documented by ABC.



Stanford Market

3400 Adeline Avenue, Berkeley

Approximately 0.47 miles from Nic Nak.

Sells beer, wine, junk food and processed foods.

Documented problems include: Loitering, public drunkenness, and littering. Frequented by south Berkeley gang members.



M. and H Market and Liquor

Adeline Avenue, Berkeley

Approximately 0.47 miles from Nic Nak.

Sells beer, wine, hard liquor, junk food and processed foods.

Documented problems include: Loitering, public drunkenness, littering, graffiti. Frequented by South Berkeley gang members.



Uptown Market and Liquors

5635 Shattuck Avenue, Oakland

Approximately 0.55 miles from Nic Nak.

Sells beer, wine, hard liquor, junk food and processed foods.

Documented problems include: Loitering, public drunkenness, drug dealing, boom cars, unauthorized hip hop promotion, littering, and graffiti. Frequented by North Oakland gang members.



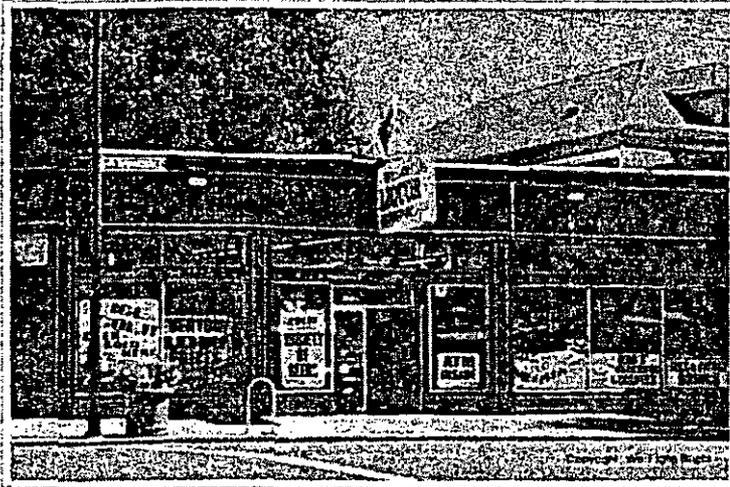
Alcatraz Market

1601 Alcatraz Avenue, Berkeley

Approximately 0.55 miles from Nic Nak.

Sells beer, wine, junk food and processed foods.

Documented problems include: Loitering, public drunkenness, drug dealing, littering, and graffiti. Frequented by South Berkeley gang members.



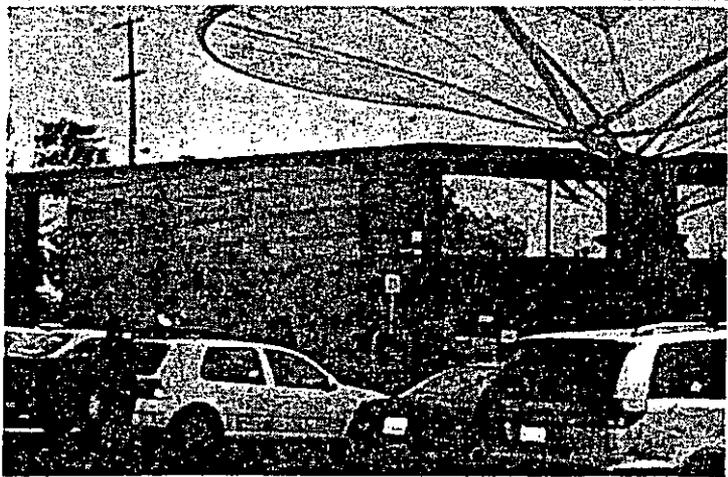
Williams Liquors

5830 Telegraph Avenue, Oakland

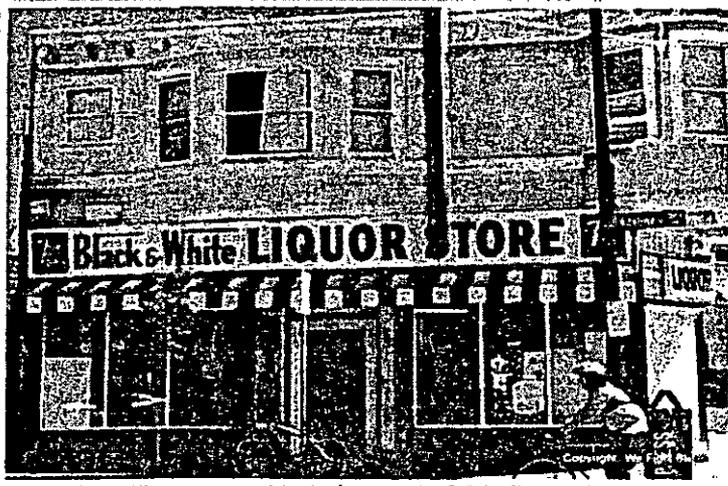
Approximately 0.57 miles from Nic Nak.

Sells beer, wine, hard liquor, junk food and processed foods.

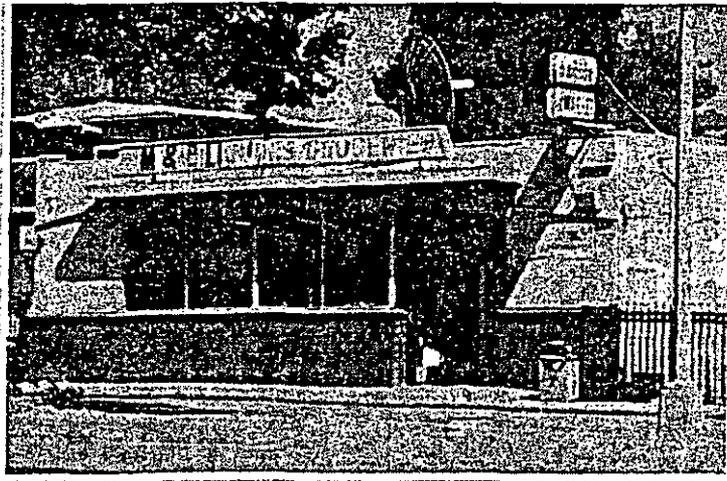
Documented problems include: Loitering, public drunkenness, littering, and graffiti. Frequented by North Oakland gang members from nearby Oakland Housing Authority complex. Drive by shootings at corner of 58th and Telegraph.



Berkeley Bowl
6363 Shattuck Avenue, Berkeley
Approximately 0.62 miles from Nic Nak.
Sells beer, wine, and full service grocery items.
Documented problems include: Aggressive panhandling.



Black and White Liquors
3027 Adeline Avenue, Berkeley
Approximately 0.72 miles from Nic Nak.
Sells beer, wine, hard liquor, junk food and processed foods.
Documented problems include: Averted declaration of public nuisance by City of Berkeley Zoning Board 5-4. Public drunkenness, public urination, defecation and vomiting on nearby residential streets, litter, and graffiti. Site of violent crimes including recent day-time pistol whipping and armed robbery of a woman. Currently under severe operational restrictions.



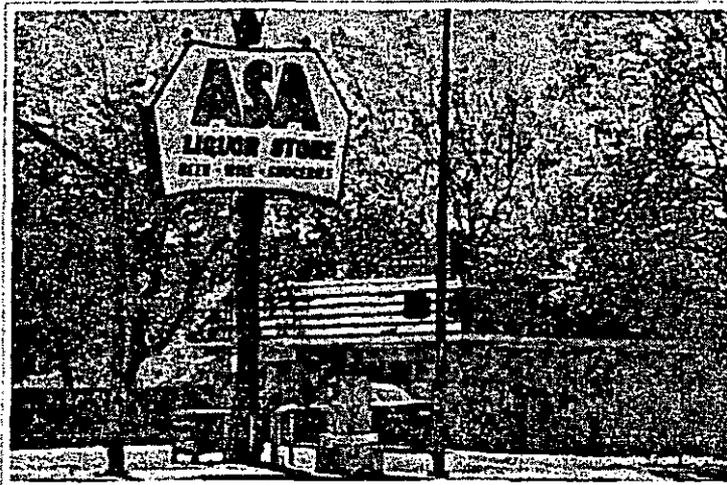
M and B Liquors and Groceries

6310 Market Street, Berkeley

Approximately 0.73 miles from Nic Nak.

Sells beer, wine, hard liquor, junk food and processed foods.

Documented problems include: Loitering, littering, graffiti, and public drunkenness.



ASA Liquor Store

5909 Market Street, Oakland

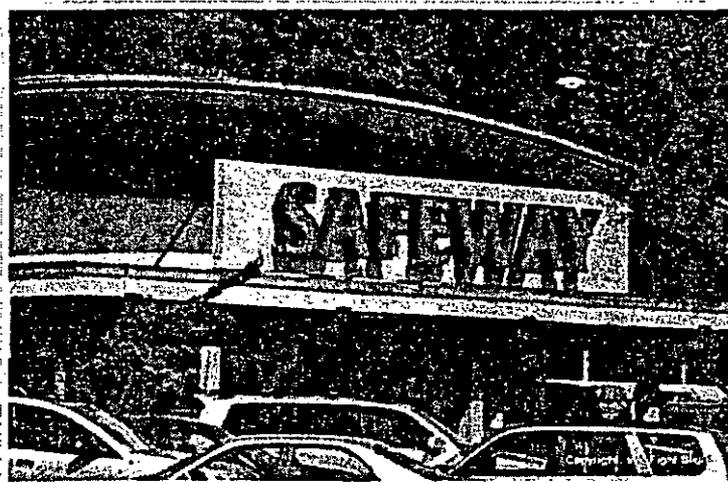
Approximately 0.74 miles from Nic Nak.

Sells beer, wine, hard liquor, junk food and processed foods.

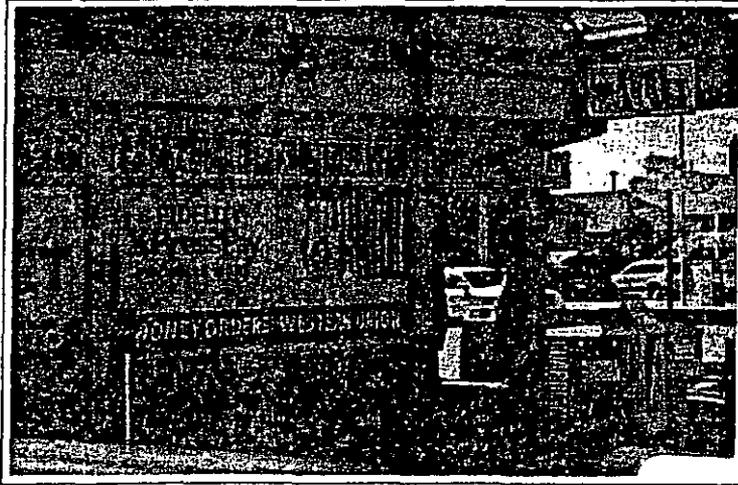
Documented problems include: According to the City of Oakland it is considered a bad liquor store with several minor violations or at least one serious violation. Loitering, littering, graffiti, and public drunkenness.



Whole Foods
3000 Telegraph Avenue, Berkeley
Approximately 0.79 miles from Nic Nak.
Sells beer, wine, and full service grocery items.
Documented problems include: Attempted alcohol purchases by underage UC Berkeley students, and aggressive panhandling.



Safeway
6310 College Avenue, Oakland
Approximately 0.80 miles from Nic Nak.
Sells beer, wine, hard liquor, and full service grocery items.
Documented problems include: Attempted alcohol purchases by underage UC Berkeley students, and aggressive panhandling.



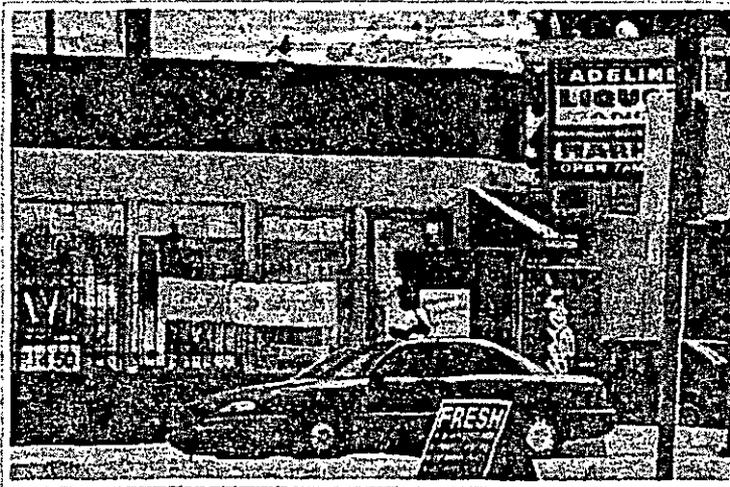
King's Market

5442 Martin Luther King Jr. Way, Oakland

Approximately 1.00 miles from Nic Nak.

Sells beer, wine, junk food and processed foods.

Documented problems include: Graffiti, litter, and minor loitering.



Adeline Liquors and Market

5702 Adeline Avenue, Oakland

Approximately 1.04 miles from Nic Nak.

Sells beer, wine, hard liquor, junk food and processed foods.

Documented problems include: According to the City of Oakland it is considered a bad liquor store with several minor violations or at least one serious violation. Loitering, public drunkenness, littering, and graffiti.



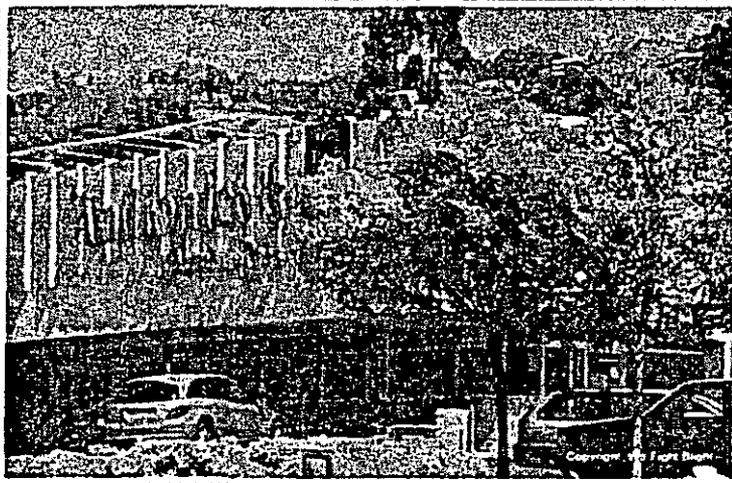
East Bay Liquors

5350 Martin Luther King Jr. Way, Oakland

Approximately 1.06 miles from Nic Nak.

Sells beer, wine, hard liquor, cigarettes, junk food and processed foods.

Documented problems include: According to the Cit of Oakland it is considered a bad liquor store with several minor violations or at least one serious violation. Public drunkenness, loitering, drug sales, littering, and graffiti. Involved in several shootings including a killing by an Oakland Police Officer.



Andronicos

2655 Telegraph Avenue, Berkeley

Approximately 1.18 miles from Nic Nak.

Sells beer, wine, hard liquor, and full service grocery items.

Documented problems include: Attempted alcohol purchases by underage UC Berkeley students.

Posted by Fight Blight at 2:05 PM 

Labels: Anne E. Mudge, blight, doug boxer, liquor, liquor stores and crime, Litter, Oakland, Oakland Planning Commission, over

Emails, Letters, Other
Correspondence in
Opposition
6400 Shattuck Avenue
CMVM09-111

From: Christopher Waters [christopher@GypsySpiritMission.com]
Sent: Wednesday, July 29, 2009 1:26 AM
To: Shattuck Neighbors Yahoo Group Yahoo Group; EastLorinNeighbors; 65th-Wheeler-Fairview Group Group; NOVA Yahoo Group Group
Subject: Re: [shattuckneighbors] REMEMBER THERE ARE TWO SIDES TO EVERY STORY. (Jo Jo's Convenient Market)

Neighbors:

Mr. Pannell, his daughter Ms. La Chaux, and her son Joseph (Jo Jo's namesake) are long-time residents of our community. Joseph is a great guy and a very ambitious and accomplished young man. I want to make it clear that my opposition to this application for a major variance and major conditional use permit for the liquor sales use has nothing to do with personalities or neighborly disagreements with Ms. La Chaux. It has everything to do with the fact that our neighborhood needs another liquor store like it needs a hole in the head.

The facts are simple: The re-opening of a liquor store at this location would be in violation of Oakland's Municipal Code, which states:

-No Alcoholic Beverage Commercial Sales activity shall be located closer than 1,000 feet to any other Alcoholic Beverage Sales Commercial Activity [Nic Nak/Jo Jo's is within 100 feet of T&K Market, which is right across the street]

-[It] will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable
-[It must conform] to the criteria for findings of "Public Convenience and Necessity"

Any one of these facts, let alone all of them, strongly compel a denial of Mr. Pannell's application for the Major Variance and Major Conditional Use Permit.

After 90 days of non-operational status, Mr. Pannell lost his grandfathered-in off-sale liquor sales use -- and as Ms. La Chaux points out, Mr. Pannell's store has been non-operational for over 5 years, since 2004. It appears Mr. Pannell and Ms. La Chaux are making the argument that they should get to keep the liquor sale use because the city made a clerical error, which implies that Pannell and his family were naïve, innocent victims of a city bureaucracy, unaware that their application to renew would place their business in contradiction with the law. I know for a fact that this untrue, because I had this conversation with Mr. Pannell myself, in person, about two years ago when he told me he was planning to reopen the liquor store. This was after Ed Kikumoto and the Alcohol Policy Network effectively prevented their first attempt to reopen the liquor sales use. I explicitly pointed out to Mr. Pannell that he had lost his grandfathered-in status and that he would need to put his property to a higher and better use than liquor sales in order to be compliant with the law. He brushed my comments aside. Furthermore, I and many of our neighbors all have copies of a letter to Mr. Pannell from the Deputy Director of Oakland's Planning and Zoning Department, dated 28 April 2004, informing Mr. Pannell that his grandfathered-in (Deemed Approved/legal non-conforming) liquor sales activity status had lapsed. Rather than applying at that time (or later, when no longer ill) for a Major Variance and Major Conditional Use Permit, Mr. Pannell instead waited for a change of staffing at City Hall, changed the name of the applicant from "Nic Nak Drive In Liquor" to "Jo Jo's Market", and flew under the radar through the City's approval process. When the City caught its mistake and withdrew its approval of the liquor sales use and demanded an immediate cease & desist of liquor sales, only then did Mr. Pannell, given no other choice, apply for the Major Variance and Major Conditional Use Permit that has sparked so much objection from the neighborhood.

Ms. La Chaux suggests that it's okay to have a liquor store across from T&K, because T&K only sells beer & wine. However, both are liquor sales uses, which by law cannot be within 1,000 feet of each other. These two liquor stores are d

10/1/2009

ifferent from Nomad Cafe in that they have an "off-sale" use, which means that people can buy alcohol and take it away with them, whereas Nomad Cafe has an "on-sale" use (the beer & wine can only be consumed on premises). At Nomad, this on-sale use also complements a restaurant use. The only crime or violence we have experienced at Nomad has been perpetrated by non-customers, some of whose escapades have no doubt been fueled with help from our neighborhood liquor stores.

It's unfortunate that Ms. La Chaux is attempting to deflect the facts by painting a picture of the Nomad Cafe as a crime magnet for our neighborhood, rather than a model business that has helped make our neighborhood more livable, walkable, neighbor-friendly, community-oriented and safe. Contrast this with Nic Nak/Jo Jo's, which is an uninviting, gated, liquor-laden plexiglass gauntlet with a toilet out by the fence and an RV dominating the parking lot. I believe Pannell's family can -- and must -- do a much better job honoring our neighborhood with their inheritance than giving us back an old liquor store with a new name at Shattuck and Alcatraz.

Mr. Pannell's application for the Major Variance and Major Conditional Use Permit will be before the Planning Commission at City Hall on August 5. It is Item #4 on the agenda, and the meeting starts at 6pm. I encourage neighbors to come, fill out speaker cards, and have your voices heard, or to at least stand when asked to indicate whether you support or oppose the approval of the application.

Christopher Waters

On Jul 28, 2009, at 11:11 PM, nsoresident wrote:

In regards to Jo Jo's Convenient Market located at 6400 Shattuck Avenue. You have been given false information. I would like to set the record straight by relating that Mr. Pannell suspended his store operation business in 2004, due to health issues. He attempted to sale his liquor license on three different occasions. Each time the City of Oakland rejected the applicants. It was stated by one of the opposing members that Mr. Pannell attempted to sale his liquor license for \$ 100,000, which is a lie. The fact is each offer was less than \$ 20,000. Further, in 2008, ABC (Alcohol Beverage Control) gave Mr. Pannell two options. ABC advised Mr. Pannell that within six months either relinquish your liquor license or re-open your business. The state has the authority to decide who can sale Alcoholic Beverages not the city. As a result, the family decided to re-open the family business which has been in business for 30 plus years with no violations or citations. Our business should be viewed as a role model not a nuisance.

Mr. Pannell received all the proper permits from zoning before re-opening his business. He was given the green light to operate and therefore invested a substantial amount of money in inventory to provide products to the community. After receiving authorization from the state and city the business was opened on March 14, 2009. We received a warm welcome from the community who remembered us and a welcome to the neighborhood from some of the new comers in the neighborhood.

Unfortunately after we began operating our business soon thereafter we were notified by the City of Oakland that we were issued our permit by mistake. This action was not fair after we received the blessing of our city government to continue our operation.

The business across the street named T & K Market has been in existence for a while; however the management has changed hands on several occasions. It should be noted, T & K Market does not have a liquor license, and the only alcoholic beverages they are permitted to sale are beer and wine. Separate licenses are required for Beer and Wine and Alcohol. We

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have always considered T & K Market friendly competition. The only other businesses near our location that have liquor license are Uptown who are approximately 8 blocks away and Acatel Liquors who is located on Telegraph.

In addition, it was brought to our attention that the Nomad Café located at 6500 Shattuck Avenue is opposing the business because they feel alcohol would bring crime to the neighborhood, so why is the Nomad Café selling beer and wine that is alcohol as well. Alcohol bottles from the Nomad Café periodically appear at my curb along with other trash that comes directly from the Nomad Café. Is it within the law to drink in public on the sidewalk outside the Nomad Café? NO. In addition, the Nomad Café has had numerous incidents of crime in the short time it has been opened. It is a known fact if you consume too many beers and drink too many glasses of wine you can become intoxicated, depending on your tolerance level. In regards to crime, the Nomad Café was robbed; this act also endangered the safety of the customers, which was also televised. In addition, the undersigned witnessed a laptop taken from one of their customers and also witnessed an object thrown into the Café's window. All of the above crimes occurred before the opening of Jo Jo's Market. Jo Jo's Convenient Market formally known as Nic Nak Liquors, have never had any loitering, drug activity, soliciting, prostitution, sale of alcohol or tobacco to minors or violent crimes on the property. That is exactly what we should expect from someone who was an outstanding honored member of the law enforcement community. We have always operated a respectful business. Furthermore, we have attempted to keep our prices affordable; we have off street parking and 24-hour surveillance. We offer more products other than alcohol. We sell hand packed ice cream, slushes, sundries, produce, beverages and a variety of foods. To add, the undersigned has resided in the community for more than 30 plus years. Further, the undersigned has worked in the community for the last 25 years to present. As a Deputy Probation Officer (peace officer) my job has been to keep our community safe. Many of the clients on my caseload reside in the immediate community. My goal has been to change their lifestyles in a positive direction. Based on my professional experience, many of the crimes occur from street drugs, gang activity and the lack of employment. Not just because alcoholic beverages are sold.

It is a shame that new residents of our community have been misinformed about the activities of the owner of the store. Our store has always provided good customer service and inspiration to our community. How many retail businesses provide positive interaction with our community? Not many. We also operated the North Oakland Boy's Home on 55th street for many years, a business that provided counseling, social skills, computer skills in a nurturing environment for troubled youth. It should be noted, this family has contributed to the positive social fiber of this North Oakland Community for many many years.

If you would like to receive further information, please stop by and visit us, we will be available to answer any of your questions.

For your information, since we open our business the hours of operation is the following; closed on Monday and Tuesday, on Wednesday, Thursday and Sunday 10:00 AM -10:00 PM and Friday and Saturday 10:00 AM - 12:00 AM.

Sincerely, Lindia La Chaux

[Messages in this topic \(1\)](#) [Reply \(via web post\)](#) | [Start a new topic](#)

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Valeska, David

From: Jeffrey G. Jensen [jeffreygjensen@yahoo.com]
Sent: Thursday, August 06, 2009 1:05 PM
To: Valeska, David; Miller, Scott
Subject: Nic Nak Liquors

Mr. Valeska/Mr. Miller:

If I heard correctly last night, the Planning Commission closed the public hearing and did not extend the public hearing or continue it to the next meeting at which the staff findings for a major variance and conditional use permit will be presented. Consequently, there will be no formal opportunity for the public to address the legal rationale for the findings or the substance of any additional conditions. Is that correct?

However, I also heard several Commissioners express an interest in understanding what compromise might be acceptable to both those in support as well as opposition to the liquor sales. While the applicant, Mr. Pannell, was given an excessively abundant opportunity to plead his case by the Chair, including what compromises might be acceptable to him, those in opposition of the liquor sales were not given the opportunity to express what conditions would be appropriate for alcohol sales as that was not part of the staff report. In the spirit of elasticity, as many supporters preached last night and the Planning Commission seemed to support, will those in opposition to the liquor sales be given an opportunity.

We simply want to understand what is procedurally allowable as this matter may be appealed to the City Council and possibly the courts due to the legal gymnastics the City will have to undertake to make unorthodox variance findings based on Commissioner Mudge's direction and the precedent this will set for the City's liquor outlet policy, notwithstanding Commission Mudge and Cox's assertion that it wont.

Thank you.

Jeffrey G. Jensen
Chair East Lorin Neighborhood Association

9/28/2009

Valeska, David

From: Pugh, Pickering, & Park Properties [pcubedproperties@yahoo.com]
Sent: Thursday, August 06, 2009 11:33 AM
To: Valeska, David
Subject: RE: RE: Nik Nak Liquor License

Thanks David for your work on this matter. I attended the meeting last night and was very dismayed at the name calling and specifically the allegations made towards your professionalism. In the event that others have not stepped forward, yet, please know that your efforts and contributions in this matter are being appreciated.

I don't feel the planning commission understands either the current demographics nor the speed at which that particular block is changing. Our property, which is 1/2 a block away on Shattuck was recently valued at +30% what we paid for it three years ago. Much of this appreciation was due to the number of flips/new owners moving into our neighborhood, and of course our own sweat to spruce up our property.

While I do understand the anger that older tenants may feel, and the concern about loss of Black businesses that I share as well, I don't feel the emotional appeals have any relevance when the current owner has tried to sell the property twice. It is VERY clear to us that this family has no concern for the neighborhood and are only pursuing this liquor license to sell it.

As a result, I wonder if it is relevant for the city to investigate any liens/mortgages related to this property to determine the likelihood that he or his family will sell the property. Transfer to a new owner, specifically one is less likely to run a tight ship, is completely relevant to the conversation and the community at large.

We cannot ignore the greater good of the community in the efforts to thank one, dying man for his service.

Thank you again and we'll be at the next meeting to support your findings.

Marie

--- On Fri, 7/31/09, Valeska, David <DValeska@oaklandnet.com> wrote:

From: Valeska, David <DValeska@oaklandnet.com>
 Subject: RE: RE: Nik Nak Liquor License
 To: "Pugh, Pickering, & Park Properties" <pcubedproperties@yahoo.com>
 Date: Friday, July 31, 2009, 11:43 AM

Staff recommendation for August 5 Planning Commission is to deny liquor,

Approve convenience market at 6400 Shattuck. Report is on City website.

9/28/2009

From: Pugh, Pickering, & Park Properties [mailto:pcubedproperties@yahoo.com]
Sent: Wednesday, July 29, 2009 9:40 PM
To: Valeska, David
Subject: Fw: RE: Nik Nak Liquor License

David,

Thanks for your attention on this matter.

Marie

--- On Wed, 7/29/09, Brunner, Jane <JBrunner@oaklandnet.com> wrote:

From: Brunner, Jane <JBrunner@oaklandnet.com>
Subject: RE: Nik Nak Liquor License
To: "Pugh, Pickering, & Park Properties" <pcubedproperties@yahoo.com>
Date: Wednesday, July 29, 2009, 3:48 PM

Marie (and Karen)–

Thank you for your email. I have heard from many residents about this issue.

I understand that the Planning Commission will be making a decision on this in early August. To have your comments on the public record I urge you to send an email to the Planner, David Valeska at dvalueska@oaklandnet.com.

Thank you,

Jane

From: Pugh, Pickering, & Park Properties [mailto:pcubedproperties@yahoo.com]
Sent: Wednesday, July 29, 2009 10:04 AM
To: Brunner, Jane
Subject: Nik Nak Liquor License

Jane,

I am writing to add our voices to the thundering crowd of neighbors apposing the Nik Nak liquor license being reinstated. We own the fourplex on the corner of 63rd and Shattuck and are, unfortunately, well aware of how liquor in our neighborhood negatively impacts our lives and the many residences within a five block circumference.

Prior to moving in (yes, we are an owner occupied building), I did not understand the issues facing lower income neighborhoods. The FACT is much of the crime and drug activity in our beautiful city is fueled by small corner liquor stores.

The last three years have been a much needed wake-up call and have given us empathy and understanding through so many experiences. I have personally

...cleaned a pool of blood off the sidewalk on Shattuck, after a drunk group of men beat up an other man

...called 911 for one of my tenants who was so shaken by a drunk man trying to force himself into her apartment that she could not dial the phone

...been faced with multiple drunk neighbors knocking on my door late at night, asking for money "to go to Highland Hospital to visit my cousin"

...called 911 multiple times for others who were asking for help from aggressive strangers that were threatening their safety

...called 911 repeatedly because our neighbor was being beaten by her drunk/high boyfriend

...daily removed trash and litter, including all sizes of hard liquor bottles from my front garden

So in considering whether to reinstate this license, please consider what it will do to a neighborhood already suffering under the pain of poverty, drugs, and FIVE other liquor stores within walking distance. We really can't afford more fuel being added to the gang, drug, and crime related issues in our neighborhood.

Sincerely

Marie Watts (& Karen Bosko)

601 63rd Street

And tenants

Lois Porter

Angela Porter

Tara Shakeshaft

Sean Jubb

Micheal Brown

Diana Koulechova

Valeska, David

From: Pugh, Pickering, & Park Properties [pcubedproperties@yahoo.com]
Sent: Monday, August 24, 2009 9:15 PM
To: Valeska, David
Subject: Nik Nack - requested restrictions

Hi David,

I've compiled a number of recommendations to restrict the Nik Nack license, as the neighborhood is not happy and would like as many restrictions placed on this business as allowed by the planning commission.

Many of these recommendations were based on the arguments provided by the Pannell family including the issues of Black ownership in Oakland and the difficulty many young Black males have in finding decent employment. As the neighborhood obviously doesn't need or want additional liquor sales, the other suggestions restrict the volume, the hours liquor is available, the minimum size sold, the neighborhood's safety, and the ability for the license to be sold.

Please consider the following restrictions:

1. The sales of liquor on the property be restricted to the current square foot allocated and never to exceed this square footage, no matter any changes to the configuration or total store size.
2. That the liquor license require Black ownership exceeding 50%.
3. That the percentage of liquor sales not exceed 33% of total sales.
4. That there be no liquor sales after 10pm Mon-Sat night and no liquor sales after 5pm on Sunday.
5. That a minimum of 50% of managerial hours be attributed to Black males between the ages of 21-30.,
6. No single shot / airline serving size hard liquor sales or 40 oz. beer sales.
7. Security cameras installed that the police are permitted to check at any time. All recorded images, with time stamps must be held for longer than 6 months.
8. In the event crime increases, as reported by both the NCPC and police records, more than 20% for any 6 month period for the 3 blocks surrounding Nik Nack, the license will be revoked.
9. 4% of sales or 10% of profits, be donated to the Bushrod community park to provide after school sports activities for teens.
10. Any change of ownership, outside the Pannell family, requires the liquor license be renegotiated as if it were a new license.

Sincerely looking forward to when this issue will be resolved,

Marie

8/25/2009

Valeska, David

From: Jeffrey G. Jensen [jeffreygjensen@yahoo.com]
Sent: Wednesday, August 26, 2009 9:11 AM
To: Valeska, David; Miller, Scott
Cc: Don Link; Guita Boostani; Stephen Glaudemans; Ed Kikumoto; Christopher Waters; Ian Martin; Chia Hamilton; Jeffrey Jensen
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval

Mr. Valeska and Mr. Miller:

Attached, please find a list of conditions that I am requesting be included in the conditional approval for liquor sales at 6400 Shattuck Avenue, Oakland, CVM09-11 (I also support the conditions already identified by the Planning Staff for operation of a convenience market and they should be incorporated herein).

The conditions are intended to ensure that Mr. Panell and any subsequent permittee/property owner/operator/lessee is held accountable to maintaining the property and its use free from crime, blight, and public nuisances. My experience in North Oakland and South Berkeley as a former member of the Shattuck Crime Prevention Council and as the Chair of the East Lorin Neighborhood Association is that liquor stores are magnets for crime, loitering, public drunkenness, drug dealing, graffiti, litter and other nuisances. Once the use is permitted and becomes a nuisance, it takes an extreme amount of effort on behalf of the City and the neighborhood to gain control.

The conditions noted in the attached, are reasonable and appropriate for this type of use. I believe you can make the appropriate findings to support such conditions as it is the stated public policy of the City of Oakland to limit and control alcohol outlets such that they do not become public nuisances. There need not be a demonstrated past history of problems to impose conditions on such alcohol sales. The notion of a conditional use permit is that such uses are already recognized through zoning and general plan policies to be potentially detrimental to the community and therefore are subject to conditions to ensure compatibility with adjacent land uses and neighborhood expectations.

If you have any questions about the conditions I am requesting, please feel free to contact me at 510-290-1444. There may be other residents who separately submit their desired conditions. Thank you.

Jeffrey G. Jensen

--- On Mon, 8/10/09, Valeska, David <DValeska@oaklandnet.com> wrote:

From: Valeska, David <DValeska@oaklandnet.com>
 Subject: RE: Nic Nak Liquors
 To: "Jeffrey G. Jensen" <jeffreygjensen@yahoo.com>, "Miller, Scott" <SMiller@oaklandnet.com>
 Date: Monday, August 10, 2009, 11:37 AM

Jeffrey, please e-mail us in the next week or two with suggestions from

Yourself and neighbors for conditions for JoJo's/NikNak at 6400 Shattuck.

Typical conditions used on other alcoholic beverage sales permits are listed Below, which is not an exhaustive list of all possible conditions but rather Indicative of standard conditions/best management practices. These would Be added to the draft you saw for Aug. 5 Planning Commission (conditions 1 to 21, including those jointly applicable to convenience market and/or Alcoholic beverage use). This list will be edited through the end of August As we discuss this more and is not final.

22. Conformance with State Department of Alcoholic Beverage Control regulations

Ongoing.

This use shall conform to all provisions of the State ABC license. The state license and state conditions shall be posted along with these Conditional Use Permit conditions in a place visible to the public. This use shall also conform to all State Retail Operating Standards, Section 25612.5 of the Business and Professions Code and local Performance Standards, Section 15210, where applicable including any future changes in the above regulations. The intent of these standards is to reduce nuisance, litter, loitering, and crime associated with alcohol outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

23. Compliance with City of Oakland special regulations for Alcoholic Beverage Sales Commercial Activities.

a. Ongoing.

Unless waived by the Zoning Manager, within 30 days of the date of decision, at least one sign (one square foot maximum) shall be posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to the store. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

b. Ongoing.

The applicant/property owners shall clear the sidewalks adjacent to their property of all "Street Furniture" including mattresses, crates, pads, and other items for sitting or laying on by loiterers on a daily basis.

24. Inclusion of conditions in State Department of Alcoholic Beverage Control license.

Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit.

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions number 14, 15, 16, 17, 18, 21, 22, 23 and 24 in the conditions of their ABC license. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the applicant fails to include the above conditions in the ABC license.

A. Safety

Surveillance

To provide for adequate security and safety of employees and patrons and prevent nuisance activities, the permittee/property owner/operator shall: (1) Install wall length surveillance mirrors on the back wall perpendicular to the aisles/shelving that will provide clear visibility down the aisles from any location in the store; (2) Place the cash register near the entrance, or in a location that will allow maximum visibility of the sidewalk and surrounding property; and (3) Ensure that all interior shelving and displays will be no higher than 4.5 feet and that all shelving be installed perpendicular to the front of the premises so that someone looking into the interior from the sidewalk will be able to see down the aisles between the shelving.

Site Security

To provide for adequate safety and security of employees and patrons and prevent nuisance activities, the permittee/property owner/operator shall ensure that: (1) A licensed, uniformed guard is provided from 4:00 P.M. until closing; (2) A floor safe is provided and used as a cash drop; (3) Surveillance cameras are provided for all areas not visually controlled by an employee from the cash register; (4) Video records be maintained for a minimum of 72 hours before re-use and be shared with law enforcement upon request; (5) Surveillance cameras be capable of producing a retrievable image on film, tape or digitally that can be made a permanent record and that can be enlarged through projection or other means. Cameras meeting the requirements of this section shall be maintained in proper working order at all times and shall be subject to periodic inspection; and (5) Fixed metal security bars and screening that obstruct the clear view in and out of the premises are not installed or permitted.

Lighting

To provide for the adequate security and safety of the employees and patrons and prevent nuisance activities, the permittee/property owner/operator shall: (1) Install lighting fixtures that will harmonize with the building design to light the sidewalk and front of the premises during the hours of darkness the business is open; (2) Provide exterior lighting of the premises and parking area at a level sufficient to recognize the features of persons at any point on the property. Lighting shall be designed so as not to produce glare, light pollution or illuminate nearby residential properties; and (3) Provide sufficient interior lighting so that a law enforcement officer can clearly see all areas of the interior of the premises – especially the cash register area.

Windows and Doors

To provide for the adequate security and safety of the employees and patrons, the permittee/property owner/operator shall: (1) have or install doublewide clear glass doors to allow visibility into the store at all times from the sidewalk, and the street; (2) Ensure that any and all signage not cumulatively exceed 10% of the window and door space and not be placed in a manner that obstructs the clear view of law enforcement from the sidewalk and street into the store and the area where the cash register is located; (3) Keep windows and doors (whether open or closed) clear of any visual obstructions including, but not limited to advertising, signage, advertising displays, chip/product racks, refrigeration equipment, cardboard, trash, wire/mesh security bars, reflective coatings, or other opaque materials; and (4) Install sufficient windows in all walls that look out onto all publicly accessible areas under the control of the permittee/property owner/operator, e.g. parking areas, driveways, and sidewalks.

B. Access and Site Control

Ingress/Egress

To ensure efficient and safe ingress and egress to the property, and prevent stacking and conflicts at the adjacent intersection of Alcatraz Avenue and Shattuck Avenue, and blocking of the bus stop on Alcatraz Avenue, the permittee/property owner/operator shall: (1) Place a barrier around the parking lot to control vehicular traffic ; (2) Submit a plan, to be reviewed and approved by the Director of Planning, for the safe and efficient ingress/egress and parking, including placement of entrances, exits, fencing/barriers, landscaping, and lighting that directs the flow of individuals coming and going from the store. Vehicular ingress/egress shall be designed as one way and prohibit left hand turns across traffic either to enter or exit the parking area; and (3) Remove and prohibit the parking and use as an Office of any RV's or trailers onsite and limit onsite parking only to patrons and employees.

Site Control

To ensure sufficient site control and enhance site security, the permittee/property owner/operator shall: (1) Close and lock the gate to the parking lot from closing time until the store opens the following day; (2) Provide landscaping, lighting, signage and fencing in a manner that expresses the store's ownership and control of the property; and (3) provide a comprehensive and coordinated site plan, to be reviewed and approved by the Director of Planning, that identifies all landscaping, lighting, signage, fencing and any other improvements required herein.

C. Maintenance

Sidewalk and Gutter Maintenance

To minimize blight and littering, the permittee/property owner/operator shall: (1) Maintain the cleanliness of the sidewalk and gutter in front of the premises and twenty feet beyond the boundaries of the premises at all times the business is open free from litter, debris, and weeds and provide for twice daily removal of such material; and (2) Remove graffiti from the aforementioned location within 24 hours.

Building and Site Maintenance

To minimize blight associated with the building operation, the permittee/property owner/operator shall: (1) Paint the building when exterior paint has substantially worn off, is peeling or substantially faded; (2) Keep the property clean and free of accumulations including weeds or other vegetation, rank growth, rubbish, junk, garbage, litter, debris, and flyers or circulars and provide for daily removal of such material; (3) Maintain exterior stairs, the roof, foundations, walls, fences, signs, retaining walls, driveways, walkways and any other improvements which are substantially broken, deteriorated, or defaced, and shall replace windows which are missing or broken; (4) Remove all graffiti within 24 hours; and (5) Install and maintain at least two, non-flammable trash can located near the entrance of the store and in the parking lot and provide for daily removal of trash.

D. Minimizing Loitering and Nuisance Activities

Site Furniture, ATM, Arcade Games

To minimize unnecessary loitering and nuisance activities, the permittee/property owner/operator shall not: (1) Provide or operate an exterior or interior payphone; (2) Provide or operate an ATM machine; (3) Provide or allow any benches, portable seats, milk crates, mattresses or any other "street furniture" that encourages loitering outside the store; and (4) Provide or operate any arcade or digital games.

Nuisance Controls

To minimize unnecessary loitering and nuisance activities, the permittee/property owner/operator shall: (1) Limit the hours of operation from 9AM to 9PM, seven days a week or more restrictive as determined by the Planning Director; (2) Ensure that the owner, manager, and all employees or volunteers of the establishment police the premises, public rights of way, parking areas, and in front of adjacent

properties every hour to prevent loitering – persons hanging around the store with no apparent purpose for more than 10 minutes shall be asked to leave. Reasonable steps shall be taken by the permittee/property owner/operator to prevent loitering; (3) Maintain a log book/diary to record the date and time of all calls made to the Police Department and the ensuing response and provide a copy of said logs to the Planning Director every 3 months; and (4) Prohibit the consumption of any alcoholic beverages onsite.

Signage

To minimize unnecessary loitering and nuisance activities, the permittee/property owner/operator shall: (1) Post at least two signs in legible condition at each public entrance to the building prohibiting littering, loitering, and public drinking; and (2) Prominently post, inside the establishment, one sign (8x11 inch minimum) stating, "We ID everyone under 30 years of age for alcohol sales."; and (3) Ensure that all signs are easily readable by all patrons and written in English as well as the predominant language of the facility's clientele.

Training

To minimize nuisance activities, every permittee/property owner/ operator (manager, clerks, and volunteers) shall: (1) Be required to attend certified Responsible Beverage Server (RBS) training prior to selling or serving alcohol. Recertification is required every two years; (2) Attend any city sponsored Model Store training at least once a year; (3) Provide evidence of attending RBS training and Model Store Training to the Planning Director on an annual basis from the date the first training is taken; (4) Ensure that only those clerks 21 years and older are allowed to sell alcohol; and (5) Comply with all city, state, and federal regulations, ordinances, and statutes in the operation, management, maintenance of convenience and off-site liquor sales.

E. Signage

To minimize blight related from existing and future signage, the permittee/property owner/ operator shall: (1) Not allow sandwich boards and freestanding displays outside of the premises (building), including, but not limited to being attached to any fencing, posted in the parking lot, placed on the sidewalk or otherwise placed in any public right of way; (2) Maintain or provide only one sign with the store's name on each side of the building that faces the street. All other exterior signs attached to the building shall be removed; (3) Ensure that no reference to alcoholic beverages or an alcoholic beverage brand name be part of the name of the store, e.g., XYZ Liquors; (4) Ensure that sub-signs (beer, wine, groceries, deli, ATM, cash checking, etc.) collectively be less than 50% of the size of the type used for the business name on the sign; (5) Ensure no protruding signs or tower signs are

installed; (6) Ensure removal of the existing billboard along the northern property boundary and extinguishment of the lease arrangement for said billboard within 60 days of issuance of this conditional use permit and provide written verification to the Planning Director; and (7) Submit for review and approval to the Planning Director, a sign program, including the removal of existing signage and the placement, size, color and design of any new or replacement signage.

F. Sale of Alcohol and Tobacco

To minimize the adverse health effects of alcohol and tobacco sales to minors, the permittee/property owner/operator shall ensure: (1) No tobacco and alcohol advertising is placed at a child's view height or near grocery products particularly attractive to or frequently purchased by children; (2) No tobacco and alcohol advertising within the store is intentionally placed to be visible from outside the premises; (3) The footprint of the display of alcohol is less than 15% of the total floor space. The other 85% of the floor space shall be for the sale of groceries and convenience items. The sale of pre-packages snacks soft drinks and tobacco products does not constitute "groceries." There shall be a clear demarcation between alcohol and tobacco products and grocery items. Any increase above 15% of floor space dedicated to alcohol sales shall be subject to review and approval by the Planning Commission; (4) All tobacco products are kept behind the counter; (5) All alcoholic beverages are in the visual sight of clerk at all times; (6) All overstock of alcoholic beverages and other products are kept in a storage facility or back room out of the public view; (7) Alcoholic and non-alcoholic beverages do not share the same refrigeration unit; (8) Adult magazines and videos are kept out of plain view of minors.

G. Alcohol Packaging and Sales

To minimize the illegal consumption of alcohol in public, minimize public health hazards and deter public drunkenness, the permittee/property owner/operator shall ensure that: (1) All grocery bags, including single item bags be branded with the stores name and address; (2) There be no self-service sales of distilled spirits. The display of distilled spirits shall be behind the sales counter and accessible only to employees; (3) Products used for consuming or mixing alcoholic beverages such as cups, glasses, ice, and mixers only be sold in prepackaged quantities; (4) All single containers of any beverage (including, but not limited to, milk, soda, juice, water or an alcoholic beverage) be sold either not bagged or bagged in clear plastic bags such that law enforcement officers can readily identify the contents without removing the container from the bag; (5) Single sales of beer, malt liquor, fortified wine regardless of container size, and single shot sized bottles of distilled spirits, also known as "flights" are not sold; and (6) No display or sale of alcoholic beverages be made from an ice tube. An "ice tub" is a vessel filled with iced that displays single servings of any alcoholic beverages for customer self service.

H. ADA Compliance

The permittee/property owner/operator shall comply with all provisions of the Americans with Disabilities Act (ADA) accessibility standards including, but not limited to: (1) Shelving height shall be a maximum of 4.5 feet high and spaced a minimum of 36 inches apart with a minimum turning area at each end of the aisles of 60 inches; (2) The entrance and doorway shall be clear of obstructions at all times e.g., floor displays, overstock, newspaper racks, etc.; and (3) Sufficient handicap parking be provided.

I. Incorporation Into Lease

The permittee/property owner shall incorporate all conditions of approval into the terms of any lease or rental agreement between the property owner and the business owner/operator.

The permittee/property owner shall agree that its successors in interest, assigns, heirs, lessees and transferees shall be bound by all obligations on the property owner and they shall attach and incorporate all conditions into any lease entered into with any future operator of a business that sells alcoholic beverages at the property, and the lease or rental agreement shall contain a prohibition on illegal and nuisance activity at the property. Copies of such lease or rental agreements shall be provided to the Planning Director within 30 days upon written request.

J. Conditions of Operation shall be recorded with the County Assessor's Office

The permittee/property owner/operator shall ensure that all conditions of approval restricting or limiting land use (e.g., removal of a grandfathered use), are to be recorded with the County Assessor's Office to run with the land within 30 days of issuance of this conditional use permit and evidence of recordation provided to the Planning Director within 60 days of issuance of this conditional use permit.

K. Local Conditions of Approval Added to ABC Operating Conditions

The permittee/property owner/operator shall insure that the business owner/ABC Licensee shall submit a letter to the local zoning department signed by the Business Owner and addressed to the ABC stipulating that the Business Owner wishes to include those Conditions of Approval that fall within the ABC's authority to regulate the sale of alcohol on the Business Owner's ABC license.

From: Jeffrey G. Jensen [jeffreyjensen@yahoo.com]
Sent: Tuesday, September 15, 2009 12:55 PM
To: Valeska, David
Cc: Miller, Scott; Cohen, Walter; Brunner, Jane; Wald, Zachary; michaelcolbruno@clearchannel.com; Blake.Huntsman@seiu1021.org; sgalvez@phi.org; dboxer@gmail.com; mzayasmart@sf.wrtdesign.com; VienV.Truong@gmail.com; VinceGibbs.opc@gmail.com; Brooks, Desley; De La Fuente, Ignacio; Kernighan, Pat; Nadel, Nancy; Quan, Jean; Reid, Larry
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval

Mssrs: Valeska, Miller and Cohen

Thank you for your staff report and findings for approving an Major Conditional Use Permit and Major Variance for the above noted project, Nic Nak Liquors.

I would like the following comments and questions entered into the Administrative Record for the above noted project.

I would like to inquire as to whether the City of Oakland has ever issued an approval for a Major Variance for any type of project based on the proposition that "historical relevance constitutes a unique physical circumstance"? If it has, can I please get a copy of the staff report and the findings for those projects? Is the City Planning Department aware of any published court cases that are binding on the City of Oakland that permits, justifies or otherwise compels a City to use or equate the longevity of a business and the social/political ties of the property owner to the community to a unique or extraordinary topographic or physical circumstance?

Can you please provide me the specific regulations governing the appeal to the City Council and the associated fees. Can a City Councilman appeal the Planning Commission's decision or must a member of the public do so? Can the fees be waived for an appeal?

Am I to understand correctly from your prior email that the fee to appeal to City Council would be \$1,000? If that is so, I would like to submit my protest over the fee and understand what is required to request a fee waiver, if any. If this fee is the correct fee and there is no fee waiver possible, the City should be aware that its fee requirement violates the statutory right of appeal to the elected body under Public Resources Code Section 21151(c) by imposing unreasonable and onerous filing fees and by imposing unreasonable and onerous documentation requirements.

I would like to get a copy of the DVD or video for the public hearing held on August 5, 2009 for the above noted project. Where and how can I get a copy of that DVD? Is it possible to get a copy of that video prior to the next agenda Planning Commission Meeting?

Also, I would like to point out that due to the highly controversial nature of this project and the highly unusual and unorthodox findings for approval of a Major Variance, this neighborhood matter has gained significant public attention in the following media outlets:

http://www.sfgate.com/cgi-bin/blogs/inoakland/detail?blogid=123&entry_id=47556

<http://wefightblight.blogspot.com/2009/04/nic-nak-liquors-liquor-store-coming-to.html>

<http://www.abetteroakland.com/>

<http://sfbay.fwix.com/source/Fight+Blight+in+South+Berkeley-North+Oakland>

10/1/2009

Sincerely,

Jeffrey G. Jensen
Chair, East Lorin Neighborhood Association

--- On Fri, 9/11/09, Valeska, David <DValeska@oaklandnet.com> wrote:

From: Valeska, David <DValeska@oaklandnet.com>
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval
To: "Jeffrey G. Jensen" <jeffreygjensen@yahoo.com>
Date: Friday, September 11, 2009, 2:47 PM

Jeffrey, here is the Friday 2:40 pm report to the Planning Commission.

They have your extensive condition suggestions and can append these to the Action if they wish; however, our own draft included just standard alcohol and Convenience market conditions (which address many of the same issues) plus Targeted conditions like the fence, billboard etc.

From: Jeffrey G. Jensen [<mailto:jeffreygjensen@yahoo.com>]
Sent: Friday, September 11, 2009 2:02 PM
To: Valeska, David
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval

Okay. Thank you.

--- On Fri, 9/11/09, Valeska, David <DValeska@oaklandnet.com> wrote:

From: Valeska, David <DValeska@oaklandnet.com>
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval
To: "Jeffrey G. Jensen" <jeffreygjensen@yahoo.com>
Date: Friday, September 11, 2009, 1:17 PM

Jeffrey, it would be a good use of your time to attend and be prepared to

Address conditions if the Commission asks for it. The applicant may ask

10/1/2009

To have it pulled from the consent agenda too.

From: Jeffrey G. Jensen [mailto:jeffreygjensen@yahoo.com]
Sent: Friday, September 11, 2009 12:31 PM
To: Valeska, David
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval

Thanks David,

Yes, I would appreciate the findings and conditions of approval when they are ready.

Does Staff have any sense whether the Planning Commission may pull this from the consent calendar? Frankly, I am not interested in attending if the item will simply be voted on consent. However, if there is a strong likelihood that it will be pulled, I would attend. Thanks

Jeffrey G. Jensen

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From: Valeska, David <DValeska@oaklandnet.com>
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval
To: "Jeffrey G. Jensen" <jeffreygjensen@yahoo.com>
Date: Friday, September 11, 2009, 7:55 AM

Jeffrey, staff no longer has a separate recommendation; we have written findings for a Nominated Planning Commission action to approve. The findings will be released today. Remind me and we will e-mail you a copy (10 new conditions too).

The consent calendar reflects that the general public hearing has been concluded. The Commission may take the item off consent in order to discuss findings and conditions And may even allow the public to comment. (They have your e-mails).

10/1/2009

See you at the meeting!

From: Jeffrey G. Jensen [mailto:jeffreygjensen@yahoo.com]
Sent: Thursday, September 10, 2009 6:20 PM
To: Valeska, David
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval

Hi David,

I was looking for the Staff Recommendation and could not find it online. Can you please send me a copy?

Also, why is this matter for the consent calendar. It was rather contentious from the public perspective, requires unusual findings for a variance, and may involve conditions that the applicant does not wish to adhere to? Since this is a consent calendar item will there be a public comment period?

Thank you,

Jeffrey G. Jensen

--- On Wed, 8/26/09, Valeska, David <DValeska@oaklandnet.com> wrote:

From: Valeska, David <DValeska@oaklandnet.com>
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval
To: "Jeffrey G. Jensen" <jeffreygjensen@yahoo.com>
Date: Wednesday, August 26, 2009, 1:01 PM

Thanks Jeffrey, got it. See you Sept. 16 at 6 pm Planning Commission!

From: Jeffrey G. Jensen [mailto:jeffreygjensen@yahoo.com]
Sent: Wednesday, August 26, 2009 11:55 AM
To: Valeska, David
Cc: Don Link; Stephen Glaudemans; Guita Boostani; Ian Martin ; Christopher Waters; Ed Kikumoto; Chia Hamilton
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval

10/1/2009

David, et.al try this version. It has been saved with greater word compatibility. Please let me know if you have any problems. The other document had an ending with docx rather than doc. This comes from the most recent Word versions. Thank you.

Jeffrey G. Jensen

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 To: "Jeffrey G. Jensen" <jeffreygjensen@yahoo.com>
 Date: Wednesday, August 26, 2009, 9:56 AM

Thanks, Jeffrey, for your e-mail. My computer would not let the attachment open, so

Please fax it to me at (510)238-4730 and call me at 238-2075 just before you fax so

I can intercept it at the group fax here at City Hall.

September 16 at 6 pm is the current Planning Commission agenda time.

From: Jeffrey G. Jensen [mailto:jeffreygjensen@yahoo.com]
Sent: Wednesday, August 26, 2009 9:11 AM
To: Valeska, David ; Miller, Scott
Cc: Don Link; Guita Boostani; Stephen Glaudemans; Ed Kikumoto; Christopher Waters; Ian Martin ; Chia Hamilton; Jeffrey Jensen
Subject: RE: Nic Nak Liquors, CVM09-11; Proposed Conditions of Approval

Mr. Valeska and Mr. Miller:

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10/1/2009

of the East Lorin Neighborhood Association is that liquor stores are magnets for crime, loitering, public drunkenness, drug dealing, graffiti, litter and other nuisances. Once the use is permitted and becomes a nuisance, it takes an extreme amount of effort on behalf of the City and the neighborhood to gain control.

The conditions noted in the attached, are reasonable and appropriate for this type of use. I believe you can make the appropriate findings to support such conditions as it is the stated public policy of the City of Oakland to limit and control alcohol outlets such that they do not become public nuisances. There need not be a demonstrated past history of problems to impose conditions on such alcohol sales. The notion of a conditional use permit is that such uses are already recognized through zoning and general plan policies to be potentially detrimental to the community and therefore are subject to conditions to ensure compatibility with adjacent land uses and neighborhood expectations.

If you have any questions about the conditions I am requesting, please feel free to contact me at 510-290-1444. There may be other residents who separately submit their desired conditions. Thank you.

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 To: "Jeffrey G. Jensen" <jeffreygjensen@yahoo.com>, " Miller, Scott " <SMiller@oaklandnet.com>
 Date: Monday, August 10, 2009, 11:37 AM

Jeffrey, please e-mail us in the next week or two with suggestions from

Yourself and neighbors for conditions for JoJo's/NikNak at 6400 Shattuck.

Typical conditions used on other alcoholic beverage sales permits are listed

Below, which is not an exhaustive list of all possible conditions but rather

indicative of standard conditions/best management practices. These would

be added to the draft you saw for Aug. 5 Planning Commission (conditions

1 to 21, including those jointly applicable to convenience market and/or

alcoholic beverage use). This list will be edited through the end of August

As we discuss this more and is not final.

10/1/2009

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Ongoing.

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a. Ongoing.

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Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit.

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions number 14, 15, 16, 17, 18, 21, 22, 23 and 24 in the conditions of their ABC license. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the applicant fails to include the above conditions in the ABC license.

APPEAL, 6400 SHATTUCK AVENUE

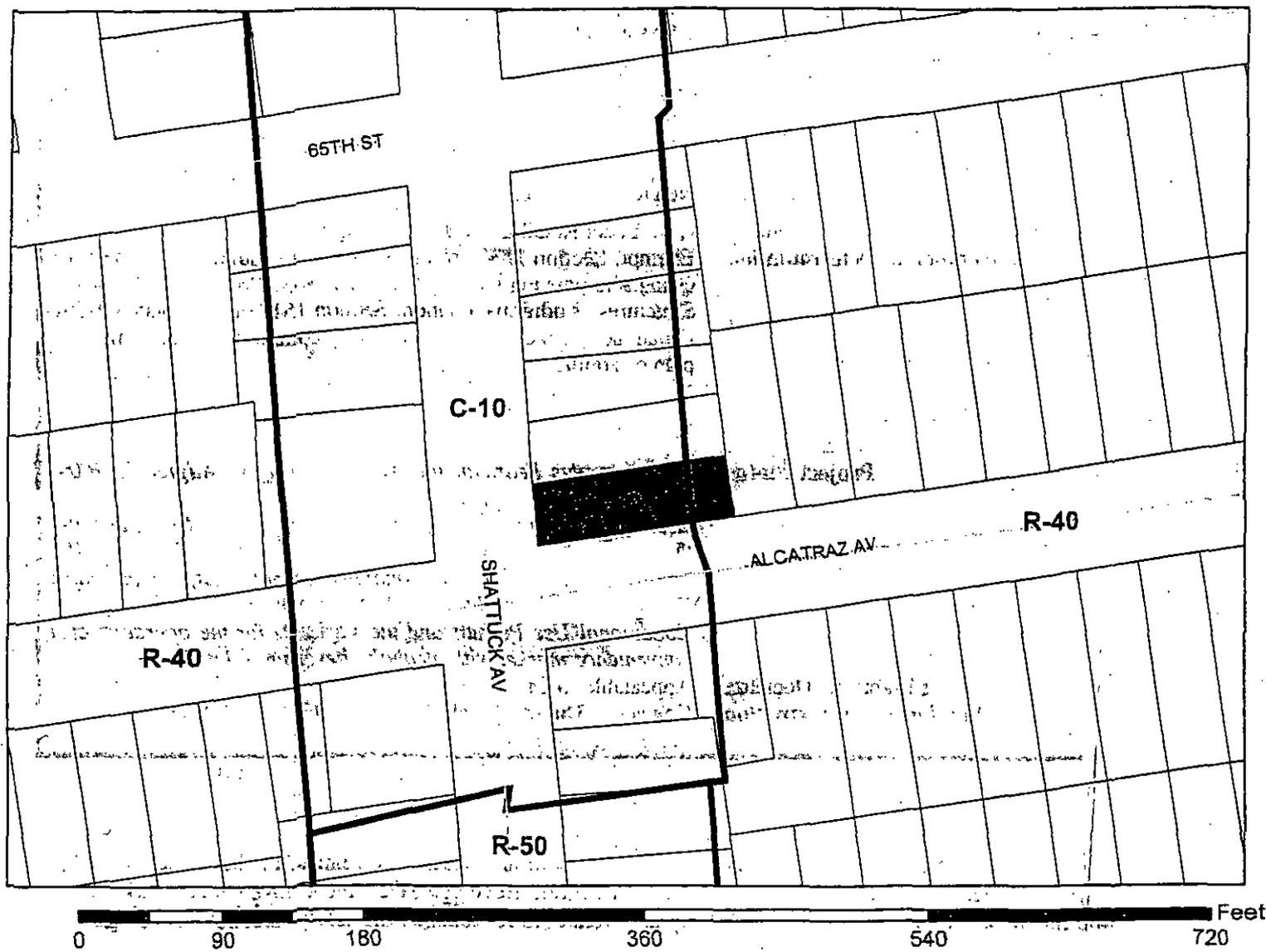
**ATTACHMENT B: PLANNING
COMMISSION REPORT-10/7/09**

Location:	6400 SHATTUCK AVENUE (APN 016-1427-024-00)
Proposal:	To provide alcoholic beverage service and a convenience market
Contact Person/Phone Number:	Ashrious and Verniece Pannell, (510)292-7200
Owner:	Ashrious and Verniece Pannell
Case File Number:	CVM09-111
Planning Permits Required:	Major Conditional Use Permit and Variances to allow Alcoholic Beverage Sales Activities at an existing commercial building, within 1,000 feet of another Alcoholic Beverage Sales activity and other specified facilities; and operation of a Convenience Market
General Plan:	Neighborhood Center Commercial
Zoning:	C-10 Local Retail Commercial
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines, Exterior changes to existing facility; Section 15303, Conversion of Small Structures; Additional citation: Section 15183 of the State CEQA Guidelines: Projects consistent with a community plan, general plan or zoning
Historic Status:	Not Potential Designated Historic Property
Service Delivery District:	2
City Council District:	1
Project Status:	<i>This item was heard at the public hearing of August 5, 2009. After the public hearing was closed, the Planning Commission discussed the application and recommended, by a 4-1 straw vote, that both the Conditional Use Permits and Variance be approved. The item was continued so that staff could return Findings and Conditions of Approval in support of the Conditional Use Permits and the Variance for the operation of a convenience market with alcoholic beverage sales.</i>
Finality of Decision:	Appealable to City Council
For Further Information:	Contact David Valeska at (510) 238-2075 or dvalaska@oaklandnet.com

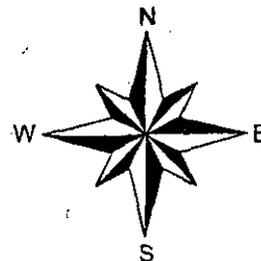
SUMMARY

This Major Conditional Use Permit and Variance application involves the request of the owners of an expired Deemed Approved legal nonconforming Alcoholic Beverage Sales and Convenience Market at 6400 Shattuck Avenue, at the corner of Alcatraz Avenue, to re-establish the sale of alcohol. On August 5, 2009 the Planning Commission expressed intent to adopt findings to approve the Variance and Conditional Use Permit for Alcoholic Beverage Sales, and Conditional Use Permit for Convenience Market with conditions by taking a non-binding "Straw" vote to bring back findings for and conditions of approval, which are Attachments A and B to this report. Additional background is set forth in the attached August 5, 2009 staff report (Attachment C). The September 16, 2009 hearing was renoticed for October 7, 2009, at the request of the applicant. The Commission is not bound by the earlier Straw vote and can vote to approve or deny the application.

CITY OF OAKLAND PLANNING COMMISSION



Case File: CMV09-0111
Applicant: Ashrious and Verniece Pannell
Address: 6400 Shattuck Ave.
Zone: C-10



PROJECT DESCRIPTION

JoJo's Market was formerly known as NicNak Liquors. The applicant proposes to utilize approximately 400 square feet for Alcoholic Beverage sales area within an existing commercial building of approximately 1,200 square feet. The 5,200 square foot level site contains a 40-year-old one-story, 11-foot tall, 27' by 44' building. The approximately 2,600 square foot fenced parking lot can park 8 vehicles, accessed through existing 17-foot wide gates on Shattuck Avenue and on Alcatraz Avenue. Neighboring uses are both commercial and residential, with residential immediately abutting.

UPDATED ANALYSIS

Two new members of the Planning Commission and Chair Colbruno were provided copies of the record and a video DVD recording of the August 5 Commission meeting. The City Attorney's Office advises that all members present may vote if they either attended the August 5th meeting or reviewed the record/DVD of the August 5th meeting, unless they recuse themselves for any other reasons.

On August 5, 2009 the Commission heard from over two dozen neighbors and other interested parties, both for and against the request. The Commission directed staff, by a 4 to 1 straw vote, to bring back approval findings and conditions for both the Alcoholic Beverage Sales and Convenience Market. Attachment A to this report includes these modified findings, drafted based on Commissioner discussion at the hearing. Additional conditions are also attached, including standard conditions for Alcoholic Beverage Service as well as voluntary offerings by the applicant regarding the existing billboard and not to sell small "airline" bottles in the store. Additional correspondence from neighbors and other interested parties since the August 5, 2009 public hearing are attached. Many neighbors continue to be concerned about a possible Alcoholic Beverage Sales operation at this location. Supporters continue to believe this is a good use for the site. All written correspondence received by close of business on Wednesday, September 30th has been attached to this report (Attachment D).

Commissioners noted at the August 5th meeting that, while the Major CUP and Variance would be new, the extensive history of this use (sale of alcohol) at this property is a basis for Variance findings, as distinguished from new applicants for Alcoholic Beverage Sales. As required by Variance findings, this is a unique property because of historical associations of the business to the neighborhood and because of the unusually geographically constrained trade area, limiting the applicant's ability to relocate the alcoholic beverage service to another site within the trade area. Also, this will not be a new Alcoholic Beverage Control (ABC) license issued because the existing license was merely reissued and the total number of ABC licenses in Oakland will not increase.

In light of the Commissioners' comments, staff also has reviewed the Environmental Determination for the project and determined it is exempt for the following reasons:

Sections 15301 and 15303 of the Californian Environmental Quality Act (CEQA) Guidelines exempt from CEQA review small existing or new commercial facilities, respectively, where the building is less than 2,500 square feet in area. The building at 6400 Shattuck Avenue is approximately 1,200 square feet, and has not increased in 4 decades. The alcoholic beverage use and sales area is unchanging at less than half of this floor area and has not produced measurable physical or other environmental effects, thus being exempt from further CEQA review.

RECOMMENDATION (Pursuant to August 5th Commission straw vote):

1. Affirm staff's environmental determination.
2. Approve the Major Conditional Use Permit and Variance for Alcoholic Beverage Sales, and the Major Conditional Use Permit for Convenience Market, at 6400 Shattuck Avenue based on findings and subject to the attached conditions.

Commission Options: The Planning Commission could also vote on any of the options discussed under the ALTERNATIVES Section of the August 5th Staff Report (Pages 7 and 8 of Attachment C)

Prepared by:

David Valeska (sm)

David Valeska, Planner II

Approved by:

Scott Miller

SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:

Walter Cohen
Walter Cohen, CEDA Director
Community & Economic Development Agency

Attachments:

- A. Findings for Approval of the Convenience Market and Alcoholic Beverage Sales (pursuant to Commission direction on August 5, 2009)
- B. Conditions of Approval
- C. Original August 5, 2009 Staff Report (including Findings & Conditions of Approval)
- D. Applicant and Neighbor Correspondence
Submitted After August 5, 2009 Public Hearing (up to Sept. 30th)

ATTACHMENT A. : FINDINGS**FINDINGS FOR APPROVAL (CONVENIENCE MARKET)**

This proposal meets the required findings under Sections 17.134.050, General Use Permit Criteria, and 17.102.210(A)&(B) Special Use Permit Criteria, as set forth below. Required findings are shown in **bold type**; explanations as to why these findings can be made are in normal type.

Section 17.134.050 (General Use Permit Criteria):

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

An attractive and properly managed convenience market could satisfy a community need which does not affect livability of the surrounding neighborhood, and is operated in a scale which is compatible with neighborhood character. The Market provides food, household items and similar small purchases for neighbors, many of whom are inclined to walk to the facility rather than drive to a larger market.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

An attractive and properly managed convenience market's availability of food and household items enhances the convenience and functional living environment.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The Convenience Market's display floor includes some Permitted Activities of General Food Sales and General Retail Sales, (food and household items), thus having similar effects, except offered in a small convenience format which requires a Conditional Use Permit. Such products are essential to a community.

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

The building at 6400 Shattuck Avenue is existing, with a façade covered with non-historical materials which do little to enhance the surrounding commercial and residential area. The fortified appearance of the site reflects obsolete design standards which do not reflect the ongoing reinvestment in the neighborhood by private property owners. Any approval should be conditioned on enhancing the fencing and landscaping of the store to appear more like a traditional neighborhood market. Staff has recommended several conditions to enhance the aesthetics of the site.

- E. **That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

The General Plan allows for approval of convenience markets. The General Plan allows for businesses that will not cause undue nuisance activity. The Neighborhood Center Commercial land use category envisions a wide range of retail, restaurant and specialty stores along with promoting mixed-use developments. An attractive and well-managed commercial operation at this location will conform to the General Plan.

Section 17.102.210 (A) - Special Use Permit Criteria:

1. **That the proposal will not contribute to undue proliferation of such uses in a area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.**

Such convenience markets, properly managed, do not tend to provide the same types of loitering and other problems as do stores which primarily sell alcohol. The neighborhood has sufficient capacity to support this small market without causing undue traffic or other problems.

2. **That the proposal will not adversely affect adjacent or nearby churches, temples or synagogues; public or parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds**

The facility is approximately 960 feet from a community park/former school site on Shattuck Avenue and is unlikely to adversely affect it. Likewise, houses of worship are likely too distant to experience effects. This facility design has built-in sound attenuation characteristics within the structure. Staff believes that the convenience market use will protect nearby uses from adverse effects.

3. **That the proposal will not interfere with the movement of people along an important pedestrian street.**

The facility parking lot provides two sites of entrance, on Shattuck and Alcatraz Avenues, spaced apart, minimizes the crowd management issues of the building tenant. The building entry does not impede pedestrian corridors. Aesthetic improvements are recommended in conditions to enhance the pedestrian character of the site.

4. **That the proposed development will be of an architectural and visual quality and character, which harmonizes with, or where appropriate enhances the surrounding area.**

The building is existing and the façade is plain with unfeatured walls and windows, with little landscaping and a fenced paved lot, doing little to enhance or harmonize with the area. Retrofitting and improvement to fencing, signs and site landscaping are necessary, and have been recommended in conditions of approval.

5. **That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression.**

Existing signage is legal nonconforming and exceeds the minimum allowed by code and necessary to identify a small commercial use. One sign facing residential areas might not be approved if filed

today. No change in signs is proposed by the applicant. No additional parking areas would be built and the existing parking, while giving a plain appearance, provides sufficient parking spaces for this use. Either use should require retrofitting of the parking lot with a lower fence, trimmed at the corner, additional landscaping and other enhancements to remove the bleak view. Staff has also recommended a condition of approval regarding modifications to the freestanding pole sign to allow it to better fit with the neighborhood character,

6. That adequate litter receptacles will be provided where appropriate.

As conditioned, there will be non-flammable trash containers installed proximate to the entrance of the facility and litter will be removed from the sidewalk and gutter in front of and to twenty feet beyond the premises.

7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten PM and seven AM.

The walls and windows of the dwellings are near the store building and parking lot, establishing the potential for late night sound impacts on residences. Attached conditions are provided to ameliorate some of the noise effects, including reduced hours of evening operations and lighting controls.

FINDINGS FOR APPROVAL (ALCOHOLIC BEVERAGE SERVICE)

This proposal meets the required findings under the Oakland Planning Code. Required findings are shown in bold type; explanations as to why these findings can be made are in normal type.

Section 17.134.050 (General Use Permit Criteria):

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

An attractive and properly managed Alcoholic Beverage Sales operation could satisfy a community need which does not affect livability of the surrounding neighborhood, and is operated in a scale which is compatible with neighborhood character. The store provides convenient purchases for neighbors, many of whom are inclined to walk to the facility rather than drive to a larger store. Staff has recommended several conditions to mitigate any potential negative effects of alcohol sales.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

An attractive and properly managed Alcoholic Beverage Sales operation promotes availability of items and enhances the convenience and functional living environment of its customers.

C. That the proposed development will enhance the successful operation of the surrounding area

in its basic community functions, or will provide an essential service to the community or region.

The small scale Alcoholic Beverage Service functions, which fill less than 1/3 of the floor area of the store, efficiently service a community's alcoholic beverage needs, including home use, hospitality or celebrations. This facility would have less traffic, noise and light than if offered in a larger alcohol format, such as a full-size liquor store or drug store.

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

The building at 6400 Shattuck Avenue is existing, with a façade covered with non-historical materials which do little to enhance the surrounding commercial and residential area. The fortified appearance of the site reflects obsolete design standards which do not reflect the ongoing reinvestment in the neighborhood by private property owners. Any approval should be conditioned on enhancing the fencing and landscaping of the store to appear more like a traditional neighborhood market. Staff has recommended several conditions to enhance the aesthetics of the site.

- E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

The General Plan allows for approval of Alcoholic Beverage Sales uses by Conditional Use Permit and in this case, Variance. The General Plan allows for businesses that will not cause undue nuisance activity. The Neighborhood Center Commercial land use category envisions a wide range of retail, restaurant and specialty stores along with promoting mixed-use developments. An attractive and well-managed commercial operation at this location will conform to the General Plan.

Section 17.102.210 (A) - Special Use Permit Criteria:

- 1. That the proposal will not contribute to undue proliferation of such uses in a area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.**

Such an Alcoholic Beverage Sales Activity, managed like this one has been for decades, does not tend to provide the same types of loitering and other problems as do many other small markets with Alcoholic Beverage Sales. City crime statistics for recent months show that overall crime rates near the applicant's store are similar to commercial areas elsewhere in the City which do not have an image as crime locations, such as Rockridge, Temescal and Montclair. The neighborhood streets have sufficient capacity to support this small facility without causing undue traffic or other problems.

- 2. That the proposal will not adversely affect adjacent or nearby churches, temples or synagogues; public or parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds**

The facility is approximately 960 feet from a community park/former school site on Shattuck Avenue and is unlikely to adversely affect it. Likewise, houses of worship are likely too distant to experience effects. This facility design has built-in sound attenuation characteristics within the

structure. Staff believes that the convenience market use will protect nearby uses from adverse effects.

- 3. That the proposal will not interfere with the movement of people along an important pedestrian street.**

The facility parking lot provides two sites of entrance, on Shattuck and Alcatraz Avenues, spaced apart, minimizes the crowd management issues of the building tenant. The building entry does not impede pedestrian corridors. Aesthetic improvements are recommended in conditions to enhance the pedestrian character of the site.

- 4. That the proposed development will be of an architectural and visual quality and character, which harmonizes with, or where appropriate enhances the surrounding area.**

The 1969 building's façade is plain with unfeathered walls and windows, with little landscaping and a fenced paved lot, doing little to enhance or harmonize with the area. Retrofitting and improvement to fencing, signs and interior fortifications are necessary, and have been recommended in the Conditions of Approval.

- 5. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression.**

Existing signage is legal nonconforming and exceeds the minimum allowed by code. No change in signs is proposed by the applicant, except to make good faith efforts to remove the legal nonconforming billboard within the next 6 months. Staff recommends the attached Conditions of Approval to require modification of the freestanding pole sign and introduction and/or maintenance of certain signs required state law regarding alcohol sales and consumption.

No additional parking areas would be built and the existing parking, while giving a plain appearance, provides sufficient parking spaces for this use. Either use should require retrofitting of the parking lot with a lower fence, trimmed at the corner, additional landscaping and other enhancements to remove the bleak view.

- 6. That adequate litter receptacles will be provided where appropriate.**

As conditioned, there will be non-flammable trash containers installed proximate to the entrance of the facility and litter will be removed from the sidewalk and gutter in front of and to twenty feet beyond the premises.

- 7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten PM and seven AM.**

The walls and windows of the dwellings are near the store building and parking lot, establishing the potential for late night sound impacts on residences. Attached conditions are provided to ameliorate some of the noise effects, including reduced hours of evening operations and lighting controls.

Section 17.102.210(B) - Special Use Permit Criteria

Finding C.1 below is satisfied with the proposal only by granting a Variance:

C. Special Restrictions on Establishments Selling Alcoholic Beverages.

1. **No Alcoholic Beverage Sales Commercial Activity shall be located closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Commercial Activity except;**
 - a. **On-sale retail licenses located in the Central District (defined as within the boundaries of I-980 and Brush Street to the west; 27th Street to the north; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south); or**
 - b. **Activity is in conjunction with a Full-Service Restaurant; or**
 - c. **Establishments with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more.**

This proposed location is within 80 feet of a market across the street selling beer and wine. A Variance has been requested to allow this Alcoholic Beverage Sales Commercial Activity closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Activity. This is not an adverse precedent for other such uses, due to the distinctive historical association over several decades between this facility and this neighborhood, which is not present for many other Alcoholic Beverage Sales facilities in West and North Oakland.

This store will provide for an otherwise unmet Alcoholic Beverage Sales need for a population in the immediate Oakland Community. While beer and wine can be purchased across Alcatraz Avenue, spirit liquors cannot be purchased anywhere within convenient walking distance unless restored at this location.

SECTION 17.148.050(a)—VARIANCE FINDINGS:

All the following findings below are satisfied with the proposal:

1. **That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency or appearance.**

Historical relevance of the 6400 Shattuck Avenue property constitutes a unique physical circumstance. The facility and activity cannot be moved while retaining these historical associations, including neighborhood, social and leadership activities. Without a variance the business may be forced to close, because it is not economically viable to have a convenience market without alcohol sales in such a site where the building is setback/hidden in a commercial row and is in a small building. Preventing an economically viable product mix, including alcoholic beverages, makes this site unsuitable for the type of commercial which has occupied the site for decades. This results in an unnecessary hardship inconsistent with the purposes of zoning regulations. Rather than protecting the neighborhood, denying the variance could adversely change the historical relationships in this part of the neighborhood.

In addition, the physical aspects of the property are unique: the building is nearly the only commercial building in the adjacent blocks which is set back this much from the commercial street. The positions of other buildings blocks visibility of the building, perhaps reducing its commercial viability and making it more difficult to sustain sufficient commerce on convenience sales alone;

alcoholic beverage sales are needed to offset this condition of design in the existing commercial structure.

The internal physical aspects of the building are also unique: unlike other alcohol sales facilities, a customer cannot walk up to a liquor shelf and remove a bottle or can. Alcohol must be passed through protective windows at this location. Thus some potential adverse secondary effects of alcoholic beverage service are prevented by the long-existing physical aspects of the building which are different than many other West and North Oakland liquor services. The lack of a history of criminal behavior associated with the site has been confirmed by consulting Police records; this unique design may contribute to the unusually low criminal history.

2. **That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.**

Due to the proximity of the Berkeley city limits on 2 sides, and the proximity of surrounding Oakland residential areas, with only a thin strip of commercial zoning along Shattuck Avenue, most sites are within 1,000 feet of existing alcohol outlets, churches, schools, etc.

Likewise, the nearest commercial street to the east, Telegraph Avenue, already has several competing liquor service locations in close proximity to each other, so it is not easy for this applicant to relocate to a nearby neighborhood either. This places a burden on the owner of this 6400 Shattuck Avenue liquor license which does not exist in many other parts of the City. Requiring relocation of this facility and activity would deprive the owner of a privilege enjoyed by other similar uses, to relate to the neighborhood and customer base historically established.

3. **The variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.**

Unlike some other Alcoholic Beverage Service facilities and activities in Oakland, this use at 6400 Shattuck Avenue has historically been a part of the character, livability and appropriate development of the surrounding area, as testified at the public hearing by some neighbors. While other neighbors dispute this, the balance and weight of testimony is that this applicant has contributed to the neighborhood, both via this business and by other business and charitable activities, in a historically unique manner which would be lost if relocated to another area. In addition, the area of liquor product is a small part of a larger convenience market, without significant adverse crime, litter, noise or traffic effects as evidenced by many years of prior operation.

4. **That the variance will not constitute a grant of a special privilege inconsistent with the limitations imposed on similarly zoned properties or inconsistent with the purposes of zoning regulations.**

The store at 6400 Shattuck Avenue has a unique history regarding land use entitlements which does not grant a special privilege to this site, but which does justify special modification of land use limitations. After losing Deemed Approved legal nonconforming status due to owner illness and other reasons, in 2004 the right to sell alcohol lapsed and the California Alcoholic Beverage Control license became inactive. The applicant was re-issued his liquor license from the Department of Alcoholic Beverage Control. The applicant has applied for this Conditional Use Permit and Variance to allow Alcoholic Beverage Sales, as required by the Zoning Code. Other similarly zoned properties

do not have the extensive history of previous operation that this site has, and hence a special privilege would not be evident with the granting of the Variance.

There are very few other Alcoholic Beverage Service locations in North Oakland which have the continuity over decades of use and the positive secondary effects of this use at 6400 Shattuck Avenue. Therefore, granting restoration of a facility and activity which has been active in the neighborhood for decades would not grant a special privilege inconsistent with the purpose of zoning regulations, because one purpose of zoning regulations is to preserve equity and protect neighborhood continuity.

5. **That the elements of the proposal requiring the variance (e.g. elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.**

With changes as described in the conditions of approval, the applicant's facility and activity would conform to regular design review criteria and would retain the modest-scale and open site area which has marked this use for several decades, without expansion.

ATTACHMENT B: CONDITIONS OF APPROVAL**STANDARD CONDITIONS:****1. Approved Use.*****Ongoing.***

a. The project shall be constructed and operated in accordance with the authorized use as described in this letter and the plans dated May, 2009 and submitted May 11, 2009 and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

b. This action by the City Planning Commission ("this Approval") includes the approval set forth as follows: A Convenience Market, plus any lawful permitted use in the C-10 Local Retail Zoning District for this facility type, with hours from 6 am to 10 pm.

c. This approval **includes** sales area of alcoholic beverage products in less than 33% (thirty-three percent) of the store floor area, **or 400 (four hundred) square feet, whichever is lesser**, with the remaining floor area for convenience market items such as packaged food and sundries, and for office and storage areas.

2. Effective Date, Expiration, Extensions and Extinguishment***Ongoing.***

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits have been issued, or authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any valid building permit for this project may invalidate this approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes***Ongoing.***

The project is approved pursuant to the Planning Code only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance with Other Requirements.***Prior to issuance of a demolition, grading, P-job or other construction related permit.***

a. The project applicant shall comply with all other applicable federal, state, regional and/or local codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshall, and the City's Public Works Agency.

b. The applicant shall submit approved plans for project-specific needs related to fire protection including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access and vegetation management for preventing fires and soil erosion.

5. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing.

- a. Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b. The City Planning Department reserves the right at any time during construction, to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.
- c. Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and /or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions if it is found that there is violation of any of the Conditions, or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement Actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

6. Signed Copy of the Conditions

With submittal of a demolition, grading and building permit.

A copy of the approval letter and Conditions shall be signed by the property owner and submitted with each set of permit plans submitted for this project.

7. Indemnification

Ongoing

- a. To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action or proceeding (including legal costs, attorney's fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The project applicant shall reimburse the City for its reasonable legal costs and attorneys fees.
- b. Within ten (10) calendar days of the filing any Action as specified in subsection A above, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in this condition or other requirements, or other conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval and all applicable

adopted mitigation measures set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions and if any one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the approved plans, along with the Approval Letter and Conditions of Approval shall be available for review at the job site at all times.

11. Recycling Space Allocation Requirements

Prior to issuance of a building permit

The design, location and maintenance of recycling collection and storage areas must substantially comply with the provision of the Oakland City Planning Commission "Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas", Policy 100-28. Pursuant to Section 17.118.020 of the Oakland Planning Code, this condition shall apply to new commercial and industrial development that requires a building permit. A minimum of two cubic feet of storage and collection area shall be provided for each dwelling unit and for each 1,000 square feet of commercial space.

Ongoing.

No deviation shall be made from the approved drawings or conditions of approval that alters the project's siting, height, exterior appearance, and/or required new landscaping without prior written approval from the Oakland Planning & Zoning Department.

12. Construction Practices.

During construction.

All work shall apply the "Best Management Practices" (BMPs) for the construction industry, including BMPs for dust, erosion and sedimentation abatement per Section 15.04 of the Oakland Municipal Code, as well as all specific construction-related conditions of approval attached to this project.

13. Days/Hours of Construction Operation (Fence Modifications)

Ongoing throughout demolition, grading and/or construction.

The project applicant shall require construction contractors to limit standard construction activities as follows:

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 AM and 4:00 PM Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 AM to 7:00 PM Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of residents' preferences for whether the activity is acceptable if the overall duration of

construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.

- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - i) Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of residents' preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - ii) After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries and construction meetings held on-site in a non-enclosed area.

SPECIFIC PROJECT CONDITIONS

14. Hours.

Ongoing.

The business may be open to the public for business from **7 am** to 10 pm daily. Any work outside these hours shall solely be staff preparation and not open to the public.

15. Security.

Ongoing

The applicant/property owner shall **continue** to keep windows clear of visual obstructions including, but not limited to signage beyond 20% window coverage, any advertising displays, product racks, refrigerated equipment, cardboard, trash, wire mesh/security bars, reflective coatings, or other materials. Note that this is more restrictive than the state regulations related to signage.

16. Convenience Market Management

a. Ongoing

Lighting shall be maintained providing enough illumination to identify loiterers standing in front of the store and in the parking lot. Such illumination shall remain lit during all hours of darkness when the business is open.

b. Ongoing

The licensees/property owners shall clear the gutter and sidewalks twenty feet beyond the property lines along these streets of litter twice daily or as needed to control litter (sweep or mechanically

clean weekly). The licensee shall clean the sidewalk with steam or equivalent measures once per month.

c. Ongoing.

Graffiti shall be removed from the premises within 72 hours (3 days) of application.

d. Ongoing.

No pay phones are permitted outside the building.

e. Ongoing.

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiterers who refuse to leave. Persons hanging around the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team.

17. Trash and litter

Prior to commencement of use and ongoing.

The applicant/property owner shall install and maintain at least one (1), non-flammable trash can located near the entrance of the store. Said trash receptacle shall be emptied as needed to avoid overflow and/or adverse odors.

18. Crowd Control/Anti-Loitering Plan

Prior to commencement of use and ongoing

A crowd control/anti-loitering plan shall be reviewed and approved by the Zoning Manager prior to occupancy. The applicant shall provide staff on duty from 6:00 pm until closing on days when the business is open to the public. Staff shall patrol the interior and exterior as necessary to achieve crowd control and to deter nuisance, loitering and crime.

19. Limitations on Merchandise and Sales

Prior to commencement of use and ongoing

A) The applicant will not cook or sell on-site produced barbeque or other items under the City code definition 17.09 of "fast food" unless a separate and additional conditional use permit is approved. The existing barbeque units shall be removed.

B) The applicant may sell otherwise applicable "convenience market" items including packaged food and non-alcoholic beverages, sundries, household items, newspapers etc. as well as any of the permitted activities under Section 17.36 of the City Zoning Code for the C-10 Zoning District and an area of alcoholic beverage sales as outlined in Condition No 1.

20. Sign Modifications

Within 60 Days of Approval

The existing pole sign at the corner of Shattuck and Alcatraz shall be modified to be no taller than 10 feet in height, with landscaping added at its base to the satisfaction of the Zoning Manager.

21. Project Modifications

With Timelines as specified within

This approval is contingent on modifications to the existing facility, with applicable permits:

- 1) The existing 6 foot tall metal fence at the perimeter shall be modified within 60 days of partial or full project approval, as follows:
 - a) to be within the property boundary in any area where an encroachment into the right of way may occur, and
 - b) at the corner of Shattuck and Alcatraz Avenues, to provide an inset parallel to the side street property line in the fence two (2) feet back from the corner point along Alcatraz Avenue, along that portion into which the existing gates do not open, with landscaping added outside of the inset; and
- 2) Within one (1) year of partial or full project approval, the applicant/property owner shall apply for and obtain small project design review approval for a modification to the project that may include 1 or more of the following elements: a) alteration of the storefront to increase the floor area to accommodate an additional zone C-10 use such as general food sales (including fruit, produce, and/or fresh meat), a limited service restaurant and café, b) modification of the interior to alter or remove the partition to expand/enhance the customer sales area.
- 3) Removal of the two portable barbeques and the motorhome from the parking lot within 30 days of partial or full project approval.
- 4) The applicant has voluntarily agreed to make reasonable good faith efforts to remove the existing freestanding billboard by March 31, 2010 at his own expense, with any required permits, unless time is extended by the Zoning Manager for cause up to an additional 90 (ninety) days. The applicant shall provide the Zoning Manager written documentation of such good faith efforts.

SPECIFIC CONDITIONS RELATED TO ALCOHOL SALES

22. Conformance with State Department of Alcoholic Beverage Control regulations

Ongoing.

This use shall conform to all provisions of the State ABC license. The state license and state conditions shall be posted along with these Conditional Use Permit conditions in a place visible to the public. This use shall also conform to all State Retail Operating Standards, Section 25612.5 of the Business and Professions Code and local Performance Standards, Section 15210, where applicable including any future changes in the above regulations. The intent of these standards is to reduce nuisance, litter, loitering, and crime associated with alcohol outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

23. Compliance with City of Oakland special regulations for Alcoholic Beverage Sales Commercial Activities.

a. Ongoing.

Unless waived by the Zoning Manager, within 30 days of the date of decision, at least one sign (one square foot maximum) shall be posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to the store. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

b. Ongoing.

The applicant/property owners shall clear the sidewalks adjacent to their property of all "Street Furniture" including mattresses, crates, pads, and other items for sitting or laying on by loiterers on a daily basis.

24. Applicant Voluntary Agreements to Modify Project
Ongoing

The applicant has voluntarily agreed to modify the project description for City and State Alcoholic Beverage Control permits to eliminate sales of small "airline bottles" of spirit liquors and mixed drinks under 4 ounces.

25. Inclusion of conditions in State Department of Alcoholic Beverage Control license.
Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit.

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions number 14, 15, 16, 17, 18, 21, 22, 23 and 24 in the conditions of their ABC license. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the applicant fails to include the above conditions in the ABC license.

APPROVED BY: City Planning Commission: _____ (date) _____ (vote)
City Council



*Michael Colbruno, Chair
C. Blake Huntsman, Vice Chair
Doug Boxer
Sandra E. Gálvez
Vince Gibbs
Vien Truong
Madeleine Zayas-Mart*

October 7, 2009
Regular Meeting

ROLL CALL

Present: Gálvez, Gibbs, Boxer, Truong, Colbruno,
Huntsman arrived at 6:40pm

Excused: Zayas-Mart

Staff: Joann Pavlinec, Devan Reiff, Mike Rivera, David
Valeska, Aubrey Rose, Eric Angstadt, Scott Miller, Daria
Edgerly, Mark Wald, Carolyn Ortler

WELCOME BY THE CHAIR

COMMISSION BUSINESS

Agenda Discussion The Commission may hear item #4 before item #3.

Director's Report Status Report on the 2009 Mills Act Contract Application Selection

Joann Pavlinec presented Director's report.

Committee Reports

Commission Matters Commission Election of Officers

For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.

♿ This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the **Planning Department at 510-238-3941** or TDD 510-238-3254 at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who may experience chemical sensitivities may attend. Thank you.



Speakers: Sanjiv Handa

As a scoping session for an EIR, no vote was taken.

This item will come back to the Planning Commission.

2.	Location:	316 14th Street (APN 008-0625-047-00)
	Proposal:	To operate a bar in the Central Business District until 2:00am, Monday through Saturday.
	Applicant:	Jamal Perry
	Owner:	Unasuk Perry
	Contact Person/Phone	Jamal Perry
	Telephone Number:	(510) 719-8175
	Case File Number:	CM09-163
	Planning Permits Required:	Major Conditional Use Permit to allow Alcoholic Beverage Sales Activity at an existing commercial building.
	General Plan:	Central Business District
	Zoning:	CBD-P Central Business District Pedestrian Retail Commercial Zone
	Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities; Section 15183 of the State CEQA Guidelines: Projects consistent with a General plan, Community Plan, or Zoning
	Historic Status:	Not a Potential Designated Historic Property (PDHP); Survey Rating: Ed3, Minor Importance
	Service Delivery District:	Metro
	City Council District:	2
	Date Filed:	07/17/09
	Action to be Taken:	Decision based on staff report
	Finality of Decision:	Appealable to City Council
	For further information:	Contact case Planner Mike Rivera, at (510) 238-6417 or by email at mriviera@oaklandnet.com

Mike Rivera presented staff report.

Speakers: Jamal Perry applicant, Serena Martin, Diana Wu, Jen-Mei Wu, Liz Wei Ing, Richard Wright, Soo Na Puck, Sottolin Weng, Namie Shin, Leslie Mah.

Motion to affirm staff's environmental determination approve the major conditional use permit subject to the attached findings and conditions Boxer, Gibbs seconded.

Action on the Matter

4 ayes (Gibbs, Boxer, Huntsman, Colbruno) 1 noes (Truong) 1 abstention (Gálvez)

3.	Location:	6400 Shattuck Avenue (APN 016-1427-024-00)
	Proposal:	To provide off-site consumption sales for alcoholic beverages in a Convenience Store
	Applicant:	Ashrious and Verniece Pannell (JoJo's Market, former NikNak)
	Owners:	Ashrious and Verniece Pannell
	Contact Person/Phone Number:	Ashrious Pannell (510) 836-0409
	Case File Number:	CMV09-0111

(continued on page 4)



(continued from page 3)	Major Conditional Use Permits and Variance to allow Alcoholic Beverage Service Activities at a an existing commercial building, 11 am to 12 am, within 1,000 feet of another alcoholic beverage service activity and other specified facilities, Section 15303, New construction or Conversion of Small structures, and operation of a Convenience Market
Planning Permits Required:	
General Plan:	Neighborhood Center Commercial
Zoning:	C-10 Local Retail Commercial Zone
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines; Modification of of Existing Facilities, Section 15183, Projects consistent with a general plan, community plan, or zoning
Historic Status:	Not PDHP/Historic
Service Delivery District:	2
City Council District:	1
Project Status:	<i>This item was heard at the public hearing of August 5, 2009. After the public hearing was closed, the Planning Commission discussed the application and recommended, by a 4-1 straw vote that both the Conditional Use Permits and Variance be approved. The item was continued so that staff could return Findings and Conditions of Approval in support of the Conditional Use Permits and the Variance for the operation of a convenience market with alcoholic beverage sales.</i>
For further information:	Contact case planner David Valeska , at (510) 238-2075 or dvalueska@oaklandnet.com

Commissioner Gibbs, Colbruno, and Truong all stated that they received and viewed the DVD of the August 5th Planning Commission meeting. Scott Miller gave a brief history of this case and reported that staff was removing the condition of approval related to the billboard (21.4) from the recommended conditions.

David Valeska presented staff report.

Speakers: Clinton Killian the applicant’s attorney, Don Link, Christopher Waters, Robert Brokl, Laurie Polster, Vivian Kleima, Alfred Cross, Sanjiv Handa.

Motion to affirm staff’s environmental determination and approve the major conditional use permit and variance for alcoholic beverage sales and the major conditional use permit for convenience market at 6400 Shattuck Ave based on the findings and subject to the attached conditions, with a modification to condition 20 regarding the pole sign from 60 days to 90 days, with a request from applicant an extension may be provided for 90 additional days, Gibbs, seconded Gálvez.

Action on the Matter

4 ayes (Gálvez, Gibbs, Boxer, Huntsman) 1 noes (Colbruno) 1 abstention (Truong)

APPEAL, 6400 SHATTUCK AVENUE

**ATTACHMENT C: PLANNING
COMMISSION REPORT-8/5/09**

Case File Number CVM09-111

August 5, 2009

Location:	6400 SHATTUCK AVENUE (APN 016-1427-024-00)
Proposal:	To provide alcoholic beverage service and a convenience market
Contact Person/Phone Number:	Ashrious and Verniece Pannell, (510)292-7200
Owner:	Ashrious and Verniece Pannell
Case File Number:	CVM09-111
Planning Permits Required:	Major Conditional Use Permit and Variances to allow Alcoholic Beverage Sales Activities at an existing commercial building, 11 am to 12 am, within 1,000 feet of another Alcoholic Beverage Sales activity and other specified facilities; and operation of a Convenience Market
General Plan:	Neighborhood Center Commercial
Zoning:	C-10 Local Retail Commercial
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines, Exterior changes to existing facility; Section 15303, Conversion of Small Structures; Additional citation: Section 15183 of the State CEQA Guidelines: Projects consistent with a community plan, general plan or zoning; Section 15270, Projects which are disapproved
Historic Status:	Not Potential Designated Historic Property
Service Delivery District:	2
City Council District:	1
Staff Recommendation:	Deny Variances and Conditional Use Permit for Alcoholic Beverage Sales; Approve Conditional Use Permit for Convenience Market with conditions.
Finality of Decision:	Appealable to City Council
For Further Information:	Contact David Valeska at (510) 238-2075 or dvalueska@oaklandnet.com

SUMMARY

This Major Conditional Use Permit and Variance application involves the request of the owners of an expired Deemed Approved legal nonconforming Alcoholic Beverage Sales and Convenience Market at 6400 Shattuck Avenue, at the corner of Alcatraz Avenue, to restore approval of these uses. Staff recommends denial of Variance and Conditional Use Permit for Alcoholic Beverage Sales, and approval of Conditional Use Permit for Convenience Market with conditions.

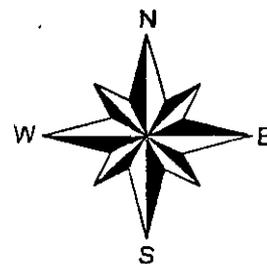
PROJECT DESCRIPTION

JoJo's Market was formerly known as NicNak Liquors. The applicant proposes to operate an approximately 400 square foot Alcoholic Beverage operation within an existing building of approximately 1,200 square feet. *No construction is planned; the facility is already built.* Photographs show approximately 1,000 bottles of liquor on display, plus a cooler with beer and wine. The applicant has posted a sign that no alcohol is being sold at this time. The applicant said he has been complying with staff's cease-and-desist order regarding Alcoholic Beverage Sales since receiving the City's May 2, 2009 letter. The 800 square foot remaining floor area is used to sell snacks, non-alcoholic beverages and other Convenience Market items, and as vestibule and dormant food service area (former ice cream cooler). The facility is closed Monday and Tuesday, open at 10:00 AM other days, closing at 10 pm except Friday and Saturday with closing at 12 midnight. The two portable barbeque units stored on-site are subject to a requirement for a Conditional Use Permit for Fast Food service, which has not been filed, and will be removed from the project site.

CITY OF OAKLAND PLANNING COMMISSION



Case File: CMV09-0111
Applicant: Ashrious and Verniece Pannell
Address: 6400 Shattuck Ave.
Zone: C-10



PROPERTY DESCRIPTION

The 5,200 square foot (1/8 acre) level site contains a 40-year-old one-story, 11-foot tall, 27' by 44' building. The approximately 2,600 square foot fenced parking lot can park 8 vehicles, accessed through existing 17-foot gates on Shattuck Avenue and on Alcatraz Avenue. Neighboring uses are both commercial and residential, with residential immediately abutting.

BACKGROUND

The facility was built by the applicant's family approximately 40 years ago as a market and for most of that time operated with Alcoholic Beverage Sales. City regulations permit legal nonconforming alcohol uses to remain in business if they comply with the "Deemed Approved" program, including remaining in the alcohol sales business continuously without a lapse of 90 days in sales.

In 2004, the owner closed the facility (NicNak) and later surrendered the State Alcoholic Beverage Control License. On April 28, 2004 staff sent the property owner and business operator a letter putting them on notice that the property's Deemed Approved (legal, nonconforming) Status had lapsed, that they had ten days to appeal the decision and that a CUP and/or Variance would be needed to resume the sale of alcoholic beverages at the property. No appeal was filed.

In December 2008, the owner obtained a new State Alcoholic Beverage Control license and (by staff error) a City Zoning Clearance and then the store proceeded to reopen. The reopened liquor store operated sporadically for approximately 5 months and the retail market remains open at various times.

Based upon concerns raised by community members about resumption of alcohol sales after the long period of closure, staff reviewed the situation and determined that the property had been (erroneously) shown on the City's "Deemed Approved" list as a legal nonconforming use, but, as stated above, had in fact had been closed for over 4 years and had lapsed in "Deemed Approved" status. Therefore, on May 2, 2009, the City Zoning Division sent a letter to the owners, Mr. and Ms. Pannell, that the Zoning Clearance issuance was an error and was therefore rescinded and the owners could either appeal that determination within 10 days or they would need to apply for a Major Conditional Use Permit and Variance. (The State-issued Alcoholic Beverage Control license remains in effect). On May 11, 2009, these applications were filed and no appeal was taken. Therefore, the applicant has waived his rights to contest the City's determination that the Deemed Approved (legal, nonconforming) status has lapsed and there is no legal right to sell alcohol at that location. The only issues before the Commission are whether the applicant has met the required findings for a new Alcoholic Beverage Sales Activity and Convenience Market.

The applicant's property includes a commercial billboard which provides additional revenue to the site. The billboard is not subject of this application and may continue. Two portable barbeque units in the parking lot would constitute Fast Food; no application for this use is submitted and the barbeque units would not be allowed to operate.

Nearby land uses include automotive (muffler, auto glass, smog check), general food sales (pizza café) and personal care (hair/nail salon) commercial activities; and one- and two-story residential structures of generally pre-WWII vintage. A market selling beer and wine is across the street. A church is one block south on Shattuck Avenue. A charter school and park area are approximately 950 feet west on Shattuck Avenue.

Staff has received e-mails (attached) and verbal statements that over a dozen East Lorin and Shattuck area neighbors are very concerned about past and future occupancy by an Alcoholic Beverage Sales

Activity. They view it as inconsistent with recent private investments in housing upkeep in surrounding residential areas. Staff met with eight of these neighbors at their request. There are also several neighborhood residents in support of the Alcoholic Beverage Sales Activity.

GENERAL PLAN ANALYSIS

This project is located in the Neighborhood Center General Plan Land Use Classification, under the General Plan Land Use and Transportation Element (LUTE). One intent of this classification is to identify, create, maintain and enhance commercial and residential structures in this area with good access to transportation and other services. Typical uses include "a mix of retail...office...eating and drinking places, personal and business services..." Excerpts from LUTE include:

Policy 1/C1.2. Retaining Existing Business. *Existing businesses and jobs within Oakland which are consistent with the long-range objectives of this Plan should, whenever possible, be retained.*

Staff notes that a return of the Alcoholic Beverage Sales Activity after years of absence is not an "existing business." A Convenience Market not serving alcohol would accomplish the same benefit without neighborhood concerns.

Policy 1/C3.2. Enhancing Business Districts. *Retain and enhance clusters of similar types of commercial enterprises as the nucleus of distinctive business districts...*

A liquor operation is not similar to other commercial enterprises in this district. In contrast, a Convenience Market without alcohol could fulfill this Policy, being a typical neighborhood use.

Policy 1/C3.4. Strengthen Vitality. *The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved.*

Staff notes that the Alcoholic Beverage Sales Activity is not a "similar type of enterprise" to other businesses in the 5000-6000 blocks of Shattuck Avenue. The applicant's activity is not consistent with a "distinctive business district," nor would it "strengthen and preserve" an emerging distinctive neighborhood, such as Temescal, Dimond or Laurel districts. A Convenience Market could be beneficial without alcohol.

Pages 220 and 221 of LUTE discuss North Oakland revitalization as follows:

Community Character and Identity. *Preservation of character and strengthening community identity are key objectives for North Oaklanders....Participants also suggested that enforcement of existing regulations be strengthened to combat blight and deterioration of the community's image.*

Staff comment: some neighbors state that a liquor store does not contribute to emerging community character and identity in North Oakland. A Convenience Market is neutral on this issue.

Commercial Revitalization. *Some locations need commercial revitalization. Vacant and underutilized commercial properties, and activities that are incompatible with neighborhood shopping, such as auto repair and derelict signs/fencing, detract from the local business climate along certain corridors. Some neighborhoods, such as Golden Gate, lack goods and services for residents.*

Staff comment: the applicant's store is the only facility in the immediate 1000-foot-radius area which sells hard liquor products. The existing market across the street sells beer and wine. However, some neighbors believe other services (e.g. cafes, retail stores) are more important for their neighborhood and a

better fit for this address. A Convenience Market not selling alcohol could fulfill this General Plan LUTE objective.

Staff review of these policies confirms that, on the whole, additional alcohol service uses in this North Oakland area *do not* conform with City land use policies. Existing business districts should be better supported, and neighborhood experiences enhanced without Alcoholic Beverage Sales from a second location in this immediate neighborhood.

ZONING ANALYSIS

The project is located in the C-10 Local Retail Commercial Zoning District, consistent with the Neighborhood Center General Plan Land Use Element (LUTE) designation. In order to allow the selling of alcoholic beverages at this location, the regular Conditional Use Permit findings per Section 17.134.050 and special findings for Alcoholic Beverage Sales Commercial Activities per Section 17.102.210 must be made, as well as approval of a Major Variance because the site is within 1,000 feet of another Alcoholic Beverage Sales Activity.

Planning Code Section 17.09.040 defines: "Alcoholic beverage license overconcentrated areas" as "a police beat with crime rates that exceed the City median by twenty percent or more or a census tract in which the per capita number of on-sale or off-sale retail Alcoholic Beverage Sales licenses exceeds the Alameda County median." The applicant's store is in Police Beat 11-X. In 2008, there were 1,030 crimes in 11x; the City's "overconcentrated areas" threshold was 1,320. Beat 11-X is thus approximately 30% below this threshold and is thus not overconcentrated by that standard.

In Census Tract 4005, in 2008 there were 3 alcoholic beverage licenses other than (exempt) full-service restaurants; the applicant's store would make 4, not exceeding the standard threshold of 6. Therefore, this site does not meet the definition of overconcentrated area defined in Section 17.09.040. Section 17.102.210(3) requires an activity that is located in an overconcentrated area to make a "Public Convenience or Necessity" finding; since the area is not overconcentrated, no "Public Convenience or Necessity" findings are required for this proposal.

On February 1, 2000, the Oakland City Council passed Resolution No. 75490 establishing a "no net increase" policy in the number of alcoholic beverage sales commercial activities in Oakland neighborhoods to protect the health, safety and welfare of residents. The applicant has obtained a previously approved Oakland liquor license for this use, so no new licenses will result.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines list projects which are categorically exempt from environmental review. Section 15301 exempts exterior changes to an existing facility and Section 15303 exempts conversion of small structures. This project involves minimal exterior changes to the building. Therefore, this project is considered categorically exempt from the provisions of CEQA pursuant to Sections 15301 and 15303 of the State CEQA guidelines. In addition, Section 15183 applies as this activity, subject to revised Conditional Use Permit approval, is consistent with a Community Plan, General Plan, or Zoning. In addition, Section 15270 covers projects which are disapproved.

KEY ISSUES AND IMPACTS

The application presents issues of *potential to set precedent, safety/crime control, noise control, community service and community vitality.*

Potential to Set Precedent

Section 17.102.210 of the Planning Code requires that alcohol sales uses be separated by at least 1,000 feet, except for uses in the Central District and Hegenberger areas, and for full-service restaurants which are not on designated streets. The purpose of the separation requirement is to avoid the blighting adverse effects of concentrated alcohol sales uses such as: loitering, public intoxication, trash/debris and similar results of customers abusing alcohol. In Oakland, the Alcoholic Beverage Action Team (ABAT) Police procedure for control of alcohol sales uses was established in order to limit adverse effects.

The proposed Variance to the 1,000 foot separation standard in a neighborhood could set a precedent for other alcohol sales applications in the area. Variance exceptions to this Ordinance could accumulate or cluster in an area, changing the character of the commercial district and affecting the nearby residential areas. Allowing alcohol sales uses to cluster closer than the 1,000 foot radius could be detrimental to the vitality of an emerging neighborhood commercial and mixed-use node.

Safety/Crime Control

Neighbors advise that this operation prior to 2004 had a reputation for attracting loitering and other concerns. However, recent police statistics and reports have not singled out JoJo's (former NicNak) as a high crime generator. As a former Alameda County Deputy Sheriff, the owner has attempted to control on-site crime with a security fence, protective glass wall inside the store, security cameras and other methods. Despite these precautions, neighbors have complained about crime concerns; this owner has owned the property for several decades. However, for much of the past five years, the market has been closed, and only reopened with limited hours since December 2008. Liquor sales stopped in April 2009, though a Convenience Market continued. There may not have been sufficient operational time for safety issues to become manifest in statistics with the most recent activity.

The applicant's site does not appear to contribute to alcohol, robbery or narcotics cases at a level much higher than Rockridge or Montclair shopping districts. However, neighbors of 6400 Shattuck Avenue give anecdotal evidence of past loitering and drinking near the site. Attachment G contains crime statistics.

Section 17.102.210(B)4(b) evaluates Alcoholic Beverage Sales uses based on overconcentration of crimes. For the area near 6400 Shattuck Avenue, the Police Beat 11-X had approximately 30% fewer crimes in 2008 than the threshold limit for overconcentration of 1,320 crimes. In addition, the threshold for police calls is 10,904, while Police Beat 11-X had 6,389 calls, again over 1/3 below the threshold. The requested Variance and the findings would allow the applicant to reopen within 1,000 feet of another liquor operation.

Noise Control

Residential uses are close to the market and any excessive noise would affect residents. Late night vehicle and customer noise may especially disturb neighbors.

Noise management and design of the facility must address potential impacts on the neighboring residents. However, with compliance with attached conditions, the proposed activity should be able to maintain the City's maximum noise standard of 55 CNEL/decibels across the property line, approximately the level of a loud radio. Conditions requires such noise control, and adopted codes prohibit noise levels above City standards.

Community Service

Presently the neighborhood is served for liquor by the "White Horse" store at 66th Street and Telegraph Avenue; Alcatel at Alcatraz Street and Telegraph Avenue; as well as at the Safeway Store in Oakland and Berkeley Bowl in Berkeley, and other stores, all within a 5 minute drive from 6400 Shattuck Avenue. TJ's Market, a store selling beer and wine, is directly across Alcatraz from this site. It is unlikely that alcohol sales from 6400 Shattuck (JoJo's Market) is serving an unmet need in the vicinity.

The following summary focuses on the applicant's and neighbors' alternative points of view.

The applicant believes this use has been a part of the community for decades, serving a need for residents to conveniently obtain these products, particularly a range of liquors, elsewhere within walking distance. The applicant says it is for community service that he wants to retain Alcoholic Beverage Sales in approximately one-third the floor space of the convenience market.

Neighbors respond that there is a market across Alcatraz which serves beer and wine in a traditional neighborhood format, making alcoholic beverage service at JoJo's unnecessary, except for strong liquor. They believe that liquor stores slightly more distant provide a better opportunity to meet community needs without the negative impacts of this liquor store for residential neighbors.

Staff comments are in the attached findings. The market is not proposing to offer a wide selection of fine wines. A Conditional Use Permit runs with the land and transfers to future property buyers. A future owner, or the current owner, might want to expand liquor service from the smaller level of the past, potentially increasing the effects of this use for neighbors. Expansion of size would require further Planning Commission approvals.

Community Vitality

North Oakland is one of the "renaissance" neighborhoods in the City, with new investment in housing and businesses. Neighbors have suggested that the applicant's liquor operation would be a hindrance to this developing community vitality, being a use and business plan from an earlier era. The applicant submits that a well-run liquor store and Convenience Market would better retain community vitality than a potential vacancy.

Neighbors comment that a different use of the C-10 Zoning District would better enhance community vitality. The C-10 District allows General Food Sales, Convenience Sales and Service, General Retail Sales, General Personal Service, Medical Service, Consultative and Financial Service and other permitted uses; and by Conditional Use Permit, Consumer Laundry, Plant Nursery and other uses. Neighbors believe merchandise stores, cafes, offices, hair or nail salons etc. might better represent the needs of the neighborhood. Staff notes in reply that this commercial district, with its older buildings, distance from freeway frontage and limited parking may not attract the types of businesses neighbors mention, and that an existing business such as JoJo's could provide some Convenience Market services, limited by this Conditional Use Permit to omit alcohol.

ALTERNATIVES

The applicant's objective is to have a viable business to operate, and in the future, to sell. A future owner may want to expand liquor sales. The community's objective is that the store contribute to, rather than impede, the ongoing revitalization of the neighborhood. There are alternatives which address these objectives in greater or lesser proportions:

- 1) Restore Activity to Pre-2005 Condition

The applicant asks the right to sell liquor of all types, and operate a convenience market, unimpeded by any alterations from the pre-2005 store format. The applicant is familiar with this business and would have low business costs. Unless limited by conditions, a future owner might expand the currently limited floorspace dedicated to liquor, increasing effects. The neighborhood responds that allowing restoration (or expansion) of the activity does not address their issues.

2) Limit but Do Not Prohibit Liquor Sales, Allow Convenience Market

This option would address some neighborhood concerns, with minimal impact on the applicant. *One operational change that could be memorialized in conditions would be to limit amounts and types of alcohol sold; within limits of the State ABC license. For instance, airline-style minibottles, single cans of beer etc., small wine bottles might be banned or voluntarily withheld.* There is a difference between a wine bar where customers take a bottle home for dinner, vs. the type of liquor store where loitering and drinking from bagged single servings takes place, often early in the morning or in the middle of the night. Since the facility is not open in the mornings, this feature might be retained in project conditions, to prevent potential loitering during these hours. Other conditions may limit late night hours or limit expansions by future owners.

3) Deny the Application Except for Convenience Sales, Divert Tenancy Opportunity to Other Permitted C-10 Zone Land Use (Staff Recommendation)

The neighborhood's concerns will not be fully addressed unless liquor sales cease. Some neighbors note that the limited liquor area in the market (under 15% of floor area for distilled spirits) might be increased by a subsequent owner, so the current impacts of the store may understate the potential long term impact of approving alcoholic beverage sales. The Convenience Market might be allowed to continue without liquor; and combined with billboard revenue, the site would continue to provide business revenue. The owner might also substitute a café, retail store or other use for the past uses. The issued State ABC liquor license might be sold to another Oakland business in a more suitable location, preserving the owner's investment to a limited degree.

4) Deny both the Alcoholic Beverage Sales and the Convenience Market.

The neighborhood's concerns for loitering and crime may extend to the Convenience Market as well. However, staff finds that a well-run Convenience Market could produce a net beneficial effect, balancing customer service with other concerns and avoiding a potential vacancy.

CONCLUSION

Staff distinguishes between ramifications of and impacts from the Major Variance and Conditional Use Permit for Alcoholic Beverage Sales, which is opposed by many in the neighborhood, from a Conditional Use Permit to allow a Convenience Market at 6400 Shattuck Avenue.

Staff recommends denial of the Major Variance and Conditional Use Permit for Alcoholic Beverage Sales. *The findings required by the Oakland Planning Code are not fulfilled in this case. Granting the request would cause an adverse precedent. The liquor store lost its legal status 5 years ago and community demand has been well-served by other Alcoholic Beverage Sales locations. A neighboring market already provides beer and wine services to the immediate Shattuck neighborhood. Several other liquor stores provide services near the edge of the 1000 foot radius from this store; and this additional venue for liquor is not necessary. The potential for adverse secondary effects, such as loitering and littering, would likely increase with another operator in the future.*

With appropriate conditions requiring design modifications and prohibiting alcohol sales, this project will meet all of the Use Permit Criteria for a Convenience Market pursuant to Section 17.134.050 and other Sections listed, which are attached herein and are hereby incorporated into this report.

RECOMMENDATION:

1. Affirm staff's environmental determination.
2. Deny the Major Conditional Use Permit and Variances for Alcoholic Beverage Sales, and approve with conditions the Major Conditional Use Permit for Convenience Market, at 6400 Shattuck Avenue based on findings and subject to the attached conditions.

Prepared by:


David Valeska, Planner II

Approved by:


SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:


Walter Cohen, CEDA Director
Community & Economic Development Agency

Attachments:

- A. Findings for Approval (Convenience Market) and for Denial (Alcoholic Beverage Sales)
- B. Conditions for Approval (Convenience Market)
- C. Applicant Plans & Photographs
- D. Applicant Statement and Operations Plan
- E. Neighbor Letters & E-mails
- F. City Letters to Applicant (April 2004 and May 2009 Lapsing Letters)
- G. Crime Statistics

ATTACHMENT A. FINDINGS FOR APPROVAL (CONVENIENCE MARKET)

This proposal meets the required findings under Sections 17.134.050, General Use Permit Criteria, and 17.102.210(A)&(B) Special Use Permit Criteria, as set forth below. Required findings are shown in bold type; explanations as to why these findings can be made are in normal type.

Section 17.134.050 (General Use Permit Criteria):

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

An attractive and properly managed convenience market could satisfy a community need which does not affect livability of the surrounding neighborhood, and is operated in a scale which is compatible with neighborhood character. The Market provides food, household items and similar small purchases for neighbors, many of whom are inclined to walk to the facility rather than drive to a larger market.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

An attractive and properly managed convenience market's availability of food and household items enhances the convenience and functional living environment.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The Convenience Market's functions (food and household items) are closer to the Permitted Activities of General Food Sales and General Retail Sales, except offered in a small convenience format which requires a Conditional Use Permit. Such products are essential to a community.

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

The building at 6400 Shattuck Avenue is existing, with a façade covered with non-historical materials which do little to enhance the surrounding commercial and residential area. The fortified appearance of the site reflects obsolete design standards which do not reflect the ongoing reinvestment in the neighborhood by private property owners. Any approval should be conditioned on enhancing the fencing, landscaping and interior fortifications of the store to appear more like a traditional neighborhood market. Staff has recommended several conditions to enhance the aesthetics of the site.

- E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

The General Plan allows for approval of convenience markets. The General Plan allows for businesses that will not cause undue nuisance activity. The Neighborhood Center Commercial land use category envisions a wide range of retail, restaurant and specialty stores along with promoting mixed-use developments. An attractive and well-managed commercial operation at this location will conform to the General Plan.

Section 17.102.210 (A) - Special Use Permit Criteria:

- 1. That the proposal will not contribute to undue proliferation of such uses in a area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.**

Such convenience markets, absent alcohol, do not tend to provide the same types of loitering and other problems as do small markets with alcohol. The neighborhood has sufficient capacity to support this small market without causing undue traffic or other problems.

- 2. That the proposal will not adversely affect adjacent or nearby churches, temples or synagogues; public or parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds**

The facility is approximately 960 feet from a community park/former school site on Shattuck Avenue and is unlikely to adversely affect it. Likewise, houses of worship are likely too distant to experience effects. This facility design has built-in sound attenuation characteristics within the structure. Staff believes that the convenience market use will protect nearby uses from adverse effects.

- 3. That the proposal will not interfere with the movement of people along an important pedestrian street.**

The facility parking lot provides two sites of entrance, on Shattuck and Alcatraz Avenues, spaced apart, minimizes the crowd management issues of the building tenant. The building entry does not impede pedestrian corridors. Aesthetic improvements are recommended in conditions to enhance the pedestrian character of the site.

- 4. That the proposed development will be of an architectural and visual quality and character, which harmonizes with, or where appropriate enhances the surrounding area.**

The building is existing and the façade is plain with unfeatured walls and windows, with little landscaping and a fenced paved lot, doing little to enhance or harmonize with the area. Retrofitting and improvement to fencing, signs and interior fortifications are necessary, and have been recommended in conditions of approval.

- 5. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression.**

Existing signage is legal nonconforming and exceeds the minimum allowed by code and necessary to identify a small commercial use. One sign facing residential areas might not be approved if filed

today. No change in signs is proposed by the applicant. No additional parking areas would be built and the existing parking, while giving a plain appearance, provides sufficient parking spaces for this use. Either use should require retrofitting of the parking lot with a lower fence, trimmed at the corner, additional landscaping and other enhancements to remove the bleak view. Staff has also recommended a condition of approval regarding modifications to the freestanding pole sign to allow it to better fit with the neighborhood character,

6. That adequate litter receptacles will be provided where appropriate.

As conditioned, there will be non-flammable trash containers installed proximate to the entrance of the facility and litter will be removed from the sidewalk and gutter in front of and to twenty feet beyond the premises.

7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten PM and seven AM.

The walls and windows of the dwellings are near the store building and parking lot, establishing the potential for late night sound impacts on residences. Attached conditions are provided to ameliorate some of the noise effects, including reduced hours of evening operations and lighting controls.

FINDINGS FOR DENIAL (ALCOHOLIC BEVERAGE SALES)

In order to approve alcoholic beverage sales, the proposal must meet **all** the required findings under Sections 17.134.050, General Use Permit Criteria, Section 17.102.210(A)&(B) Special Use Permit Criteria; and Section 17.148.050(a), Variance, as set forth below. Required findings are shown in bold type; explanations as to why these findings **cannot** be made are in normal type. Note, that since each and every finding must be met in order to approve the Alcoholic Beverage Sales Activity, the failure to meet even one finding is grounds for denial. Each individual finding for denial constitutes a separate and independent basis to deny the proposal, and when taken collectively, provides an overall basis to deny the proposal.

Section 17.134.050 (General Use Permit Criteria):

The following findings A. and C. below are not satisfied with the proposal:

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The proposal to include Alcohol Beverage Sales at the convenience market will not be compatible with adjacent and surrounding businesses. The nearby residences cannot be buffered from night noise by due diligence and best management practices required by conditions. As approved the activity

with late operating hours and other operating characteristics will adversely affect livability or appropriate development. Traffic and parking could affect neighbors, particularly if liquor sales are expanded in the future by this owner or subsequent owners.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**
- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The proposed Alcoholic Beverage Sales activity is unlikely to enhance the surrounding community which is struggling to improve and in fact would likely cause detrimental effects often associated with small scale alcohol sales establishments in transitioning neighborhoods. The demand for sales of alcoholic beverages for this immediate neighborhood continues to be satisfied by the market selling beer and wine across the street and by other sales locations within the larger neighborhood, as detailed earlier in the staff report. Sales of alcoholic beverages from this location will not provide an essential service to this immediate neighborhood.

- D. That the proposal conforms to all applicable design review criteria set forth in the City design review procedure at Section 17.136.070.**
- E. That the proposal conforms in all significant respects with the Oakland General Plan and any other applicable plan or development control map which has been adopted by City Council.**

Section 17.102.210 (A) - Special Use Permit Criteria:

Findings 1 and 2, below, are not satisfied with the proposal:

- 1. That the proposal will not contribute to undue proliferation of such uses in a area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.**

The proposed alcoholic beverage sales will result in a net increase in Alcoholic Beverage Sales uses in this neighborhood, and tend to establish a precedent for other such uses located less than 1,000 feet apart as required by the Oakland Planning Code. City Police ABAT team observations are that clustering of similar Alcoholic Beverage Sales stores in Oakland generally result in a contribution to crime and loitering problems. This location is immediately across the street from a market selling beer and wine.

- 2. That the proposal will not adversely affect adjacent or nearby churches, temples or synagogues; public or parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds**

The facility is approximately 960 feet from a community park/former school site on Shattuck Avenue and may adversely affect it. Likewise houses of worship may also experience adverse effects. Approving this use and establishing a Planning precedent for Alcoholic Beverage Sales uses of the same type closer than 1,000 feet separation could ultimately affect these uses.

3. That the proposal will not interfere with the movement of people along an important pedestrian street.
4. That the proposed development will be of an architectural and visual quality and character, which harmonizes with, or where appropriate enhances the surrounding area.
5. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression.
6. That adequate litter receptacles will be provided where appropriate.
7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten PM and seven AM.

Section 17.102.210(B) - Special Use Permit Criteria

Finding B.1 below is not satisfied with the proposal:

B. Special Restrictions on Establishments Selling Alcoholic Beverages.

1. No Alcoholic Beverage Sales Commercial Activity shall be located closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Commercial Activity except;
 - a. On-sale retail licenses located in the Central District (defined as within the boundaries of I-980 and Brush Street to the west; 27th Street to the north; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south); or
 - b. Activity is in conjunction with a Full-Service Restaurant; or
 - c. Establishments with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more.

This proposed location is within 80 feet of a market across the street selling beer and wine. A Variance has been requested to allow this Alcoholic Beverage Sales Commercial Activity closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Activity. This is an adverse precedent for other such uses.

This store will not provide an unmet Alcoholic Beverage Sales need for a population in the immediate Oakland Community, since beer and wine can be purchased across Alcatraz Avenue and spirit liquors can be purchased at several locations within a 5-minute drive. The store will not serve as a catalyst for other desirable businesses in the area, such as retail or restaurant uses; rather, the store is planned to operate like liquor stores from 40 years ago.

SECTION 17.148.050(a)—VARIANCE FINDINGS:

All the following findings below are not satisfied with the proposal:

1. **That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency or appearance.**

The code requires 1,000 foot separation of alcoholic beverage sales activities, for valid Planning reasons; granting a Variance might cause an adverse and unjustified precedent. A Variance is not justified because one purpose of the Zoning Regulations is to limit the proliferation of establishments selling alcohol. Strict compliance with the regulations could not cause a hardship or practical difficulty for the applicant because a convenience market is proposed for approval and because there are other potential uses of the site. Moreover, neither staff nor the applicant has been able to identify any unique physical or topographic circumstances or conditions of design that warrant granting of the Variance.

2. **That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.**

There are no unique circumstances warranting granting of this Variance; this is a flat rectangular commercial property similar to many such properties in the area. The applicant is subject to the same 1,000 foot distance separation for alcoholic beverage sales that apply to similar properties outside of the downtown area and the Hegenberger Corridor. There are no unique reasons that Alcoholic Beverage Sales Activities need to be closer than 1,000 feet in this otherwise typical residential neighborhood.

3. **The variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.**

Testimony of neighbors and observations by staff verify that an Alcoholic Beverage Sales facility this proximate to an existing beer and wine sales facility and to nearby residences would be detrimental to the public welfare and contrary to adopted polices intended to promote neighborhood revitalization.

4. **That the variance will not constitute a grant of a special privilege inconsistent with the limitations imposed on similarly zoned properties or inconsistent with the purposes of zoning regulations.**

The Variance would grant a special privilege that is not consistent with the restriction placed on similarly zoned and located properties.

5. **That the elements of the proposal requiring the variance (e.g. elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.**

While no new design review is required, existing facilities do not meet the required finding for design criteria for the variance, in that fences are inappropriately austere and fortified, and the building does not provide an inviting appearance, due to design of entries and security partitions visible through the windows. This is more of a problem for an Alcoholic Beverage Sales Activity than for a Convenience Market Activity, due to the nature of products sold and to customers served.

ATTACHMENT B. CONDITIONS OF APPROVAL

The following conditions are for approval of a Convenience Market without the sale of alcohol:

STANDARD CONDITIONS:

1. Approved Use.

Ongoing.

a. The project shall be constructed and operated in accordance with the authorized use as described in this letter and the plans dated **May, 2009** and submitted **May 11, 2009** and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, conditions of approval or use shall required prior written approval from the Director of City Planning or designee.

b. This action by the Director of City Planning ("this Approval") includes the approval set forth as follows: A Convenience Market, plus any lawful permitted use in the C-10 Local Retail Zoning District for this facility type, with hours from 6 am to 10 pm.

c. This approval **excludes** sale of alcoholic beverages.

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing.

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits have been issued, or authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any valid building permit for this project may invalidate this approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes

Ongoing.

The project is approved pursuant to the Planning Code only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance with Other Requirements.

Prior to issuance of a demolition, grading, P-job or other construction related permit.

a. The project applicant shall comply with all other applicable federal, state, regional and/or local codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshall, and the City's Public Works Agency.

b. The applicant shall submit approved plans for project-specific needs related to fire protection including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access and vegetation management for preventing fires and soil erosion.

5. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing.

- a. Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b. The City Planning Department reserves the right at any time during construction, to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.
- c. Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and /or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions if it is found that there is violation of any of the Conditions, or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement Actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the conditions of Approval.

6. Signed Copy of the Conditions

With submittal of a demolition, grading and building permit.

A copy of the approval letter and Conditions shall be signed by the property owner and submitted with each set of permit plans submitted for this project.

7. Indemnification

Ongoing

- a. To the maximum extent permitted by law, the applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action or proceeding (including legal costs, attorney's fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The project applicant shall reimburse the City for its reasonable legal costs and attorneys fees.
- b. Within ten (10) calendar days of the filing any Action as specified in subsection A above, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in this condition or other requirements, or other conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval and all applicable adopted mitigation measures set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions and if any one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the approved plans, along with the Approval Letter and Conditions of Approval shall be available for review at the job site at all times.

11. Recycling Space Allocation Requirements

Prior to issuance of a building permit

The design, location and maintenance of recycling collection and storage areas must substantially comply with the provision of the Oakland City Planning Commission "Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas", Policy 100-28. Pursuant to Section 17.118.020 of the Oakland Planning Code, this condition shall apply to new commercial and industrial development that requires a building permit. A minimum of two cubic feet of storage and collection area shall be provided for each dwelling unit and for each 1,000 square feet of commercial space.

Ongoing.

No deviation shall be made from the approved drawings or conditions of approval that alters the project's siting, height, exterior appearance, and/or required new landscaping without prior written approval from the Oakland Planning & Zoning Department.

12. Construction Practices. (Fence Modifications)

During construction.

All work shall apply the "Best Management Practices" (BMPs) for the construction industry, including BMPs for dust, erosion and sedimentation abatement per Section 15.04 of the Oakland Municipal Code, as well as all specific construction-related conditions of approval attached to this project.

13. Days/Hours of Construction Operation (Fence Modifications)

Ongoing throughout demolition, grading and/or construction.

The project applicant shall require construction contractors to limit standard construction activities as follows:

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 AM and 4:00 PM Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 AM to 7:00 PM Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of residents' preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.

- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - i) Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of residents' preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - ii) After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction shall take place on Sundays or Federal holidays.
- f) *Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries and construction meetings held on-site in a non-enclosed area.*

14. Hours.

Ongoing:

The business may be open to the public for business from 6 am to 10 pm daily. Any work outside these hours shall solely be staff preparation and not open to the public.

CONDITIONS FOR CONVENIENCE MARKET COMMERCIAL ACTIVITY:

15. Security.

Ongoing

The applicant/property owner shall keep windows clear of visual obstructions including, but not limited to signage beyond 20% window coverage, any advertising displays, product racks, refrigerated equipment, cardboard, trash, wire mesh/security bars, reflective coatings, or other materials. Note that this is more restrictive than the state regulations related to signage. The purpose of this condition is to maintain good sight lines in and out of the store to allow police to monitor activity inside and to allow business staff to monitor and discourage inappropriate activity in front of the business.

16. Convenience Market Management

a. *Ongoing*

Lighting shall be maintained providing enough illumination to identify loiterers standing in front of the store and in the parking lot. Such illumination shall remain lit during all hours of darkness when the business is open.

b. *Ongoing*

The licensees/property owners shall clear the gutter and sidewalks twenty feet beyond the property lines along these streets of litter twice daily or as needed to control litter (sweep or mechanically clean weekly). The licensee shall clean the sidewalk with steam or equivalent measures once per month.

c. Ongoing.

Graffiti shall be removed from the premises within 72 hours (3 days) of application.

d. Ongoing.

No pay phones are permitted outside the building.

e. Ongoing.

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiterers who refuse to leave. Persons hanging around the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team.

17. Trash and litter

Prior commencement of use and ongoing.

The applicant/property owner shall install and maintain at least one (1), non-flammable trash can located near the entrance of the store.

18. Crowd Control/Anti-Loitering Plan

Prior to commencement of use and ongoing

A crowd control/anti-loitering plan shall be reviewed and approved by the Zoning Manager prior to occupancy. The applicant shall provide staff on duty from 6:00 pm until closing on days when the business is open to the public. Staff shall patrol the interior and exterior as necessary to achieve crowd control and to deter nuisance, loitering and crime.

19. Limitations on Merchandise and Sales

Prior to commencement of use and ongoing.

A) The applicant will not cook or sell on-site produced barbeque or other items under the City code definition 17.09 of "fast food" unless a separate and additional conditional use permit is approved. The existing barbeque units shall be removed.

B) The applicant may sell otherwise applicable "convenience market" items including packaged food and non-alcoholic beverages, sundries, household items, newspapers etc. as well as any of the permitted activities under Section 17.36 of the City Zoning Code for the C-10 Zoning District.

20. Sign Modifications

Within 60 Days of Approval

The existing pole sign at the corner of Shattuck and Alcatraz shall be modified to be no taller than 10 feet in height, with landscaping added at its base to the satisfaction of the Zoning Manager.

21. Project Modifications

Within 60 Days of Approval

This approval is contingent on modifications to the existing facility, with applicable permits:

- 1) The existing 6 foot tall metal fence at the perimeter shall be modified to a height of 42 inches or less;
 - a) to be within the property boundary in any area where an encroachment into the right of way may occur, and
 - b) at the corner of Shattuck and Alcatraz Avenues, to provide an angle in the fence ten (10) feet back from the corner point along both Shattuck and Alcatraz Avenues, with landscaping added outside of the angled fence; and.
- 2) Removal of the floor-to-ceiling glass wall inside the market to reduce the appearance of fortification; and.
- 3) Removal of the two portable barbeques and the motorhome from the parking lot.

APPROVED BY: City Planning Commission: _____ (date) _____ (vote)
City Council



CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 839-6451

VIA Certified Mail

April 29, 2009

Ashrious and Verniece Pannell
1426 Holman Road
Oakland, California 94610

RE: Notice of Rescission of City Zoning Clearance ZC08-2293 and Immediate Cessation of Alcoholic Beverage Sales at 6400 Shattuck Avenue, Oakland; APN: 016-1427-024-00

Dear Mr. and Ms. Pannell:

As detailed below, the City hereby rescinds City Zoning Clearance ZC08-2293 issued on September 24, 2008 for alcohol sales at 6400 Shattuck Avenue and therefore you must immediately cease all alcoholic beverage sales until such time that a Major Conditional Use Permit is applied for and issued by the City Planning Commission. In addition to the Major Conditional Use Permit, a Major Variance will also be required because one or more provisions of Code Section 17.102.210 would not be satisfied. You may appeal this decision within ten (10) calendar days of the date of this letter.

This letter notifies you of the rescission of the City Zoning Clearance (ZC08-2293) issued on September 24, 2008 for alcohol sales at 6400 Shattuck Avenue. This decision to rescind is based on information that this location had not in fact been selling alcohol for at least 90-days prior to that date. In fact, a 90-day lapse letter had been issued to you in 2004 (see attachment), and no active sales had been legally conducted from that time through September 24, 2008. This information is contrary to information received by the zoning planner on September 24, 2008. As you are aware, locations not selling alcoholic beverages for a period of greater than 90 days lose their nonconforming status, pursuant to City of Oakland code section 17.114.050 (Nonconforming Activity – Discontinuance). Accordingly, the City also rescinds our approval for alcohol sales at the property set forth in the Department of Alcoholic Beverage Control Zoning Affidavit dated August 25, 2008.

Based on the above-referenced code section, the current sale of alcoholic beverages from 6400 Shattuck Avenue is in violation of the zoning ordinance. Sale of alcohol in conformance with the zoning ordinance can only commence pursuant to application for, and review and approval of, a Major Conditional Use Permit by the City Planning Commission, pursuant to code sections 17.114.050 and 17.134.020. The City Planning Commission has the authority to approve or deny such application, once received and reviewed by them.

ITEM 2
ATTACHMENT F
CITY LETTERS
6400 SHATTUCK AVE.

Through this letter, you are hereby notified to immediately cease all alcoholic beverage sales until such time that a Major Conditional Use Permit and Major Variance are applied for and issued by the City Planning Commission.

This decision to rescind the zoning clearance is appealable to the City Planning Commission within 10 days of the date of this letter (by Monday, May 11, 2009, by 4:00 p.m.). Such an appeal must be on a form provided by the Planning and Zoning Division, and submitted to 250 Frank Ogawa Plaza, Suite 2114 (2nd floor), to the attention of Dave Valeska. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the City or wherein the decision regarding the rescission of zoning approval is not supported by substantial evidence and must include a payment of \$1,046.52 in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court.

The City has provided a copy of this letter to the State Department of Alcoholic Beverage Control for their records.

If you have any questions regarding this matter, please contact Dave Valeska, who can be reached by email at dvalaska@oaklandnet.com or telephone at 510-238-2075.

Sincerely,



Scott Miller
Zoning Manager
City of Oakland

Enclosure: April 28, 2004 Lapse of Deemed Approved Status letter

Cc: Eric Angstadt, Deputy Director of Community and Economic Development
David Valeska, Planner II
Carolyn Ortler, City Attorney's Office
Leroy Johnson, ABAT
Zachary Wald, District 1 Council Office
Brett Musselman, District Administrator, State Dept. of Alcoholic Beverage Control

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Police Department

Telephone Device for the Deaf (510) 238-3227

28 April 2004

Nagi Saeed Dobashi
"Nic Nak Drive in Liquor"
6400 Shattuck Ave
Oakland, Ca 94609

Ashrious Pannell
1426 Holtman Rd.
Oakland, CA 94610

Re: Deemed Approved Status at 6400 Shattuck Ave.

Dear Operator and/or Property Owner,

This letter is to advise you of a Zoning determination regarding the status of the liquor license located at 6400 Shattuck Ave. The Alcoholic Beverage Sales Commercial Activity at this location has been discontinued for more than ninety days. Therefore, the Deemed Approved/legal non-conforming status of the activity located on this site has lapsed. The sales of alcoholic beverages cannot be conducted at this site unless the Oakland Planning Commission grants a Major Variance or Major Conditional Use Permit for the activity after a duly noticed public hearing, and the Department of Alcoholic Beverage Control (ABC) authorizes a license at that location.

Previously, the use was considered to be legal non-conforming activity because it existed before 1977 when the City of Oakland enacted the Conditional Use Permit process for Alcoholic Beverage Sales Commercial Activities (i.e. liquor stores, bars, and restaurants in some areas). The status has become known as Deemed Approved upon the enactment of Municipal Code Chapter 17.156 in 1993. The Deemed Approved/legal non-conforming status is extinguished if the activity (the sale of alcoholic beverages) is discontinued for more than ninety (90) days (Municipal Code Section 17.117.050).



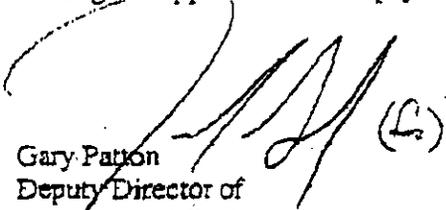
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Police Department

Telephone Device for the Deaf (510) 238-3227

Also, if your property is in a census tract that is over concentrated with Alcoholic Beverage Sales Commercial Activities (according to ABC), in addition to the usual Conditional Use Permit and Variance findings, the Oakland Planning Commission will need to make special findings that the activity would further the Public Convenience or be a Necessity.

If you have any questions regarding this determination, please contact Jacob Graef at 777-8672. This determination may be appealed to the Oakland Planning Commission within 10 days of this decision. If you choose to appeal this determination, please submit a written request for appeal containing your name, the request for appeal, the basis for making the appeal and the fee payment of \$633.00 for the appeal.


Gary Patton
Deputy Director of
Planning and Zoning

- Cc:
- Oakland Planning Commission
- Sgt. L. White, OPD ABAT
- Pelayo Llamas, Deputy City Attorney
- Everest Robillard, District Administrator of ABC Oakland Office
- Yvonne Wade, ACHD Health Inspector

8/22



**California Department of Alcoholic Beverage
Control
For the County of ALAMEDA - (Retail Licenses)
and Census Tract = 4005**

Report as of 6/11/2009

41 = Restaurant

License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1) 403462	ACT	20	6/8/2004	5/31/2009	ALROBAIDI MANSOOR HAMOOD 701 60TH ST OAKLAND, CA 94609 Census Tract: 4005.	AIBAN MARKET		0109
2) 425645	ACT	20	7/7/2005	6/30/2009	BEE POKPAL INC 6407 TELEGRAPH AVE OAKLAND, CA 94609- 1111 Census Tract: 4005.	BEE POKPAL INC		0109
3) 425697	ACT	41	6/1/2005	5/31/2009	GYPSEY SPIRIT MISSION INC 6500 SHATTUCK AVE OAKLAND, CA 94609 Census Tract: 4005.	NOMAD CAFE	PO BOX 1243 BERKELEY, CA 94701	0109
4) 428258	ACT	41	8/31/2005	7/31/2009	GLORY GLOBAL INC 6101 TELEGRAPH AVE OAKLAND, CA 94609- 1324 Census Tract: 4005.	ORIENTAL BBQ TOWN		0109
5) 457207	ACT	41	11/7/2007	10/31/2009	ENDALKACHEW WOSSEN 6430 TELEGRAPH AVE OAKLAND, CA 94609- 1112 Census Tract: 4005.	HIDE A WAY CARIE		0109
6) 461031	ACT	20	11/2/2007	6/30/2009	AHMED OMAR ALI 6342 SHATTUCK AVE OAKLAND, CA 94609- 1239 Census Tract: 4005.	LEE MARKET 2		0109

--- End of Report ---

For a definition of codes, view our [glossary](#).

Attachment G: Crime Statistics

The subject property was researched by staff for crime activity, using the City's police website, for the purpose of determining if the property was within an area of high crime.

According to City police records, over the 90 days prior to April 7, 2009, there had been 21 criminal incidents within a quarter mile of 6400 Shattuck Avenue. For 90 days prior to June 17, 2009, there were 24 criminal incidents in the quarter mile radius. The two separate computer reports include 3 weeks of time overlap; together they show crime patterns over several recent months. None of the activity has been shown to be associated with this specific location.

This data allows comparison of recent crime intensity with other commercial districts in the City. The following chart compares the June 17, 2009 tables of non-murder crime data for the applicant's site, 6400 Shattuck Avenue, with a nearby commercial area (Claremont at College Avenue in Rockridge), a low crime area (Mountain Boulevard at Park Boulevard, Montclair) and a higher crime area (78th Avenue at International Boulevard in East Oakland). The radius is uniformly ¼ mile and the period of reporting is 90 days prior to June 18, 2009. Source: City Web Page/Oaklandnet.Com/Police Crime Statistics.

CATEGORY	6400 Shattuck (Applicant Site)	College/ Claremont	78 th Ave. International	Mountain Bl./ Park Bl
Alcohol	1	0	0	0
Assault (Aggravated Plus Simple)	6	1	23	1
Burglary	6	8	7	2
Narcotics	0	0	5	0
Robbery	0	0	4	0
Theft	7	13	14	4
Vandalism	1	2	3	4
Vehicle Theft	3	6	12	1



OAKLAND POLICE DEPARTMENT

EASTMONT FACILITY
(2651 73rd Ave., Oakland 94605)

TO: Ed
Fax: 548-0822-0485
Date: 29 APR 04 Time: 1345
From: Jacob

Page 1 of 4/3 pages

Ed,
Sorry but ~~we~~ I can not
release the ACHD letter... None the less
I do have it and I will use it to
Build our case.
Jacob

6/22



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Police Department Telephone Device for the Deaf (510) 238-3227

28 April 2004

Nagi Saeed Dobashi
"Nic Nak Drive in Liquor"
6400 Shattuck Ave
Oakland, Ca 94609

Ashrious Pannell
1426 Holman Rd.
Oakland, CA 94610

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2/22

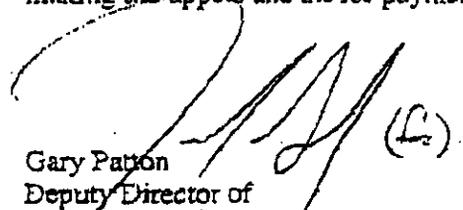
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Police Department

Telephone Device for the Deaf (510) 238-3227

Also, if your property is in a census tract that is over concentrated with Alcoholic Beverage Sales Commercial Activities (according to ABC), in addition to the usual Conditional Use Permit and Variance findings, the Oakland Planning Commission will need to make special findings that the activity would further the Public Convenience or be a Necessity.

If you have any questions regarding this determination, please contact Jacob Graef at 777-8672. This determination may be appealed to the Oakland Planning Commission within 10 days of this decision. If you choose to appeal this determination, please submit a written request for appeal containing your name, the request for appeal, the basis for making the appeal and the fee payment of \$633.00 for the appeal.


Gary Patton
Deputy Director of
Planning and Zoning

- Cc:
- Oakland Planning Commission
- Sgt. L. White, OPD ABAT
- Pelayo Llamas, Deputy City Attorney
- Everest Robillard, District Administrator of ABC Oakland Office
- Yvonne Wade, ACHD Health Inspector

8/22



**California Department of Alcoholic Beverage Control
License Query System Summary
as of 10/12/2004**

License Information	
License Number: 40341	Status: R65 SURRENDER
Primary Owner: PANNELL A	
ABC Office of Application: OAKLAND	
Business Name	
Doing Business As: NIC NAK LIQUORS	
Business Address	
Address: 6400 SHATTUCK AVE Census Tract: 4005.	
City: OAKLAND County: ALAMEDA	
State: CA Zip Code: 94609	
Licensee Information	
Licensee: PANNELL A	
Licensee: PANNELL VERNIECE	
License Types	
1) License Type: 21 - OFF-SALE GENERAL	
License Type Status: R65 SURRENDER	
Status Date: 29-APR-2004	Term: 12 Month(s)
Original Issue Date:	Expiration Date: 31-JAN-2005
Master: Y	Duplicate: 0 Fee Code: N A
License Type was Transferred On: 30-MAR-2004 To: 411764	
Current Disciplinary Action	
... No Active Disciplinary Action found ...	
Disciplinary History	
... No Disciplinary History found ...	
Hold Information	
... No Active Holds found ...	

- - - End of Report - - -

For a definition of codes, view our [glossary](#).

15/22



**California Department of Alcoholic
Beverage Control**
*License Query System Summary
as of 4/9/2009*

License Information	
License Number: 411764	Status: WITHDRAWAL
Primary Owner: DOBASHI NAGI SAEED	
ABC Office of Application: OAKLAND	
Business Name	
Doing Business As: NIC NAK DRIVE IN LIQUOR	
Business Address	
Address: 6400 SHATTUCK AVE Census Tract: 4088	
City: OAKLAND County: ALAMEDA	
State: CA Zip Code: 94609-3853	
Licensee Information	
Licensee: DOBASHI NAGI SAEED	
License Types	
1) License Type: 21 - OFF-SALE GENERAL	
License Type Status: WITHDRAWAL	
Status Date: 16-JUL-2004	Term: Month(s)
Original Issue Date:	Expiration Date:
Master: Y	Duplicate: 0 Fee Code: NA
License Type was Transferred On:	From: 40341
Current Disciplinary Action	
... No Active Disciplinary Action found ...	
Disciplinary History	
... No Disciplinary History found ...	
Hold Information	
Hold Date:	Type: FORM 220
Hold Date: 30-MAR-2004	Type: ALIEN VERIFICATION
Escrow	
Escrow: ENWERE MADUABUCHI 15250 HESPERIAN BLVD STE 201 SAN LEANDRO, CA 94578	

--- End of Report ---

For a definition of codes, view our [glossary](#).



**California Department of Alcoholic
Beverage Control**
*License Query System Summary
as of 3/17/2009*

License Information	
License Number: 40341	Status: ACTIVE
Primary Owner: PANNELL A	
ABC Office of Application: OAKLAND	
Business Name	
Doing Business As: JO JOS MARKET	
Business Address	
Address: 6400 SHATTUCK AVE	Census Tract: 4088
City: OAKLAND	County: ALAMEDA
State: CA	Zip Code: 94609-3853
Licensee Information	
Licensee: PANNELL A	
Licensee: PANNELL VERNIECE	
License Types	
1) License Type: 21 - OFF-SALE GENERAL	
License Type Status: ACTIVE	
Status Date: 29-AUG-2008	Term: 12 Month(s)
Original Issue Date:	Expiration Date: 31-JAN-2010
Master: Y	Duplicate: 0
Fee Code: NA	
License Type was Transferred On: 30-MAR-2004	To: 411764
License Type was Transferred On: 30-JAN-2008	To: 463647
Current Disciplinary Action	
<i>No Active Disciplinary Action found</i>	
Disciplinary History	
Violation Date: 29-APR-2005 Reg. Number: 08067699 Cleared On: 20-NOV-2008	
Reporting Agency: ABC	
1) Charge Date: 29-APR-2005	Section Violated: 24200 (a)
Charge: GROUNDS FOR ACTION	
2) Charge Date: 29-APR-2005	Section Violated: CCR 65 (a)
Charge: FLD TO REACTIVATE OR TFR LIC.	
Proceeding Status: COMPLETE Decision: MOOT	
Suspension Days: Stayed Days POIC/Fine:	
Suspension Start Date: Suspension End Date:	
Hold Information	



**California Department of Alcoholic
Beverage Control
License Query System Summary
as of 3/17/2009**

License Information		
License Number: 463647	Status: WITHDRAWAL	
Primary Owner: KHALID SHARAF MOHAMED		
ABC Office of Application: OAKLAND		
Business Name		
Doing Business As: ALL MART		
Business Address		
Address: 6421 INTERNATIONAL BLVD	Census Tract: 4088	
City: OAKLAND	County: ALAMEDA	
State: CA	Zip Code: 94621-3853	
Licensee Information		
Licensee: KHALID SHARAF MOHAMED		
License Types		
1) License Type: 21 - OFF-SALE GENERAL		
License Type Status: WITHDRAWAL		
Status Date: 16-APR-2008	Term: Month(s)	
Original Issue Date:	Expiration Date:	
Master: Y	Duplicate: 0	Fee Code: NA
License Type was Transferred On:	From: 40341	
Current Disciplinary Action		
No Active Disciplinary Action found . . .		
Disciplinary History		
No Disciplinary History found . . .		
Hold Information		
Hold Date:	Type: FORM 220	
Hold Date: 27-MAR-2008	Type: H & L PROTEST	
Escrow		
Escrow: MECHANICS BANK ESCROW THE 1999 HARRISON ST STE 100 OAKLAND, CA 94612-3517		

--- End of Report ---

For a definition of codes, view our [glossary](#).

18/22



**California Department of Alcoholic
Beverage Control
License Query System Summary
as of 3/17/2009**

License Information	
License Number: 40341	Status: ACTIVE
Primary Owner: PANNELL A.	
ABC Office of Application: OAKLAND	
Business Name	
Doing Business As: JO JOS MARKET	
Business Address	
Address: 6400 SHATTUCK AVE Census Tract: 4088	
City: OAKLAND County: ALAMEDA	
State: CA Zip Code: 94609-3853	
Licensee Information	
Licensee: PANNELL A.	
Licensee: PANNELL VERNIECE	
License Types	
1) License Type: 21 - OFF-SALE GENERAL	
License Type Status: ACTIVE	
Status Date: 29-AUG-2008	Term: 12 Month(s)
Original Issue Date:	Expiration Date: 31-JAN-2010
Master: Y	Duplicate: 0 Fee Code: NA
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Current Disciplinary Action	
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Disciplinary History	
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Charge: FLD TO REACTIVATE OR TFR. LIC.	
Proceeding Status: COMPLETE Decision: MOOT	
Suspension Days: Stayed Days POIC/Fine:	
Suspension Start Date: Suspension End Date:	
Hold Information	

19/22



*Michael Colbruno, Chair
C. Blake Huntsman, Vice Chair
Doug Boxer
Sandra E. Gálvez
Anne Mudge
Madeleine Zayas-Mart*

**August 5, 2009
Regular Meeting**

ROLL CALL

Present: Mudge, Gálvez, Boxer, Zayas-Mart,
Huntsman

Excused: Colbruno

Staff: Mike Rivera, Moe Hackett, David Valeska,
Ulla-Britt Jonsson, Joann Pavlinec, Darin Ranelletti,
Scott Miller, Daria Edgerly, Mark Wald

WELCOME BY THE CHAIR

COMMISSION BUSINESS

Vice Chair Huntsman is chair for tonight's meeting.

Agenda Discussion

Director's Report

Committee Reports

Design Review Committee met on July 22nd the item was continued to the next Design Review Committee meeting. The design and the massing was an issue with the committee.

Commission Matters

Commission Election of Officers – moved to September. Also this is Commissioner Mudge's last meeting. Thanks and appreciation was expressed to Commissioner Mudge for more than 6 years of service on the Commission.

For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.

♿ This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the *Planning Department at 510-238-3941* or TDD 510-238-3254 at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who may experience chemical sensitivities may attend. Thank you.



3. **Location:** 6161 Coliseum Way (APN: 041-3906-011-00) (12/31/07)
Proposal: To establish a fast food sales service (mobile Taco Truck) at a paved corner of an industrial lot with an existing structure. (Note: this item was previously discussed before the Planning Commission at the June 16th, 2009 hearing to allow the Planning Commission to reconsider a prior decision)
Applicant: Maria Menendez
Contact Person/Phone Number: Same (510)569-8418
Owner: Huey B. Hoang
Case File Number: CM07-553
Planning Permits Required: Major Conditional Use Permit for the creation of a fast food activity.
General Plan: Business Mix
Zoning: CIX2, Commercial Industrial Zone
Environmental Determination: 15301, Existing Structures, 15183, projects consistent with a community plan, general plan, or zoning
Historic Status: Not a Historic Property
Service Delivery District: 5
City Council District: 6
Status: Pending
Action to be Taken: Decision based of staff report
Finality of Decision: Appealable to City Council within 10 days
For Further Information: Contact case planner Moe Hackett at (510) 238-3973 or by email: mhackett@oaklandnet.com

Moe Hackett presented staff report.

Shelly Garza gave presentation on behalf of the applicant Maria Menendez.

Speaker: Sanjiv Handa

Motion to affirm to staff's environmental determination and approve the major conditional use permit subject to the attached findings and conditions of approval, Zayas-mart, Mudge seconded.

Action on the Matter

5 ayes (Mudge, Gálvez, Boxer, Zayas-Mart, Huntsman) 0 noes

4. **Location:** 6400 Shattuck Avenue (APN 016-1427-024-00)
Proposal: To provide off-site consumption sales of alcoholic beverages in a Convenience Store
Applicant: Ashrious and Verniece Pannell (JoJo's Market, former NikNak)
Owners: Ashrious and Verniece Pannell
Contact Person/Phone Number: Ashrious Pannell (510) 836-0409
Case File Number: CMV09-0111
(continued on page 6)
(continued from page 5)
Planning Permits Required: Major Conditional Use Permit and Variances to allow Alcoholic Beverage Service Activities at a an existing commercial building, 11 am to 12 am, within 1,000 feet of another alcoholic beverage service activity and other specified facilities; and operation of a Convenience Market
(continued on page 5) **General Plan:** Neighborhood Center Commercial



(continued from page 4) Zoning:	C-10 Local Retail Commercial Zone
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines; Modification of Existing Facilities, Section 15183, Projects consistent with a general plan, community plan, or zoning
Historic Status:	Not PDHP/Historic
Service Delivery District:	2
City Council District:	1
Finality of Decision:	Appealable to City Council within 10 days
For further information:	Contact case planner David Valeska, at (510) 238-2075 or dvaleska@oaklandnet.com

David Valeska presented staff report.

Speakers: Lyndia LaChaux & Ashrious Pannell (applicants), Walter Johnson, Stephen Glaudemans, Jeffrey Jensen, Marcel Diallo, Gene Hazzard, Elaine Heiring, Renee Lachaux, Joseph Lachaux, Emily Katz, Geoffrey Pete, Michelle Gray, Heather Walls, David Vartanoff, Mike Dapper, Guita Boostani, Xavier Etter, Ashrious Pannell Jr., Doug Dove, Will Gordon, David Little, Beverly Robinson, Helen Flowers, Ayyjb Nasir, Dana McMillian, George Spencer, Don Link, Sanjiv Handa

Motion to have staff come back to the Commission with new findings and conditions in support of the conditional use permits and variance for a formal action at a later date.

Action on the Matter

Straw Vote to support.

4 ayes (Mudge, Gálvez, Boxer, Huntsman) 1 noes (Zayas-Mart)

10 min recess

5.	Location:	360 42nd Street
	Assessors Parcel Numbers:	APNs 013-1106-003-03 & 013-1106-004-00
	Proposal:	Revision to a Conditional Use Permit (CM94-148) to increase the number of students at Park Day School from 244 to 480 students, change on-site circulation, and add the adjacent parcel. This additional parcel contains the existing historic "Matilda Brown Home" formerly used by the Ladies Home Society. Exterior modifications are proposed to the Matilda Brown Home building to allow conversion to classrooms and offices.
	Applicant/Contact:	Tom Little
	Phone Number:	(510) 653-0317
	Owner:	Park Day School
	Case File Number:	REV08-013 (CM94-148), DR08-314, PMW08-018
	Planning Permits Required:	Major Conditional Use Permit for community education in the R-35 Zone for a project site that exceeds one acre with a non-residential project involving 25,000 square feet or more of floor area, Design Review for exterior modifications, and a Parcel Map Waiver to merge two parcels.
	General Plan:	Institutional
	Zoning:	R-35, Special One-Family Residential Zone

APPEAL, 6400 SHATTUCK AVENUE

**ATTACHMENT D: CORRESPONDENCE
IN OPPOSITION**

Valeska, David

From: Valeska, David
Sent: Tuesday, September 15, 2009 1:42 PM
To: 'Nigel Lucas'
Subject: RE: jojo's

Nigel and Amanda, this item (CMV09-111, 6400 Shattuck) has been continued from September 16 to October 7 Planning Commission.

From: Nigel Lucas [mailto:lucas-5@att.net]
Sent: Wednesday, September 02, 2009 1:15 AM
To: Valeska, David
Subject: jojo's

Hi David,

I hear they got their license. Oh well, I guess we will have to make the best of it. My main complaint is the fence. It really should be lowered to fit in with the current neighborhood appearance. I would also like the permit to be rescinded if ownership changes hands. I understand that the owner is a pillar of the community and that is what the board voted on, so if he is gone so should the license.

Thank you for your attention to the neighborhood issues. We really appreciate it!

All the best,

Amanda & Nigel Lucas RN's
610 63rd Street, Oakland

9/15/2009

Valeska, David

From: Miller, Scott
Sent: Tuesday, September 15, 2009 4:21 PM
To: Jeffrey G. Jensen
Cc: Wald, Mark; Angstadt, Eric; Cohen, Walter; Valeska, David
Subject: RE: Object to Consent Calendar Item--for the Nic Nak Liquors, CVM09-11--Request Public Hearing

Hello, Mr. Jensen, the 6400 Shattuck item is being removed from this agenda based on a very recent request of the applicant. It is anticipated that it will be placed on the October 7th Agenda (with separate notice provided). The placement of the item on the consent calendar merely represents the fact that the Planning Commission on August 5th closed the public hearing. It is the expectation that because of the very high level of interest in this item from the applicant and interested parties that it will be pulled from the consent calendar to provide ample opportunity for public comment and Commission discussion on the proposed Findings and Conditions of approval. Meanwhile, I look forward to receiving your detailed assessment of the failings of the proposed findings.

Thanks for your continued interest.

Scott

From: Jeffrey G. Jensen [mailto:jeffreygjensen@yahoo.com]
Sent: Tuesday, September 15, 2009 2:03 PM
To: Valeska, David; Miller, Scott; Cohen, Walter; michaelcolbruno@clearchannel.com; Blake.Huntsman@seiu1021.org; sgalvez@phi.org; dboxer@gmail.com; mzayasmart@sf.wrtdesign.com; VienV.Truong@gmail.com; VinceGibbs.opc@gmail.com
Cc: De La Fuente, Ignacio; Kernighan, Pat; Nadel, Nancy; Quan, Jean; Reid, Larry; Brunner, Jane; Wald, Zachary; Russo, John
Subject: Object to Consent Calendar Item--for the Nic Nak Liquors, CVM09-11--Request Public Hearing

Messrs. Valeska, Miller and Cohen
 Planning Commissioners

I am writing to protest the approval of conditions and findings for the Nic Nak Liquors, CVM09-11 through a consent calendar item for the September 16, 2009 Planning Commission Meeting.

As you are fully aware based on the public hearing and the administrative record, this matter is highly controversial within the community, elicited numerous public comments, has the potential to create a significant precedent for the City of Oakland not only for liquor sales but other uses requiring Major Conditional Use Permits and Variances, and employs some unorthodox and highly unusual findings to approve the project.

The Planning Staff had prepared a recommendation for approval of the convenience market, but denial of the liquor sales stating that: *The proposed Variance to the 1,000 foot separation standard in a neighborhood could set a precedent for other alcohol sales applications in the area...Allowing alcohol sales uses to cluster closer than the 1,000 foot radius could be detrimental to the vitality of an emerging commercial and mixed-node....Staff recommends denial of the MMajor Variance and Conditional Use Permit for Alcoholic Beverage Sales. The*

9/16/2009

findings required by the Oakland Planning Code are not fulfilled in this case. Granting the request would cause an adverse precedent. The liquor store lost its legal status 5 years ago and community demand has been well-served by other Alcoholic Beverage Sales locations. A neighboring market already provides beer and wine services to the immediate Shattuck neighborhood. Several other liquor stores provide services near the edge of the 1,000 foot radius from this store; and this additional venue for liquor is not necessary. The potential for adverse secondary effects, such as loitering and littering, would likely increase with another operator in the future.

However, the Planning Commission rejected this reasoning by straw vote 4-1 and directed the Planning Staff to return with findings and conditions for approval. Since then, the Planning Commission has lost and replaced two of the members involved in the August 5, 2009 hearing. The project itself continues to elicit significant public interest and controversy as evidenced by the following media reports:

http://www.sfgate.com/cgi-bin/blogs/inoakland/detail?blogid=123&entry_id=47556

<http://wefightblight.blogspot.com/2009/04/nic-nak-liquors-liquor-store-coming-to.html>

<http://www.abetteroakland.com/>

<http://sfbay.fwix.com/source/Fight+Blight+in+South+Berkeley-North+Oakland>

Scheduling the approval of the findings and conditions for liquor sales by consent calendar is not in the public interest. Liquor sales in the City of Oakland are highly controversial. The City Council has recognized the public interest in limiting alcohol sales.

The City states that: *The prevalence of retail liquor sales is an important public policy issue in Oakland. The City Council has determined that there is an over-concentration of off-sale liquor facilities and that there has been a great deal of documented nuisance and other public safety problems due to the prevalence of retail liquor outlets and the conditions under which some of these stores operate. Therefore, the Council has decided to invoke its police power to control the manner, extent, type and other operational characteristics of this type of activity through the Conditional Use Permit procedure in Planning Code Section 17.134. All commercial zones, require that a use permit be approved prior to allowing retail liquor sales. This use permit process provides for public notification and hearing, assessment of extent and nature of liquor sales activity in relation to other retail sales and the conditions and requirements within which the sales will occur including type of liquor sold, extent of floor area devoted to liquor sales, hours of operation, security and anti-loitering provisions, etc.*

Moreover, a review of the proposed findings shows that it is replete with factual errors and assertions that are not substantiated by the administrative record and public testimony. We do not believe it is in the best interest of the City to allow this project to move forward with such inadequate findings as they would not likely pass judicial scrutiny. We will be submitting under separate cover/email a detailed assessment of the failings of the proposed findings.

As you know, findings explain the factual reasons for a quasi-judicial decision. They are statements of fact that must be based on evidence in the public record considered by decision makers. Findings should bridge the gap between the raw data and the conclusions or ultimate decision. Findings facilitate logical, orderly, and objective analysis, which reduces the likelihood that the public entity will randomly leap from the accumulated evidence to the legally required conclusions. Importantly, findings are relevant to any future judicial review as they are "legal footprints" that the project decision-makers leave to explain

how they progressed from the facts through the established regulations to their final decision.

Given the precedent setting nature of this project, the highly unusual, unorthodox and inadequate findings being presented to the Planning Commission for approval, and the continued public controversy, we believe it is more appropriate to reschedule this matter at a future date as a full public hearing. We believe the opportunity to vet the findings and conditions in a public hearing will lessen the likelihood that this item will be appealed to the City Council and/or referred to the Courts for litigation. We believe it is in the interest of a cash strapped city to avoid litigation by allowing the most robust possible public input on this matter and the preparation of legally defensible findings. This is in the interest of the City, the community and the applicant, Mr. Pannell.

Please let me know as soon as possible whether our request to reschedule this matter at a future date for a full public hearing will be granted. Thank you.

Jeffrey G. Jensen
Chair, East Lorin Neighborhood Association

Valeska, David

From: Christopher Waters [christopher@gypsyspiritmission.com]
Sent: Tuesday, September 15, 2009 7:34 PM
To: Valeska, David; Miller, Scott; Cohen, Walter
Cc: michaelcolbruno@clearchannel.com; Blake.Huntsman@seiu1021.org; sgalvez@phi.org; dboxer@gmail.com; mzayasmart@sf.wrtdesign.com; VienV.Truong@gmail.com; VinceGibbs.opc@gmail.com; De La Fuente, Ignacio; Kernighan, Pat; Nadel, Nancy; Quan, Jean; Reid, Larry; Brunner, Jane; Wald, Zachary; Russo, John
Subject: Nic Nak/Jo Jo's Convenience/Liquors - CVM09-11

Dear Planning staff and Planning Commissioners,

Staff disseminated the news today that the Nic Nak/Jo Jo's Convenience/Liquors item, CVM09-11, was continued from September 15 to the October 7 Planning Commission meeting, at the applicant's request.

Despite the Planning Commission's shameless fawning over the applicants and their use of the race card, and despite the fact that the opponents of the resumption of the alcohol sales use were thrown under the bus by the Planning Commission for political expedience, the Commissioners are about to get another taste of who they are really dealing with: a stubborn, arrogant, intransigent applicant who refuses to accept a deal even when it is handed to him on a silver platter, cobbled together with great difficulty by staff under instructions by the Planning Commission to make findings that are irrational, unprecedented, and probably illegal.

Mr. Pannell keeps threatening to lawyer up if he doesn't get his way, and maybe he actually will sue. But what I do know is that there is an equal threat of litigation against the City of Oakland if this action goes through on October 7 -- especially if this highly contentious item remains on the consent calendar and is not allowed another full public hearing at that time. The City of Oakland made a terrible mistake in approving the resumption of the lapsed Deemed-Approved alcohol sales use status in the first place; now you are faced with the dilemma of making the difficult but right choice to redress this error by enforcing the city's stated policy against alcohol outlet over-concentration, or else abdicating your duty in favor of the fantasy that you are defending a helpless ex-deputy sheriff against the injustice of institutionalized racism.

Please remove this item from the consent calendar, and consider carefully the importance of making findings that will hold up in court.

Sincerely,

Christopher Waters
65th Street resident/Nic Nak neighbor

P.S. Whether the Planning Commission made a knee-jerk reaction based on the Pannell contingent's allegation of racism, or just used that as a smokescreen for a predetermined agreement with the City Attorney's office that this issue must not escalate to the courts, is not relevant.

What is relevant, as Commissioner Zayas-Mart said, is that we all have to live together back here in the neighborhood. The point is, the effort to support and encourage a truly integrated, unified, and inclusive community has always been a one-way effort. We are all fully aware that gentrification comes at a cost, but ignoring the reality of the ongoing socioeconomic shift and engaging in cultural isolationism are not the appropriate responses. Mr. Pannell and his supporters are openly disdainful of non-African American residents and business owners in "their" neighborhood. It does not have to be this way, and indeed, outside the Pannell camp, it is usually NOT this way. There are many Caucasians, African-Americans, and people of other ethnicities and cultural backgrounds within our neighborhood who have strong, deep and enduring relationships and support structures. I don't want to get into a preening display with Commissioner Gálvez or the other Commissioners; suffice it to say that the members of the Planning Commission do not stand on morally superior ground to the rest of us when it comes to our commitment to, and activism on behalf of, racial and economic justice in our neighborhood, our city, and our world.

Valeska, David

From: Christopher Waters [christopher@gypsyspiritmission.com]
Sent: Thursday, September 17, 2009 3:01 PM
To: Miller, Scott
Cc: Jeffrey G. Jensen; Don Link; Valeska, David
Subject: Re: 6400 Shattuck application

Thanks for the info, Scott.

I strongly oppose findings for approval of the resumed alcohol sales use and want my comments in the public record to reflect that. However, as long as staff is required by Planning Commission to make findings for approval, I would like to suggest to you another condition proposed and discussed by several other people in our neighborhood: stipulating that the Major Variance and Major Conditional Use Permit, if approved, would be limited in duration only to the Pannell/Pannell family ownership of the business or any business like it on that property.

In another neighbor's words:

a state liquor license can be sold and used at any location, and that applies to Mr. Pannell's alcohol license. But the only way his state license can be used at 6400 Shattuck is if City of Oakland issues a use permit for alcohol sales at that location. Which leads back to my question about conditions attached to the variance. IF the ONLY reason that commissions were swayed to vote for issuing a variance, in violation of city regulations, was based on the fact that Mr. Pannell's store was "the original liquor store in the neighborhood", then by my reasoning it follows that their goal was to give him a chance to resume a prior family-run small business that had operated in the neighborhood starting 40 years ago, not simply to make his property more valuable for a future sale - and [yet] he already tried to sell the property and business during the time when it was closed. If the City denies the use permit for 6400 Shattuck, Mr. Pannell can still sell his state liquor license to someone else for use at a different location ... But if the City does issue a variance with the conditions as outlined, then Mr. Pannell can sell the property, the store, the state license AND the City use permit to anyone - which means we're stuck with this high density alcohol sales in our neighborhood forever - which seems absurd.

While I don't know how Use Permits are written, I do know that homeowners can get variances that only apply while they own the property. For instance, I recall a Berkeley homeowner, who is disabled, got a permit to put in a driveway with no garage or side clearance, which is a violation of zoning regulations. But the ruling stipulated that if the house is sold, the driveway must be removed. These stipulations get attached to the title of the property.

So I would like to know if something similar could be attached to Mr. Pannell's property regarding the issuance of the use permit. The State license he would be free to sell separately to someone for use at another location.

Meanwhile, I still strongly support all Jeffrey Jensen's proposed conditions (attached) whether for the convenience market use, the alcohol sales use, or both.

Sincerely,

Christopher Waters
65th Street resident/Nic Nak neighbor

Miller, Scott wrote:

Hello, gentlemen. The 6400 Shattuck application has been placed on the October 7th Planning Commission Agenda as a *Public Hearing* item. The earlier placement of this item on the Consent Calendar was only reflective of the fact that the Planning Commission on August 5th had closed the Public Hearing. It was fully expected that the item would have been pulled off that calendar to allow public comment. Based on the request of several neighbors, this item will now be a new Public Hearing. With that status comes the ability of any party to introduce new information that was not previously in the public record.

If there are any specific Findings or Conditions of Approval in the September 16th staff report that you would like staff to review for inclusion in the October 7th report (and/or include as attachments to the October 7th report), please make sure that Dave and I have that information as soon as possible (see specific due dates following).

Our internal review process and printing deadlines require the following due dates: any issues (such as Findings or Condition of Approval) that you would like staff to review and address *within* the staff report should be submitted no later than 4:00 p.m. on Thursday, September 24th, while attachments (only) to the October 7th staff report are due no later than 4:00 p.m. on Tuesday, September 29th. Of course, any comments (written or verbal) may be submitted directly to the Commission at the hearing itself.

Please do not hesitate to contact Dave or myself with any questions.

Scott

From: Jeffrey G. Jensen [jeffreygjensen@yahoo.com]
Sent: Friday, September 18, 2009 7:24 AM
To: Miller, Scott
Cc: Valeska, David; Don Link; Christopher Waters
Subject: Re: 6400 Shattuck application

Thank you Mr. Miller,

We appreciate the City's willingness to reconsider and set this matter for a public hearing.

Jeffrey G. Jensen
Chair, East Lorin Neighborhood Association

-- On Thu, 9/17/09, Miller, Scott <SMiller@oaklandnet.com> wrote:

From: Miller, Scott <SMiller@oaklandnet.com>
Subject: 6400 Shattuck application
To: "Christopher Waters" <christopher@gypsypspiritmission.com>, "Jeffrey G. Jensen" <jeffreygjensen@yahoo.com>, "Don Link" <don-link@comcast.net>
Cc: "Valeska, David" <DValeska@oaklandnet.com>
Date: Thursday, September 17, 2009, 1:48 PM

Hello, gentlemen. The 6400 Shattuck application has been placed on the October 7th Planning Commission Agenda as a *Public Hearing* item. The earlier placement of this item on the Consent Calendar was only reflective of the fact that the Planning Commission on August 5th had closed the Public Hearing. It was fully expected that the item would have been pulled off that calendar to allow public comment. Based on the request of several neighbors, this item will now be a new Public Hearing. With that status comes the ability of any party to introduce new information that was not previously in the public record.

If there are any specific Findings or Conditions of Approval in the September 16th staff report that you would like staff to review for inclusion in the October 7th report (and/or include as attachments to the October 7th report), please make sure that Dave and I have that information as soon as possible (see specific due dates following).

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Please do not hesitate to contact Dave or myself with any questions.

10/1/2009

Valeska, David

From: Don Link [don-link@comcast.net]
Sent: Friday, September 18, 2009 5:40 PM
To: Miller, Scott
Cc: Christopher Waters; Jeffrey G. Jensen; Valeska, David
Subject: Re: 6400 Shattuck application

Thanks Scott and David for this change.

I am confident that it will lead to the most fair resolution of the matter. New Commissioners need to have the opportunity to see and hear the dynamics of the situation first hand. A printed recap does not have the same reality.

We'll be there and respectful and reasonable as always.

Don

On Sep 17, 2009, at 1:48 PM, Miller, Scott wrote:

Hello, gentlemen. The 6400 Shattuck application has been placed on the October 7th Planning Commission Agenda as a *Public Hearing* item. The earlier placement of this item on the Consent Calendar was only reflective of the fact that the Planning Commission on August 5th had closed the Public Hearing. It was fully expected that the item would have been pulled off that calendar to allow *public comment*. Based on the request of several neighbors, this item will now be a new Public Hearing. With that status comes the ability of any party to introduce new information that was not previously in the public record.

If there are any specific Findings or Conditions of Approval in the September 16th staff report that you would like staff to review for inclusion in the October 7th report (and/or include as attachments to the October 7th report), please make sure that Dave and I have that information as soon as possible (see specific due dates following).

Our internal review process and printing deadlines require the following due dates: any issues (such as Findings or Condition of Approval) that you would like staff to review and address *within the staff report* should be submitted no later than 4:00 p.m. on Thursday, September 24th, while attachments (only) to the October 7th staff report are due no later than 4:00 p.m. on Tuesday, September 29th. Of course, any comments (written or verbal) may be submitted directly to the Commission at the hearing itself.

Please do not hesitate to contact Dave or myself with any questions.

Scott

9/21/2009

Valeska, David

From: pc [p-c@comcast.net]
Sent: Friday, September 18, 2009 9:53 PM
To: Valeska, David
Subject: no more liquor stores Alcatraz n Shattuck

Please veto the Nik Nak liquor permit.

There is enough crime, loitering, trash, liquor stores with their attendant downer vibes and drug dealing around the edges, in North Oakland and the Berkeley border.

It was shut for many years and the owner told me he wanted to open it as an ice cream store. I think his son, to prove his street cred or to make much more money, or something, wants more booze in the hood.

He called me up and ranted & raved when I posited my position on our neighborhood yahoo group. I stand by what I say.

It's not an addition to the walk-ability and street life, the hominess of the residential nor the brightness of the business buildings surrounding it. The high fences, nearly nil parking spaces, and need for people to saunter up to buy booze makes it uncomfortable for families with little kids or students with laptops (refer to Nomad thefts) to move about freely in the vicinity of yet another liquor store.

This isn't rocket science. Either someone is getting a kickback or "incentive" either monetary or otherwise, or the Planning Commission & Staff think the residents around here can't go more than a few blocks without needing to buy more booze.

Give us a break! You represent us. Put yourself in our shoes, not just Mr. Pannell's. To say you're only interested in the "legal" aspects of the case, not the human aspects, makes me wonder why you're in public office.

Pamela Crawford

Best & Co. Realty, Finance, Investment
Broker's license 01325862
2625 Alcatraz Ave. #336
Berkeley CA 94705
510-655-4781 tel
510-652-9020 fax
p-c@comcast.net
"Roll your IRA into CA real estate"

Valeska, David

From: Deborah Mikuteit [deb.ratfriend@yahoo.com]
Sent: Saturday, September 19, 2009 12:46 PM
To: Valeska, David
Subject: Nik Nak convenience store

September 19, 2009

Dear Mr. Miller and Mr. Valeska, and the Oakland Planning Commission:

I live in the East Lorin Neighborhood 2 blocks from the site of the business called Nik Nak Convenience Store, which the owner Mr. Parnell proposes to open and wishes to obtain a permit to sell alcohol at this store. There is presently a convenience store selling liquor DIRECTLY ACROSS THE STREET from Nik Nak's location. I am writing to express my strong opposition to this plan. I am outraged that permission for Nik Nak to sell liquor is even being seriously considered. The city of Oakland's policy on liquor stores should have meant that the application to sell liquor at this location was turned down in a heartbeat. Oakland has a city policy on liquor stores, in recognition of the nuisance that they bring to neighborhoods, which as I understand it, requires a 1000 foot separation between stores; and opening a 2nd liquor store directly across the street from an existing one about 50 feet away is about as clear a violation of the intention of Oakland city policy on the issue as is it is possible to have. Furthermore, as has been noted by others, the proposed variance to the 1000 foot separation standard in a neighborhood could set a very problematic precedent for other alcohol sales and other applications for variances in the area. If you give permission to one to violate the city policy, you will have a harder time justifying future denials of like permission to others. Keep all Oakland safe from the intrusion of nuisance businesses by applying the same standard to all, making exemptions for none.

Neither this neighborhood, nor any Oakland neighborhood, nor the city of Oakland generally, wants or in any way benefits from having a 2nd liquor store open directly across the street from an existing one, in an area where there are also several other liquor stores within walking distance. From the We Fight Blight blog, I have found that according to the Urban Strategies Council, there are 325 stores in the City of Oakland that sell liquor. With a population of 411,775 residents, that means there is one liquor store for every 1267 people. North Oakland does not need more liquor stores. Oakland does not need more liquor stores. Despite the claims of some Planning Commissioners to the contrary, approval of this Major Conditional Use Permit and Variance means that it will set a precedent not only for North Oakland but the entire City.

My understanding is that a possible exemption or exception to the Oakland city policy on liquor stores is being considered for this particular owner, because he is black, and the city wishes to support black-owned businesses. If this is true, then this is one of the most ridiculous cases of race-preferential politics I have ever heard of, one which if it stands will surely help make Oakland, already suffering from an image of incompetent city leadership, look yet more ridiculous and draw further mockery from observers of regional and state/national politics.

If the city of Oakland wishes to support black-owned businesses, then assist up and coming black business owners to obtain low-interest small business loans, help them find appropriate storefront locations to rent or buy, guide potential black business owners to resources on developing a strategic business plan and to find advice and help on running a business successfully. These are all appropriate measures to help black businesses. But do not think you're helping either the black business owner, or their neighborhood or the city, by directly violating city policy and exempting them from the

9/21/2009

regulations, laws and policies to which persons of all other ethnicities and races are bound, in order to open the type of business which has clearly been demonstrated to constitute a nuisance for the neighborhood. Moreover, I think that giving persons of one race an exemption from city regulations/policies, which are not given to persons of other races/ethnicities, could certainly be alleged in court to constitute racial bias. If permission to sell alcohol at Nik Nak is ultimately approved, and in any way this approval seems to have been based upon the fact that the applicant was black, I hope that Arab, Asian, Indian, Caucasian & other applicants for up and coming liquor stores who have been denied permits for their establishments, will sue the City of Oakland alleging racial bias, and cause the city of Oakland to have to pay for its foolishness. Racial equity is a desirable goal, but if white, Asian, Arab and other residents of a neighborhood are forced to accept the imposition of a nuisance establishment, apparently allowed with a special exemption because the owner is black, do you imagine that this will feed greater harmony amongst the races? I don't think so.

I have read on the We Fight Blight blog that the applicant Mr. Parnell claims there must be "racism" behind those wishing to deny him a permit in this instance, and that he marches black associates into Planning Commission meetings who don't live in the neighborhood at all, including members of the controversial Uhuru house movement (who organized a parade for the man who killed 4 Oakland Police Officers), in a dishonest effort to try to turn a business zoning issue into a wholly fabricated fiction about racial discrimination. "Racism" seems nowadays to be an accusation flung with the greatest irresponsible abandon toward anyone whose point of view is opposed to that of the protagonist. I suggest that in respectful recognition of the fact that there is and continues to be REAL racism in the world, we recognize and condemn instances of irresponsible, manipulative use of the term. Do not allow the manipulative accusation of "racism" in this instance cow you into submissive compliance with Mr. Parnell's request that you bend the law for him. I would suggest, by contrast, that it could be considered "racist" to imply that a black person wishing to do business in Oakland can only succeed if he is allowed to violate the rules, laws, regulations and policies that everyone else of any other race is obliged to follow, such as the Oakland city policy on not allowing one liquor establishment to open within 1000 ft of another location of liquor sales. I believe that black people, like anyone else, can be successful businesspersons without having to be given special dispensations to violate city regulations.

Please make the appropriate decision here reflecting the wishes of not only this neighborhood, but the city of Oakland as a whole as codified in its own policies, and do not approve Mr. Parnell's application to sell liquor at its establishment located directly across the street from another liquor store.

I wish for my comments herein to be part of the administrative record.

Sincerely,
Deborah Mikuteit
Resident of East Lorin Neighborhood
Oakland, CA

Valeska, David

From: Robin Wright [redrobinwright@yahoo.com]
Sent: Saturday, September 19, 2009 9:44 AM
To: Miller, Scott; Valeska, David
Cc: ldna@yahoogroups.com; jeffreygjensen@yahoo.com
Subject: Strongly Oppose - Nik Nak Liquor License

To:
Scott Miller, Zoning Manager, City of Oakland
SMiller@oaklandnet.com

David Valeska, Planner II, City of Oakland
dvaleska@oaklandnet.com

For Administrative Record re Nik Nak Liquors

I am a resident of South Berkeley since 1999. I strongly oppose a liquor license for Nik Nak store at 6400 Shattuck. We have a concentration of liquor stores in our neighborhood, sources of litter, panhandling, public drinking, drug dealing and even prostitution. I invite you to look across the street from M and M liquors on Adeline at Fairview St. You will see the corner alcove wall and sidewalk stained black from streams of urine. You may see human feces. Most of the time you will see people loitering and selling drugs. Litter abounds. Take another look across from Black and White Liquors on the West side of Adeline near the benches and stairs that descend to the Ashby BART station. You will see empty liquor bottles, litter, public drinking and panhandling. This is just two of far too many sites blighted by liquor stores.

Please do not invite more blight and menace to our neighborhood. Many of us spend our own time picking up litter, cleaning graffiti, maintaining landscaping and much more to improve this neighborhood. Would you bring a another corner liquor store to your own neighborhood?

Robin Wright
3043 Ellis St
Berkeley CA 94703

Valeska, David

From: Alden Jenks [jendoafj@gmail.com]
Sent: Sunday, September 20, 2009 9:47 AM
To: Valeska, David
Subject: Nik-Nak Store

Hello Mr. Valeska,

I own a house on Alcatraz less than 100 feet from the proposed Nik-Nak store that is applying for a permit to sell liquor. This store would be right across the street from an existing convenience/liquor store ("T & K") that already does a "fine job" of servicing the alcoholics of the neighborhood. I strongly oppose granting the owners of the Nik-Nak a variance that would allow them to add to the problems our area already has. I already have enough to do cleaning up the feces and washing the urine off the sidewalk and cleaning up discarded trash. Mine is a multi-racial household, but I deplore the owners' cheap playing of the "race card" in the previous hearings; this throws a completely irrelevant issue into the situation that has the predictable results: everyone panics and runs for cover.

Please include these comments as part of the administrative record.

Thank you.

Alden Jenks
726 Alcatraz Avenue
Oakland, CA 94609

9/21/2009

Valeska, David

From: fgruliow@yahoo.com [fgruliow@sbcglobal.net]
Sent: Monday, September 21, 2009 4:47 PM
To: Valeska, David
Cc: Fgruliow
Subject: Nik Nak Liquors Permit

I have lived within a couple of blocks of the Nik Nak Liquor store for twenty years. I am deeply concerned that this legal, procedural and social issue which has been tainted by unrelated issues and which, it appears, have swayed the recent hearings in an inappropriate and unacceptable way despite the facts:

The facts are that there are TOO MANY liquor stores in the neighborhood, that there is no legal standing for re-instating the Nik Nak liquor license. With around 19 convenience/liquor stores within walking distance of Nik Nak, there is hardly need for yet another one. This has nothing to do with the integrity of the owner. There are too many sources of liquor and litter already. We do not need an additional one no matter what the excuse.

Frank Gruliow
6519 Tremont Street
Oakland, CA 94609
fgruliow@yahoo.com
Frank Gruliow
fgruliow@yahoo.com

Valeska, David

From: Gloria Angela Okada [gokada020202@gmail.com]
Sent: Monday, September 21, 2009 8:20 PM
To: Miller, Scott; Valeska, David
Subject: Nic Nak Liquor Store, Shattuck & Alcatraz

Dear Scott and David,

My name is Gloria Okada and I am a resident near the Oakland/Berkeley border. I am writing concerning the liquor sales at Nic Nak Liquor Store on the corner of Shattuck and Alcatraz. I believe it is not in the best interest of the neighborhood to allow another corner store to sell liquor. There is already a corner store across the street from Nic Nak Liquor. Please include my email in the public comments about this location.

If you have any questions about my opinion please email me at gloria.okada@gmail.com.

Thank you for reading my email.

Gloria Okada
Oakland Resident

9/22/2009

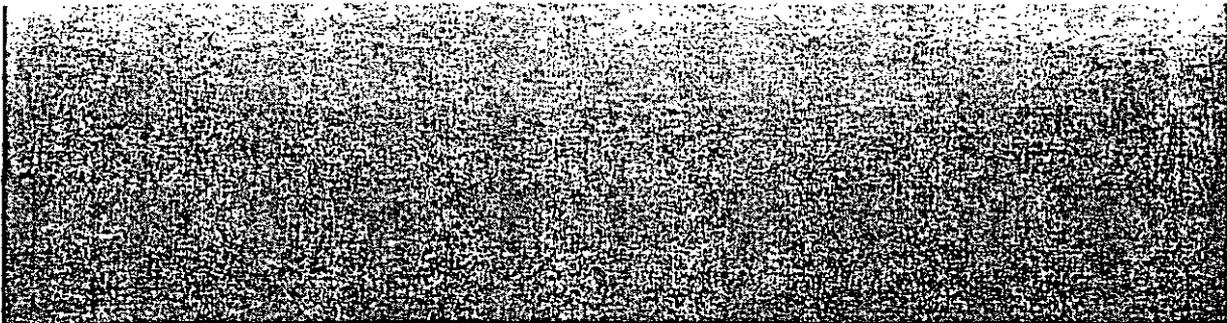
Valeska, David

From: Zoe Smith [zoesmithalso@yahoo.com]
Sent: Tuesday, September 22, 2009 9:24 AM
To: Miller, Scott
Cc: Valeska, David
Subject: Nik Nak Liquor



Please do not approve liquor sales at Nik Nak in North Oakland.
We deal with the fallout of numerous liquor store sales already and are baffled by the rationale being used to grant a liquor license to the property owner. Let him open a convenience store, but more liquor? Are you even considering Oakland zoning regulations and the well being of our neighborhood?

Zoe Smith
765 65th Street
Oakland



Valeska, David

From: Chia [oh4chia@yahoo.com]
Sent: Tuesday, September 22, 2009 9:52 AM
To: Miller, Scott; Valeska, David
Subject: Nic Nac

Dear Scott & David

I have lived near Alcatraz & Shattuck since 1978. I have witnessed problems in this area linked to ready access to alcohol. I believe we do not need another outlet for alcoholic beverages and urge you to follow the City's policy direction to not add another store closer than the 1000 foot guideline.

I hope you will do everything possible to have the Major Conditional Use Permit and Major Variance denied.

Please add my comments as part of the administrative record.

Thank you
Chia Hamilton

"I'd always thought the nice thing about freedom was that nobody could tell you what to do with it."
- Michael Pollan

9/22/2009

Valeska, David

From: Elanne Kresser [elanne@elannekresser.com]
Sent: Tuesday, September 22, 2009 11:27 AM
To: Valeska, David
Subject: Opposition to the Nic Nak Liquor store at 6400 Shattuck Ave in Oakland

Dear Mr. Valeska,

As a resident of the East Lorin neighborhood, I oppose the issuing of a permit for the Nic Nak Liquor store at 6400 Shattuck Ave in Oakland.

This is not in the best interest of the residents of our neighborhood as there are already a number of liquor stores in our area. Neighborhoods with closer proximity to liquor stores tend to have higher crime rates and this is true of the area around the intersection of Shattuck Ave and Alcatraz Ave. We DO NOT need another outlet that sells liquor contributing to greater crime, drunkenness, graffiti and litter.

Please support our neighborhood to be a safe, clean and enjoyable place for it's residents. I would like my comments to be a part of the administrative record.

Sincerely,
Elanne Kresser
6547 Whitney St,
Oakland, CA
94609

Elanne Kresser
Guild Certified Feldenkrais Practitioner
510.380.6491
<http://elannekresser.com/>

Valeska, David

From: Chris Kresser [chriskresser@gmail.com]
Sent: Tuesday, September 22, 2009 11:41 AM
To: Valeska, David
Subject: Nic Nac Liquor Store - NO!

Dear Mr. Valeska,

As a resident of the East Lorin neighborhood, I oppose the issuing of a permit for the Nic Nak Liquor store at 6400 Shattuck Ave in Oakland.

This is not in the best interest of the residents of our neighborhood as there are already a number of liquor stores in our area.

Neighborhoods with closer proximity to liquor stores tend to have higher crime rates and this is true of the area around the intersection of Shattuck Ave and Alcatraz Ave. We DO NOT need another outlet that sells liquor contributing to greater crime, drunkenness, graffiti and litter.

Please support our neighborhood to be a safe, clean and enjoyable place for it's residents. I would like my comments to be a part of the administrative record.

Sincerely,
Chris Kresser
6547 Whitney St,
Oakland, CA
94609

Valeska, David

From: Miller, Scott
Sent: Tuesday, September 22, 2009 1:12 PM
To: Valeska, David
Subject: FW: Nik Nak Liquor Permit : a long-time local resiend's view

Another email comment for Nik Nak.

-----Original Message-----

From: Frank Gruliow [mailto:fgruliow@yahoo.com]
Sent: Tuesday, September 22, 2009 1:02 PM
To: Miller, Scott
Cc: Fgruliow
Subject: Fw: Nik Nak Liquor Permit : a long-time local resiend's view

Frank Gruliow
fgruliow@yahoo.com

--- On Mon, 9/21/09, fgruliow@yahoo.com <fgruliow@sbcglobal.net> wrote:

> From: fgruliow@yahoo.com <fgruliow@sbcglobal.net>
> Subject: Nik Nak Liquor Permit : a long-time local resiend's view
> To: SMiller@oaklandnet.com
> Cc: "Fgruliow" <fgruliow@yahoo.com>
> Date: Monday, September 21, 2009, 4:46 PM
> I have lived within a couple of
> blocks of the Nik Nak Liquor store for twenty years. I am
> deeply concerned that this legal, procedural and social
> issue which has been tainted by unrelated issues and which,
> it appears, have swayed the recent hearings in an
> inappropriate and unacceptable way despite the facts.
>
>
> The facts are that there are TOO MANY liquor stores in the
> neighborhood, that there is no legal standing for
> re-instating the Nik Nak liquor license. With around 19
> convenience/liquor stores within walking distance of Nik
> Nak, there is hardly need for yet another one. This has
> nothing to do with the integrity of the owner. There are too
> many sources of liquor and litter already. We do not need an
> additional one no matter what the excuse.
> Frank Gruliow
> 6519 Tremont Street
> Oakland, CA 94609
> fgruliow@yahoo.com
>

Valeska, David

From: Immanuel Lupe Alcala [zenloop@gmail.com]
Sent: Tuesday, September 22, 2009 2:42 PM
To: Miller, Scott; Valeska, David; manderson@ci.berkeley.ca.us
Subject: Nic Nak Liquor Store

Please note I wish my comments to be of public record.
Hi Scott and David (and Max);

I am writing you to express my concern of allowing Nic Nak Liquor Store to sell alcohol. I am a father of 2 children and live at 1885 Harmon st. in Berkeley. I regularly pick up empty bottles of alcohol and junk food wrappers in front of my house. Just the other day an older woman collapsed at Treamong and 65th (I notified the police of this incident and it is documented). She was heading from Shattuck towards Adeline. As I assisted her I could not help but to smell the alcohol on her breath. She informed me that she was blacking out of consciousness. A month ago a man dropped his pants in front of my wife and kids and began to defaecate on the side walk. Events like this are a normal occurrence on 65th/Harmon st. The kids of the East Lorin District should not be exposed to incidence such as these. It is my opinion that many Alcoholics and addicts that receive services from the Berkeley Drop In Center frequent the surrounding liquor stores. Our neighborhood is saturated with stores that provide alcohol. To allow more outlets of alcoholic beverages would be a disservice to our community. For the record I am a multi-racial man. My father is Mexican and my mother is Black.

-Immanuel Lupe Alcala

Valeska, David

From: Tim Thomas [tim@greenbergstudios.com]
Sent: Tuesday, September 22, 2009 3:56 PM
To: Miller, Scott; Valeska, David
Subject: Liquor store @ Alcatraz and Shattuck

I as a person who lives in North Oakland and works in Berkeley, would like to register my opinion that we do not need and should not have another liquor in this neighborhood. There are already enough corners in that neighborhood that have people drinking 40's on the curb. My garage has been robbed twice, and my girlfriend gets harassed when she walks to my house after dark. Enough is enough

Thank you,
Tim Thomas
5911 Dover St.
Oakland, CA
94609

Tim Thomas | Assistant Project Manager | Greenberg Studios
510.809.3107 Office | 510.845.4381 Fax
Be on the lookout this October as Greenberg Studios becomes watchLAB!

9/22/2009

Valeska, David

From: Manuel Alcala [alcala@gmail.com]
Sent: Tuesday, September 22, 2009 4:01 PM
To: Miller, Scott; Valeska, David
Subject: Please add this to the public record. : Nic Nak Liquor store at 6400 Shattuck Avenue

Please add this to the public record.

Thank you,
Manuel Alcala

----- Forwarded message -----

From: Manuel Alcala <alcala@gmail.com>
Date: Tue, Sep 22, 2009 at 3:35 PM
Subject: Nic Nak Liquor store at 6400 Shattuck Avenue
To: SMiller@oaklandnet.com, dvaleska@oaklandnet.com
Cc: Alejandro Soto-Vigil <alejandrosotovigil@yahoo.com>

I am opposed to Nic Nak Liquor store at 6400 Shattuck Avenue selling alcohol in this neighborhood . I have been a long time resident and have seen many people hanging out on street corners drinking alcohol all hours of the day and night over the past 22 years, which has led to violent crime and shootings. We do not need another store owner making money at the expense of the local community!

Please refuse a permit to sell alcohol at Nic Nak Liquor store at 6400 Shattuck Avenue.

Thank you,

Manuel Alcala
1889 Harmon Street

Valeska, David

From: Leah Alcala [lshenry77@yahoo.com]
Sent: Tuesday, September 22, 2009 7:45 PM
To: Miller, Scott; Valeska, David
Subject: Administrative Record re Nik Nak Liquors



Do not allow another liquor store on the corner of Shattuck and Alcatraz. One is enough on that corner. Adding a second liquor store would not provide any additional benefit for the community. Please let my opinions on this matter be part of the public record.

Leah Alcala

Valeska, David

From: Pam Paulson [pamtpaulson@gmail.com]
Sent: Wednesday, September 23, 2009 7:16 AM
To: Miller, Scott; Valeska, David
Subject: Nik Nak Liquor Store

Hello,

I am writing to voice my objection to the opening of Nik Nak Liquor Store at 6400 Shattuck . I am a resident right around the corner on Harmon Street. I have lived here since 1982. In this neighborhood we fight a constant battle with litter and public drunkenness. Opening another liquor store so close to so many others does not make sense. It will increase the disruptive element in our community. That particular corner already has constant drug deals and loitering. We are constantly picking up liquor bottles off the street and in our garden. We see and hear drunken fighting, drug dealing as people stream up and down Harmon/65th. Why add to this problem? We don't need or want another convenience/liquor store here. We have several children who must navigate through this flow of users. Please consider the objections you are hearing and deny the opening of this store.

The Oakland /Berkeley border has an especially difficult time resolving issues and being heard because we must constantly deal with two city governments. Please don't dismiss this appeal because I reside in Berkeley. Please add my comments to the record.

Thank you,

Pam Paulson
1906 Harmon Street
Berkeley Ca 94703

Valeska, David

From: Kester Allen [kester@gmail.com]
Sent: Wednesday, September 23, 2009 10:52 AM
To: Miller, Scott; Valeska, David
Subject: For Administrative Record re Nik Nak Liquors

I am a resident of South Berkeley since 2005. I strongly oppose a liquor license for Nik Nak store at 6400 Shattuck. We have a concentration of liquor stores in our neighborhood, sources of litter, panhandling, public drinking, drug dealing and even prostitution. I invite you to look across the street from M and M liquors on Adeline at Fairview St. You will see the corner alcove wall and sidewalk stained black from streams of urine. You may see human feces. Most of the time you will see people loitering and selling drugs. Litter abounds. Take another look across from Black and White Liquors on the West side of Adeline near the benches and stairs that descend to the Ashby BART station. You will see empty liquor bottles, litter, public drinking and panhandling. This is just two of far too many sites blighted by liquor stores.

Please do not invite more blight and menace to our neighborhood. Many of us spend our own time picking up litter, cleaning graffiti, maintaining landscaping and much more to improve this neighborhood. Would you bring a another corner liquor store to your own neighborhood?

9/23/2009

Valeska, David

From: Miller, Scott
Sent: Wednesday, September 23, 2009 1:49 PM
To: Valeska, David
Subject: FW: Nik Nak Liquor License

-----Original Message-----

From: Lisa Kramer [mailto:fairviewgal@earthlink.net]
Sent: Wednesday, September 23, 2009 1:32 PM
To: Miller, Scott
Subject: Nik Nak Liquor License

Mr. Miller,

I live near the Nik Nak (on Fairview Street) and want to express my opposition to their getting their liquor license reinstated. For most of the 12+ years that I have lived in the neighborhood the Nik Nak has been closed. It has also been a blight by being a vacant, fenced lot used for vehicle storage.

I would love to see the site being used as a lively retail spot, but not as another liquor store.

It is unreasonable for the owner to expect the City to give him special approval since he has contributed nothing to the neighborhood during the many years that I have lived there.

Thank you,

Lisa Kramer

Valeska, David

From: Miller, Scott
Sent: Wednesday, September 23, 2009 3:47 PM
To: Valeska, David
Subject: FW: [LDNA] Fw: Strongly Oppose - Nik Nak Liquor License

From: Robin Wright [mailto:redrobinwright@yahoo.com]
Sent: Wednesday, September 23, 2009 3:32 PM
To: Miller, Scott
Subject: Fw: [LDNA] Fw: Strongly Oppose - Nik Nak Liquor License

----- Forwarded Message -----

From: Robin Wright <redrobinwright@yahoo.com>
To: ldna@yahoogroups.com
Sent: Tuesday, September 22, 2009 11:21:18 AM
Subject: [LDNA] Fw: Strongly Oppose - Nik Nak Liquor License

----- Forwarded Message -----

From: Robin Wright <redrobinwright@yahoo.com>
To: SMiller@oaklandnet.com; dvalueska@oaklandnet.com
Cc: ldna@yahoogroups.com; jeffreygjensen@yahoo.com
Sent: Saturday, September 19, 2009 9:43:52 AM
Subject: Strongly Oppose - Nik Nak Liquor License

To:

*Scott Miller, Zoning Manager, City of Oakland
SMiller@oaklandnet.com*

*David Valeska, Planner II, City of Oakland
dvalueska@oaklandnet.com*

For Administrative Record re Nik Nak Liquors

I am a resident of South Berkeley since 1999. I strongly oppose a liquor license for Nik Nak store at 6400 Shattuck. We have a concentration of liquor stores in our neighborhood, sources of litter, panhandling, public drinking, drug dealing and even prostitution. I invite you to look across the street from M and M liquors on Adeline at Fairview St. You will see the corner alcove wall and sidewalk stained black from streams of urine. You may see human feces. Most of the time you will see people loitering and selling drugs. Litter abounds. Take another look across from Black and White Liquors on the West side of Adeline near the benches and stairs that descend to the Ashby BART

station. You will see empty liquor bottles, litter, public drinking and panhandling. This is just two of far too many sites blighted by liquor stores.

Please do not invite more blight and menace to our neighborhood. Many of us spend our own time picking up litter, cleaning graffiti, maintaining landscaping and much more to improve this neighborhood. Would you bring a another corner liquor store to your own neighborhood?

Robin Wright
3043 Ellis St
Berkeley CA 94703

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Valeska, David

From: Sondra Lee Beck [rubadubb@comcast.net]
Sent: Wednesday, September 23, 2009 4:03 PM
To: Valeska, David
Subject: Liquor sales at the Nik Nak store

Dear D. Valeska,

I am writing to let you know that I vehemently oppose the request for a new liquor License at the corner of Shattuck and Alcatraz in Oakland. It would really be bad for our neighborhood to have two stores right across the street from each other selling liquor. The Nix Nax store has been closed for years and why the city is even considering this application to reopen is beyond me.

Please place my comments in the Administration record.

Sincerely,
Sondra Beck
659 Fairview St
94609

Valeska, David

From: Miller, Scott
Sent: Wednesday, September 23, 2009 3:58 PM
To: Valeska, David
Subject: FW: Liquor sales at Shattuck Ave and Alcatraz in Oakland

-----Original Message-----

From: Sondra Lee Beck [mailto:rubadubb@comcast.net]
Sent: Wednesday, September 23, 2009 3:55 PM
To: Miller, Scott
Subject: Liquor sales at Shattuck Ave and Alcatraz in Oakland

Dear Mr Miller,

I am writing to voice my opposition to the proposed liquor sales use for the reopening of the Nik Nak store at the corner of Shattuck Avenue and Alcatraz. Everyone knows that the presents of a liquor store in a neighbor brings down the value of the neighborhood. Not just in terms of property values but in terms of the quality of life for families in the area. It is well known the problems that often come with the sale of liquor. I live 2 blocks away and absolutely do not want another liquor store in my neighbor. There is already a store that sells liquor right across the street from the Nik Nak location. It is beyond my comprehension that the the city would even consider allowing another one.

Please place my comments in the Administration records.

Sincerely,

Sondra Beck
659 Fairview St
94609

Valeska, David

From: Christopher Waters [christopher@gypsyspiritmission.com]
Sent: Wednesday, September 23, 2009 5:44 PM
To: Miller, Scott; Valeska, David
Subject: [Fwd: [LDNA] Re: Nik Nak Liquor Store]

From BAPAC member Ralph Adams, for the administrative record.

Christopher Waters

----- Original Message -----

Subject: [LDNA] Re: Nik Nak Liquor Store
Date: Thu, 24 Sep 2009 00:30:06 -0000
From: adams.ralph <adams.ralph@yahoo.com>
To: ldna@yahooogroups.com

As a member of BAPAC (Berkeley Alcohol Policy Advocacy Coalition) and a resident on the border of Oakland I have been involved with trying to stop Nik Nak from reopening. About the time Spuds was trying to get going on Adaline and Alcatraz Nik Nak posted a notice that they were trying to transfer the Liquor License as if they were an operating business, even though they had not been open for many years. At first we started writing letters about how.

- 1 Already over concentrated. A store right across the street less than 50 feet away, 3 more less than half a mile.
- 2 Rampant drug dealing all around the area.
- 3 Drug dealers in war with neighboring gang. No need to provide Hard Liquor up to 2am.
- 4 Plenty of nuisance activity already. Drunks, public urination, pan handling, fights.

As we met and planned what to do one of the members said he knew someone in the Oakland Government that would know how to deal with it.

The word came back that in the 1990s the Health Dept. scheduled an inspection of the store. They made several attempts to get in door hangers, phone calls, and mailings were all ignored. Oakland has a policy that stores with a land use for alcohol closed for 90 lose said land use. Therefore Nik Nak did not exist at that time and no transfer or reopening of the store could take place.

End of story?

About a year ago our friend heard that someone on behalf of Nik Nak was trying to get an over the counter approval to reopen the store. Again an verbal explanation was enough to get it denied.

End of story?

Now it looks like a formal application has been filed for. A whole summer of drumming up support, it could well go to a full hearing. If that happens we will need all the bodies we can get complete with signs to hold up. They may

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have a councilperson on their side to be getting this far.

Obviously stopping the alcohol bussiness trashing neighborhoods is a long and arduous process
Ralph

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Valeska, David

From: dejkorn [dejkorn@yahoo.com]
Sent: Wednesday, September 23, 2009 5:56 PM
To: Miller, Scott; Valeska, David
Subject: OPPOSE NIK NAK LIQUOR LICENSE

For the Administrative Record

I strongly oppose a liquor license for the Nik Nak store at 6400 Shattuck Av. As a resident of the area for 12 years I am disgusted by the associated problems surrounding all of the neighboring liquor stores. Litter, Human waste and Urine, Empty Liquor bottles, Panhandling, Loitering, Public Drinking, Fights, even Drug Dealing and Prostitution.

Please do not grant this liquor license!

Am Amnuaydejorn
3043 Ellis St
Berkeley CA 94703

From: Rosina Keren [rowenkeren@sbcglobal.net]
Sent: Wednesday, September 23, 2009 7:02 PM
To: Miller, Scott
Subject: liquor stores

We already have too many places where our kids and neighbors can buy alcohol. Please do not add to this community disaster we already have. DUIs, child abuse, DV.... all with alcohol often fueling the situation.

thank you.

10/1/2009

Valeska, David

From: Miller, Scott
Sent: Thursday, September 24, 2009 9:15 AM
To: Valeska, David
Subject: FW:

From: Enythe Green [mailto:mizala7@yahoo.com]
Sent: Wednesday, September 23, 2009 8:27 PM
To: Miller, Scott
Subject:

As a resident of South Berkeley we dont need another liquor store. We need a restaurant but definitely not another liquor store.

Thank you,
Enythe Green

Valeska, David

From: David Vartanoff [iskandr@att.net]
Sent: Wednesday, September 23, 2009 9:06 PM
To: Miller, Scott; Valeska, David
Subject: Jo Jo's AKA Nic Nak

Sirs. I write to insist the Planning Commission follow Oakland and State Liquor laws and deny Mr Panell a new license to sell liquor at 6400 Shattuck. With White Horse, TeliDeli, T & K, and nearby Berkeley alcohol outlets, there is no "public necessity and convenience" issue. Although Mr. Panell's adherents tried to claim he would be stocking "fresh vegetables" he complains he will not have a viable store without alcohol sales. Real vegetable stores in Oakland and Berkeley exist and prosper without alcohol-- Yasai for instance.

As to his personal history, none of tht supercedes the legalities.

Thank you for your time and attention
David Vartanoff
Raymond Street
Oakland
(38+ years in this neighborhood)

Valeska, David

From: Lance-William DaCosta [ldacosta18@gmail.com]
Sent: Wednesday, September 23, 2009 9:59 PM
To: Valeska, David
Subject: nic nak liquors

Dear Mr. Miller and Mr. Valeska,

I would like to enter my comments in opposition to approval of alcohol sales at 6400 Shattuck Avenue (Nic Nak). I understand Nic Nak was an "early pioneer" of alcohol sales in our neighborhood, as they have owned this business for 40 years. However, their hoariness does not make them above the law, which is clear: their alcohol sales use is no longer deemed-approved because their operations lapsed for longer than 90 days (closer to 90 months, actually). Even since their "grand reopening" a few months ago, it is virtually impossible to know when this unfriendly, reinforced-looking business is going to be open. Why are they even resuming their business at all, if they are hardly ever available to serve the community? Has the Planning Commission not considered, in light of this, and in light of the fact that they have already tried to sell the business -- along with the alcohol license -- twice in the last five years, that a desire to serve the community is the least of their priorities?

Mind you, I am one of the rare breed in North Oakland: I am an African-American male who smokes cigarettes, drinks a bit of alcohol, does not have a car, walks to the corner stores, and works a respectable job and takes care of a family, rather than selling drugs for a living. I would actually benefit, in terms of my convenience, from Nic Nak's presence on the corner. However, their minimal and completely unpredictable hours, as well as their unwelcoming environment and their staff's hostile attitude towards me, has led me to the conclusion that it is not worth trying to give them my business anymore. I would much rather walk the extra few blocks to White Horse, a respectable and well-run market on Telegraph, or in a pinch, to T&K Market across from Nic Nak. I find it particularly ironic that the Nic Nak family's posture, in asking for an exception to the city's laws and stated alcohol outlet deconcentration goals, is that they are an African-American business serving the African-American community. If their repeated hostility toward me is any indication of their respect for the African-American community, I would hate to see how they treat white people.

I understand that Nic Nak got a great turnout of support at their first Planning Commission hearing, from members of their church (not in our neighborhood) and other relatives and members of their extended community. This is touching; but if these people care about Nic Nak so much, why are they not shopping at Nic Nak? Has anyone asked to see sales receipts from Nic Nak for the past few months, since their "grand reopening?" Honestly, I don't know how they stay open -- nobody goes there! Because nobody in their right mind would feel welcome or invited to that unpleasant, uninviting place. I also heard they sold the Planning Commissioners on the fact that they offer "low-cost produce" to the community. Have any of the Commissioners actually been INSIDE Nic Nak? What low-cost produce are we talking about? The only produce I have seen there is a pile of watermelons that they were giving away in exchange for petition signatures earlier this summer. Sundries? Sure, you can get a few dusty household items at Nic Nak -- but anybody who walks into that place will tell you immediately upon walking out, that they have just visited a LIQUOR STORE. What kind of credentials does one need to be on this Planning Commission, anyway?

I urge a denial of the alcohol sales use, and I ask that my comments be entered into the administrative record.

Lance-William DaCosta
65th Street resident

9/24/2009

Valeska, David

From: Nancy Jessup [njessup@sbcglobal.net]
Sent: Wednesday, September 23, 2009 10:05 PM
To: Valeska, David
Subject: NikNak Liquor License

Dear Mr. Valeska,

I'm writing to express my opposition to the NikNak liquor license request. We already have a number of liquor stores in our neighborhood -- within a few blocks of 6400 Shattuck Ave. In fact, there is already a liquor store only one block away from that location.

We don't need another store selling alcohol. Please do not approve the license.

Please include my comments in the administrative record.

Sincerely,
Nancy Jessup
living on Ellis St near Prince St
Berkeley, CA
510-649-8471

Valeska, David

From: Linda Aldridge [ljaldridge@sbcglobal.net]
Sent: Wednesday, September 23, 2009 10:07 PM
To: Miller, Scott
Cc: Valeska, David
Subject: Please deny NikNak Liquor License

Mr. Scott Miller
Zoning Manager
City of Oakland

Dear Mr. Miller,

I'm writing in opposition to the application for a Liquor License for the NikNak establishment at 6400 Shattuck Avenue. I live in the South Berkeley neighborhood adjacent to this proposed liquor store location.

Truly, the last thing our neighborhood needs is another retail liquor outlet. Liquor is already readily available at several locations within 1 to 4 blocks of the intersection of Alcatraz and Shattuck Avenues. I understand the need to lease available retail space; however, the character and needs of our neighborhoods must also be taken into account. Healthy neighborhoods create foot traffic for all sorts of businesses. An over-abundance of liquor stores creates an atmosphere that discourages pedestrians and shoppers alike.

Please include my comments in the administrative record pertaining to this matter.

Thanks for helping to keep our neighborhood livable.

Sincerely,

Linda Aldridge, MA
Berkeley, CA 94703
510.847.3598

cc: Mr. David Valeska, Planner II, City of Oakland

From: Michelle Leicester [moose99679@sbcglobal.net]
Sent: Wednesday, September 23, 2009 10:51 PM
To: Valeska, David; Miller, Scott
Subject: Nic Nack Liquors, Shattuck & Alcatraz

Mr. Valeska, Mr. Miller

I am writing to inform you of my opposition to the major variance being requested by the owners of Nic Nack Liquors on the corner of Alcatraz and Shattuck. I would like my opposition to be made a part of the permanent case file for this matter.

I don't feel the need to go into all the reasons why I am against yet another liquor store in this area. Anyone with rudimentary Google skills and a spare 10 minutes can easily figure out how many other stores are already in operation within a square mile of Nic Nack; how much crime is associated with a typical take-away liquor outlet, and the detrimental impacts these businesses have on the surrounding neighborhoods. Adding to the existing level of chaos caused by these establishments by allowing yet another liquor store to operate, is completely unacceptable, not to mention illegal.

I would like to make clear that I expect the city planning commission to act responsibly and within the constraints of the law. They failed utterly to do this at the previous hearing, and the result has been a great deal of wasted time and effort on both of your parts to conjure up some mythical "findings" that would grant the major variance and allow Mr. Pannell to continue to sell liquor at this location, although it is quite obvious that no legal basis in fact exists to support such a finding.

Thank you for your attention to this matter.

Michelle Leicester
North Oakland resident

10/1/2009

Valeska, David

From: wtziemba@aol.com
Sent: Thursday, September 24, 2009 7:55 AM
To: Miller, Scott; Valeska, David
Cc: redrobinw@yahoo.com
Subject: NikNak Liquor Store - Please Include on Administrative Record.

To Whom it may concern:

I am a resident of South Berkeley, and have lived here since 1974. I strongly oppose granting any further liquor licenses in my neighborhood, and am shocked that the City of Oakland would consider giving a license to Nik Nak Liquors at 6400 Shattuck.

I presently live on the 1600 Block of Harmon Street and even that far down from Adeline, individuals who purchase food and beverages walk down Harmon Street and throw their trash on the street. The stores refuse to keep a trash can near their doors and refuse to inspire their customers to respect the neighborhood. There is loitering, visible drug dealing and areas where no one dares to walk because the sidewalk is lined with feces, trash and urine; I find hypodermic needles in my yard on a regular basis and crack baggies everywhere. Drunks throw their trash and liquor bottles in my yard, on the sidewalk in front of my house and regularly tease and poke sticks at my dogs, torturing them at every opportunity.

Coincidentally, at the corner of Fairview and MLK, there is a liquor store. I am convinced that if this store were shut down, the quality of life for all residents in this neighborhood (including the drunks - perhaps especially the drunks), would increase to an incredible degree. Further the store at the corner of Harmon and Adeline is a menace. The filth around that store is unbelievable and the pretense of being a grocery store is laughable. The clientele don't care and neither do the store owners. Never in the years I have lived here have I noted any degree of caring for the neighborhood by the store owners.

I used to walk to Spud's and buy pizza in the evening. I did, until there was rampant dealing in front of the store on the corner of Harmon & Adeline and in front of the People's Bazaar. I was afraid to walk home that evening and was forced to call my husband to come pick me up. We reported this to the police but the gatherings at the store continued. No wonder our beloved Spud's failed. Adding another liquor store will only add to the demise of this neighborhood.

Bringing in a new liquor store is a one-way street: Once it's here, there's no going back, and all suffer indeterminately as a consequence. There are so many problems in this neighborhood and until we eliminate the cheesy liquor stores we will not be able to encourage foot traffic, businesses or trade. South Berkeley will continue to fall as it appears the city council desires.

You have a moral duty to oppose and block any stores that you can in this neighborhood. I strongly recommend that you do what ever is in your power to do so.

Thank you

9/24/2009

Wanda Ziemba

RECENT ACTIVITY

New Members 1

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in 3 easy steps.

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others.

From: Clara Berridge [clarawarner@gmail.com]
Sent: Thursday, September 24, 2009 8:26 AM
To: Miller, Scott
Subject: Nic Nak Liquor

Mr. Miller,

I am writing to express my concern about the proposed Nic Nak Liquor store at 6400 Shattuck Avenue in Oakland. I live blocks away and do not see a need for more liquor stores in the area. There are already more than enough and alcoholism is an obvious problem in this area. We do not want another outlet in our community.

Please include my e-mail on public record.

Thank you,
Clara Berridge

10/1/2009

Valeska, David

From: dicekmuro [dicekmuro@gmail.com]
Sent: Thursday, September 24, 2009 8:30 AM
To: Miller, Scott; Valeska, David
Subject: Nic Nak Liquor store

Hi,

My name is Daisuke Muro and I am a resident of 6330 Shattuck Ave, Oakland, CA. I am writing this letter for two reasons. 1) please delete my name from petition I signed in support of Nic Nak Liquor store. I signed under misleading and inaccurate pretense. 2) please do not allow Nic Nak Liquor to sell liquor in our neighborhood. We already have one store sale liquor and anything more would result in excessive availability of liquor to the neighborhood.

please make this letter as part of public record and administrative record

Daisuke Muro

Valeska, David

From: We Fight Blight [wefightblight@yahoo.com]
Sent: Thursday, September 24, 2009 8:57 AM
To: michaelcolbruno@clearchannel.com; Blake.Huntsman@seiu1021.org; sgalvez@phi.org; dboxer@gmail.com; mzayasmart@sf.wrtdesign.com; VienV.Truong@gmail.com; VinceGibbs.opc@gmail.com; Brooks, Desley; Brunner, Jane; De La Fuente, Ignacio; Kernighan, Pat; Nadel, Nancy; Quan, Jean; Reid, Larry; Wald, Zachary
Cc: amudge@coxcastle.com; Valeska, David; Miller, Scott; Russo, John
Subject: Nic Nak Liquors--A Case for Over-Concentration of Liquor Outlets in North Oakland/South Berkeley

Ladies and Gentleman.

We bring your attention to the following articles prepared by We Fight Blight, which is dedicated to eliminating blight in North Oakland and South Berkeley. The interest here of We Fight Blight is the link between liquor stores, blight and crime and the oversaturation of liquor stores in North Oakland and South Berkeley that have caused a significant quality of life issue for neighbors and residents.

As the Planning Commission prepares to approve a Major Variance for Nic Nak Liquors to locate within 1000 feet of another liquor store, we have to wonder whether the City of Oakland really wants to be a party to a lawsuit defending a property owner's ability to open yet another liquor store in North Oakland when: (1) North Oakland (and South Berkeley) is already over-concentrated with liquor stores; (2) it is the stated public policy of the City of Oakland to limit and control the proliferation of alcohol outlets; (3) the applicant has lost his deemed approved status as a legal nonconforming use since it is had been out of operation for at least 5 years and possibly longer; and (4) the basis for approval of a Major Variance uses a unique and unprecedented theory that "historical relevance constitutes a unique physical constraint" when the theory has no basis in land use law, court decisions, will the first time the City of Oakland has ever used the theory to approve a liquor store let alone and land use through a Major Variance and is a misapplication of the existing regulations governing Major Variances; and (5) the overwhelming body of peer reviewed studies the City has ignored that provide a nexus between the concentration and density of alcohol outlets and crime.

While Commissioners Mudge and Boxer led the charge to suggest this idea of historical relevance, and do not believe it will set a precedent, it will. The legal findings proposed to approve this project are wholly inadequate and would never pass muster with the courts since they fail to bridge the gap between the raw data and the conclusions. Unsubstantiated assertions are not adequate as findings and would never pass judicial scrutiny.

We invite you to read the following articles as they highlight the concerns of the East Lorin Neighborhood Association, the Shattuck Crime Prevention Council, residents, neighbors and business owners as they relate to the approval of the Nic Nak Liquor Store through a Major Variance. This matter comes back before the Planning Commission at its October Commission Meeting.

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-case-for-over.html>

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-at-what-cost-to-our.html>

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-community-in.html>

Valeska, David

From: avyvalladares [avyvalladares@gmail.com]
Sent: Thursday, September 24, 2009 9:02 AM
To: Miller, Scott; Valeska, David
Subject: Opposing liquor license for Nic Nak Liquor Store

Dear Mr. Miller and Mr. Valeska,

I'm a resident of area that Nic Nak Liquor Store services (as a matter of fact I live within sight of that establishment), and I'm deeply concern about the store's request for a liquor license. As a convenience store, I think Nic Nak could very well be a welcome addition to our community, but the truth of the matter is that there are too many places that sell alcohol within walking distance from the corner of Shattuck and Alcatraz and I don't see how the addition of yet another place that sells hard liquor would benefit this community. I'm concerned that giving Nic Nak its liquor license would increase a particular type of foot traffic late at night into my neighborhood; loiters, thieves, graffiti "artists". Furthermore, I also think that adding a liquor store would also bring in more crime in that it increases the number of possible targets for a store robbery within my neighborhood: not long ago Nomad cafe was held up and I fear that yet another store that deals in large amounts of cash would only increase these types of crimes here.

I write to express my strong disapproval of granting Nic Nak a liquor license, and I would like my email to be part of the administrative record.

Thank you for your time,

Sincerely,

Avy Valladares

9/24/2009

they offer services that were not previously available in the area. These businesses have brought value to the area. A new liquor store would threaten to off-set the neighborhood's gains by bringing more blight, litter and crime.

Please ensure that my opposition and comments are entered into the administrative record.

Katina Ancar

Valeska, David

From: Katina Ancar [kancar@yahoo.com]
Sent: Thursday, September 24, 2009 9:48 AM
To: Miller, Scott; Valeska, David
Subject: Nic Nak Liquor Store - Zoning

Messrs. Miller & Valeska,

I strongly oppose the pending application for a Major Conditional Use Permit and Major Variance for liquor sales at the Nic Nak store in North Oakland. I request that the Planning Commission, tasked with ensuring that land and real estate is used for the best interests of the surrounding community (including preventing the over-saturation of liquor stores), do the same.

Having lived in North Oakland for more than 10 years, I understand that the owner's liquor license was revoked some time ago and I have seen that the store itself has been out of business for over 5 years. From both press coverage and neighbors who have attended commission meetings, I also understand that these facts in and of themselves should prohibit the owner from regaining a liquor license.

More importantly, I do not believe a Variance or Conditional Use Permit is in the best interest of our neighborhood. North Oakland is littered with a large number of "convenience" stores, whose mainstay is liquor sales. Most of these liquor establishments contribute significantly to crime, blight, graffiti, and litter.

Within a 2 block radius of my home, there are no fewer than five establishments licensed to sell alcohol. On my drive north to Berkeley, I pass at least three additional liquor establishments - one directly across the street from Nic Nak. I have picked up liquor bottles and cans, wrappers and other trash dropped by those frequent these stores. Two (perhaps three, I've lost count now) people have been killed (and an officer shot) on the property of a single liquor store in North Oakland. It goes without saying that this neighborhood needs fewer - not more - liquor stores. In fact, the City Council has proclaimed that the City's policy is to restrict severely the number of liquor stores where so many already exist.

North Oakland is a residential area. There are hundreds of families with children and senior citizens living here. Neighbors worked to revitalize Bushrod park, to create and open the Dover Street park, and to push out drug dealers who come through the area - often visiting these alcohol outlets due to their convenient locations and easy access to cheap liquors.

Yet another liquor store would serve no positive purpose in this neighborhood. Instead, another such store would have a significant and adverse impact on residents who have worked hard to make this area more livable for its seniors and families.

The lack of a liquor license would cause no specific hardship to the owner. The store has been closed for all sales for years now. Sitting on a corner lot at a major intersection with off-street parking, the store is perfectly situated to succeed in sales of any number of items/products other than alcohol.

In the last several years, at least two coffee shops have opened along Shattuck Avenue in North Oakland quite near to Nic Nak. A book publisher recently took over a run-down building and opened a bookstore. Another couple opened a small restaurant. The neighborhood welcomed these businesses, as

9/24/2009

Valeska, David

From: Brian Hill [brian@lingerhere.org]
Sent: Thursday, September 24, 2009 10:02 AM
To: Miller, Scott; Valeska, David
Subject: Re: Nic Nak Liquors

Dear Commissioners,

I live a few blocks north of the Nik Nak at Prince and Shattuck in Berkeley.

Our neighborhood already has more drinking, vagrancy, littering, fights, loud late-night arguments and crime than any neighborhood deserves.

If you approve another liquor store the back is likely to break, and we could be in a downward spiral, with the result looking much more like the Uptown Market crime magnet at 56th and Shattuck than it does today.

If you help us get the neighborhood on a better track, with businesses that serve the many pedestrians coming to and from the Ashby BART station, our neighborhood will continue to have great potential.

Please do not approve this permit.

Thanks very much,

Brian Hill
3100 Shattuck Ave
Berkeley, CA 94705

9/24/2009

Valeska, David

From: Michelle Page [mfp2709@hotmail.com]
Sent: Thursday, September 24, 2009 10:03 AM
To: Valeska, David; Miller, Scott
Subject: north oakland liquor

Dear Mr Valeska and Mr. Miller,

I have lived with my family, which includes 3 children under age 6, on Dover St. in North Oakland for 7 years.

We are deeply disturbed that the city is considering reinstating the liquor license of Nik Nak Liquors. We consider this store to be poorly managed and the property to be poorly maintained. Our area has far too much crime, much of it is propogate by easy access to drugs and alcohol. We do not need another liquor store in our neighborhood.

I believe, in this case, the interest in preserving the quality of life of the community out weighs the commercial interests of the owners of this establishment, and that no liquor license should be granted.

Please help us continue to improve the safety of our neighborhood.

-Dr. Michelle P. Cooper

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From: Todd Stiers [tas@darthracing.com]
Sent: Thursday, September 24, 2009 10:57 AM
To: Miller, Scott; Valeska, David
Subject: No on Nik Nak Liquors at 6400 Shattuck

Dear,

Scott Miller, Zoning Manager, City of Oakland SMiller@oaklandnet. com

David Valeska, Planner II, City of Oakland dvalueska@oaklandnet .com

The last thing my neighborhood needs is another liquor store. From the blight, trash and police helicopters, there are many hidden costs along with any monetary gain Oakland may envision from issuing this license. In addition to calling my city in on the trash quality of life issues, do I begin calling yours too?

Please consider other funding initiatives if that is the goal - myself and my neighbors might well be willing to PAY to keep your city from sanctioning blight and problems on our border.

We pay for it one way or another, with some creativity some alternate win-wins can be developed.

Thank you,
Todd Stiers
3208 King Street
Berkeley, CA 94703

PS: Some ideas
How about a place that makes good pizza?
Or maybe a grocery store to provide alternates to the constant stream of junkfood and associated wrappers that end up in my yard?
Tax the junkfood, triple tax the booze if its about the money, your city is certainly justified in the costs that are being incurred.

Valeska, David

From: Gladys Dalmau [gladysdalmau@hotmail.com]

Sent: Thursday, September 24, 2009 11:33 AM

To: Miller, Scott; Valeska, David

Subject: Nik Nak Liquors

Please Please please do NOT put another liquor store in my neighborhood! We definitely do not need another establishment that sells liquor. Please do not allow Nik Nak Liquor to renew their license, there is across the street from that location a liquor store already there. Within a 3 block radius we have more than 5 stores that sell liquor we don't need more! Thank you for your consideration to this matter.

Sincerely,

Gladys Dalmau

Valeska, David

From: Miller, Scott
Sent: Thursday, September 24, 2009 1:46 PM
To: Valeska, David
Subject: FW: Nic Nac Liquor at 6400 Alcatraz Ave.

From: Shindman@aol.com [mailto:Shindman@aol.com]
Sent: Thursday, September 24, 2009 11:52 AM
To: SMiller@oaklandnet; com@imo-da01.mx.aol.com
Subject: Nic Nac Liquor at 6400 Alcatraz Ave.

Please include my comments in the administrative record.

Regarding: a liquor license for Nic Nak Liquors at 6400 Alcatraz in N. Oakland.

I am a nearby resident and strongly oppose granting a liquor license for this shop. Honestly we are trying to CLEAN UP this neighborhood and get the alcoholics and drug users off the street and street corners. We have major problems with drug and alcohol use in our neighborhood. This will only ADD to existing problems and will do nothing to help solve them.

There are numerous nearby stores currently selling liquor already. Yet another one-- is the LAST thing we need.

Sincerely,
Sally Hindman
3129 Ellis Street
Berkeley CA 94703

Valeska, David

From: Miller, Scott
Sent: Thursday, September 24, 2009 1:46 PM
To: Valeska, David
Subject: FW: Outrage regarding Nik Nak Liquors
Importance: High

From: Erika Miranda [mailto:quiny@earthlink.net]
Sent: Thursday, September 24, 2009 12:25 PM
To: Miller, Scott
Cc: Brunner, Jane
Subject: Outrage regarding Nik Nak Liquors
Importance: High

Re: Outrage with Planning Commission regarding Nik Nak Liquors

,To Mr. Scott Miller

I am SHOCKED to hear that the City Planning Commission is dubiously trying to "reinterpret" the law in order to accommodate another liquor store in our neighborhood. I have lived in the Lorin District for almost 7 years. I love my neighborhood in spite of the fact that I am within two-three blocks of about 4 different liquore stores. Both myself and my neighbors have had garbage left in our yards and houses (mostly empty alcohol containers in the accompanying black plastic bags or brown paper bags). I have also had drunks throwing up and urinating in my side yard, falling over and breaking my fence, acting in a loud, belligerent and aggressive fashion and loitering with other drunks and drug dealers. We have lots of kids and families in this neighborhood and it is frightening to think when they may meet up with some of these people. Why 4 liquor stores in such close proximity were allowed to open, I find already very dubious but to find out the Planning Commission has completely *over-ridden* the *objective* findings and report from the City Planning Staff regarding Nik Nak Liquors is now an outrage to me.

The thorough evaluation of the history of the liquor store and the legal requirements for Variances which the City Planning Staff presented to the Planning Commission (including that the convenience store be approved, but that the liquor sales be denied) is very clear and objective:

The proposed Variance to the 1,000 foot separation standard in a neighborhood could set a precedent for other alcohol sales applications in the area...Allowing alcohol sales uses to cluster closer than the 1,000 foot radius could be detrimental to the vitality of an emerging commercial and mixed-node....Staff recommends denial of the Major Variance and Conditional Use Permit for Alcoholic Beverage Sales. The findings required by the Oakland Planning Code are not fulfilled in this case. Granting the request would cause an adverse precedent. The liquor store lost its legal status 5 years ago and community demand has been well-served by other Alcoholic Beverage Sales locations. A neighboring market already provides beer and wine services to the immediate Shattuck neighborhood. Several other liquor stores provide services near the edge of the 1,000 foot radius from this store: and this additional venue for liquor is not necessary. The potential for adverse secondary effects, such as loitering and littering, would likely increase with another operator in the future.

9/28/2009

Furthermore, the City website states that: "*A Variance is permission to depart from the development standards, or setbacks, of the zoning district. Variances provide the discretion and flexibility to resolve difficulties or hardships that may be inappropriate where special or extraordinary circumstances occur on the property. These circumstances do not mean economic hardship; rather, they refer to topographic or physical attributes of the site that do not allow for the development standards of the Zoning District to be applied.*"

This clearly states that, the Major Variance relates to a **topographic** or physical attribute of the site that would not allow for the normal development standards to be applied (in this case a 1,000 foot separation from another liquor store). Therefore *there is nothing in the administrative record that supports a Variance*. So, with all of this information, how is it possible then, that the City Planning Commission, despite the Planning Staff recommendation and opposition by the Shattuck Crime Prevention Council, the East Lorin Neighborhood Association and several business owners, can justify going against the laws of Oakland and the intentions of the City to approve a variance by claiming that "historical relevance" is equivalent to "a unique physical circumstance" even when *The City Planners, themselves have acknowledged that there has never been a single project in the City of Oakland that has been approved using this legal theory.* (especially at a time when the adopted public policy of the City Council is to limit and control the proliferation of liquor stores)?

I have been shocked to hear that the City Planning Commission is also claiming Mr. Pannell engages in "neighborhood and social leadership activities" I would be curious to know *specifically* what these claims entail as I know a great number of my neighbors and not a single one has heard of him outside of Nik Nak Liquors. He certainly doesn't live in our neighborhood and owns a house in Trestle Glen and Clear Lake, apparently (perhaps if he engages in his "neighborhood and social leadership activities" in those places, they would welcome him to open Nik Nak Liquors there?).

Based on all the above information, I can only draw the conclusion that there are "undisclosed reasons" why the Planning Staff have been required to withdraw their original findings and why approval for the regranting of Nik Nak's liquor license is being pushed forward by the Planning Commission. I would like to hear from you on this and

I would like this email to be included in the official Administrative Record.

Sincerely,
Erika Miranda
Tremont St.
Oakland CA

Erika Miranda
quiny@earthlink.net
EarthLink Revolves Around You.

From: Pam Uzzell [puzzelld@hotmail.com]
Sent: Thursday, September 24, 2009 12:56 PM
To: Miller, Scott; Valeska, David
Subject: opposition to NikNak liquor license

Please include these comments in the public record.

Dear Mr. Miller and Mr. Valeska,

As a resident of South Berkeley I am strongly opposed to granting a liquor license to NikNak liquor at 6400 Shattuck street in Oakland. Is that all that people think our neighborhood needs, wants or deserves, *another* liquor store? If anyone is in our part of town looking for liquor, I can point him or her to several nearby stores already. Better yet, follow the trails of garbage and empty bottles and cans and then stop when you come to the crowd of inebriated people on the sidewalk, and, voila, you've found the liquor store. Liquor stores must be the Starbucks of South Berkeley and North Oakland, you can't go more than a couple of blocks without finding one. Is that really all we can do as a community for local businesses? Can't we do better?

Sincerely,

Pam Uzzell
3109 Ellis St.
Berkeley, CA 94703

Your E-mail and More On-the-Go. Get Windows Live Hotmail Free. [Sign up now.](#)

Valeska, David

From: Carol Sepersky [flyingskwri@yahoo.com]
Sent: Thursday, September 24, 2009 1:02 PM
To: Miller, Scott; Valeska, David
Subject: Nik Nak Store

Dear Officials:

As a neighbor on Shattuck Avenue, I am opposed to Nik Nak being granted a liquor license and ask for the denial of the proposed liquor sales use and ask that my comments be placed in the administrative record.

As a homeowner, I have lived in the neighborhood for 5 years and the site has not been in open until recently. I often wondered over the years, what it was, a storage spot for someone cars? Motorhome? I find the bullet proof glass to be unwelcoming and there is no need to additional liquor sales in the area. It is not like folks can't walk across the street or down a few blocks to find their liquor they are wanting. So it is not necessary and since they have not been in opporation for such a long time and seems that they were aware of the lapse, they should be under the current rules and regulations.

I was happy to hear that they will be taking down the billboard, but have not seen that done yet. If you should grant the license, which I hope you will not, it should have a stipulation that it can not be *transferred with the sale*. I understand the the owner has attempted to sell the site several times over the past few years, so it would seem that we can not hold the new owner to any "voluntary considerations" that the current owner states that he would uphold. I am all for someone to have their own business and in particular African American owned businesses, but lets make sure that it up to the standards set by the City and the community. It could use a facelift while we are at it.

Thank you,
Carol Sepersky

9/28/2009

From: Lindsey Smallsreed [lindseysmallreed@hotmail.com]
Sent: Thursday, September 24, 2009 1:16 PM
To: Miller, Scott; Valeska, David
Subject: Nik Nak Liquors - For Administrative Record

Dear Mr. Miller and Mr. Valeska,

I own a home on 65th St. in Oakland, up the block from Shattuck Avenue.

It has come to my attention that Nik Nak Liquors on the corner of Shattuck and Alcatraz has applied for some sort of bizarre exception to the revocation of their liquor sales permit (a variance, I believe, is the legal term in use). I cannot imagine how this request would be given serious consideration, but as it appears the owner has mustered enough people to intimidate city planning staff into reconsidering this revocation, I must step forward to ask you to DENY their request for the following reasons:

- 1) The store lost its permit 5 years ago. This is years beyond the permissible 90 day extension request.
- 2) There is an operational liquor store ACROSS THE STREET from Nik Nak Liquors, which is obviously well within 1,000 feet- which is against the city's laws.
- 3) The "historical relevance" of a liquor store is laughable at best. The location and building themselves are not historically relevant, nor is the business which was (thankfully) closed. I grew up in Berkeley, and vividly recall the liquor store being open when I was a child. It was of no *beneficial* relevance then, nor is there any historical relevance now.
- 4) I do not know, have never met, nor have I ever heard of (until now) Mr. Pannell. His argument that he is a pillar of the community is a farce. I fail to see how being a good neighbor (which he is not) would provide grounds for the ability to sell liquor where there is already an abundant supply.
- 5) There is no added benefit to my neighborhood, if Nik Nak Liquors is allowed to sell alcohol. However, there is ample reason to believe there will be great detriment, if their request is approved.
- 6) Perhaps the city believes the RV in the parking lot to be of historical relevance. Fine with me- move it somewhere else! I have seen balloons attached to the RV with pictures of playing cards on them, and wonder if there is gambling done in the parking lot.

Existing City policy and regulations are in place to prevent non-conforming liquor stores like Nic Nak that have closed from re-opening. I strongly urge you to deny the Nik Nak's request for permission to sell alcohol, and ask that my comments be placed in the administrative record.

Thank you.

Lindsey Smallsreed
Owner, 658 65th Street, Oakland

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10/1/2009

Valeska, David

From: jenny haley [working_girl1912@riseup.net]
Sent: Thursday, September 24, 2009 1:38 PM
To: Miller, Scott; Valeska, David
Subject: No More Nic Nac Stores Please

Hi

I am a resident in South Berkeley on 66th st. Right on the boarder of Oakland and Berkeley. My house is on alley of Baker st. The issues of violence on this one street in relation to drug and alcohol use have been an on going issue in our neighborhood concerning exposure to violence by children and youth in the neighborhood and also crime against women.

On a monthly basis there are frequent incidence of Domestic Violence and crime against women. Often how these issues arise is with loud arguments where intoxication is clear and continuing to escalate. I have called the BPD more then 20 times in the past 4 months. There are 5 liquor within a 2 block radius of my house.

I encourage you to read this article:

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-case-for-over.html>

I agree with everything written here and this is why I am e-mailing you.

Jenny Stanley
1350 66th st.
Berkeley, CA 94207
619-384-6103

From: arianna vaewsorn [ariannavaewsorn@gmail.com]

Sent: Thursday, September 24, 2009 1:44 PM

To: Miller, Scott; Valeska, David

Subject: not another liquor store

Dear Sirs,

I am adding my voice to the opposition to allowing Nic Nak liquor store to open in the South Berkeley/ North Oakland neighborhood. We do not need another business that degrades the neighborhood. The abundance of liquor stores in the area contributes to public drunkenness, brutal violence, and fatal auto accident risks; all of which are a problem in South Berkeley/ North Oakland.

Please don't allow Nic Nak Liquors to open - let's make future Oakland/ South Berkeley businesses promote positive change in the area

-please add this message to the administrative record

10/1/2009

Valeska, David

From: \ Danya A. Marshman [danya_amber@yahoo.com]
Sent: Thursday, September 24, 2009 2:39 PM
To: Valeska, David; Miller, Scott
Subject: NO NEW LIQUOR STORE

Thanks for your time, I just want it to be public record that I vehemently oppose allowing the licensure for yet another liquor store in Oakland. We have an overabundance already and another-- in a very busy intersection, would serve no purpose, except to bring unwanted activity to this area. Please heed the call and recognize the folly in allowing this to take place.

Thank you,
Danya Marshman

Valeska, David

From: Timothy H. Smallsreed [TSmallsreed@fablaw.com]
Sent: Thursday, September 24, 2009 2:56 PM
To: Miller, Scott; Valeska, David
Subject: Nic Nak Liquors 6400 Shattuck

Dear Sirs:

I write in opposition to the grant of a variance or any other form of legal authorization for the issuance of a permit to operate a liquor store at the above location. There is no need for another source of liquor in the neighborhood, there being an adequate number of purveyors already to satisfy local need. There is no compelling argument in favor of excusing the failure of the applicant to maintain the permit that previously existed and which was allowed to lapse.

I urge you to deny authorization of a liquor store at this location.

Yours,
Timothy H. Smallsreed
65th St.
Oakland, CA 94612
tel 510.451.3300
tsmallsreed@fablaw.com

Don Link
6510 Raymond Street
Oakland, CA 94609
Tel. 510-658-8632 Fax 510-658-4613
e-mail don-link@comcast.net

September 24, 2009

TO: Members of the Planning Commission &
Staff members Scott Miller and David Valeska
FROM: Don Link, Chair Shattuck Neighborhood Crime Prevention Council
SUBJECT: Major Variance for 6400 Shattuck Ave. CVM09-111

When I appeared before the Planning Commission on Aug. 5, I presented a petition signed by 133 people, 130 of whom live in Beat 11 where the Nic Nak Liquor Store is located, and 95% of the signers within 4 blocks of 6400 Shattuck Ave. Signers opposed a Major Variance allowing the sale of alcohol at that location and continue to oppose it.

I also presented a report from the Beat 11 Hotline describing street crime in the 2-3 block area surrounding the Nic Nak and argued that allowing another liquor outlet in that area would not benefit the neighborhood or its residents. I base that contention on years of experience in crime prevention and community improvement efforts in the Shattuck Corridor and city-wide as a member of Oakland's Community Policing Advisory Board (9 of them as its Chair).

Like the other signers of the petition, I still oppose a Major Variance allowing liquor sales at 6400 Shattuck. The findings presented by the P.C. Staff for the September 16 meeting when the matter was to be finalized have some significant errors that cry out for correction.

No. 2 of the Special Use Permit Criteria (p. 5) deals with adverse effects on nearby churches and mentions none. The Shattuck Ave. United Methodist Church at 6300 Shattuck, 1 block south of the Nic Nak regularly found empty alcoholic beverage containers on its property, including beer cans and vodka, gin, and brandy bottles. I can state this unequivocally because I was a Trustee of that Church and helped maintain its building and grounds during the period between 2000 and 2005. Methodists eschew alcohol and found this litter offensive to their sensibilities. Alcohol outlets do affect at least one church close to the Nic Nak location.

Paragraph C on page 9 refers to a "distinctive historical association over several decades between this facility and the neighborhood, which is not present for many other Alcoholic Beverage Sales facilities in West and North Oakland" as a basis for ignoring the Planning Code's prohibition of an additional alcohol outlet within 1000 feet of an existing one.

This is patently wrong and the reasoning specious and disingenuous. By definition every Deemed Approved alcohol outlet in Oakland has a long historical association with its neighborhood because it has been in existence in that capacity since the 1970s when the Deemed Approved status was created. Granting a Major Variance to the Pannells will set the precedent for other lapsed legal non-conforming facilities to appeal for the restoration of that status for themselves, and the intent of the 1970's code changes will become meaningless.

The following paragraph justifies the Major Variance for convenience and incorrectly states that "spirit liquors cannot be purchased anywhere within convenient walking distance." The Alcatel Liquor store, which is much larger, is 2 blocks to the east on Telegraph Ave., and White Horse Liquors is another 2 blocks to the north on Telegraph. Similarly, 3 blocks to the west of the Nic Nak, on Adeline St., there is

another full-sized liquor store. Each of these stores offers a much more extensive selection of wine, beer, and spirits than the Nic Nak can given its small size and restrictions on amount of floor space that can be used for alcohol sales.

Our first preference is that no alcohol be sold at 6400 Shattuck. That said, if the Commission decides to grant the Major Variance allowing it, the community is adamant that it only be granted with the 25 conditions listed in Attachment B (pp 12-18).

We also ask that some improvements be made to several of the conditions to eliminate ambiguity. No 1 C on page 12 needs to be clarified to restrict the alcoholic beverage display area to less than 33% of the store floor area, or 300 square feet whichever is smaller to guarantee that the alcohol sales area will not increase if the store is ever enlarged.

Condition No. 24 on page 17 likewise should be modified to include not just Airline "Flight" containers but also individual cans or bottles of beer and malt liquor which are almost always consumed on the street and left as litter for residents and other business owners to clean up.

We also ask that an additional Condition No. 26 be added to deal with the sale of the business, namely that the Major Variance be expressly linked to the Pannells' ownership and operation of the business and that it expire if the business is ever sold outside the family. Mr. Pannell stated that his family will never sell their business to someone outside the family, this in spite of his having tried to sell it twice in the last 5 years.

We think that if the city decides to grant the Major Variance, it should take the Pannells at their word and allow alcohol sales to continue only while they own and operate the business. Sale of the business would result in the Major Variance expiring and the new owner having to apply for a new Conditional Use Permit based on the merits of the case. An arrangement of this sort is a win for the Pannells who would be allowed to resume operating their business, and a win for the city and community, because the Variance would expire with the sale of the business to an owner not in the family and the city and community would have an opportunity revisit the issue of alcohol sales at that location.

I will end with an admonition. If the Major Variance is granted without the Conditions of Approval and the changes requested above, there will be an appeal to the City Council and very likely a civil lawsuit against the city for ignoring municipal statutes that dictate planning code rules. Staff findings and justifications for a Major Variance fly in the face of both reason and settled law.

From: starrbitz@gmail.com on behalf of Robyn Mac [robyn.s.mac@berkeley.edu]
Sent: Thursday, September 24, 2009 3:27 PM
To: Valeska, David; Miller, Scott
Subject: I Keeping Another liquor Store From Opening in South Berkeley/North Oakland

I would to say that I do not want Nic Nak Liquors to go into business in our city.

Thank You,

Robyn MacConnell

5627 Miles Ave
Oakland Ca
94618

Valeska, David

From: matt jacobs [mtjacobs58@yahoo.com]
Sent: Thursday, September 24, 2009 3:50 PM
To: Miller, Scott; Valeska, David
Subject: 6400 Shattuck ave liquor sales

As a resident who lives two blocks from the intersection of Alcatraz and Shattuck, I would like to ask that you deny Nic Nak Market & Liquors' proposal for off-sale alcohol sales at 6400 Shattuck Ave, and register my objection in the administrative record.

Thank you,

Matt Jacobs
658 65th st

Valeska, David

From: Karen [karendenyse@yahoo.com]
Sent: Thursday, September 24, 2009 3:53 PM
To: Miller, Scott; Valeska, David
Cc: Brunner, Jane
Subject: Opposition to Nic Nak (Jo Jo's) Liquor Store at 6400 Shattuck

Dear Scott and David,

Please add my email to the administrative record, regarding the request for a major conditional use permit and major variance for Jo Jo's liquor store at 6400 Shattuck.

As a property owner and resident, 1 short block south on Shattuck from the proposed Jo Jo's liquor store, I would like to express my opposition to the re-opening of a previously closed liquor location. The decision to vote for or against this variance, must be a logical, legal and policy driven one. I ask the board members put their emotions aside and vote for the decision following current Oakland policy regarding alcohol off-sale licenses within 1000 feet of another off-sale establishment.

In an owner occupied, multi-unit property, I am well aware of the gentrification issues facing the neighborhood which have been fueling this debate. With emotions aside, the facts must drive the decision to disapprove this permit.

As per Section 17.148.050, "Variances are granted only when all of the first four of the following findings can be made":

1. Unique Circumstance that is specific to the property. NO (There are no physical or topographic constraints applicable to this location)
2. Minimizes the Differences Between Properties in the Same Zoning District.
3. No Adverse Impacts to the Neighborhood. "...will not be detrimental to the public welfare or contrary adopted plans or development policy" NO (1000 feet rule for off-sale license)
4. No Special Privilege. "...inconsistent with the purposes of the zoning regulations" NO (again 1000 feet rule for off-sale license)

Sincerely

Karen Bosko
Owner of 601 63rd, 603 63rd, 6229 Shattuck and 6231 Shattuck

From: Marie [lmariew@gmail.com]
Sent: Thursday, September 24, 2009 3:54 PM
To: Valeska, David; Miller, Scott
Cc: Brunner, Jane; Barra-Gibson, Maria
Subject: Nik Nak Liquor License

David and Scott,

I am writing on behalf of the neighborhood included in the NCPC's Sector 5, which includes approximately 400 residences within 2 blocks of the Nik Nack Liquor store. As the neighborhood representative for sector 5 for the last 3 years, I am well aware of crime through speaking with many of our neighbors and being an active part of the eyes and ears policing our blocks. As I walk my dog, twice daily, through many of the neighborhoods bordering the Shattuck/Alcatraz corridors, I am keenly aware of local gentrification and crime issues which were touched upon, but not completely described during the Planning Meeting in August.

I see a lot; I hear a lot; and I do my best to represent the wishes of the neighbors and to find solutions to problems when they arise. As such, I was one of the first to mention Black ownership as a valid issue with respect to this license. Prior to speaking with my neighbors, I spoke to a few older residences because I felt it was important for me to understand the history of the neighborhood prior to forming a firm opinion.

Having approached the last planning meeting with an open mind, and still undecided, I was horrified at both the public spectacle created by Mr. Parnell's entourage AND the behavior of the Planning Commission staff. **A glimpse into this hearing was NOT REPRESENTATIVE of either the neighboring demographics nor public opinion** and I question whether the many Parnell supporters even live in the local area.

I spend a great deal of time working in my garden on Shattuck speaking with passing neighbors and watching the world go by, as well as walking my dog in a five block radius, I am well aware of the faces and many names of those living near the Shattuck corridor. Having been a very active Sector Representative and placing many phone calls and knocking on many doors, I can assure you that very few of those attending the August meeting live within a 3 block radius. I know my neighbors and those 'testifying' for Mr. Parnell were not my neighbors.

The demographics framing Nik Nack is approximately 30% Black, 45% White, 10% Asian, and 15% 'other'. The last meeting was approximately 80% Black and 20% White/Other. Looking in, from the outside, as the Planning Commissioners were, it must have looked as though the whole neighborhood supported the license, when in reality the vast majority of the neighbors do not.

This opinion/email from a Black, male, retired Marine, and a +20 year resident of the 600 block of 63rd states quite clearly states how many feel:

"ayyub nasir" <msgtnasir@yahoo.com>
Wednesday, June 24, 2009 12:57 PM

"Personally, there are entirely too many liquor stores within close proximaty of each other through out all of the communities where Blacks live especially, as well as, other ethnic minorities, and mainly the lower and/or very poor reside.

It has not proven to do any good for any community where people (as defined above) live, even though within all

of those communities are very good, law abiding, very hard working people, trying to do the best they can in raising their families, including sending their children to schools for a good education that make it possible for that next generation to climb to higher heights in learning, understanding, earnings, better living, functioning within society and other cultures, etc."

As a sector 5 representative, I believe this quote is completely representative of the local opinion, regardless of race, and should be taken into consideration above the noise and distraction created by the Parnell entourage.

I have since walked, with a neighbor, to gather ~150 signatures OPPOSING THE LICENSE on the 500 and 600 blocks of 62nd and 63rd, I unfortunately lost these signatures by dropping them at the wrong house (right number, wrong street, oops) so they are not included in the supporting documents, but as I have multiple witnesses who will attest to my knocking on every door and speaking with every resident, I feel it must be considered in the evidence of those opposing this license.

I sincerely hope the planning commission takes these comments to heart and truly reads all the letters coming in. Beyond the fact that there is no legal basis for granting the license, the Planning Commission will be opening the door to more headaches and lawsuits as this case will no doubt be cited in future variance hearings.

Marie Watts
Sector 5 Rep, NCPC

Valeska, David

From: Fayza Bundalli [fayza.b@gmail.com]
Sent: Thursday, September 24, 2009 8:37 PM
To: Valeska, David; Miller, Scott
Subject: Nic Nak Liquors

Dear Mr Valeska and Mr Miller,

I oppose the granting of a liquor licence to Nic Nak, for several reasons. First, there is a scientific link between crime and saturation of liquor stores; north berkeley is already over-saturated, in my opinion. Within a one mile radius of Nic Nac, there are already 18 other places in which to buy liquor. Secondly, liquor stores make streets less pedestrian-accessible, because of people (often men) who loiter outside of liquor stores, and being a young woman, and being aware of the crime rates in Oakland, I feel less comfortable walking by, than I would, say, a park full of families and children.

I support the zoning of more land for parks and greenspaces.

Thanks sincerely,

Fayza Bundalli.
North Oakland Resident.

Valeska, David

From: Christopher Waters [christopher@gypsyspiritmission.com]
Sent: Thursday, September 24, 2009 11:45 PM
To: Miller, Scott; Valeska, David
Subject: Nic Nak - procedural question

Scott and Dave,

Jeffrey mentioned to me tonight that he had spoken to Dave, and that a large number of letters of opposition have been pouring in to your email in boxes. I am glad to hear that the issue has captured the attention of our neighbors this time around, now that they know how the Nic Nak supporters "played" the Planning Commission at the first hearing.

Jeffrey also said that you mentioned that the volume of the letters of opposition may cause you to decide to simply place these in the Planning Dept. offices for the Commissioners to review at their convenience, rather than attaching them as an official part of their packets. I am disturbed and disappointed by how willing you seem to be to sacrifice fair public process -- why, I still don't understand. Please correct me if my understanding is wrong -- isn't it legally REQUIRED that you attach, as part of the actual meeting packets, all comments by citizens who request them to be added to the public record? You specifically told us that such comments provided before 4pm on September 29 would be included, and we made that clear to our neighbors. Why would you withdraw that promise (and, presumably, that legal obligation) now? Especially as this thing seems to be edging ever closer towards litigation from opponents of the approval of the variance for alcohol sales. If the Commission does not change its vote, opponents will be outraged if the 25 conditions for approval (as well as the additional condition requiring the variance to be applicable only so long as Nic Nak remains in the Pannell family) are partially removed or compromised.

And even before arriving at the point of litigation -- I recall being present at Council for a few notable instances where Council has angrily returned a contentious issue to the Planning Commission demanding that they "do their jobs," and I can virtually guarantee this will be another such instance, should the Commissioners continue to find in favor of the liquor sales use.

Please do let me know if our efforts are somehow inconsistent with proper protocol for inclusion in official meeting packets. Should these letters be going directly to the Planning Commissioners, rather than staff? Or is there some other procedure we should be following? I know from a great deal of unfortunate experience that it is difficult enough to get our Planning Commissioners and City Council members to read their meeting packets, let alone go out of their way to find and review supplemental correspondence that is left on a desk in an office somewhere for them to find. Just as with the sheer numbers of people Nic Nak brought to the last hearing, we want the Commissioners to take in the sheer quantity of letters generated by those in opposition. The most appropriate method of achieving that is through their packets. The Planning Commission made it very clear that it is quantity, not quality, of testimony that sways their thinking.

Thank you,

Christopher Waters

Valeska, David

From: Elic Suazo [elicsuazo@earthlink.net]
Sent: Friday, September 25, 2009 12:26 AM
To: Valeska, David; Miller, Scott
Subject: For Administrative Record on Nik Nak Liquors

For Administrative Record on Nik Nak Liquors

As a resident of South Berkeley I am alarmed and disturbed to learn of proceedings that are likely to grant a license for the sale of alcoholic beverages to Nik Nak Liquors at the corner of Shattuck and Alcatraz Ave.

Our neighborhood is one already overcrowded with liquor vending establishments, nearly all of which are responsible for heightened levels of public nuisance (drug dealing, trash, public urination, drunken loitering, etc) A daytime walk through North Oakland and South Berkeley along Shattuck, MLK and Sacramento corridors should give even the most unfamiliar visitor a quick sense of their impact.

Just what possibly could be going on in the minds of Oakland's Planning Commission and Council-members to weigh and consider licensing of yet another liquor establishment?

The neighborhood in which Nik Nak Liquors exists is one still lingering with the memory of a liquor store on Shattuck deemed a nuisance several years back by the City of Berkeley. The success of its closure was due entirely to the tireless effort of residents united together to put an end to rampant drug dealing and prostitution at the once notorious site. This latest development is a clear affront to Berkeley and Oakland residents who seek to establish healthy and vibrant neighborhoods.

Please oppose granting of a license to Nik Nak Liquors.

Sincerely,
E.C. Suazo
Berkeley, CA 94703

From: Christopher Waters [christopher@gypsypspiritmission.com]
Sent: Friday, September 25, 2009 7:57 AM
To: Miller, Scott
Subject: Re: Nic Nak - procedural question

Okay, thank you.

Sent from my Verizon Wireless BlackBerry

From: "Miller, Scott"
Date: Fri, 25 Sep 2009 07:30:59 -0700
To: <christopher@gypsypspiritmission.com>
Subject: Re: Nic Nak - procedural question

Christopher, all of the comments coming in by the end of the day next Wednesday will be attached to the Commission report --- I am sorry that Dave led you to believe that may not happen. I think we have received more than 100 emails so far. Let me know if you have other questions. Thanks

Scott

----- Original Message -----

From: Christopher Waters <christopher@gypsypspiritmission.com>
To: Miller, Scott; Valeska, David
Sent: Thu Sep 24 23:44:35 2009
Subject: Nic Nak - procedural question

Scott and Dave,

Jeffrey mentioned to me tonight that he had spoken to Dave, and that a large number of letters of opposition have been pouring in to your email in boxes. I am glad to hear that the issue has captured the attention of our neighbors this time around, now that they know how the Nic Nak supporters "played" the Planning Commission at the first hearing.

Jeffrey also said that you mentioned that the volume of the letters of opposition may cause you to decide to simply place these in the Planning Dept. offices for the Commissioners to review at their convenience, rather than attaching them as an official part of their packets. I am disturbed and disappointed by how willing you seem to be to sacrifice fair public process -- why, I still don't understand. Please correct me if my understanding is wrong -- isn't it legally REQUIRED that you attach, as part of the actual meeting packets, all comments by citizens who request them to be added to the public record? You specifically told us that such comments provided before 4pm on September 29 would be included, and we made that clear to our neighbors. Why would you withdraw that promise (and, presumably, that legal obligation) now? Especially as this thing seems to be edging ever closer towards litigation from opponents of the approval of the variance for alcohol sales. If the Commission does not change its vote, opponents will be outraged if the 25 conditions for approval (as well as the additional condition requiring the variance to be applicable only so long as Nic Nak

10/1/2009

remains in the Pannell family) are partially removed or compromised. And even before arriving at the point of litigation -- I recall being present at Council for a few notable instances where Council has angrily returned a contentious issue to the Planning Commission demanding that they "do their jobs," and I can virtually guarantee this will be another such instance, should the Commissioners continue to find in favor of the liquor sales use.

Please do let me know if our efforts are somehow inconsistent with proper protocol for inclusion in official meeting packets. Should these letters be going directly to the Planning Commissioners, rather than staff? Or is there some other procedure we should be following? I know from a great deal of unfortunate experience that it is difficult enough to get our Planning Commissioners and City Council members to read their meeting packets, let alone go out of their way to find and review supplemental correspondence that is left on a desk in an office somewhere for them to find. Just as with the sheer numbers of people Nic Nak brought to the last hearing, we want the Commissioners to take in the sheer quantity of letters generated by those in opposition. The most appropriate method of achieving that is through their packets. The Planning Commission made it very clear that it is quantity, not quality, of testimony that sways their thinking.

Thank you,

Christopher Waters

Valeska, David

From: Jeffrey G. Jensen [jeffreygjensen@yahoo.com]
Sent: Friday, September 25, 2009 8:25 AM
To: Cohen, Walter; Miller, Scott; Valeska, David; michaelcolbruno@clearchannel.com
Cc: Russo, John; Don Link; Christopher Waters; Wald, Zachary; Jeffrey Jensen
Subject: October 7, 2009 Planning Commission Meeting; CVM09-111; Proposed Approval of Conditions and Findings for Nic Nak Liquors; 6400 Shattuck Avenue

Mssrs. Colbruno, Cohen, Miller and Valeska:

As the Chair of the East Lorin Neighborhood Association in North Oakland, I wish to bring to your attention our significant concerns regarding the public comment for the above noted project. In discussing the project with Mr. Valeska on 09/24/09, I understand that Mr. Miller and Mr. Valeska have received a large number of emails and letters from members of the public who are strongly opposed to the issuance of a Major Variance to Mr. Pannell to allow him to re-open his Nic Nak liquor store and restore his lapsed Deemed Approved Status as a legal nonconforming use.

Mr. Valeska indicated that should more emails and letters arrive it is likely that the Planning Department would bundle these emails and letters of opposition and inform the Planning Commission that they are available for review at the Planning Department, rather than providing them as part of the Commissioner's mailing packet.

Including these emails and letters of opposition in the Commissioner's mailing packet allows Commissioners to review the packet at their discretion. Asking the Planning Commissioners to come into the Planning Offices to review the emails and letters, where there is no guarantee that they will actually do so due to the inconvenience, may effectively negate the power of the comments and adversely influence the opportunities of the public, who have acted in good faith to send in their comments well before the Planning Department's mailing deadline. This is contrary to the public interest in allowing robust and thorough comments to be considered by decision makers on highly controversial projects, particularly those that may be heading towards litigation, and it provides an undue and unwarranted advantage to the applicant.

At the last hearing on August 5, 2009, we were concerned about the apparent and obvious concessions that the Planning Commission afforded not only Mr. Pannell, but his supporters as well, to plead his case. The public comment period was structured by Vice Chair Huntsman such that those in opposition to the application, who were ceded time by others in opposition, were requested to speak first. Those who supported Mr. Pannell's application were bunched at the end of the comment period. This effectively negated the public input of those opposing the project by making it appear to the Planning Commissioners that there was an overwhelmingly large number of supporters (mind you, the vast majority of those supporting Mr. Pannell do not actually live in North Oakland). Moreover, the Chair failed to ensure that Mr. Pannell and his supporters addressed the specific legal questions at hand--does the project meet the requirements of a Major Conditional Use Variance and a Major Variance--and allowed them to speak *ad nauseum* about Mr. Pannell's life history, racism, and gentrification. This effectively negated the ability of others to speak at greater lengths on the issues that were actually relevant to the legal question at hand. Furthermore, the Vice Chair allowed numerous supporters of Mr. Pannell to speak well beyond the time allotment per speaker and allowed them to wrap up their comments with long-winded closings. These concessions were not afforded to those opposing the application.

9/28/2009

It became abundantly clear during and after the hearing that the Planning Commission was not swayed by the quality of the comments, but by the quantity of comments. Those of use who opposed the application specifically and intentionally limited the number of speakers from the neighborhood so as not to repeat the same messages over and over again about denying the project, but to provide the Planning Commission with comments that focused on the legal and policy questions (not Mr. Pannell's life story) at hand. In fact, the Vice Chair requested that speakers not repeat the same comments. Yet, Mr. Pannell and his supporters continuously repeated the same comments over and over again and were allowed that luxury by the Vice Chair himself.

Now that those in opposition are sending in written comments prior to the mailing time, and those comments appear to be voluminous to the point where Planning Staff is expressing concerns about their ability to reproduce the documents, post them on the server and generally make them available to the Planning Commission, there is this suggestion that the comments will not be sent to the Planning Commission directly. It is also being suggested that this approach has been taken on other projects. We don't have to tell the City that just because this approach has been taken on other projects that it is necessarily legally sustainable nor in the public interest.

Democracy at times can be challenging, difficult and costly in terms of making public comments known and available to decision makers. However, we cannot imagine why the Planning Staff is precluded from collating all of the comments (for and against) for this neighborhood issue, reproducing them, binding them and mailing them to the Commissioners as part of the mailing packet to ensure that the Commissioners have an efficient and convenient method to review and evaluate the full breadth of public comments on this highly controversial project, particularly since they are contemplating approving findings that have no basis in planning theory, no legal underpinnings from published court cases, and no prior precedent in the City of Oakland.

Collating and mailing large amounts of public comments to decision makers is done all the time in all parts of the San Francisco Bay Area and the country by local, state and federal public agencies. We do not believe that staff convenience and the cost of reproduction are a legitimate basis for potentially undermining and negating public comments. We not believe that it is in the City's interest to create procedural issues for the courts. The substantive issues of "historical relevance" are problematic enough.

We are requesting an immediate indication from the City on how the written public comments on this project will be handled. If the comments are to be copied and retained in the Planning Commission Offices for Commissioner's review, we are requesting the City provide the written policy approved by the CEDA Director or City Administrator, or specific guidance or regulation from the Planning Commission or City Council that governs this specific process and identifies the specific thresholds and circumstances under which this process is triggered--i.e. how many letters/emails or how many pages of information. If there is no established written policy or guidance, we request the City acknowledge the lack of a policy. We also request the City identify the specific constraints that preclude it from sending the comments directly to the Commissioners.

Clearly, we are not interested in making this process any more difficult for the City Staff. Our goal is simply to ensure that decision makers have a full and complete understanding of all public comments and that those for and against this project are afforded an equal opportunity to present their reasoned case. Preferential treatment should not be afforded to the applicant or any member of the public.

Jeffrey G. Jensen
Chair, East Lorin Neighborhood Association

Valeska, David

From: Jeffrey G. Jensen [jeffreygjensen@yahoo.com]
Sent: Friday, September 25, 2009 10:18 AM
To: Cohen, Walter; Valeska, David; michaelcolbruno@clearchannel.com; Miller, Scott
Cc: Russo, John; Don Link; Christopher Waters; Wald, Zachary
Subject: RE: October 7, 2009 Planning Commission Meeting; CVM09-111; Proposed Approval of Conditions and Findings for Nic Nak Liquors; 6400 Shattuck Avenue

Thank you Mr. Miller.

We appreciate that consideration and information.

Nevertheless, I would still like my comments below to be part of the administrative record. As expressed below, there are some significant concerns regarding perceived irregularities and unfairness in how the last public hearing was managed by the Vice Chair of the Planning Commission. We are aware that previously, the City Attorney John Russo has brought these types of procedural issues to the attention of the Planning Commission and specific recommendations for preventing perceptions of procedural bias in the public comment process. We hope the next public hearing will be better managed to give both those for and against this liquor store an equal, fair and unbiased opportunity to present reasoned arguments that are relevant to the legal and policy questions at hand.

Thank you.

Jeffrey G. Jensen
 Chair, East Lorin Neighborhood Association

--- On Fri, 9/25/09, Miller, Scott <SMiller@oaklandnet.com> wrote:

From: Miller, Scott <SMiller@oaklandnet.com>
 Subject: RE: October 7, 2009 Planning Commission Meeting; CVM09-111; Proposed Approval of Conditions and Findings for Nic Nak Liquors; 6400 Shattuck Avenue
 To: "Jeffrey G. Jensen" <jeffreygjensen@yahoo.com>, "Cohen, Walter" <WCohen@oaklandnet.com>, "Valeska, David" <DValeska@oaklandnet.com>, michaelcolbruno@clearchannel.com
 Cc: "Russo, John" <JRusso@oaklandcityattorney.org>, "Don Link" <don-link@comcast.net>, "Christopher Waters" <christopher@gypsyspiritmission.com>, "Wald, Zachary" <ZWald@oaklandnet.com>
 Date: Friday, September 25, 2009, 9:09 AM

Jeffrey, et al: All comments received by 4:00 p.m. on Wednesday, Sept. 29th will be included in the attachment of correspondence with the Planning Commission report. Any comments received after that time will be provided to the Commissioners at the meeting on October 7th.

Scott

Valeska, David

From: mike pitler [mike@mp-architecture.com]
Sent: Friday, September 25, 2009 8:50 AM
To: Miller, Scott; Valeska, David
Subject: nik nak liquors in north oakland

mr. miller

I would like to express my opposition to the granting of a liquor liscense for nik nak liquors. I strongly join the sentiment expressed my many of my neighbors including christopher waters. I live one block away. please note that this opposition is on behalf of myself and my wife, rachel pomerantz.

thanks

mike pitler | architect

mike pitler architecture
586 66th street, oakland, ca 94609
phone: 510.368.1499
www.mp-architecture.com

9/28/2009

Valeska, David

From: Elizabeth Gessel [elizabethgessel@earthlink.net]
Sent: Friday, September 25, 2009 11:54 AM
To: Miller, Scott; Valeska, David
Subject: opposition to liquor sales at Nik Nak liquor

September 25, 2009

Scott Miller, Zoning Manager, City of Oakland SMiller@oaklandnet.com

David Valeska, Planner II, City of Oakland dvalueska@oaklandnet.com

Dear Mr. Miller and Mr. Valeska,

I am writing to request that you do not allow liquor sales to resume at Nik Nak Liquors on the corner of Alcatraz and Shattuck Ave. I am a homeowner and live less than a block from the site at 739 Alcatraz Ave. The T&K Liquor across the street provides all the alcohol sales needed in this neighborhood. I would like for my opposition to the resumption of liquor sales at Nik Nak to be placed in the administrative record and included in the Planning Commission hearing on October 7.

Sincerely,

Elizabeth Gessel
739 Alcatraz Ave
Oakland, CA 94609
elizabethgessel@earthlink.net
510-658-8161, 510-301-4565

Valeska, David

From: Miller, Scott
Sent: Friday, September 25, 2009 2:08 PM
To: Valeska, David
Subject: FW: liquor

From: jenny overman [mailto:lostinthedance@yahoo.com]
Sent: Friday, September 25, 2009 1:27 PM
To: Miller, Scott
Subject: liquor

please deny the proposed liquor sales at the nic nak on alcatraz and shattuck.

www.jennyoverman.com
www.myspace/jennyoverman.com

Valeska, David

From: Sher King [shersking@yahoo.com]
Sent: Friday, September 25, 2009 1:46 PM
To: Miller, Scott; Valeska, David
Cc: king@getpastimpasse.com
Subject: Nik Nak now Jo Jo Historical Relevance?

Hello Scott & David et al:

After attending only a portion of the last Commission meeting I am still baffled by the reason stated for the exemption, as opposed to the specific land use laws intended for the variance application? There is no precedent and no prescription or basis for such a judgment and contradicts the researched staff recommendation. I am not sure if council believes an entire store bullet proofed for liquor and sundry sale is preferred upgrade from a vacant building?

Come on Oakland -we can rise above and show people we know how to read and follow the law. Many people are counting on you and many more are watching your actions. Let's make them all proud.

Best,

Sher King
Mediator & Still Resident

9/28/2009

Valeska, David

From: actmba@aol.com
Sent: Tuesday, September 29, 2009 4:55 AM
To: Miller, Scott; Valeska, David
Subject: 6400 Shattuck Variance

From:

Forest Thomas
653 65th Street
Oakland, CA 94609
e-mail actmba@aol.com

September 29, 2009

To:

Via e-mail

Scott Miller, Zoning Manager, City of Oakland SMiller@oaklandnet.com
David Valeska, Planner II, City of Oakland dvalueska@oaklandnet.com

RE: Liquor Sales at 6400 Shattuck

Dear Sirs:

As a home owner and resident of North Oakland, I am very much opposed to the opening of any off use alcohol sales establishment that does not conforming to existing zoning regulations, including 6400 Shattuck. This location is within 1000 feet of my residence and was closed for business by the current owner more than five years ago. At that point any historical associations, including neighborhood, social and leadership activities were severed. There is nothing to indicate that the neighborhood has suffered in any way from this closure.

It is my sincere hope that the planning commission will deny the requested major variance and not allow 6400 Shattuck to operate as an off use alcohol sales establishment.

I would like this letter to become part of the administrative record.

Regards,

Forest Thomas

9/29/2009

Valeska, David

From: Anat Shenker [anatshenker@gmail.com]
Sent: Tuesday, September 29, 2009 8:26 AM
To: Valeska, David; Miller, Scott
Subject: Nic Nak Liquors Permit

Dear Mr. Miller and Mr. Valeska,

As a resident of the North Oakland neighborhood and the mother of a toddler, I ask that you please NOT grant Nic Nak the right to sell alcohol on Shattuck and Alcatraz. There is, as I'm sure you know, a liquor store across the street as well as nearby on Telegraph Avenue.

This is more than enough access to liquor for this residential neighborhood. I live close enough to Dorsey's Locker and the liquor store on 55th (the name escapes me) to know what ready access to alcohol does to a neighborhood. Already we must contend with drunken brawls, late night joy rides at all speeds, screaming, littered bottles and the like. I don't think we need any more of this.

The fact that Nic Nak is acting so forcefully against the standard provisions for a liquor store (lowering the fence, beautifying, not selling 1 oz. containers or single bottles, etc.) is proof positive they aren't a community-oriented business. These provisions are standard in Oakland, I see absolutely no reason why every merchant shouldn't have to comply.

In closing, I hope you've had the chance to come visit this location and the neighborhood around it. I think you'll see, the last thing this area needs is more alcohol.

Yours,
Anat Shenker
608 58th St
Oakland 94609

Valeska, David

From: Christopher Vernon [vernfami@pacbell.net]
Sent: Tuesday, September 29, 2009 8:28 AM
To: Miller, Scott; Valeska, David
Subject: Nik-Nak Liquor Store

I strongly oppose the granting of a liquor license to Nik-Nak Market, located at the corner of Alcatraz and Shattuck Avenues in North Oakland. I have lived in North Oakland for the past 18 years and have hated the fact that there are so many corner liquor stores in our area. Given that Nik-Nak let its license lapse, there is no excuse for them to be granted a new license. This is something that the whole community can do without - another place to buy alcohol.

Thank you,

Chris Vernon
682 Aileen Street
Oakland, CA 94609

Valeska, David

From: Miller, Scott
Sent: Tuesday, September 29, 2009 11:50 AM
To: Valeska, David
Subject: FW: Nik Nak

-----Original Message-----

From: Chris Collins [mailto:chris_collins@linuxmail.org]
Sent: Tuesday, September 29, 2009 11:19 AM
To: Miller, Scott
Subject: Nik Nak

Hello,

I've lived at Prince and Harper for several years. I can purchase single size servings of alcohol in three different "Corners" within a five minute walk from my house right now.

A variance to this property is inappropriate. This neighborhood must not be subjected to an additional "corner" for liquor.

Please, please, do not facilitate another corner liquor store in my neighborhood.

--Chris Collins

p.s. I could have easily substituted cigarettes/cigars for liquor in my statement. Please!

An Excellent Credit Score is 750
See Yours in Just 2 Easy Steps!

Valeska, David

From: Miller, Scott
Sent: Tuesday, September 29, 2009 11:50 AM
To: Valeska, David
Subject: FW: Nik Nak Liquors

From: paul kagiwada [mailto:paulgkag@yahoo.com]
Sent: Tuesday, September 29, 2009 11:46 AM
To: Miller, Scott
Subject: Nik Nak Liquors

Dear Mr. Miller,

I am writing to register my opposition to the resumption of the many-years-lapsed off-sale alcohol sales use at the Nic Nak Market & Liquors at 6400 Shattuck (corner of Alcatraz).

I live a few houses down from the Nik Nak on Alcatraz Ave. and feel that there is no need for another establishment that sells liquor in our neighborhood. For as long as I've owned my home (over 7 years), the Nic Nak has not been open for business.

The T&K Market, across the street from the Nic Nak, sells alcohol. The owner of the T&K seems responsible and doesn't allow disorderly conduct or loitering around his market. Even with this attitude, we have a great deal of littering, drug dealing, and disorderly conduct on our block. I believe that if the Nic Nak began selling alcohol, these quality of life crimes would increase. Also, because the Nic Nak has a parking lot, I believe that loitering on the premises would be a major issue.

I have two young sons. I allow them to walk our dog or ride their bikes around the block by themselves right now, but if crime gets any worse, I certainly would not. I would also give serious consideration to moving to a different neighborhood, perhaps even a different city.

Please place my comments in the administrative record.

Sincerely,
Paul Kagiwada
739 Alcatraz Ave.
Oakland, CA 94609

9/29/2009

Valeska, David

From: Carrie Moulton [carriemoulton@yahoo.com]
Sent: Tuesday, September 29, 2009 12:39 PM
To: Miller, Scott
Cc: Valeska, David
Subject: No Nik Nak Liquor Variance

Dear Gentlemen:

I write this to request that the variance for Nick Nak Liquor on Shattuck and Alcatraz NOT be granted. North Oakland is on its way up; let's keep it that way. There are plenty of liquor outlets throughout the neighborhood.

Thank you for your consideration.

Very truly yours
Carrie Moulton
677 57th Street

9/29/2009

Valeska, David

From: Michael Littleton [michaellittleton37@hotmail.com]
Sent: Tuesday, September 29, 2009 1:13 PM
To: Miller, Scott; Valeska, David; Brunner, Jane
Subject: Oppose the granting of a liquor license to Nic Nak Market, Alcatraz and Shattuck

Dear Mr Miller and Mr Valeska

I wholeheartedly support the comments of Ms Ancar below. It seems really odd to me that the city would be supporting another liquor store in this area.

My wife and I have lived in North Oakland for 19 years. Our daughter attends Oakland Tech. I have seen a significant of improvement over the years, none of which however was due to the opening of more liquor stores in the area.

Best regards

Michael Littleton
 643 57 St
 Oakland, CA 94609

Messrs. Miller & Valeska,

I strongly oppose the pending application for a Major Conditional Use Permit and Major Variance for liquor sales at the Nic Nak store in North Oakland. I request that the Planning Commission, tasked with ensuring that land and real estate is used for the best interests of the surrounding community (including preventing the over-saturation of liquor stores), do the same.

Having lived in North Oakland for more than 10 years, I understand that the owner's liquor license was revoked some time ago and I have seen that the store itself has been out of business for over 5 years. From both press coverage and neighbors who have attended commission meetings, I also understand that these facts in and of themselves should prohibit the owner from regaining a liquor license.

More importantly, I do not believe a Variance or Conditional Use Permit is in the best interest of our neighborhood. North Oakland is littered with a large

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number of "convenience" stores, whose mainstay is liquor sales. Most of these liquor establishments contribute significantly to crime, blight, graffiti, and litter.

Within a 2 block radius of my home, there are no fewer than five establishments licensed to sell alcohol. On my drive north to Berkeley, I pass at least three additional liquor establishments - one directly across the street from Nic Nak. I have picked up liquor bottles and cans, wrappers and other trash dropped by those frequent these stores. Two (perhaps three, I've lost count now) people have been killed (and an officer shot) on the property of a single liquor store in North Oakland. It goes without saying that this neighborhood needs fewer - not more - liquor stores. In fact, the City Council has proclaimed that the City's policy is to restrict severely the number of liquor stores where so many already exist.

North Oakland is a residential area. There are hundreds of families with children and senior citizens living here. Neighbors worked to revitalize Bushrod park, to create and open the Dover Street park, and to push out drug dealers who come through the area - often visiting these alcohol outlets due to their convenient locations and easy access to cheap liquors.

Yet another liquor store would serve no positive purpose in this neighborhood. Instead, another such store would have a significant and adverse impact on residents who have worked hard to make this area more livable for its seniors and families.

The lack of a liquor license would cause no specific hardship to the owner. The store has been closed for all sales for years now. Sitting on a corner lot at a major intersection with off-street parking, the store is perfectly situated to succeed in sales of any number of items/products other than alcohol.

In the last several years, at least two coffee shops have opened along Shattuck Avenue in North Oakland quite near to Nic Nak. A book publisher recently took over a run-down building and opened a bookstore.

Another couple opened a small restaurant. The neighborhood welcomed these businesses, as they offer services that were not previously available in the area. These businesses have brought value to the area. A new liquor store would threaten to off-set the neighborhood's gains by bringing more blight, litter and crime.

Please ensure that my opposition and comments are entered into the administrative record.

Katina Ancar
55th/Dover

--- On **Tue, 9/29/09, Christopher Vernon**
<vernfami@pacbell.net> wrote:

From: Christopher Vernon
<vernfami@pacbell.net>
Subject: [NorthOaklandVotersAlliance]
Oppose the granting of a liquor license to Nic
Nak Market, Alcatraz and Shattuck
To: northoaklandvotersalliance@yahoo.com
Date: Tuesday, September 29, 2009, 8:32
AM

We don't need anymore liquor
stores in North Oakland!

e-mails should be sent to:
smiller@oaklandnet.com and
dvaeska@oaklandnet.com (Scott Miller is
the Zoning Manager of the Planning Dept.
and David Valeska is the case manager of
the Nic Nak application) .

This is a **request** to those who are
concerned that the Planning
Commission may grant the Nic
Nak (NE corner of Alcatraz and
Shattuck) a Major Variance to sell
liquor after the store lost its use

permit for that activity due to being closed for more than 90 days.

In August, the Commission heard the owners and citizens opposed and asked that staff return in Sept. with findings to grant the Variance, even though the original findings argued against the Variance as being out of compliance with Oakland law and planning rules..

New findings released before the Sept. 16 meeting when the issue was scheduled, reversed course and argued weakly and strangely that the Variance was legal and desirable: 1) because of the "distinctive historical association" this store had with the neighborhood over several decades, and 2) because hard liquor could not be purchased "within convenient walking distance."

Both contentions are wrong: 1) because any grandfathered- in legal, non-conforming alcohol outlet has a long historical relationship with the neighborhood because, by definition, they date back to the 1970s when the legislation regulating alcohol outlets originated, and 2) because two more full-service liquor stores are within 4 blocks of the Nic Nak (Alcatel, 2 blocks away, White Horse 4 blocks away).

The new findings are a stretch at best. The best thing about the report for Sept. 16 was that it included conditions involving

restricted hours of operation, prohibition of the tiny 1 oz. Airline "Flight" containers, removal of the billboard, lowering of the iron fence, flowers at the corner, etc..

Apparently, the owners of the Nic Nak did not like these conditions, because they asked for a postponement of the hearing and have been getting legal advice, apparently to push back against the imposition of conditions. The Sept. 16 meeting was to ratify the granting of the Variance to sell liquor and could have been a done-deal. The Nic Nak owners postponed it, apparently because they *did not want the variance with conditions attached*, something that the owner made crystal clear at the Aug. 5 Commission hearing. The conditions included in the Sept. 16 findings were either standard for any new alcohol outlet receiving a Use Permit in Oakland today, or something that the owners offered, such as the removal of the billboard on the property.

The position of those on the front lines of dealing with the Nic Nak issue from the community side is: 1) we oppose alcohol sales at that location because it is within 1000 ft. of another alcohol outlet (the TK Market across the street), which is Oakland law, and 2) if a Variance is granted to allow alcohol sales, it must have a full list of conditions requiring those sales to be community friendly (no "flights", no individual containers of beer or malt liquor, etc.) and one other that restricts the Variance to current owner operation of the Nic

Nak--a sale to someone else would require a new application for a Variance to sell alcohol, and the public input process would start anew. No one in the community wants a grand-fathered, eternal alcohol use granted for the property at 6400 Alcatraz.

We request that you send an e-mail to the Planning Commission:
1) opposing alcohol sales at 6400 Shattuck Ave. and 2) insisting that if alcohol sales are allowed, that they include conditions that will require that anyone operating that retail outlet meet the most stringent community-friendly conditions as part of that Use Permit, many included in the Sept. 17 meeting findings (CMV09-111).

Selling alcohol in Oakland is not a right, but a closely-regulated privilege overseen by the city and the state Alcoholic Beverage Control.

Please be sure to state your address so that the Planning Commission can see that you are in the vicinity and not someone living in Castro Valley or Sacramento.

Thanks for the help. Your e-mail does not need to be long or detailed.

Don

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Valeska, David

From: michellegray42@comcast.net
Sent: Tuesday, September 29, 2009 1:58 PM
To: Miller, Scott; Valeska, David
Subject: Nik Nak request for variance

Unlike many of those who appeared before the Planning Commission in favor of Nik Nak's application, I actually live in the neighborhood which will be afflicted by the addition of yet another liquor store. I strongly oppose granting Nik Nak a major variance to sell liquor.

I contest the assertion that hard liquor is not conveniently available in the neighborhood. I can **walk** from Nik Nak to Alcatel liquors (at Alcatraz and Telegraph Aves) in five minutes, and from Nik Nak to White Horse liquors (63rd and Telegraph) in 10 minutes.

I contest any assertion that Nik Nak is a historical part of the neighborhood. It has been nothing but a non-operational eyesore and RV parking lot for the last 5 years.

I urge you to reject the variance. Granting it would violate the letter and spirit of city ordinances aimed at reducing the blight associated with the multiplication of liquor stores in neighborhoods.

If you insist on granting the major variance, I urge you to include effective conditions, including:

- No sales of individual servings of **any** alcoholic beverage

- Removal of the billboard and RV

- Removal of the enormous security fence and bullet-proof glass between customers and merchandise. If the neighborhood's safety will truly not be affected by the addition of yet another liquor store, these extreme security measures should not be necessary. Their installation and maintenance is a clear admission that such a facility is a magnet for crime.

The variance should not be transferrable. I understand Mr. Pannell has already tried to sell the license at least twice. If he no longer owns the business, his argument that it should be approved because he has been a historic part of the neighborhood no longer applies.

Michelle Gray
North Street
Oakland

Valeska, David

From: Margaret Crayton [margaretrc@earthlink.net]
Sent: Tuesday, September 29, 2009 4:20 PM
To: Miller, Scott; Valeska, David
Subject: Nic Nak Liquors

Dear S. Miller and D. Valeska,

I am a 24-year resident of North Oakland and live near the Nic Nak Market. I oppose alcohol sales at 6400 Shattuck Ave. There are already enough bars and liquor stores in the immediate area. Liquor stores and bars attract loitering, public drunkenness and other criminal activity.

If alcohol sales are allowed, they must include conditions that will require that anyone operating that retail outlet meet the most stringent community-friendly conditions as part of that Use Permit, many included in the Sept. 17 meeting findings (CMV09-111).

Selling alcohol in Oakland is not a right, but a closely-regulated privilege overseen by the city and the state Alcoholic Beverage Control.

Thank you for your attention to this matter.

Sincerely yours,

Margaret Crayton
659 58th Street
Oakland, CA 94609

Valeska, David

From: Pam Oettel [pamoettel@comcast.net]
Sent: Tuesday, September 29, 2009 5:46 PM
To: Valeska, David; Miller, Scott
Subject: Nik Nak

Dear David and Scott,

I live at 529 North Street in Oakland, only a few blocks away from the Nik Nak Location. I have been a resident of this neighborhood since 1996, that's 13 years.

It is my understanding that findings released before the September 16, 2009 meeting proposed that the Variance is legal and desirable because of the distinctive historical association with the neighborhood. Yet another liquor store and the service it provides is most certainly not "distinctive" in a way that is better for the neighborhood businesses and residents. Further, the building itself does not offer much in terms of Historical or Architectural Merit.

In addition, the findings also claim that a Variance is desirable because hard liquor could not be purchased "within convenient walking distance." I feel that this is a blatant misrepresentation of the facts.

I am strongly opposed to the Nik Nak proposal to allow alcohol sales at 6400 Shattuck Ave. We already live in a community that has several liquor stores within just a few minutes walking distance.

I insist that if alcohol sales are allowed, that they include conditions that will require that anyone operating that retail outlet meet the most stringent community-friendly conditions as part of that Use Permit, many included in the Sept. 17 meeting findings (CMV09-111).

Thank you in advance for your consideration.



Pamela Oettel



Cell 510-703-8636
pamoettel@comcast.net
www.MyAgentIsPam.com

Keller Williams Realty
900 Colusa St #206
Berkeley, CA 94707

Hablo espanol
Office: 510-528-4500
Fax 510-528-4501
Lic No. 01761212

Valeska, David

From: Jondabomb [jondabomb@gmail.com]
Sent: Tuesday, September 29, 2009 6:22 PM
To: Miller, Scott; Valeska, David
Subject: Opposed to Nik Nak getting any variance

I oppose alcohol sales at 6400 Shattuck Ave. but if you do allow alcohol sales that you include conditions that will require that anyone operating that retail outlet meet the most stringent community-friendly conditions as part of that Use Permit, many included in the Sept. 17 meeting findings (CMV09-111).

How many liquor stores do we need in our area?

Thank you

Jonathan Wishnev
560 58th st
Oakland 94609

--
Jonathan

9/30/2009

Valeska, David

From: Miller, Scott
Sent: Wednesday, September 30, 2009 8:33 AM
To: Valeska, David
Subject: FW: alcohol permits

-----Original Message-----

From: Ruth Hurvitz [mailto:itzruth@mac.com]
Sent: Tuesday, September 29, 2009 6:41 PM
To: Miller, Scott
Subject: alcohol permits

I am writing to add my opinion to those who are against any variancd to allow alcohol to be sold at 6400 Shattuck Avenue. It adds to the already overwhelming alcohol culture in our community. There are more than enough stores which sell alcohol.

thank you.

My phone if you wish to call me is 510-520-9786. I live at 625 57th street.

Valeska, David

From: Ruth Hurvitz [fizruth@mac.com]
Sent: Tuesday, September 29, 2009 6:45 PM
To: Valeska, David
Subject: alcohol sales at 6400 Shattuck

I have lived in this neighborhood for almost 30 years. I am writing to protest any permit to allow alcohol sales at 6400 Shattuck. We already have more than enough access to alcohol products and another store selling it in this area adds to the atmosphere of alcoholic culture. I do not think even conditional permits should be permitted. Selling alcohol is not a right - it is a privilege.

I live at 625 57th street, telephone 510-520-9786. Ruth Hurvitz

Thank you for consideration of this message.

Valeska, David

From: Corey McCannon [coreydeanmc@yahoo.com]
Sent: Tuesday, September 29, 2009 7:14 PM
To: Miller, Scott; Valeska, David
Cc: John Faust
Subject: Nic Nak Liquor Store

Hello Mr. Miller,

My partner and I are residents at 721 65th Street in North Oakland and would like to express our opposition to granting a conditional use permit for yet another liquor store in North Oakland (Nik Nak/Jo Jo's Convenient Market). We moved into the neighborhood about a year and a half ago, and like many nearby residents have found small empty liquor bottles in our yard. I am very sympathetic to small business owners and would love to see Mr. Pannell and his family operate a thriving business at that location. However, I believe that the city's restrictions on placing businesses that sell alcohol near each other represents a sound policy. My concern is that for the foreseeable future, the corner of Alcatraz and Shattuck will, be remain stuck with two store that sell alcohol across the street from each other. Each decision that the Commission considers that allows us to move away from this trend is critical.

Also, we were hoping our neighborhood would develop into a more pedestrian friendly area over time and Nic Nak doesn't have a store environment that helps facilitate that trend. Please consider myself and my partner John Faust against the idea of another liquor store.

Thank you,
Corey McCannon and John Faust

9/30/2009

Valeska, David

From: Miller, Scott
Sent: Wednesday, September 30, 2009 8:34 AM
To: Valeska, David
Subject: FW: Nik Nak liquors

From: Faith Elizabeth Fuller [mailto:faithfuller@sbcglobal.net]
Sent: Tuesday, September 29, 2009 8:01 PM
To: Miller, Scott
Subject: Nik Nak liquors

I would like to oppose the Nik Nak liquor permit on Shattuck and Alcatraz, because I do not want another liquor store in our neighborhood. Thank you,

Faith Elizabeth Fuller
593 62nd Street, Oakland CA 94609
510.684.4558 mobile
510.686.8800 fax

9/30/2009

Valeska, David

From: Eric DeFriez [iceman@gmail.com]
Sent: Tuesday, September 29, 2009 8:24 PM
To: Miller, Scott; Valeska, David
Subject: Nik Nak Concerns

Hello-

I am a resident in the neighborhood around Nik Nak and I implore you both to either deny this liquor application or at the very least place some very stringent conditions on granting it such as not allowing the sale of individual alcohol servings (there are already enough people walking up and down the streets drinking alcohol they just purchased at the liquor store right around the corner on Telegraph and North St) and requiring they clean up that dump. It is a hideously ugly storefront with high fences and is almost entirely cement/asphalt that remind me of a junkyard. Please require this business actually contribute something to the neighborhood rather than allowing them simply to profit without providing any contribution to the community many of us call home and are deeply concerned with (for example my neighbor had their car stolen right in front of our house not two weeks ago)!

Thanks for your time and attention to the concerns of the residents in this neighborhood!

Eric DeFriez
522 North St.
Oakland, CA

Valeska, David

From: Mylene vandenBerg [mylenex@earthlink.net]
Sent: Tuesday, September 29, 2009 8:39 PM
To: Miller, Scott; Valeska, David
Subject: Nic Nak Permit

Attention Mr. Miller and Mr. Valeska,

Regarding the liquor sales permit issue in front of the Planning Commission re: Nik Nak:

I oppose alcohol sales at that location because it is within 1000 ft. of another alcohol outlet (the TK Market across the street), which is Oakland law. Oakland needs less liquor outlets, not more.

If, however, a Variance is granted to allow alcohol sales, it must include a full list of the most stringent conditions as part of that Use Permit, many included in the Sept. 17 meeting findings (CMV09-111), requiring sales to be community friendly (no "fights", no individual containers of beer or malt liquor, etc.). Also, the Variance must be restricted to current owner operation of the Nic Nak so that a sale to someone else would require a new application for a Variance to sell alcohol, and the public input process would start anew. No one in the community wants a grand-fathered, eternal alcohol use granted for the property at 6400 Alcatraz. Few of us want an alcohol use permit period.

Selling alcohol in Oakland is not a right, but a closely-regulated privilege overseen by the City and the state Alcoholic Beverage Control.

Sincerely,

Mylene vandenBerg
563 58th Street
Oakland, CA 94609

9/30/2009

Valeska, David

From: sadie mitchell [sadie.graham.mitchell@gmail.com]
Sent: Wednesday, September 30, 2009 9:27 AM
To: Miller, Scott; Valeska, David
Subject: Nik Nak Liquors

Dear David and Scott,

I am writing as a community member to oppose the granting of the Nic Nak Liquor store a Major Conditional Use Permit and Variance. I know there is a lot of controversy over this store and I am sure it has made your job even more difficult than usual. From what I have read (which is only on blogs & list serves, so forgive me if I am inaccurate) the granting of a Conditional Use Permit and Variance would be a stretch of the intention of these planning tools and I believe that allowing another liquor store in the neighborhood would have an adverse effect on the neighborhood.

Sincerely,

Sadie Mitchell
624 60th Street
Oakland, CA 946909

9/30/2009

Valeska, David

From: Roland Moore [rolandmo@pacbell.net]
Sent: Wednesday, September 30, 2009 11:14 AM
To: Valeska, David
Subject: Re: Nic Nak Liquor Sales Variance: North Oakland Resident Opposed.

Dear Mr. Valeska,

Hello. I live on 44th Street in North Oakland and because I live close to two liquor stores and am an alcohol researcher, feel qualified to say that I oppose alcohol sales at 6400 Shattuck Avenue. If at the end of the day you do decide that alcohol sales will be allowed there, please include conditions that will require that anyone operating that retail outlet meet the most stringent community-friendly conditions as part of that Use Permit, along the lines of those that were included in the Sept. 17 meeting findings (CMV09-111).

Courts have backed the view that selling alcohol in Oakland is not a right, but instead is a closely-regulated privilege overseen by the city and the state Alcoholic Beverage Control. As a resident heavily impacted by alcohol sales in our flatlands, I strongly request that you look out for our interests and not create exceptions to the policy of reducing rather than adding another alcohol outlet in our overconcentrated part of the city.

Sincerely,
Roland S. Moore, Ph.D.

9/30/2009

Valeska, David

From: Stephen Bloom [bloom@BloomHomes.com]
Sent: Wednesday, September 30, 2009 12:13 PM
To: Miller, Scott
Cc: Valeska, David
Subject: Nik Nak liquor variance

Scott, David,

I live about two blocks from the Nik Nak on Shattuck (on North St). I'm writing to ask that you deny the variance they are requesting to sell alcohol. There is alcohol available literally across the street from Nik Nak -- and Oakland law is very clear on this point. There are also two full-service liquor stores within walking distance. (I know, because I walk to the Alcatel -- they have an amazing beer selection.)

If you "mistakenly" grant the variance, please impose the typical community-friendly restrictions: no individual containers, and that the variance be granted only to the current owner.

I love my neighborhood, and have made Oakland my home for over 20 years. Please help us improve where we live, not degrade quality of life. Thanks for your help.

best,
- Stephen Bloom -

Valeska, David

From: Raphael Breines [raphiebreines@gmail.com]
Sent: Wednesday, September 30, 2009 1:25 PM
To: Miller, Scott; Valeska, David.
Subject: Opposed to Nik Nak Liquor Variance, Alcatraz Ave.

Dear Mr. Miller and Mr. Valeska,

I am writing to voice my opposition to the proposed major variance to sell alcohol by Nik Nak liquor located at 6400 Alcatraz Ave.

For years, the community has worked with the city to improve the Shattuck Avenue corridor by removing billboards and blight and fixing up facades. This area is at crossroads. On the one hand, with the city's help and support it has the potential to provide healthy restaurants, cafe's and other positive commercial uses that will get people out of their houses, spending money and uplift the community. On the other hand, the city also has the power to continue to keep the Shattuck Avenue corridor in the dark ages. Granting the variance to sell alcohol would be a major set back for the community. Alcohol can be purchased across the street and other venues a short walk away. We don't need more liquor stores in the neighborhood.

Thank you for your consideration,

Raphael Breines
584 62nd Street, Oakland

From: Jeffrey G. Jensen [jeffreygjensen@yahoo.com]
Sent: Wednesday, September 30, 2009 4:11 PM
To: Valeska, David; Miller, Scott
Cc: Don Link; Christopher Waters; Wald, Zachary; Jeffrey Jensen
Subject: Nic Nak Letter for Planning Commission Packet
Attachments: CVM09111 Pannell Comments 9-30-09.doc

Attached, please find a letter for inclusion in the Planning Commission Packet for the Nic Nak Liquor Store public hearing in October. Thank you.

Jeffrey G. Jensen
Chair East Lorin Neighborhood Association

September 24, 2009

Oakland Planning Commission
Oakland Community and Economic Development Agency

Mr. Colbruno, Chair Planning Commission
Mr. Walter Cohen, CEDA Director
Mr. Scott Miller, Zoning Manager
Mr. David Valeska, Planner II

Subject: CVM09-111

I am writing to respectfully submit my major opposition to the proposed findings and conditions for approval of CVM09-111 which would allow, by Major Conditional Use Permit and Major Variance, the Nic Nak Liquor Store at 6400 Shattuck Avenue to re-open, despite being located within 1,000 feet of an existing liquor store and despite having its Deemed Approved Status lapse for greater than five years.

History

The Pannell's developed the site approximately 40 years ago. At various times, they have operated the site as the Nic Nak Liquor Store. Selling liquor requires a license from the State Alcohol Beverage Control (ABC). Selling liquor also requires a Major Conditional Use Permit and a Major Variance if the proposed liquor store is within 1,000 feet of an existing liquor store.

In recognition of the significant and ongoing quality of life issues liquor stores have created in Oakland, the City Council enacted changes to the regulations governing off-sale alcohol outlets (liquor stores not bars/restaurants). The adopted public policy of the City Council is to limit and control the proliferation of liquor stores in recognition of the ongoing nuisances, crime related problems and public health issues associated with concentrations of liquor stores in Oakland.

A number of stores, including the Nic Nak, were granted a Deemed Approved Status as a legal non-conforming use. That is as an existing liquor store, they did not meet the new requirements, particularly since they were located within 1,000 feet of another liquor store, T and K Market. But because Nic Nak had been in existence prior to the new regulations, they were grandfathered as long as they operated without documented nuisance activities and did not stop the continuous sales of alcohol for 90 days or more.

The goal, however, of Oakland as with most cities is to eliminate nonconforming uses by not allowing them to re-establish once they go out of business or eventually forcing them to come into conformance with the most current zoning and planning regulations. By their nature, nonconforming uses are problematic in that they do not meet the most current zoning and planning regulations.

In 2004, the Pannell's closed Nic Nak Liquors and surrendered the State ABC liquor license. On April 28, 2004, the City notified the Pannell's by letter that the City regulations permit legal nonconforming alcohol uses to remain in business if they comply with the "Deemed Approved" program, including remaining in the alcohol sales business continuously without a relapse of 90 days in sales. They were given ten days to appeal the decision and notified that a Major Conditional Use Permit and Major Variance would be required to re-open with liquor sales. They never did.

Five years later, in December 2008, the owner obtained a new State ABC liquor license and applied for a Zoning Clearance under the name of Jo Jo's. The City Planner erroneously issued an approval and Mr. Pannell reopened the liquor store with his new state liquor license. Several neighbors, including me, contacted the City and requested they investigate the opening of the liquor store. It was found that the Zoning Clearance was issued in error and the Pannell's were told to cease liquor sales and once again apply for a Major Conditional Use Permit and Major Variance.

In evaluating the history of the liquor store and the legal requirements for a Variance, the City Planning Staff had recommended to the Planning Commission the convenience store be approved, but the liquor sales be denied. The staff report noted that: *The proposed Variance to the 1,000 foot separation standard in a neighborhood could set a precedent for other alcohol sales applications in the area...Allowing alcohol sales uses to cluster closer than the 1,000 foot radius could be detrimental to the vitality of an emerging commercial and mixed-node...Staff recommends denial of the Major Variance and Conditional Use Permit for Alcoholic Beverage Sales. The findings required by the Oakland Planning Code are not fulfilled in this case. Granting the request would cause an adverse precedent. The liquor store lost its legal status 5 years ago and community demand has been well-served by other Alcoholic Beverage Sales locations. A neighboring market already provides beer and wine services to the immediate Shattuck neighborhood. Several other liquor stores provide services near the edge of the 1,000 foot radius from this store; and this additional venue for liquor is not necessary. The potential for adverse secondary effects, such as loitering and littering, would likely increase with another operator in the future.*

The City website states that: *A Variance is permission to depart from the development standards, or setbacks, of the zoning district. Variances provide the discretion and flexibility to resolve difficulties or hardships that may be inappropriate where special or extraordinary circumstances occur on the property. These circumstances do not mean economic hardship; rather, they refer to topographic or physical attributes of the site that do not allow for the development standards of the Zoning District to be applied.*

The key here is that the Major Variance relates to a topographic or physical attribute of the site that would not allow for the normal development standards to be applied--in this case a 1,000 foot separation from another liquor store. There is nothing in the administrative record that supports a Variance. However, the City Planning Commission, despite the Planning Staff recommendation and opposition by the Shattuck Crime Prevention Council, the East Lorin Neighborhood Association and several business owners, wants to approve a Major Variance using a unique theory that "historical relevance" is equivalent to a unique physical circumstance. In other words, because Mr.

Pannell has owned the site for 40 years and is a self-proclaimed "pillar of the community" he should be allowed to reopen a liquor store that has been shuttered for five years even though the City regulations say that if you are closed for 90 days you lose your Deemed Approved Status. The Planning Commission directed the Planning Staff to return with a recommendation for approval including new findings and conditions.

The Staff Findings for approval now say that Historical relevance of the 6400 Shattuck Avenue property constitutes a unique physical circumstance. The facility and activity cannot be moved while retaining these historical associations, including neighborhood, social and leadership activities. Without a variance the business may be forced to close, resulting in unnecessary hardship inconsistent with the purpose of zoning regulations. Rather than protecting the neighborhood, denying the Variance could adversely change the historical relationships of this part of the neighborhood.

I am a professional Environmental and Urban Planner with over 19 years of experience obtaining land use permits and writing land use permits, legal findings and recommendations for Commissions. What the City is trying to do has no legal basis, has no court cases to support it, and will essentially be creating a new precedent re-open liquor stores and other undesirable nonconforming uses. In essence they argue an economic hardship, which is exactly what the regulations say is not to be considered in approving a Major Variance. The City Planners have acknowledged that there has never been a single project in the City of Oakland that has been approved using this unique legal theory. In all respects it is a fabrication by the Planning Commission that will subject the City to potential litigation--which is not good for the City, Mr. Pannell, or the tax payers--and neighborhoods with additional liquor stores.

I have owned my property at 65th and Tremont for the past nine years. I have been involved in the neighborhood and community on a number of levels including the Shattuck Crime Prevention Council, the Ashby Bart Task Force, and as Chair of the East Lorin Neighborhood Association, to name a few. In those nine years, I have never heard of Mr. Pannell until he re-opened his liquor store. Most people I know do not know Mr. Pannell. He owns a home in Clear Lake and one in the Trestle Glen neighborhood of Oakland. He does not live in North Oakland and his business has been closed for five years. I am not sure what the City refers to as neighborhood and social leadership activities. Frankly, though, they are not relevant to a unique physical or topographic constraint, which in the planning world is typically an irregular lot, a very steep lot, and the like.

This issue is about the fairness in the application of the existing land use laws and the elimination of non-conforming uses that the City has already determined by public policy to be problematic. This issue was never about race or gentrification until it was raised by Mr. Pannell and his supporters and accepted by several Planning Commissioners as fact. Unfortunately, those issues have clouded a fair and impartial assessment of this proposed land use.

Are more liquor stores really the direction we want North Oakland to be moving towards? No.

Deficiencies in Staff Findings for Approval of a Major Variance

The following is a point-by-point assessment of the deficiencies of the staff recommendation and findings for approval and an evaluation of other issues raised by this project and the applicant, Mr. Ashrious Pannel. We do so to ensure that the administrative record is robust and supports a comprehensive ability to appeal this matter before the Oakland City Council and, if necessary, to litigate in the courts.

Special Restrictions on Establishments Selling Alcoholic Beverages

Policy and Staff Finding dated September 16, 2009

Finding B.1. below is satisfied with the proposal only by granting a Variance:

A. Special Restrictions on Establishments Selling Alcoholic Beverages.

- 1. No Alcoholic Beverage Sales Commercial Activity shall be located closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Commercial Activity except;**
 - a. On-sale retail licenses located in the Central District (defined as within the boundaries of I-980 and Brush Street to the west; 27th Street to the north; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south); or**
 - b. Activity is in conjunction with a Full-Service Restaurant; or**
 - c. Establishments with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more.**

This proposed location is within 80 feet of a market across the street selling beer and wine. A Variance has been requested to allow this Alcoholic Beverage Sales Commercial Activity closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Activity. This is not an adverse precedent for other such uses, due to the distinctive historical association over several decades between this facility and this neighborhood, which is not present for many other Alcoholic Beverage Sales facilities in West and North Oakland.

This store will provide for an otherwise unmet Alcoholic Beverage Sales need for a population in the immediate Oakland Community. While beer and wine can be purchased across Alcatraz Avenue, spirit liquors cannot be purchased anywhere within convenient walking distance unless restored at this location.

Analysis by the Community

City staff note that locating an Alcoholic Beverage Sales Commercial Activity within 80 feet of an existing market selling liquor will not set an adverse precedent for other such uses, due to the distinctive historical associations over several decades between this facility and this neighborhood, which is not present for many other Alcoholic Beverage Sales facilities in West and North Oakland.

First, there is nothing in the administrative record, the staff reports, the public testimony or the Planning Commission discussion that identifies or analyzes any other existing businesses in Oakland that could qualify under this novel theory of "historical relevance". There is no basis in the record to conclude that other liquor outlets, or even other undesirable legal non-conforming land uses, could not fall under this unique theory. Hence, the conclusion that this would not set a precedent is faulty because it has no foundation or underpinning whatsoever. It is simply an unsubstantiated assertion. Moreover, the use of West and North Oakland as the baseline by which to assess whether a precedent may be established is inherently faulty. The land use regulations governing variances and the application of this unique legal theory would apply not only to West and North Oakland, but to the entire City. Therefore, any assessment of a potential precedent must evaluate existing or shuttered businesses that are currently Deemed Approved legal nonconforming and/or lapsed Deemed Approved legal nonconforming status. This includes not only liquor outlets but any other undesirable land uses with such status.

The finding alludes to distinctive historical associations over several decades between this facility and this neighborhood. The facts, according to the administrative record, are that Mr. Pannell had shut down his liquor store at least 5 years ago, if not earlier. He does not live in North Oakland. He lives in the Trestle Glen neighborhood of Oakland and owns a home in Clear Lake California. Testimony from the supporters of his application at the August 5, 2009, show the vast majority of them did not identify where they reside. We are aware that only several of his supporters actually live in North Oakland. The supporters also claimed to have a list of 300 plus signatures from supporters in the neighborhood. Neither the City nor anyone else for that matter has verified the authenticity of the signatures and that they actually come from residents in North Oakland. The administrative record shows that neither Mr. Pannell nor his supporters pointed to any specific, existing community organizations within North Oakland, such as churches, neighborhood associations, crime prevention councils, city boards or commissions, educational institutions or youth group for which Mr. Pannell or his Nic Nak liquor store has historically participated and continues to participate in.

Anecdotally, I have owned my home several blocks from the Nik Nac Liquor Store for the past nine years. I have been the Chair of the East Lorin Neighborhood Association for the past four years of which the Association boundary abuts the Nic Nak Liquor Store. I have been appointed by the City of Berkeley as a member of the Ashby Task Force. I have been a member of the Shattuck Crime Prevention Council for Beat 11-X for the past four years. I have been active on various community, crime, economic development, city budget and other functions. I have attended hundreds of community meetings for North Oakland and South Berkeley. During this time, I had never heard of Mr. Pannell until he re-opened his liquor store. None of the neighbors I know, with few exceptions, know Mr. Pannell. His self proclamation that he is a "pillar of the community" and that his liquor store has a distinctive historical association to the neighborhood is based on sheer fabrication and a romantic notion and has little to no foundation in the administrative record.

The staff report notes that the store will provide for an otherwise unmet Alcoholic Beverage Sales need for a population in the immediate Oakland Community. While beer

and wine can be purchased across Alcatraz Avenue, spirit liquors cannot be purchased anywhere within convenient walking distance unless restored at this location.

Again, there is no foundation in the administrative record to support this conclusion. First, there has been no discussion or evaluation by the Planning Staff or the Planning Commission as to what constitutes a convenient walking distance. Is one block, one mile, one census tract, one census block convenient. Secondly, there is no basis for asserting that an unmet need must be assessed solely on the accessibility for pedestrians. Ease of accessibility depends on mode of travel, terrain and the location of other similar facilities in both North Oakland and South Berkeley. There has been a wholly inadequate evaluation by the Planning Staff and/or the Commission of the existing alcohol outlets within a reasonable distance that are accessible by public transportation, personal auto, walking, bicycling and other conveyances. The We Fight Blight Blog has provided an excellent evaluation of the over-concentration of alcohol outlets within approximately one mile from the Nic Nak site at (which is incorporated by reference herein for the administrative record):

<http://wefightblight.blogspot.com/2009/09/nic-nak-liquors-case-for-over.html>

We Fight Blight states that: There are a total of 18 existing off-sale liquor outlets within an approximately 1 mile radius of Nic Nak. If Nic Nak is granted a Major Variance to peddle liquor it will make 19.

We chose an approximately 1 mile geographic limitation for our assessment as it takes only 15-20 minutes to walk one mile, 5-7 minutes to bicycle one mile and 1-2 minutes to drive one mile (not counting wait times at lights). A one mile geographic boundary gives a reasonably convenient radius for all modes of travel and provides a more comprehensive assessment of over-concentration than does a much smaller census tract..

This assessment does not include the many on-sales liquor outlets such as the Starry Plough, the White Horse Bar and Inn, Valparaiso, Dorsey's Lockers and Nick's Lounge where disturbances have included everything from people being drunk in public, to drunken bar fights, shootings, stabbings and even murders (Dorsey's Lounge and Nick's Lounge). This assessment also does not include the liquor stores that have already been shut down as public nuisances.

At the public hearing of August 5, 2009, Stephen Glaudeman also presented a similar analysis with a poster board and entered it into the public record. Yet, the Planning Staff has completely disregarded this information, which is readily available on the internet. The analysis of We Fight Blight makes it abundantly clear that there many other liquor and convenience stores that are readily accessible within a short distance that are meeting the hard liquor needs of the community—perhaps far too readily.

Variance Findings

- 1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions**

of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency or appearance.

This 6400 Shattuck Avenue facility and activity have historical associations which have physical effects for the neighborhood which is a unique physical circumstance. The facility and activity cannot be moved while retaining these historical associations, including neighborhood social and leadership activities which are different from many other businesses in the neighborhood. This would be an unnecessary hardship inconsistent with the purposes of zoning regulations. Rather than protecting the neighborhood, denying the variance could adversely change the historical relationships in this part of the neighborhood.

In addition, the physical aspects of the property are unique: the building is nearly the only commercial building in the adjacent blocks which is set back this much from the commercial street. The positions of other buildings blocks visibility of the building, perhaps reducing its commercial viability and making it more difficult to sustain sufficient commerce on convenience sales alone; alcoholic beverage sales may be needed to offset this condition of design in the existing commercial structure.

The internal physical aspects of the building are also unique: unlike other alcohol sales facilities, a customer cannot walk up to a liquor shelf and remove a bottle or can. Alcohol must be passed through protective windows at this location. Thus some potential adverse secondary effects of alcoholic beverage service are prevented by the long-existing physical aspects of the building which are different than many other West and North Oakland liquor services. The lack of a history of criminal behavior associated with the site has been confirmed by consulting Police records; this unique design may contribute to the unusually low criminal history.

Community Analysis

The finding for a Major Variance relates to unique or extraordinary physical or topographic constraints. The staff report notes that the physical aspects of the property are unique: the building is nearly the only commercial building in the adjacent blocks which is set back this much from the commercial street. The administrative record shows that Mr. Pannell developed the site approximately 40 years ago. He created the set back with parking at the front of his site. This condition to which the City staff report refers as a unique physical condition or constraint has been created by the applicant himself and is not at all related to a unique physical or topographic constraint. Mr. Pannell's lot is a standard size and shape and is located on a corner. We believe the applicant created and implemented a site plan with off-site parking 40 years ago because it was considered to be a major competitive advantage to provide off-site parking. Even today, off-site parking at the front of a commercial lot is deemed by most business and development models to be a competitive advantage even though urban planners and designers feel that it adversely affects the streetscape and the pedestrian experience. Moreover, there is nothing that precludes Mr. Pannell from demolishing the existing structure and moving it to the edge of the sidewalk to achieve the same condition as nearby properties.

The staff report further states that: The positions of other buildings blocks visibility of the building, perhaps reducing its commercial viability and making it more difficult to sustain sufficient commerce on convenience sales alone; alcoholic beverage sales may be needed to offset this condition of design in the existing commercial structure. No analysis or visual assessment has been introduced into the administrative record by anyone discussing or proving the lack of visibility at this site. The site at 6400 Shattuck Avenue is located on a corner of a very busy intersection, Shattuck Avenue and Alcatraz Avenue. Both Shattuck Avenue and Alcatraz Avenue are major transportation corridors that are traversed by autos, bicyclists, pedestrians, skaters, and those on public transportation. Both serve as major corridors into and out of North Oakland and to Highway 24 and 80. The site and building are clearly visible from all four corners of the intersection. The only direction the site is not clearly visible is if one is moving along Shattuck Avenue in a southerly direction from the Berkeley border towards Temescal. At approximately 65th Street, it is difficult to see the structure itself because it is setback even further than the adjacent residential structure just to the north. However, as you approach the intersection of Shattuck and Alcatraz it becomes visible. Moreover, with the existing pole sign, several signs attached to the building and the billboard, the site is clearly demarcated.

Other Variance Findings

The staff report notes that Telegraph Avenue already has several competing liquor service locations in close proximity to each other, so it is not easy for this applicant to relocate to a nearby neighborhood either. *This places a burden on the owner of this 6400 Shattuck Avenue liquor license which does not exist in many other parts of the City. Requiring relocation of this facility and activity would deprive the owner a privilege enjoyed by other similar uses, to relate to the neighborhood and customer base historically established.*

Community Analysis

First, the statement above creates an internal inconsistency in the staff report. In other sections, the City argues that there are no other liquor stores within walking distance to the Nic Nak that would provide hard liquor. Yet, above, the City acknowledges several competing liquor stores in close proximity:

Second, there is no data, analysis or other information in the administrative record evaluating and demonstrating that the applicant would suffer a hardship if he would have to relocate his liquor sales to North Oakland. No analysis has been done by the City to identify all existing vacant retail outlets in North Oakland and show the applicant could not reasonably relocate. Existing regulations governing Major Variances and the City website specifically note that economic hardship is not a basis for a Major Variance. Yet, the City Staff report argues contrary to the stated policy and direction of the City regulations by implying he would suffer an economic hardship. Mr. Pannell has not provided any information to show that he cannot make a reasonable profit from the operation of a convenience store and has not provided any evidence that denial of the liquor sales would create an undue hardship. Mr. Pannell would still retain an economic interest in his liquor license which he could sell and he would still retain ownership of 6400 Shattuck Avenue which he could operate as a convenience store, other approvable

land uses, or could redevelop at a higher density with pedestrian-oriented uses supported by the North Oakland Community.

Other Variance Findings

The Staff Report also notes that other similarly zoned properties does not have the extensive history of previous operations that this site has, and hence a special privilege would not be evident with the granting of the Variance.

The Staff Report notes further that there are few other Alcoholic Beverage Service locations in North Oakland which have the continuity over decades of use and the positive secondary effects of this use at 6400 Shattuck Avenue.

There is no evidence in the administrative record to support either of these conclusions. The City Planning Staff has not conducted any survey of other liquor stores or legal nonconforming land uses to justify the assertion above or of any other Alcoholic Beverage Service locations in North Oakland to determine if they have a similar history that the City claims makes the Nic Nak unique. These are simply conclusions with no foundation.

Conclusion

We strongly urge the Planning Commission to reconsider its desire to approve this application for a Major Conditional Use Permit and Major Variance to sell alcohol at 6400 Shattuck Avenue. Approving this application will be contrary to established public policy in the City of Oakland, will create additional quality of life issues for North Oakland residents, and will subject the applicant and the City to administrative appeals and possibly litigation. The unprecedented and unique approach of equating "historical relevance" to a unique physical constraint has never been used in the City of Oakland to approve any type of project, let alone a liquor store, and will not survive judicial scrutiny.

Sincerely,

Jeffrey G. Jensen
Chair, East Lorin Neighborhood Association

From: Robin Donovan [robinrun1@gmail.com]
Sent: Wednesday, September 30, 2009 6:26 PM
To: Miller, Scott; Valeska, David
Subject: Nic Nak Liquors issue at the Planning Commission

Dear Planning commission:

I am writing as a concerned neighbor regarding the liquor license at Nic Nak Liquors. To me the issue seems pretty cut and dried, this establishment was issued a liquor license in error, and, it should be terminated based on Oakland law which prohibits alcohol sales at that location because it is within 1000 ft. of another alcohol outlet (the TK Market across the street). Alcatel, two blocks away, also sells alcohol. There is no shortage of alcohol distributors in this neighborhood - and yet - this is a neighborhood. Young families abound, and while convenience stores are important to a neighborhood, one more store selling alcohol is not necessary in this one. Oakland law is pretty clear on this issue, it is confusing why there is even a debate going on. If for some far fetched reason this liquor license remains in place, it must have the required restrictions (sales to be community friendly, no "flights", no individual containers of beer or malt liquor, etc. and one other that restricts the Variance to current owner operation of the Nic Nak-- a sale to someone else would require a new application for a Variance to sell alcohol, and the public input process would start anew. No one in the community wants a grand-fathered, eternal alcohol use granted for the property at 6400 Alcatraz.

Thank you,
Robin Donovan
541 North Street
Oakland, CA 94609

Valeska, David

From: Nigel Lucas [lucas-5@att.net]
Sent: Sunday, June 28, 2009 1:01 PM
To: Valeska, David
Cc: Marie Watts; radar933@yahoo.com
Subject: JoJo's Market--formerly NikNak case file #CMV09-111

Dear Mr. Valeska,

We are both registered nurses and residents at 610 63rd Street. We are strongly opposed to the liquor license being issued at the NikNak market. We have seen an increasing amount of theft in our neighborhood and adding a liquor store will just increase the amount of crime in the neighborhood. There is also a food bank at the Shattuck Methodist Church that distributes food to the homeless and less fortunate. The church also hosts Alcoholics Anonymous and Narcotics Anonymous meetings. While we support the wonderful efforts of the church, we do get a lot of foot traffic with the food distribution and court mandated AA/NA meetings. The last thing we need is more foot traffic buying liquor and then walking through our neighborhood.

We have three small children and will be attending the local public school in the fall. We love this neighborhood and are doing a lot of community building with an upcoming block party on July 25th, along with active participation in the Shattuck Neighborhood Crime Prevention Council.

I will be distributing your email to all the residents of 63rd street so that you may see the number of people who oppose this liquor license. We will also be writing to our councilwoman Jane Brunner. Please take into account the strong neighborhood opposition when you consider this application.

Thank you in advance,

Nigel & Amanda Lucas
610 63rd Street
510-428-0801

ITEM 2
ATTACHMENT E
NEIGHBOR LETTERS &
E-MAILS
6400 SHATTUCK AVE.

6/29/2009

Valeska, David

From: Don Link [don-link@comcast.net]
Sent: Monday, June 01, 2009 9:00 AM
To: Valeska, David
Cc: guita boostani
Subject: Re: Nick Nack Liquors, 6400 Shattuck Avenue

David: the tentative date for our meeting with you and any other Planning Commission staff is Mon. June 22, 2009, 7 pm, 6525 Shattuck Ave. I will get back to you to confirm once this is finalized.

Thanks

Don

On May 28, 2009, at 3:50 PM, Valeska, David wrote:

Mr. Link, CVM09-111 for JoJo's (Nik Nack) at 6400 Shattuck Ave. is tentatively on the July 1 Planning Commission (may change to July 15) to consider the owner's request for Conditional Use Permit, Variance to reopen alcoholic beverage service/convenience market Use. (A lapsing letter was sent 2 weeks ago telling them to shut down the liquor sales And owner A. Pannell told me several times he would do so).

Do you have a suggestion for a place, time and date for a neighborhood informal meeting With Planning staff to hear neighbor opinions BEFORE the public hearing? Perhaps The Police Beat neighborhood meeting or something in a library or church? Please let Me know and we will set it up, thanks.

From: Don Link [mailto:don-link@comcast.net]
Sent: Tuesday, April 14, 2009 1:28 PM
To: Miller, Scott
Cc: jeffreyjensen@yahoo.com; Barra-Gibson, Maria; Wald, Zachary; Ian Martin; Brunner, Jane; Fielding, Rich; Valeska, David; Ortler, Carolyn; Angstadt, Eric
Subject: Re: Nick Nack Liquors, 6400 Shattuck Avenue

Mr. Miller: your letter is welcome and reassuring. Should the owner of 6400 apply for a CUP, the community will want to know and to weigh in on the matter. It wasn't that many years ago that another building (6575 Shattuck, now Santini's Travel Servicejhg) sported a 2 story LIQUOR sign. When a restaurant sought a use permit, the neighborhood sought and was granted neighborhood-friendly conditions as part of the permit, including the removal of that disgusting sign.

The restaurant owner could not afford to remove it, the building owner refused, and the community formed a volunteer work committee to remove it one Sunday afternoon, shutting down one lane of Shattuck Ave. at times to remove the 30 foot steel sign. In several hours it was safely down without taking out the power lines or the plate glass windows, or any cars at the curb--all done with ropes, a block and tackle, and human ingenuity (and no permits for anything). We toasted with sparkling cider (although I would have preferred champagne, politically incorrect in the circumstances). We dismantled the sign, loaded it onto my pickup truck, and it went to a scrap metal yard on Monday morning.

One of the work crew was a 75 year old neighborhood woman who had hated that sign for decades and constantly advocated that it come down.

I bring this up, because it demonstrates the energy and determination that drive the community in this part of Oakland. That same determination will be at work regarding the Nick Nack matter.

Don Link, Chair Shattuck NCPC

On Apr 14, 2009, at 11:04 AM, Miller, Scott wrote:

Dear Mr. Jensen, (et al) the following information is an update to Dave Valeska's recent email: I will be sending a letter to the proprietor and property owner of 6400 Shattuck notifying them that the sale of alcoholic beverages from this location is out of compliance with the zoning ordinances. The zoning clearance issued in September was issued erroneously. The letter will provide the proprietor/property owner with a short period of time in which to file for a Major Conditional Use Permit (as required for alcoholic beverage sales when sales have ceased for at least 90 days). The Major Conditional Use Permit process will take the application to the Planning Commission for decision. If that permit is denied, the City will continue to pursue appropriate enforcement actions. I have been in contact with ABC staff at the State level and was told there was little the State could do since the ABC license was already issued. However, I am pursuing whether or not that is indeed the case since the City's earlier action was issued in error, and the State relied on that erroneous approval to issue the ABC license. Rest assured, I do understand the importance of this issue and the sensitivity of this location in the community. My staff has taken and will be taking more steps to ensure that this situation does not occur again. Please do not hesitate to contact me or Dave Valeska for additional information and updates.

Sincerely,

Scott Miller
Zoning Manager
(510) 238-2235

From: Valeska, David
Sent: Tuesday, April 14, 2009 8:45 AM
To: 'jeffreygjensen@yahoo.com'; Brunner, Jane; Miller, Scott; Ortler, Carolyn
Cc: Barra-Gibson, Maria; Wald, Zachary; 'Don Link'; 'Ian Martin'; Fielding, Rich
Subject: RE: Nick Nack Liquors, 6400 Shattuck Avenue

Thanks, Mr. Jensen, for your e-mail. Staff has been looking into this case And procedures and we take your concerns seriously.

In September 2008, when the zoning clearance you mentioned was issued, a Different planner was working on alcohol cases for Oakland; I started in 2009 and Work on alcohol cases on the west side of the City. My note to the computer This month alerts counter planners and code enforcement officers to followup Per approved City procedures and contact me for 6400 Shattuck. Please Call me directly at 238-2075 if you want to discuss matters.

Staff is holding meetings to review how best to address your concerns. Please Note that this store, or any similar store, must maintain legal compliance and We continue to monitor 6400 Shattuck and other sites.

From: Jeffrey G. Jensen [<mailto:jeffreygjensen@yahoo.com>]
Sent: Tuesday, April 14, 2009 8:01 AM
To: Brunner, Jane
Cc: Barra-Gibson, Maria; Wald, Zachary; Don Link; Ian Martin; Fielding, Rich; Valeska, David
Subject: Nick Nack Liquors, 6400 Shattuck Avenue

Dear Councilwoman Brunner:

I want to express my grave concern that the City of Oakland has erroneously issued a use permit to allow Nick Nack Liquor Store to reopen as if it were re-establishing a pre-existing business. This liquor store has been shut down for several years now. Accordingly, it required a public notice and public comment prior to issuing a conditional use permit for a new liquor store. No such noticing was provided to the neighborhood and no such permit was required by the City Planning Department.

The last thing that North Oakland and South Berkeley need is another liquor store. Our communities along the City border have worked hard to limit the number of alcohol outlets that have inevitably become an attractive nuisance for drug dealing, littering, loitering, public drunkenness, and blight. By not following the proper procedural requirements on this property, and providing residents an opportunity to voice our concerns about the issuance of a conditional use permit, opens the City up to potential legal liability.

In addition, this property, which is located at 6400 Shattuck Avenue, sits at a very busy intersection with a bus stop along the Alcatraz Avenue street side. It does not appear that the parking or the ingress/egress may meet current City requirements. Because the City failed to properly review this new use, it did not evaluate the parking and the ingress/egress.

Ian Martin, the owner of the Nomad Building, requested that I send to you the following information that I obtained from the City Planning Department.

Apparently, the City granted an approval as if it were re-establishing an existing business. In which case, no noticing of the community is required. If the business had been out of operation for more than a year--which it has been--a new use permit would be required and noticing would be required.

One way to show whether they were in operation or not is the amount of business tax that was paid for the last several years. Business taxes are required of every business operating in Oakland and are based on gross receipts. It is not clear that the Planning Department did this.

The owner of the business/property is:

Ashrious and Verniece Pannell
1426 Holman Road
Oakland, CA 94610
510-836-0409

The Oakland Planning application number is ZC082293 and was filed on 09/24/08. There is a note dated 4-1-09 which states: DV--Deemed Approved Status must be

maintained pursuant to the Oakland Codes and Owner is required to meet performance standards of code, otherwise City has option to hold Deemed Approved hearing. Code enforcement should report to DV any failures to comply.

The Planner I spoke to at the counter said that all Liquor Outlets go through David Valeska, Planner II, dvalueska@..., 510-238-2075.

Again, we have serious concerns regarding this use and would like the assistance of your Office in investigating: (1) why an approval was erroneously issued without a new conditional use permit and public comment; and (2) how the City can rescind the approval and require the owner to obtain a conditional use permit.

Thank you.

Jeffrey G. Jensen
Chair, East Lorin Neighborhood Association

Valeska, David

From: Adele Schenker [adele.schenker@gmail.com]
Sent: Sunday, June 28, 2009 10:41 AM
To: Valeska, David
Subject: liquor store

i am emailing you about the liquor store (formerly known as nik nak) on the corner of alcatraz & shattuck avenues. i have lived in this neighborhood for almost 29 yrs. my daughter, when she was little, went there for ice cream. the family that owns it also owns a home in the neighborhood. they are involved in law enforcement. this is a good family. to the best of my knowledgement, there has never been a negative incident related to the sale of liquor that could be traced back to that store. there is currently beer & wine sold at two places within a block of the store - so alcohol is currently being sold. we have been experiencing a lot of crime that is related to drugs and I think that the sale of alcohol is not going to make the crime incidents worsen. prohibition did not stop the sale and/or the consumption of alcoholic beverages.

i was recently the victim of a shooting on mlk & 31st street - june 17 at 3:30 in the afternoon. I will not be able to attend the planning committee meeting because of my injuries, but hope that you will consider my remarks when making your determination.

thank you.
adele schenker
6510 wheeler street
oakland

Valeska, David

From: Chris Kent [kentchristine@gmail.com]
Sent: Monday, June 29, 2009 9:46 PM
To: Brunner, Jane
Cc: Valeska, David
Subject: Not happy about NikNak liquor license (case #CMV09-111)

Hi Jane I live at 620 62nd Street. I understand from neighbors on 63rd Street that the Nik-Nak Convenience Store at 6400 Shattuck has applied for a license to sell hard liquor. I am very unhappy to hear this. I think yet another liquor store would be detrimental to a residential neighborhood that has seen so many improvements in the five years since Ive been here. Nik-Nak already sells beer, as does the corner store just across Alcatraz. There is no market need for a store selling hard liquor. Safeway is about six blocks away, as is the Uptown Market. What reason could there be to add yet ANOTHER liquor store to this neighborhood? Anyone whos watched the problems that have come about because of Uptown Market would be hard-pressed to find a reason to place a liquor store in their own neighborhood. A liquor store at the corner of Alcatraz and Shattuck would quickly become a crime nexus, not to mention a gathering spot for loiterers. It' a neighborhood disaster in the making.

I understand that there is a planning hearing scheduled on July 15th on the application for the Liquor License. Please include this message in any information you are compiling about neighborhood objections. I am asking other neighbors to contact you regarding their concerns about this property.

Christine Kent
620 62nd Street
+1 510 601 6789

Valeska, David

From: Skinner, Kristopher [kskinner@bayareanewsgroup.com]
Sent: Tuesday, June 30, 2009 10:18 AM
To: Brunner, Jane
Cc: Valeska, David
Subject: NikNak convenience store at 6400 Shattuck

Jane, David,

I understand the NikNak convenience store at Alcatraz and Shattuck has applied for a hard liquor license, and I wanted to express my firm opposition to that application. The case file is number CMV09-111.

I have lived at 620 62nd Street for about 5 years now, and for most of that time, the NikNak location could best be described as a derelict eyesore. Junked cars sat in the parking lot behind closed gates. It only recently reopened for business. I have not personally been in the store, but my wife and son did once, saying that everything in the store was kept behind glass. Not the sort of neighborhood market we need. And, as I said, the owners of the NikNak have done nothing in the past 5 years to endear themselves to the neighborhood.

I pick up hard liquor bottles from 62nd and 63rd streets on a fairly regular basis when out walking in the neighborhood. I feel that permitting this application will only contribute not only to that problem, but to a host of other associated issues as well.

I think our neighborhood is moving in the right direction. Allowing this application would be a step backward.

Thanks,
Kristopher Skinner
620 62nd Street

Page 1 of 1

Valeska, David

From: chandel@sbcglobal.net
Sent: Tuesday, June 30, 2009 2:57 PM
To: Valeska, David
Subject: case # CMV09

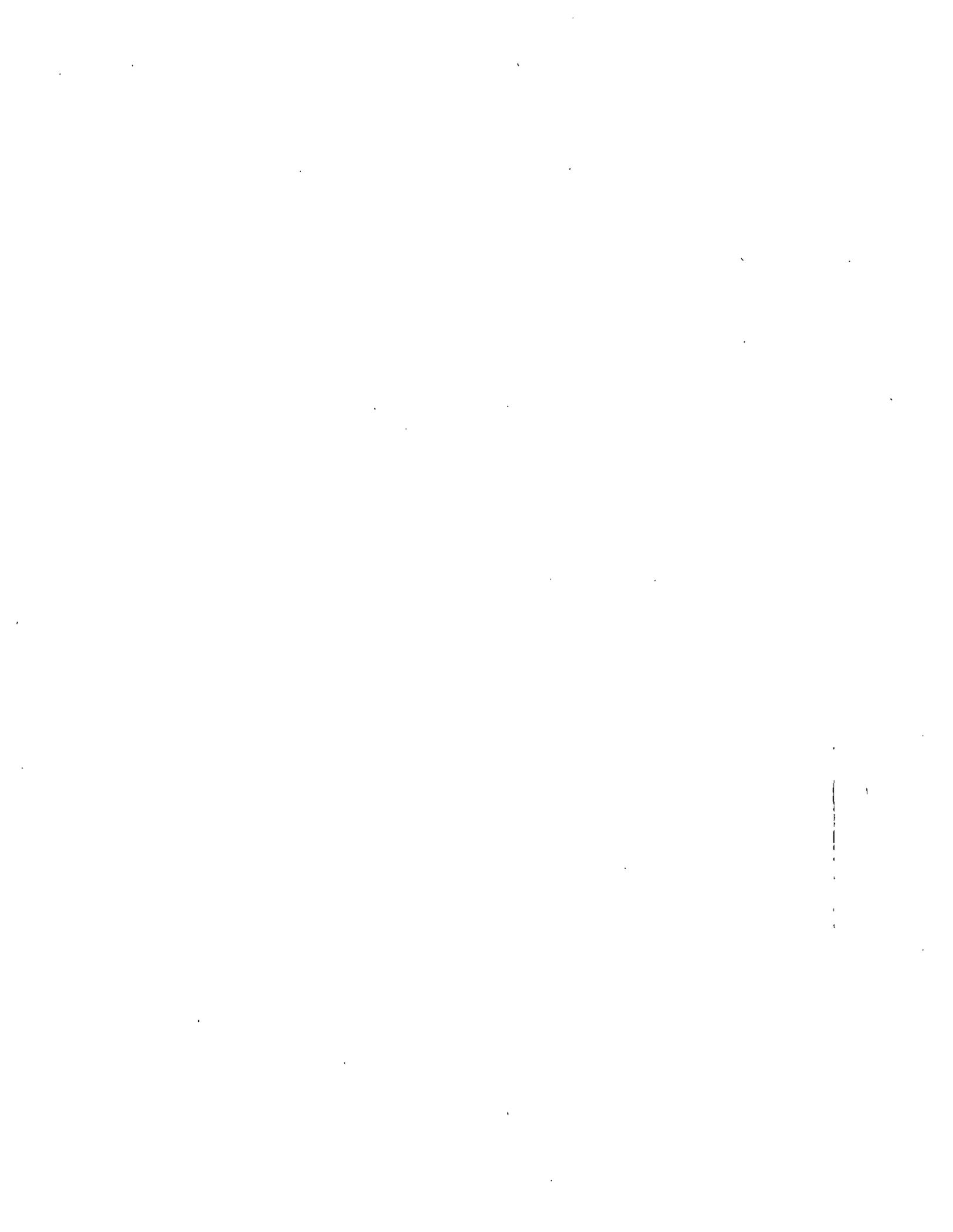
Dear David Valeska, case planner for CMV09-111

I wanted to let you know I am against the Convenience - Nik Nak store on 6400 Shattuck having a license for selling hard liquere. We have managed to remove the problem houses on our block and do not want that kind of problem back in our neighborhood. This selling of hard liquer will encourage hanging around the 61st and 62 nd st. and Shattuck area being drunk and disorderly and the poor behavior that goes with that.

I am apposed to this store receiving this license.

Thank You,

Cynthia Handel
616 62nd Street
Oakland CA 94609.



Valeska, David

From: Valeska, David
Sent: Tuesday, April 14, 2009 9:55 AM
To: 'quiny@earthlink.net'
Subject: RE:

I am Dave Valeska, the new alcohol planner for the west side of Oakland (238-2075). I spoke with Officer J. Sena (777 8673 or e-mail jjsema@oaklandnet.com) who is monitoring The situation. The police are watching.

From: Erika Miranda [<mailto:quiny@earthlink.net>]
Sent: Tuesday, April 14, 2009 9:45 AM
To: Jeffrey G. Jensen; Brunner, Jane
Cc: Barra-Gibson, Maria; Wald, Zachary; Don Link; Ian Martin; Valeska, David; Fielding, Rich
Subject: RE:

Dear Councilwoman Brunner,
 As a resident of Tremont Street (and the neighborhood it encompasses), I too want to add my voice to Mr. Jensen's. I am very surprised and dissappointed by this because we are already innundated with liquor stores as it is.

I'm sure you already know how much these liquor stores draw --and create--- problems for a neighborhood. I just don't know how there could be any legitimate rationalization for imposing yet another liquor store in our neighborhood (in fact, I can't imagine any neighborhood that would accept such a thing--especially when there are already too many) It's already intimidating enough having to walk by any of these places and having drunks walk around the neighborhood and leave their "empties" in our yards and streets. Many of them are also dealing drugs and I have often see them scoping out houses so I have no doubts they are also linked to the crimes in this area. (many of them loiter with kids going by and I've even had some throw up and fall over in my yard).

I too would be very much interested to know how something like this could have been approved without any regard to any protocols or legal requirements.

This kind of thing deteriorates our neighborhood and is just unacceptable. I hope you will be looking into it and I would really like to hear from you on this.

Sincerely,
 Erika Miranda

----- Original Message -----

From: [Jeffrey G. Jensen](mailto:Jeffrey.G.Jensen)
To: [Jane Brunner](mailto:Jane.Brunner)
Cc: [Maria Gibson](mailto:Maria.Gibson); [Zach Wald](mailto:Zach.Wald); [Don Link](mailto:Don.Link); [Ian Martin](mailto:Ian.Martin); dvalueska@oaklandnet.com; [Rich Fielding](mailto:Rich.Fielding)
Sent: 4/14/2009 7:57:12 AM
Subject:

Dear Councilwoman Brunner:

4/14/2009

Valeska, David

From: Valeska, David
Sent: Tuesday, April 14, 2009 9:19 AM
To: 'jeffreyjensen@yahoo.com'
Subject: RE: Nick Nack Liquors, 6400 Shattuck Avenue

Jeffrey, I spoke with Officer Jennifer Sena, ABAT Police team, who asked that you call her Directly at 777-8673 (e-mail jjseña@oaklandnet.com) with complaints/information about 6400 Shattuck or any other address of concern, she is a police lead contact for keeping such Uses in compliance with adopted regulations. Thanks.

From: Jeffrey G. Jensen [mailto:jeffreyjensen@yahoo.com]
Sent: Tuesday, April 14, 2009 8:01 AM
To: Brunner, Jane
Cc: Barra-Gibson, Maria; Wald, Zachary; Don Link; Ian Martin; Fielding, Rich; Valeska, David
Subject: Nick Nack Liquors, 6400 Shattuck Avenue

Dear Councilwoman Brunner:

I want to express my grave concern that the City of Oakland has erroneously issued a use permit to allow Nick Nack Liquor Store to reopen as if it were re-establishing a pre-existing business. This liquor store has been shut down for several years now. Accordingly, it required a public notice and public comment prior to issuing a conditional use permit for a new liquor store. No such noticing was provided to the neighborhood and no such permit was required by the City Planning Department.

The last thing that North Oakland and South Berkeley need is another liquor store. Our communities along the City border have worked hard to limit the number of alcohol outlets that have inevitably become an attractive nuisance for drug dealing, littering, loitering, public drunkenness, and blight. By not following the proper procedural requirements on this property, and providing residents an opportunity to voice our concerns about the issuance of a conditional use permit, opens the City up to potential legal liability.

In addition, this property, which is located at 6400 Shattuck Avenue, sits at a very busy intersection with a bus stop along the Alcatraz Avenue street side. It does not appear that the parking or the ingress/egress may meet current City requirements. Because the City failed to properly review this new use, it did not evaluate the parking and the ingress/egress.

Ian Martin, the owner of the Nomad Building, requested that I send to you the following information that I obtained from the City Planning Department.

Apparently, the City granted an approval as if it were re-establishing an existing business. In which case, no noticing of the community is required. If the business had been out of operation for more than a year--which it has been--a new use permit would be required and noticing would be required.

One way to show whether they were in operation or not is the amount of business tax that was paid for the last several years. Business taxes are required of every business operating in

Valeska, David

From: Ian Martin [ianmartin@earthlink.net]
Sent: Tuesday, April 14, 2009 9:35 AM
To: Valeska, David
Cc: jeffreygjensen@yahoo.com
Subject: RE: Nick Nack Liquors, 6400 Shattuck Avenue

Dear Mr. Valeska,

This is the email I just sent to Jane Brunner and others, I would like you to consider it too, the facts herein may help you in your bid to revoke Nik Nak's use permit. Please let me know what you think.

Dear Jane, Zac, Maria and Mr. Fielding,

In light of the city allowing Nik Nak to reopen as an on-going business (despite having been shuttered for at least eight years), I am very concerned that the same thing will be allowed to happen at 6501 Shattuck, the East Bay Smog Center (AKA Ali's). In the past, this property has been run as a car repair facility. But now, it has been out of operation for over two years. Therefore, it has lost its grandfathered-in status as a car services facility and cannot be allowed to reopen as a such under the planning code. I want the city to give the neighbors and me a written assurance that Ali's will not be allowed to reopen as a car repair facility. Please give us one.

I am deeply frustrated with Oakland over Nik Nak. My neighbors and I have thousands of hours invested in making our stretch of Shattuck a credit to the city and its residents. Due to the city's serious budgetary restrictions, we are aware that it is largely up to volunteers like us to improve our city. But for the city to actively work AGAINST our efforts through incompetence or laziness by allowing another liquor store to open without any due diligence galls me. Truly, it feels like a slap in the face. I fully expect that the city will make this situation right by revoking Nik Nak's usage permit to sell alcohol promptly.

The city may expose itself to liability to the owners of Nik Nak by the revocation. But to refuse to take responsibility for this mistake is the bureaucratic equivalent of a hit-and-run. And besides, Nik Nak must have egregiously misrepresented themselves by claiming to be an on-going operation when in truth they have been solidly closed at least as far back as the fall of 2000 when I moved into the neighborhood. Many can attest to this including Ed Kikumoto. About two years ago, he used this fact to deny their bid to reopen as a liquor store.

I am looking forward to your response.

-Ian Martin
owner/resident Nomad Cafe Building
6500 Shattuck Ave.

-----Original Message-----

>From: "Valeska, David" <DValeska@oaklandnet.com>
>Sent: Apr 14, 2009 11:44 AM
>To: jeffreygjensen@yahoo.com, "Brunner, Jane"
><JBrunner@oaklandnet.com>, "Miller, Scott" <SMiller@oaklandnet.com>,
>"Ortler, Carolyn" <COrtler@oaklandcityattorney.org>
>Cc: "Barra-Gibson, Maria" <MBarra-Gibson@oaklandlibrary.org>, "Wald,
>Zachary" <ZWald@oaklandnet.com>, Don Link <don-link@comcast.net>, Ian
>Martin <ianmartin@earthlink.net>, "Fielding, Rich"
><RFielding@oaklandnet.com>
>Subject: RE: Nick Nack Liquors, 6400 Shattuck Avenue
>
>Thanks, Mr. Jensen, for your e-mail. Staff has been looking into this



April 29, 2009

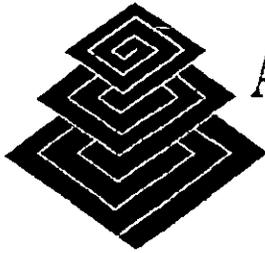
Nik Nak Convenience Store (aka Jo Jos Market, previously dba Nik Nak Liquors)
6400 Shattuck Avenue
Oakland CA 94609

TIMELINE

DATE	ACTIVITY
April 19, 2004	Ed Kikumoto first became aware of a license transfer application for 6400 Shattuck Avenue. The transmittal date on the ABC Notice was March 30, 2004. The license transfer was from Pannell (40341) to Nagi Saeed Dobashi (411764).
April 26, 2004	Ed Kikumoto informed PSA 2 Yahoo Group of a pending license transfer at 6400 Shattuck Avenue.
April 26, 2004	Ed Kikumoto asked Jacob Graef (ABAT) to rescind the locations Deemed-Approved status (grandfathered use) based upon information received by Ed Kikumoto from the community that the business had been closed for over two years.
April 28, 2004	ABAT's Jacob Graef sent to Nagi Saeed Dobashi (pending new license owner) and Ashrious Pannell (licensee and property owner) a Lapse Letter rescinding the grandfathered use. This letter was copied to the ABC.
April 29, 2004	Ashrious Pannell surrendered ABC License Number 40341 to the ABC because it had been inactive for more than 15 consecutive days.
May 4, 2004	Email Update (6 pages) sent to PSA 2 Yahoo Group by Ed Kikumoto
July 16, 2004	Nagi Saeed Dobashi (411764) withdrew his license transfer application.
April 29, 2005	ABC filed an action (ACCUSATION) against Pannell for failing to reactivate or transferring his license. (24200(a) signifies a rules violation and CCR 65(a) is the rule that was violated, which is a failure to transfer the license or reactivate it.)
January 30, 2008	ABC License Number 40341 transferred (pending) to Sharaf Mohamed Khalid (463647).
April 16, 2008	Sharaf Mohamed Khalid withdrew his application (463647) for the transfer.
September 24, 2008	Zoning Clearance approved by the Zoning Department. (See April 14, 2009 below.)
August 29, 2008	Pannell's ABC license (Number 40341) was reinstated and

2201 Broadway Suite 208, Oakland California 94612-3028
Office (510) 251-2492, FAX (510) 251-2613

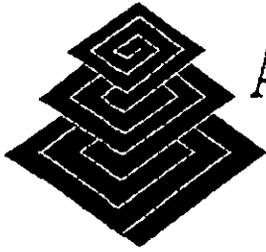
1/22



The
**Alcohol Policy
Network**

	reactivated by the ABC. Grounds for reinstatement are unknown. (See April 29, 2005 above.)
November 20, 2008	April 29, 2005 charge "cleared" by ABC (See explanation of charge at April 29, 2005 above.) No explanation of why charge was cleared.
March 17, 2009	Email from Christopher Waters to Ed Kikumoto that Nik Nak Liquors reopened. Ed called Deputy City Attorney Ortler to find out what happened. She said she would immediately send an email to Planning and Zoning to find out if a Conditional Use Permit was issued to 6400 Shattuck (based on my assumption that the grandfathered use had been rescinded).
March 28, 2009	Email from Christopher Waters describing what is being sold at the store.
April 9, 2009	Deputy City Attorney Carolyn Ortler informed Ed Kikumoto that the ABC already approved the license application based on the Zoning Clearance, therefore there is no requirement for a Public Convenience or Necessity finding in the event the census tract is over concentrated.
April 14, 2009	Email from Jeffrey Jensen to Jane Brunner: Planning Application #ZC082293, filed 09.24.08 with a note dated 04.01.09, which states: "DV—Deemed Approved Status must be maintained pursuant to the Oakland Codes and Owner is required to meet performance standards of code, otherwise City has option to hold Deemed Approved hearing. Code Enforcement should report to DV any failures to comply."
April 14, 2009	Email from Zoning Manager Scott Miller regarding the action he is taking to rescind the mistakenly approved zoning clearance.
April 15, 2009	Ed Kikumoto emailed a copy of ABAT's April 28, 2004 Lapse Letter to Zoning Manager Scott Miller and Deputy City Attorney Carolyn Ortler.
April 16, 2009	Zac Wald's email to the community regarding Zoning Manager Scott Miller's plan to rescind the zoning clearance. Council Member Brunner taking a wait and see position.
April 29, 2009	Community meeting to clarify what happened and what may be the result of the Zoning Department's action to rescind the zoning clearance.
???	Meeting between Community and City (i.e., Planning & Zoning, City Attorney and ABAT)?

2/22



The Alcohol Policy Network

QUESTIONS:

- Was the 04.28.04 Lapse Letter contested by Pannell? He had 10-days to protest the rescission and request a Planning Commission public hearing.
- Why was the Zoning Clearance approved?
- Remedies if Nik Nak remains open despite rescission of the Zoning Clearance?

PROCESS ISSUES

- ABC
- Zoning
 - a. Zoning Certificate & Deemed-Approved Status
 - b. Major Conditional Use Permit (CUP) and Planning Commission hearing
- Legal remedies of the property owner (PANNELL)
- Community participation in the process

COMMUNITY ISSUES & POSSIBLE REMEDIES

- Issues
 - a. only alcohol being sold
 - b. liquor store directly across the street
- Remedies
 - a. Needs to increase "convenience store" items and reduce alcohol footprint
 - b. CUP operating conditions (e.g., hours, limit on alcohol footprint)

STATE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
APPLICATIONS TAKEN FOR ALCOHOLIC BEVERAGE LICENSES

OFFICE: Oakland District Office

DATE: 04-01-04

TRANSMITTAL NO.: 61
ABC93/ 03-30-04

<u>APPLICANT</u>	<u>ACTION</u>	<u>TRANSFEROR OR EXPLANATION</u>
DOBASHI, Nagi Saæed dba: Nic Nak Drive In Liquor 6400 Shattuck Ave Oakland 94609	PER TRF 21-40341	PANNELL, Ashrious & Verniece ESC: M.O. Enwere 15250 Hesperian Blvd #201 San Leandro 94578
LA, Hong Quoc / LU, Khai Gian dba: Black & White Market 2681 Fruitvale Ave Oakland 94601	PER TRF 21-386528 Temp 30-411767 Eff: 04-01-04 to 07-30-04	LU, Maggie ESC: The Mechanics Bank 1999 Harrison St Ste 100 Oakland 94612
NORM LLC Walsh, Justin Cameron - Mgr/mem dba: Norms Place 356 Hartz Ave Danville 94526	PER TRF 41-389018	LIFE AFTER CORP ESC: Bay Area Escrow Services 2817 Crow Canyon Rd Ste 102 San Ramon 94583

*7-1-04
 Cancel app about
 cross transfer

 411764
 Elizabeth Tomman
 622-4982*

4/22

RECORDING REQUESTED BY

M. O. EWERS



LUVTU10020

02/20/2004 00:02 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 7.00

WHEN RECORDED MAIL TO:

NAME
M. O. EWERS

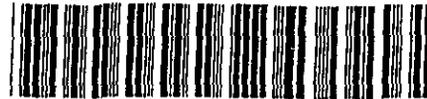
MAILING ADDRESS (Street number and name)

15250 HESPERIAN BLVD #201

CITY STATE ZIP CODE

SAN LEANDRO CA 94578

A43
ew



1 PG

DO NOT WRITE IN THE SPACE ABOVE. Government Code
Section 27381.6 reserves space above for exclusive use of County Recorder.

NOTICE OF INTENDED TRANSFER OF RETAIL ALCOHOLIC BEVERAGE LICENSE UNDER SECTIONS 24073 AND 24074 CALIFORNIA BUSINESS AND PROFESSIONS CODE

Read instructions before completing.

1. LICENSEE(S) NAME(S) (Seller)

PANNEL ASTRIOUS

PANNEL, VERNIECE

2. PREMISES ADDRESS TO WHICH LICENSE(S) HAS/HAVE BEEN ISSUED

6400 SHATTUCK AVENUE OAKLAND CA 94608

3. LICENSEE'S MAILING ADDRESS (if different)

SAME

4. APPLICANT(S) NAME (Transferee or Buyer)

NAJI S. DOBASHI

5. PROPOSED BUSINESS ADDRESS (if different than Item 2)

6. MAILING ADDRESS OF APPLICANT

2022 62ND AVENUE OAKLAND CA 94605

7. KIND OF LICENSE INTENDED TO BE TRANSFERRED

OFF-SALE LIQUOR

8. ESCROW HOLDER/GUARANTOR NAME

M. O. EWERS

9. ESCROW HOLDER/GUARANTOR ADDRESS

15250 HESPERIAN BLVD #201, SAN LEANDRO CA 94578

10. TOTAL CONSIDERATION TO BE PAID FOR THE BUSINESS AND LICENSE, INCLUDING INVENTORY, WHETHER ACTUAL COST, ESTIMATED COST, OR A NOT-TO-EXCEED AMOUNT

CASH	\$	0.01
CHECKS		100,000.00
PROMISSORY NOTES		0.00
TANGIBLE AND/OR INTANGIBLE PROPERTY		0.00
TOTAL AMOUNT \$		100,000.01

The parties agree that the consideration for the transfer of the business and the license(s) is to be paid only after the Department of Alcoholic Beverage Control has approved the proposed transfer. The parties also agree and herein direct the above-named escrow holder to make payment or distribution within a reasonable time after the completion of the transfer of the license as provided in Section 24074 of the California Business and Professions Code.

LICENSEE'S SIGNATURE (Transferor or Seller)	VERNIECE PANNEL	DATE SIGNED
<i>Verniece Pannel</i>	PANNEL, ASTRIOUS / Verniece Pannel	02/14/04
APPLICANT'S SIGNATURE (Transferee or Buyer)		DATE SIGNED
<i>Naji S. Dobashi</i>	Naji S. Dobashi	02/14/04

One copy of this notice, CERTIFIED by the County Recorder, together with an additional copy must accompany the application or the transfer of the license.

5/22

Valeska, David

From: nenahunt@sonic.net
Sent: Sunday, July 12, 2009 4:45 PM
To: Valeska, David
Subject: Please deny liquor license to JoJo's Market

Hi,

I've been told that JoJo's Market at 6400 Shattuck Ave has applied for a liquor license, and that you are the Case Planner for this request. As a resident of the neighborhood (559 North Street), I do not think that this license request should be approved. There are already multiple places in the neighborhood to buy alcohol. And, crime is already much higher in our area than it should be. Another business that sells alcohol will lead to even more crime and noise in an otherwise quiet residential neighborhood.

Please do not approve this request.

Thanks.

Nena Hunt

7/20/2009



Valeska, David

From: Wald, Zachary
Sent: Thursday, October 01, 2009 9:31 AM
To: 'Don Link'; 'Jeffrey G. Jensen'
Cc: Valeska, David; Miller, Scott; 'Christopher Waters'
Subject: RE: Nic Nak Letter for Planning Commission Packet

Don -

That is an uncharacteristically misinformed comment in relation to our office. I always answer the phone when you call, so if you want the facts, please call me.

- Zac

Zachary Wald
 Chief of Staff
 Jane Brunner, City Council President
 Oakland, California

(510) 238-7013

From: Don Link [mailto:don-link@comcast.net]
Sent: Wednesday, September 30, 2009 8:07 PM
To: Jeffrey G. Jensen
Cc: Valeska, David; Miller, Scott; Christopher Waters; Wald, Zachary
Subject: Re: Nic Nak Letter for Planning Commission Packet

Jeff: a masterly response and one which will probably prove legally useful if this application for a variance goes forward. We will be able to use this at City Council and in Court if we have to go there.

I don't have much faith that the CC will have a lot of backbone; it's members seem more eager to dodge issues than face them head on. There is a lot of discontent in the electorate that I hear. Like Sacramento, Oakland government is not measuring up to the challenges is the talk. I would expect that Jane's office will not get involved, as it did in the beginning, because it finds it more convenient to sidestep the issue of more alcohol outlets in District 1. The initial fervor of the District 1 Office in the beginning of this issue is overwhelmed by its silence and distance as it comes to a head. The same for the Dorsey's Locker problem. Feigned concern and then silence, inaction, or blocking of efforts by other agencies to move ahead. These actions will have consequences in the future.

If the Planning Commission continues to pander to the Nic Nak applicants in the way that it did in the Aug 16 findings, , the CC will see this issue and perhaps the courts. Either law and community standards prevail, or the judicial system will sort it out in the end. This issue is not going to die, and people involved will pay in the end.

I realize that Planning Staff has to serve the Commission (I chaired one for 9 years), but to reverse its findings 180 degrees as it did between the Aug. 5 and Aug. 16 findings is a mind-bending performance. Liquor sales not allowed for a number of reasons, all compliant with Oakland statutes at the Aug. 5 meeting, shifting to Liquor sales allowable and compliant with Oakland statutes at the Aug. 16 findings is, on the face of it, not credible or intellectually honest. The Planning Commission staff is probably going to take the heat in this because of their legal gymnastics (right-side up is up-side down, and vice

10/2/2009



versa).

The real villains to date are the preening, politically correct Commissioners who want to bend over backwards to demonstrate their PC while ignoring settled law, its intent, and precedents to serve their political purposes. Two of these people have left the Commission. We can hope that their replacements will pay more attention to city policy and law and the wishes of the majority of the community who will have to live with the consequences of their decisions. And, then, there is always the question of Recall, always an option and maybe a good one for the backers of this stupid application.

This is a no-brainer: why do it?

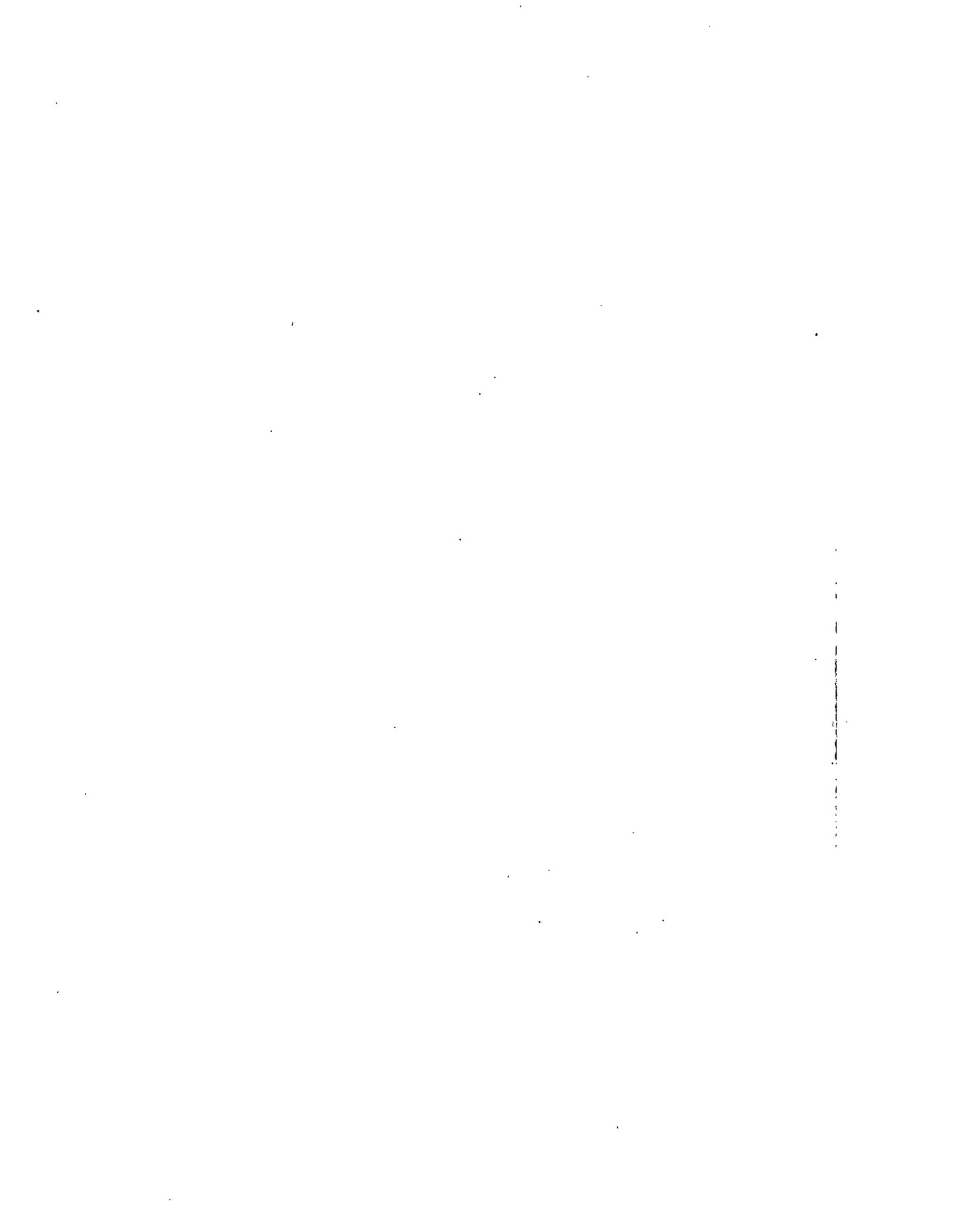
Don Link, Chair Shattuck Neighborhood Crime Prevention Council

On Sep 30, 2009, at 4:10 PM, Jeffrey G. Jensen wrote:

Attached, please find a letter for inclusion in the Planning Commission Packet for the Nic Nak Liquor Store public hearing in October. Thank you.

Jeffrey G. Jensen
Chair East Lorin Neighborhood Association

<CVM09111 Pannell Comments 9-30-09.doc>



Valeska, David

From: lillaneybo@aol.com
Sent: Thursday, October 01, 2009 2:22 PM
To: Valeska, David
Subject: Fwd: This is the final copy, discard the rest, thanks

-----Original Message-----

From:
Subject: This is the final copy, discard the rest, thanks

City of Oakland Planning Department
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Jo Jo's Market- 6400 Shattuck Ave.
City of Oakland Permit Case No: CMV09-0111

Dear Planning Dept. & Commissioners:

I support the Pannell Family application to re-open their store in its current condition by adding liquor, beer and wine. I am a resident in the neighborhood near Jo Jo's Market at Shattuck and Alcatraz Avenue. I have known the Pannell family and visited his market numerous times over the last 30 years.

Thank you for your consideration.
Elaine Herring

Sincerely,

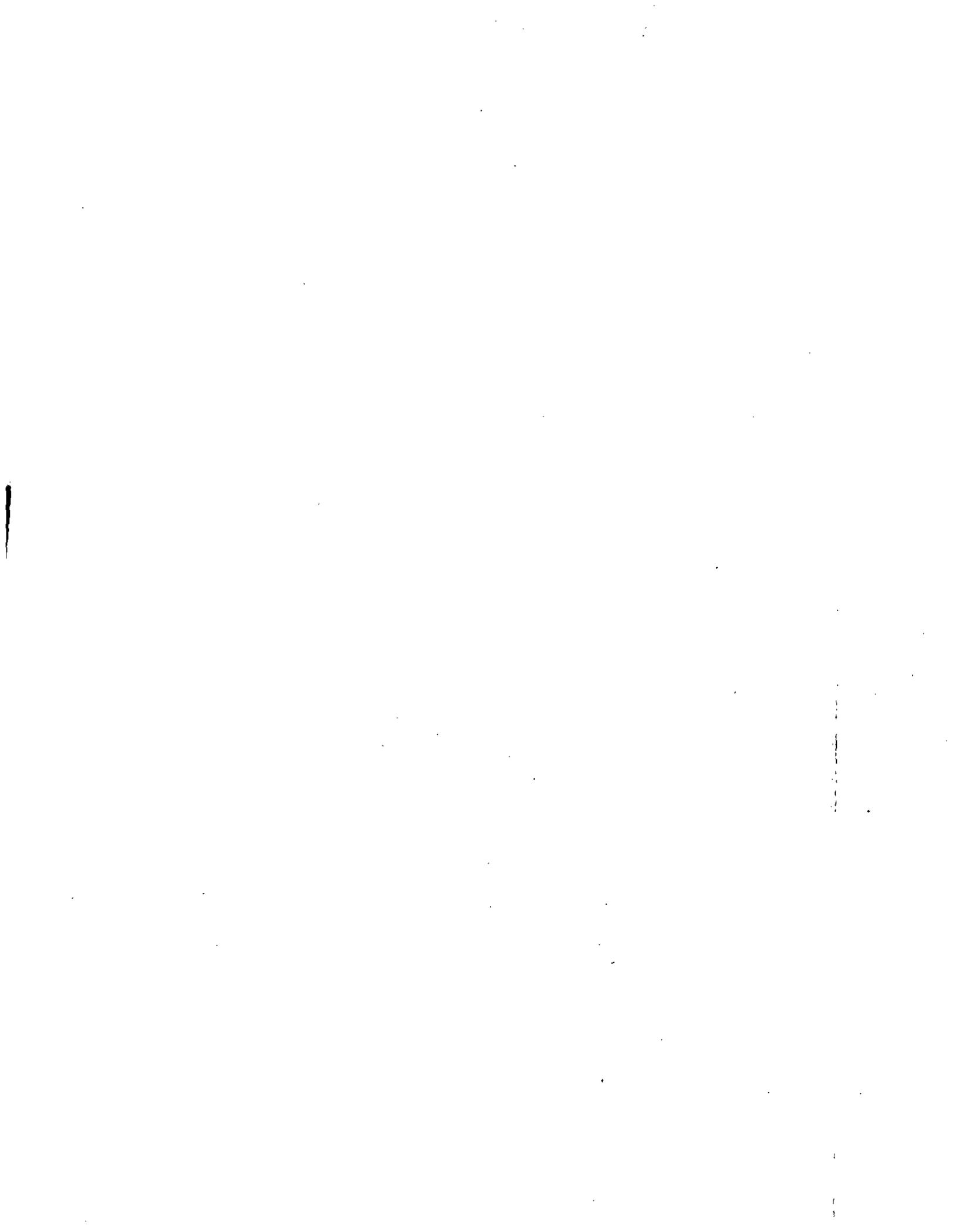
Planners

Scott Miller - smiller@oaklandnet.com
Dave Valeska - dvalueska@oaklandnet.com

Commissioners

Michael Colbruno - michaelcolbruno@clearchannel.com
Blake Huntsman - blake.huntsman@seju1021.org
Sandra Galvez - sgalvez@phi.org
Doug Boxer - dboxer@gmail.com
Madeleine Zayas-Mart - mzayasmart@sf.wrtdesign.com
Vien Truong - VienV.Truong@gmail.com
Vince Gibbs - vincegobbs.opc@gmail.com

10/2/2009



Valeska, David

From: Rubin Family [familyrubin@comcast.net]
Sent: Wednesday, September 30, 2009 8:02 PM
To: Miller, Scott; Valeska, David
Cc: Don Link; Munoz, Michael; Jeffrey Jensen; Ozzie Vincent
Subject: Nic Nak Liquors issue at the Planning Commission

TO: Scott Miller, Zoning Manager of the Oakland Planning Dept.
David Valeska, Oakland Planning Dept. Case Manager of the Nic Nak application

Dear Sirs,

I am a neighborhood watch coordinator for a large area in South Berkeley, just 4 or 5 blocks from Nic Nak Liquors. My husband and I strongly oppose granting a new liquor license to Nik Naq Liquors which was closed for many years, well over the 90-days required by law for a new license.

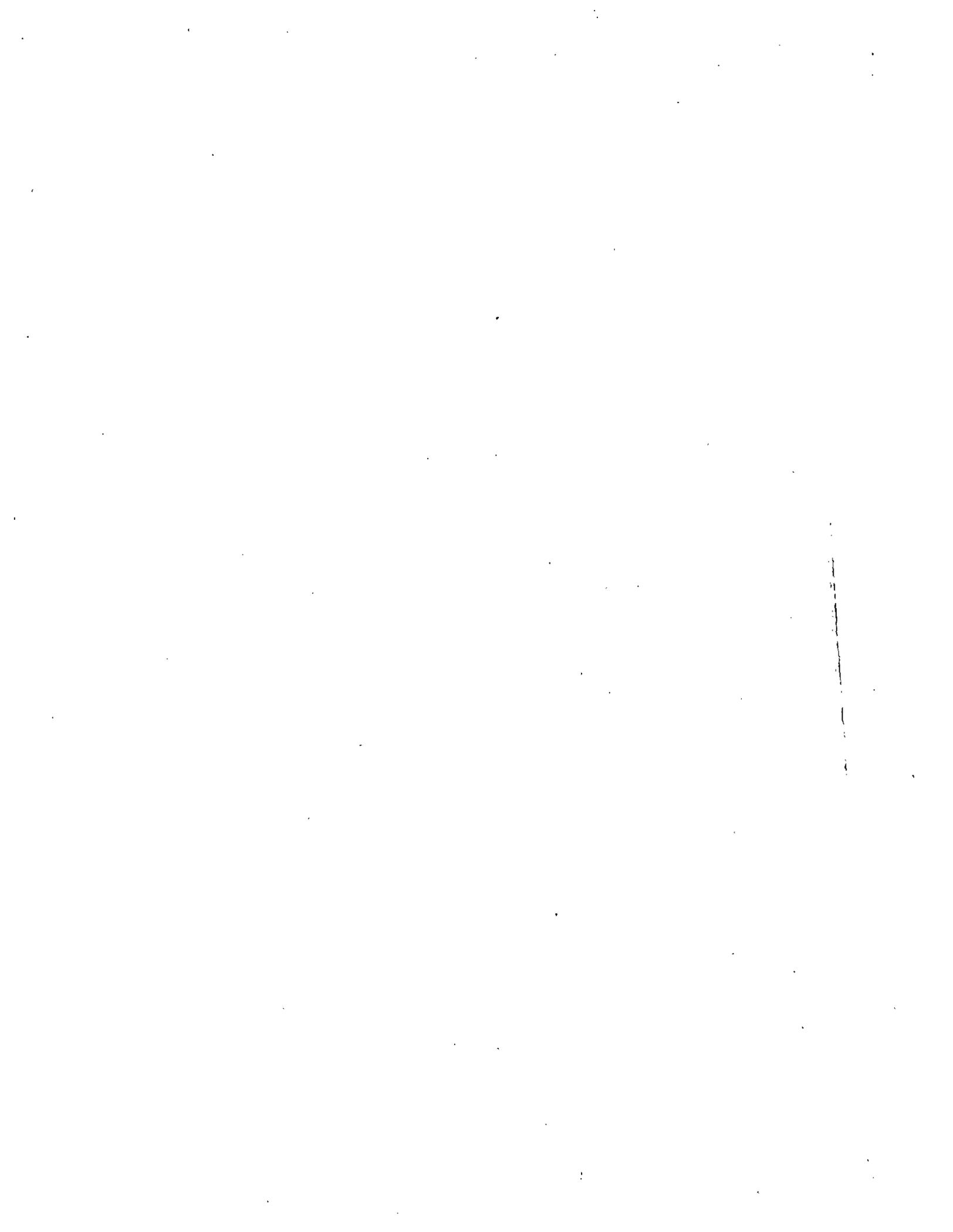
I believe it would be illegal and unethical for the City of Oakland to approve it given that there are several full-service liquor stores within easy walking distance. Both Oakland and Berkeley have spent large amounts of staff time, at considerable expense, managing nuisance liquor stores. Please note that the store is also VERY close to an elementary school. By definition any business that had a non-conforming license had some kind of long-standing relationship with the community, even if just a business relationship and/or if owners/employees live nearby. I have lived here for about 20 years and have never heard of the owners of that store participating in any community events or charities or neighborhood watch activities as good neighbors - and I am very involved in all of these.

At the VERY LEAST, if a permit is approved, please ensure that it include the strictest possible operating conditions to help them be "good neighbors" including prohibition of sales of products like alco-pops and airline-size bottles, required participation in local neighborhood watch groups, restricted hours of operation, a requirement for clear in-store visibility from the street, lowering of the iron fence, removal of the billboard sign, and other conditions volunteered by the owner at the September 17 meeting.

Thank you for your consideration.

Dawn Trygstad Rubin
3049 Wheeler St.
Berkeley, CA 94705

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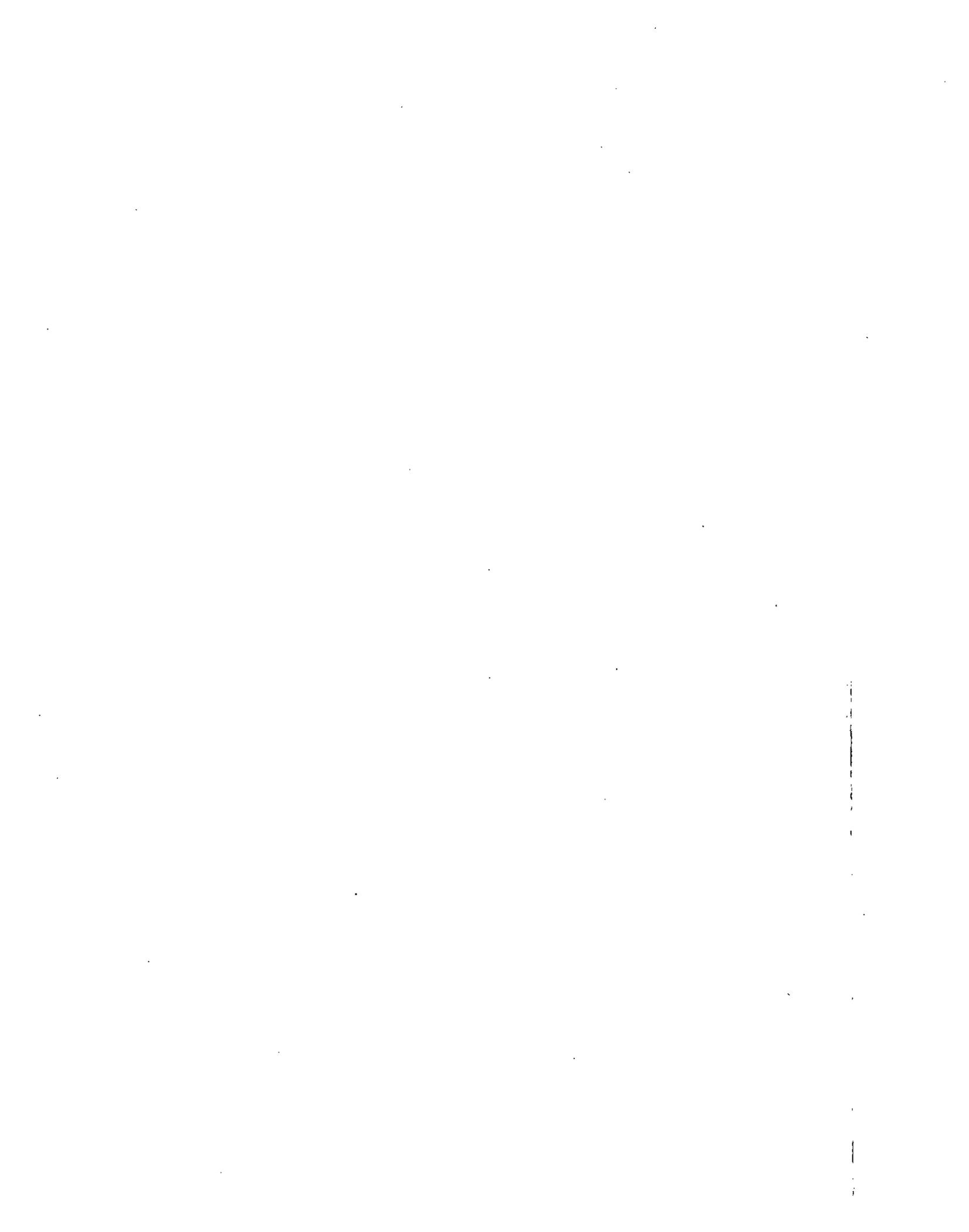
Valeska, David

From: Robin Donovan [robinrun1@gmail.com]
Sent: Wednesday, September 30, 2009 6:26 PM
To: Miller, Scott; Valeska, David
Subject: Nic Nak Liquors issue at the Planning Commission

Dear Planning commission:

I am writing as a concerned neighbor regarding the liquor license at Nic Nak Liquors. To me the issue seems pretty cut and dried, this establishment was issued a liquor license in error, and, it should be terminated based on Oakland law which prohibits alcohol sales at that location because it is within 1000 ft. of another alcohol outlet (the TK Market across the street). Alcatel, two blocks away, also sells alcohol. There is no shortage of alcohol distributors in this neighborhood - and yet - this is a neighborhood. Young families abound, and while convenience stores are important to a neighborhood, one more store selling alcohol is not necessary in this one. Oakland law is pretty clear on this issue, it is confusing why there is even a debate going on. If for some far fetched reason this liquor license remains in place, it must have the required restrictions (sales to be community friendly, no "flights", no individual containers of beer or malt liquor, etc. and one other that restricts the Variance to current owner operation of the Nic Nak-- a sale to someone else would require a new application for a Variance to sell alcohol, and the public input process would start anew. No one in the community wants a grand-fathered, eternal alcohol use granted for the property at 6400 Alcatraz.

Thank you,
Robin Donovan
541 North Street
Oakland, CA 94609



Subject: re: Nic Nak Drive In Liquors Update
From: Ed Kikumoto <ekiku@pacbell.net>
Date: Tue, 04 May 2004 04:48:04 -0600
To: PSA 2 Yahoo Group <opd@yahoogroups.com>, SBCPC <southberkeleycpc@yahoogroups.com>, James Anthony <janthonny@neighborhoodlawcorps.org>

05.04.04 04:27

To Beat 11X and South Berkeley (on the border) residents,

This is a cut and paste of the WORD.doc.

Update on Nic Nak Drive In Liquors

Click on the link to get ABC info on PANNELL's original license:

<http://www.abc.ca.gov/datport/LQsdata.asp?ID=40341000>

If your starting from scratch-

Log on to www.abc.ca.gov

Click on License Query System to the right of the webpage.

Use the serial buttons to get into the system.

Use the Continue button to move from page to page.

If you put an asterisk before a street name you'll get all the licensees on that street.

DOBASHI's PENDING License Number is 411764.

T&K Market's License Number is 338661

DOBASHI's prior ownership in Tanglewood Market & Liquors License Number is 370909 -

Note the minor decoy sales violation.

BACKGROUND

On April 1, 2004 a ABC license transfer notice was posted on the window at Nic-Nak at 6400-Shattuck-Avenue.

This is the north east corner of Shattuck and Alcatraz.

T&K Market (Type 20, Beer and Wine) is on the south east corner.

Pizza Hut is on the south west corner.

The Wash is on the north west corner.

What this means is that (pending approval from the ABC and the City's Zoning Department, the owner, PANNELL has sold his license and his business to DOBASHI and that the liquor store (Type 21 General - beer, wine and distilled spirits) will reopen at this address.

Alcohol sales at this location is "grandfathered" because the last business was a liquor store that PANNELL still has an ACTIVE license for. He just wasn't using it and now he has decided to sell it and the business.

He could still retain ownership of the property.

The fact that the business was closed for years was unsubstantiated by

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admissible evidence at the time that we became aware of the license transfer.

The posting was on the far window away from the street and was unreadable from the street.

A South Berkeley resident noticed that some type of application notice was posted on the window and notified me.

I went to the site around mid April and observed the sign and immediately realize what it was but was not able to read the date that the sign was posted because of the locked fence.

RESIDENTS HAVE THIRTY DAYS FROM THE POSTING DATE TO RELATE TO THE ABC, IN WRITING, THEIR CONCERNS ABOUT THE TRANSFER OF THE LICENSE. THE CITY OF OAKLAND (ALCOHOL BEVERAGE ACTION TEAM) HAS FORTY-FIVE DAYS TO RESPOND.

I checked my records and found out that the ABC was informed of the license transfer application on March 30 – which would make the response deadline April 29.

During the third week I began researching the license transfer, what impact it would have on the community and whether the community had any way to stop the transfer from occurring.

I also called ABC and requested that the sign be re-posted to a location that made it readable from the sidewalk and also requested an extension on the time to PROTEST the transfer.

During my discussions with ABC, I was informed that the ABC did not see any roadblocks to the license transfer and that the City had approved zoning.

The ABC, at that point, was only waiting for the forty-five day local government protest period to expire (approximately May 14) before they issued the license to the new owner. With the ABC license and administrative land use formalities completed (zoning clearance was granted by ABAT) the business would be able to open (end of May, early June).

I also emailed a brief explanation of what was happening to Beat 11 folks and to some South Berkeley residents requesting a response back if they had problems with the re-opening of the store.

~~I did receive some feedback from residents voicing their concern.~~

I was also informed that the store had not been open in years.

POSSIBLE STRATEGIES

THERE ARE THREE AVENUES BY WHICH A COMMUNITY CAN TRY TO STOP A LICENSE TRANSFER.

ONE IS TO "FILE A PROTEST" TO THE ABC WITHIN THE THIRTY DAY PROTEST PERIOD. THE PROTEST MUST BE BASED ON ONE OF TWO REASONS – 1) THAT THE APPLICANT IS UNFIT TO OPERATE AN ALCOHOL SALES BUSINESS DUE TO A PRIOR HISTORY OF BAD BUSINESS PRACTICE OR A CRIMINAL RECORD OR 2) THAT THE LOCATION (NOT THE SURROUNDING AREA) HAS A HISTORY OF PUBLIC NUISANCE AND CRIMINAL ACTIVITY THAT MAKES IT UNSUITABLE FOR A BUSINESS THAT SELLS ALCOHOL.

ANOTHER IS TO CONVINCE THE LOCAL AUTHORITIES TO FILE A PROTEST TO THE ABC FOR THE SAME REASONS AS STATED ABOVE...

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THEY HAVE FIFTEEN MORE DAY THAN RESIDENTS TO FILE A PROTEST.
THE LOCAL AUTHORITIES MAY BE ABLE TO BUILD A BETTER CASE BASED UPON LAW
ENFORCEMENT RECORDS.

THE THIRD AVENUE, IF IT IS AVAILABLE, IS TO ORGANIZE AND PROTEST THE
LOCAL LAND USE IN PUBLIC HEARINGS BEFORE THE PLANNING COMMISSION.

IN REGARDS TO NIC NAK

Because of time constraints I focused on two of the possibilities -
ostensibly to get us more time.

1) Get an extension on the protest period because the original posting
of the notice was unreadable through the fence from the sidewalk.
The extra time would allow us to research the applicant's prior history
as a ABC licensee and as a business owner, and to file a protest if
there are legitimate grounds.

2) Try to get the City to rescind the grandfathered land use and
therefore require the applicant to apply for a Major Conditional Use Permit.

THE NINETY-DAY RULE

THE CITY OF OAKLAND HAS A RULE IN THE MUNICIPAL CODE THAT SAYS THAT IF A
GRANDFATHERED OFF-SALE ALCOHOL SALES BUSINESS IS CLOSED FOR NINETY
CONSECUTIVE DAYS FOR REASONS OTHER THAN FOR RENOVATIONS OR AN ACT OF
GOD, THE CITY MAY RESCIND THE GRANDFATHERED USE.

HOWEVER, RESCISSION IS NOT AUTOMATIC AND REQUIRES THE CITY TO HAVE
KNOWLEDGE OF THE FACT THAT THE BUSINESS WAS CLOSED.

NORMALLY, ABAT IS NOTIFIED, GOES OUT TO THE LOCATION, BEGINS COUNTING
THE DAYS OR COLLECTS EVIDENCE OF THE EXTENDED CLOSURE AND AFTER NINETY
DAYS OR WITH ENOUGH EVIDENCE OF AN EXTENDED CLOSURE SENDS THE PROPERTY
OWNER A RESCISSION LETTER TERMINATING THE GRANDFATHERED USE.

THE RESULT OF THIS ACTION IS THAT ANY NEW APPLICANT TO THE CITY WHO
WISHES TO OPEN A STORE SELLING ALCOHOL AT THAT LOCATION IS NOW REQUIRED
TO RECEIVE A MAJOR CONDITIONAL USE PERMIT (CUP) FROM THE CITY.

A MAJOR CUP HAS MUCH MORE STRINGENT REQUIREMENTS ATTACHED TO IT.

FOR EXAMPLE - IF THERE IS ANOTHER OFF-SALE OUTLET OR BAR WITHIN
ONE-THOUSAND FEET OF THE APPLICANT'S BUSINESS LOCATION THE ZONING
PLANNER'S STAFF REPORT WILL RECOMMEND TO THE PLANNING COMMISSION THAT
THE APPLICATION BE DENIED.

KEEP IN MIND THAT THE PLANNING COMMISSION CAN REVERSE THE RECOMMENDATION
OF THE STAFF REPORT AND WILL OFTEN DO SO IF THERE IS NO PUBLIC
OPPOSITION FROM THE NEIGHBORS TO THE STORE OPENING.

THIRD WEEK

I called ABAT and inquired about the zoning clearance.

I was informed that the owner claimed that he periodically opened and
was never closed for over ninety days during all the years that he
"appeared" to be closed.

In addition, he continued to pay his annual ABC re-licensing fees and
paid the City's annual \$600.00 Deemed-Approved ordinance fee.

During all this time ABC was never aware of the fact PANNELL'S store was

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closed.

They had never been informed by PANNELL or anyone in the community that it was closed.

ABC didn't know because it isn't normal practice for ABC investigators to make regular inspections of alcohol outlets.

There case loads do not permit regular checks on all their licensees.

This is also pretty much the same for ABAT.

At that moment, ABAT did not have "reasonable" grounds to rescind the grandfathered use and therefore approved the zoning.

IF ABC AND ABAT HAD BEEN INFORMED BY THE RESIDENTS WHEN THE BUSINESS FIRST APPEARED TO BE PERMANENTLY CLOSED, ABC WOULD HAVE REQUIRED THE OWNER TO SURRENDER THE LICENSE UNTIL HE RE-OPENED HIS BUSINESS (STRICTLY A FORMALITY) AND ABAT WOULD HAVE BEGUN THE PROCESS OF RESCINDING THE GRANDFATHERED USE.

FOURTH WEEK

At the beginning of the fourth week after the ABC notice was posted, I asked ABAT to reconsider its zoning approval decision based upon what the residents were telling me about not seeing the store being open in years.

ABAT agreed to look into the matter, found evidence supporting the contention that the store was closed for a long period of time and on April 28 sent a rescission letter to PANNELL and an FYI to the ABC.

During this time the ABC investigator made a cite inspection upon my request and noted that the notice was not readable from the sidewalk. She had the sign moved to a window near the sidewalk on April 28. I wrote a formal letter to ABC on April 29 (what I thought was the last day - I actually had one more day according to the notice), requesting an extension on the time to protest.

I have yet to hear from the agency regarding this matter.

WHAT IT ALL MEANS

I believe that ABC signaled an extension of the protest period when it moved the notice closer to the sidewalk.

So we will have more time to consider a protest.

More importantly the ABAT has rescinded the grandfathered use.

If the rescission "holds" then the applicant, DOBASHI, will have to apply for either a Major Conditional Use Permit (CUP) or a Major Variance.

An application for a Major CUP will cause the "one-thousand feet rule" to come into affect and zoning staff will recommend denial of the application because of the close proximity of another alcohol outlet (T&K Market).

The applicant can apply for a Major Variance to the "one-thousand feet rule".

A MAJOR VARIANCE WILL EXEMPT THE APPLICANT FROM THE ONE-THOUSAND FOOT RULE. IF APPROVED BY THE PLANNING COMMISSION, THE APPLICANT WILL BE ABLE TO OPEN HIS LIQUOR STORE NEXT TO T&K MARKET.

WJ

IF THE APPLICANT MAKES A CONVINCING ARGUMENT TO THE PLANNING COMMISSION REGARDING THE SERVICE HE WILL BE PROVIDING TO THE COMMUNITY THE PLANNING COMMISSION MAY ALLOW THE MAJOR VARIANCE BECAUSE THE STORE DOES NOT ADD AN ADDITIONAL LICENSE TO THE CENSUS TRACT SINCE THE ABC LICENSE ALREADY EXISTED AT THIS LOCATION – IT WAS JUST INACTIVE.

APPEAL OF THE RESCISSION LETTER

The owner, PANNELL, may or may not appeal the rescission letter. If he appeals there will be a hearing before the Planning Commission. The reason why he will appeal is because, if he doesn't, he loses the value of his store as a liquor store. He will have to sell the license to be transferred somewhere else and then either sell or lease the property – no longer a neat package deal.

If he appeals to the Planning Commission, it will be very important for long time residents to testify at the hearing that the store has been closed for extended periods of time (longer than ninety days) and that they have not observed any commercial activity that relates to the operation a liquor store, e.g. trucks delivering alcohol, bread or groceries.

If the rescission order is NOT contested or upheld by the Planning Commission then the applicant, DOBASHI, may apply for land use permit. He may not if he believes that he will get turned down anyway and save himself the cost of the application fee.

THE PLANNING COMMISSION

If he does apply for a land use permit there will be a hearing at the Planning Commission. Again, it is very important that residents appear at the hearing in force. Twenty-five people is an adequate number but thirty to fifty residents is better.

Planning Commission decisions in these matters are NEVER a sure thing. If residents do not appear at hearings to protest, they will assume that everything is alright.

WHAT'S NEXT

Don't think we're out of the woods.
I realize that you haven't played very much of role in this process up to now.
I apologize for that.
This is not how I like to work and its more than I am comfortable doing for the community.
But I felt that I had to move very fast to give you and me some breathing room.
I THINK we have that breathing room now and its time for you to get involved in this process.

You need to organize for the possibility that 1) PANNELL will appeal the rescission of his grandfathered use and 2) an application for a Major

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Conditional Use Permit or Major Variance will be heard before the Planning Commission.

There is PROBABLY a thirty-day window from the time PANNELL appeals to the a Planning Commission hearing date.

It will only be after the appeal that we will know whether DOBASHI will be required to apply for a Major CUP or Major Variance.

If PANNELL WINS on appeal, the community can appeal that decision to the City Council.

If PANNELL wins at City Council, then the ABAT position reverts back to its original administrative zoning approval.

This ends the land use process.

The only recourse the community will have at this point is to have protested the license transfer to the ABC within the protest period.

It is important to seriously consider an ABC protest on both grounds that I eluded to.

It may not be sufficient for the ABC to deny the application but it is important to go on record with the ABC that the community does not want another liquor store in the neighborhood – especially one directly across the street from an existing business.

If there is insufficient grounds for protest a letter of concern should be written to ABC and inserted into ABC's Nic Nak file regarding the problems in the area and the community concerns about the on-going gang war activity on the Oakland-Berkeley border.

IN CONCLUSION

For those of you in Beat 11 and residents from South Berkeley who live close to this location that are concerned about this issue, its time to plan a meeting to discuss the issues, to collect evidence and to plan a strategy.

For the rest of you folks on this listserv, if you know of a vacant storefront that use to be a liquor store in its most recent existence but that is now closed for other reasons than a renovation or an act of God (fire, earthquake, flood, etc.) please contact ABAT at 777-8670 and tell them about it so that they can rescind the grandfathered use.

Finally, KUDOS to ABAT for rescinding the grandfathered use at Nic Nak. Thanks, it wouldn't have happened without you.

Ed Kikumoto
Alcohol Policy Network
(510) 549-8795

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... No Active Holds found ...
Escrow
... No Escrow found ...

--- End of Report ---

For a definition of codes, view our [glossary](#).

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From: Christopher Waters <christopher@GypsySpiritMission.com>
Subject: Fwd: [Fwd: Re: Nik Nak Liquors]
Date: March 28, 2009 11:41:41 PDT
To: Ed Kikumoto <ekiku@pacbell.net>

Hi Ed,

Just sharing some more information.

Christopher Waters

Begin forwarded message:

From: Christopher Waters <christopher@GypsySpiritMission.com>
Date: March 28, 2009 11:38:02 AM PDT
Subject: Re: [Fwd: Re: Nik Nak Liquors]

I sent an envoy yesterday afternoon to check it out. The description: Three well-organized walls of hard liquor: dark liquors on one wall, drink mixes on another wall, and clear liquors on the other wall. When you walk in, there is only a small amount of floor space that you can walk around, because the three facing walls are blocked off in the center of the room by three walls of glass (probably plexiglass?) behind which the worker walks around in safety to unshelve the customer's liquor choices from the walls. In the small remaining customer area in front of the glass, there is a small self-serve refrigerated unit that has soft drinks, juice and beer, and a few little impulse junk food snacks. There are no grocery or hygiene supplies or newspapers or magazines for sale, like you would find at T&K Market across the street. This is a liquor store in the truest sense of the word. Also, when we came home from the movies at 11:30 last night (a Friday night), they were still open for business. Their neon "open" sign was on and their front door was open and their lights were on inside.

CW

On Mar 27, 2009, at 10:42 AM, Ian Martin wrote:

Has anyone been inside to see what it is that they are selling? I noticed that their new (cheesy) signage says "convenience store".

-I

>

>jeffreygjensen wrote:

>

>Any word on Nic Nac...the last thing North Oakland/South Berkeley needs is another liquor store. I noticed they were open for business last night. Would appreciate any update. Thanks.

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From: "Wald, Zachary" <ZWald@oaklandnet.com>
Subject: Nic Nac
Date: April 16, 2009 9:18:01 PDT
To: "Wald, Zachary" <ZWald@oaklandnet.com>
Cc: "Barra-Gibson, Maria" <MBarra-Gibson@oaklandlibrary.org>

Nic Nac Neighbors –

Thank you for your emails of concern to our office about Nic Nac. We were as distressed as you about what transpired and have been working with staff to correct the mistake made by the City. I want to make sure that everybody concerned has seen the letter (below) from the Zoning Manager regarding the steps that will be taken to resolve the issue.

We will be following this issue very closely and we know that it is of great concern to the neighborhood.

Thank you,

- Zac Wald

Zachary Wald
Chief of Staff
Jane Brunner, City Council President
Oakland, California

(510) 238-7013

I will be sending a letter to the proprietor and property owner of 6400 Shattuck notifying them that the sale of alcoholic beverages from this location is out of compliance with the zoning ordinances. The zoning clearance issued in September was issued erroneously. The letter will provide the proprietor/property owner with a short period of time in which to file for a Major Conditional Use Permit (as required for alcoholic beverage sales when sales have ceased for at least 90 days). The Major Conditional Use Permit process will take the application to the Planning Commission for decision. If that permit is denied, the City will continue to pursue appropriate enforcement actions. I have been in contact with ABC staff at the State level and was told there was little the State could do since the ABC license was already issued. However, I am pursuing whether or not that is indeed the case since the City's earlier action was issued in error, and the State relied on that erroneous approval to issue the ABC license. Rest assured, I do understand the importance of this issue and the sensitivity of this location in the community. My staff has taken and will be taking more steps to ensure that this situation does not occur again. Please do not hesitate to contact me or Dave Valeska for additional information and updates.

Sincerely,

Scott Miller
Zoning Manager
(510) 238-2235

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Valeska, David

From: John Holme [jholme94609@yahoo.com]
Sent: Thursday, July 16, 2009 12:34 PM
To: Valeska, David
Subject: No Liquor at Nic Nak

Please put me on record in opposition to a liquor permit for the Nic Nak Convenience Store at the corner of Alcatraz and Shattuck Avenue . We already have more than enough liquor stores in the neighborhood. Let them sell ice cream!

thanks,
John Holme
614 56th Street
Oakland CA 94609
USA

7/20/2009

Valeska, David

From: amie zemlicka [amiezemlicka@yahoo.com]
Sent: Thursday, July 16, 2009 8:58 AM
To: Valeska, David
Subject: opposition to hard liquor sales-Nic Nac Liquors-NE corner Alcatraz and Shattuck- case file # CMV09-111

Mr. Valeska,

I live 2 blocks from the Nic Nac Liquors and am firmly opposed to the sale of liquor at that store. The T & K market--which is located *directly* across the street-- already sells liquor, beer and wine, so the area does not need another outlet. Anecdotally, I can tell you how much nuisance (noise, fighting, constant garbage, panhandling) one liquor store creates, allowing another outlet would only intensify the problem.

Since buying a house 2.5 years ago, we have seen the neighborhood steadily improve from both a safety and aesthetic perspective; and allowing stores such as Nic Nac Liquors to continue would be a huge step backwards.

I would be happy to discuss the issue with your office if you have any questions.

Thanks,

Amie Zemlicka
62nd and Dover

7/20/2009

Valeska, David

From: michellegray42@comcast.net
Sent: Monday, July 13, 2009 7:12 PM
To: Valeska, David
Subject: Liquor store application

I strongly oppose granting a liquor license to Nik Nak convenience store, located at the intersection of Shattuck and Alcatraz. This community is adequately served by liquor stores, including one directly across the street at the same intersection. In addition, it is a five-minute walk from Alcatel liquors at Alcatraz and Telegraph, and a ten-minute walk from White Horse liquors at Telegraph and 66th Street. This neighborhood is struggling to lift itself out of poverty, drugs, and crime; my husband was mugged eight months ago near the same intersection. The last thing we need is another liquor store to encourage loitering, littering, and crime in our neighborhood.

I also understand the applicant may have tried to illegally sell his liquor license. This does not augur well for his future compliance with the law, or concern for the character of the neighborhood.

Thank you for your attention to this matter.

Michelle Gray
552 North Street
Oakland

7/20/2009

Valeska, David

From: linda white [lwhitetaylor@yahoo.com]
Sent: Monday, July 13, 2009 3:27 PM
To: Valeska, David; Brunner, Jane
Subject: Fw: Voicing Opposition to a Renewal of Liquor License for 6400 Shattuck Ave. 7/15/09

--- On Mon, 7/13/09, lwhitetaylor@yahoo.com <lwhitetaylor@yahoo.com> wrote:

From: lwhitetaylor@yahoo.com <lwhitetaylor@yahoo.com>
Subject: Voicing Opposition to a Renewal of Liquor License for 6400 Shattuck Ave. 7/15/09
To: dvalueska@oaklandnet.com, jbrunner@oaklandnet.com
Date: Monday, July 13, 2009, 3:22 PM

Hello David and Jane,

Please see my attached speech I hope to give at the planning Commission meeting this Wednesday, July 15, 2009, 6 PM.

I, and other residents, are opposed to additional liquor being sold in our neighborhood.

I have submitted a Speaker card on line.

Sincerely,

Linda Taylor
Oakland Resident and Oakland native)
(510) 482-5412

July 3, 2009

Mr. David Valeska
Oakland Planning and Zoning
250 Frank Ogawa Plaza, Floor
Oakland, CA 94612

David Valeska, Case Planner

We, the neighbors of Nik Nak Liquor Store, 6400 Shattuck Ave, Oakland, CA 94609, would be delighted if Nik Nak would not renew its liquor license. We welcome businesses and start-up businesses in our neighborhood that promote a healthy lifestyle. Examples of these could be a farmer's market, a healthy food store, an exercise gym, a bicycle repair shop, a bookstore.

Studies show that liquor stores that cater to African American youth promote the use of alcohol which is their most widely used drug. (See studies by J.M. Wallace Jr. et al, *The Epidemiology of Alcohol, Tobacco, and Other Drug Use among Black Youth*, "Journal of Studies on Alcohol 60(1999):800-809). According to the National Household Survey on Drug Abuse, African American youth drink less than other youth; however, as they age, African Americans suffer more alcohol-related diseases than other groups in the population. The age-adjusted death rate from alcohol-related diseases is 31% greater than for the general population.

Alcohol use contributes to the three leading causes of death among African-American 12 – 20 year olds: homicide, unintentional injuries (including car crashes) and suicide. This information was taken from the Executive Summary of The Center on Alcohol Marketing and Youth (<http://camy.org/research/afam0603/>)

A number of studies have found that in and near neighborhoods where there is a high density of places that sell alcohol, there is a higher rate of violence. That is, when liquor stores and other businesses that sell alcohol are close together, more assaults and other violent crimes occur. Indeed, in our case, two liquor establishments would be within 100 feet of each other.

In a six-year study of changes in numbers of alcohol outlets in 551 urban and rural zip code areas in California (most likely Oakland was included in this study), an increase in the number of bars and off-premise places such as liquor stores, convenience stores, was related to an increase of the rate of violence. Regardless of a neighborhood's characteristics, an increase in outlets increased **CRIME**. (This study is cited from "The Pacific Institute for Research and Evaluation, *How alcohol Outlets Affect Neighborhood Violence* by Kathryn Stewart(www.resources.prev.org)

Even in Oakland itself, neighborhoods have been very strong in voicing their establishment Preferences for their neighborhoods, and they have won.

Additionally, to promote a sense of community, we support establishments that promote walk-in customers. The current parking lot of Nik Nak defeats this purpose and obliges non-resident customers to come to our neighborhood, if only but a moment, to fulfill a need, then leave with possibly no thought of ever returning

I, personally, would not shop at Nik Nak, as there is a more established store in existence since the 1950's, the "T & K" Market, 6342 Shattuck Ave, Oakland, CA 94609, within 200 feet that sells the same kinds of items and much more, including liquor. This corner T & K grocery store started as a neighborhood family store which has earned the respect of the neighborhood for four decades.

I, personally, would have no need to shop at Nik-Nak and, furthermore, oppose its requested renewal for a liquor license.,

Sincerely,

(Printed Name)

Signature

(Address)

APPEAL, 6400 SHATTUCK AVENUE

**ATTACHMENT E: CORRESPONDENCE
IN SUPPORT, INCLUDING PETITION**

Valeska, David

From: Lauren F. [lacamillion@comcast.net]
Sent: Wednesday, September 30, 2009 12:16 PM
To: Miller, Scott; Valeska, David; michaelcolbruno@clearchannel.com; blake huntsman;
sgalvez@phi.org; dboxer@gmail.com; mzayasmart@sf.wrtdesign.com; VienV Truong; vincegobbs
opc
Cc: redboneQ45@aol.com
Subject: Jo Jo's Market- 6400 Shattuck Ave.

City of Oakland Planning Department
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Jo Jo's Market- 6400 Shattuck Ave.
City of Oakland Permit Case No: CMV09-0111

Dear Planning Dept. & Commissioners:

I support the Pannell Family application to re-open their store in its current condition by adding liquor, beer and wine. I am a resident in the neighborhood near Jo Jo's Market at Shattuck and Alcatraz Avenue. I have known the Pannell family and visited his market numerous times over the last 29 years.

Thank you for you consideration.

Sincerely,

Lauren Flowers

9/30/2009

Valeska, David

From: RedboneQ45@aol.com
Sent: Monday, October 05, 2009 1:46 AM
To: Miller, Scott; Valeska, David; michaelcolbruno@clearchannel.com; blake.huntsman@seiu1021.org; sgalvez@phi.org; dboxer@gmail.com; mzayasmart@sf.wrtdesign.com; VienV.Truong@gmail.com; vincegibbs.opc@gmail.com; RedboneQ45@aol.com
Subject: (no subject)

City of Oakland Planning Department
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Jo Jo's Market- 6400 Shattuck Ave.
City of Oakland Permit Case No: CMV09-0111

Dear Planning Dept. & Commissioners:

I support Jo Jo's Market. I am Lindia La Chaux the General Manager for Jo Jo's Market. I am compelled to speak on behalf of Jo Jo's and to clear up some of the fabricated stories that have been circulating on the e-mail/blog. It has become a sad day when people fabricate stories to influence others to join their side. We all know that documentation speaks of the facts and without documentation it does not exist, anyone can fabricate a story.

This is my community. I have resided in the North Oakland Community for approximately 35 plus years. I was born 8 blocks from Jo Jo's Market, later moved and returned in 1981. I purchased a home right around the corner from Jo Jo's Market and continue to reside on 65th Street and Shattuck Ave. I raised my son Joseph La Chaux in this community. He is currently away at college and I am proud to report Joseph turned out to be an outstanding young man. However, I can not take all the credit, he has a father, grandfather, grandmother, uncles, aunts and a host of friends that he could depend on. It is a true statement that it takes a village to raise a child. In addition, I worked in this community for 28 years as a Deputy Probation Officer. My position was to serve and protect the community. The young adults I work with resided directly in this community. Since I reside in this community I made the choice to help re-direct the young adults in the North Oakland Community. To add, I was an administrator at a group home in the North Oakland for 10 years. **Who knows this community better than I do?** We have some people complaining, but what have they done to help keep this or any community safe. Talk is cheap, we need action. To my knowledge, I have not heard anyone talk about what they have done to make our community safe. Some of the complainers who are the older generation as well as the new arrivals in the community apparently do not know what goes on in this community if they believe alcoholic is the reason we have crime. All I hear is alcoholic will bring crime to the area. We all know that alcoholic has been around for decades and will remain here when we are all dead and gone. It would be nice if the complainers could spend some of their energy in supporting employment, finding recreation for the youth and encouraging the schools to provide an outstanding education. Our family has run an outstanding business, no loitering, soliciting, robberies or alcoholic beverages sales to minors, for 30 plus years. Further, Jo Jo's Market was open for approximately two months in 2009 and did not encounter any problems. Mr. Pannell who retired as a Deputy Sheriff always respected his customers and demanded the same respect. Mr. Pannell served and protected the community for 20 years. Between the two of us we have served and protected the community 50 years. We have been a role model in this community and should not be punished for doing an outstanding job. It is apparent that there are people who oppose Jo Jo's however, there are far more people who reside directly in the community who are in favor. I received approximately 275 plus signatures of people who are in favor. I can not count the number of customers who have come into the Market asking why we were having so many problems operating the business as usual when our records speak for itself. **This family business look forward to continuing another 35 years of operation.**

10/5/2009

Valeska, David

From: GABBTALK@aol.com

Sent: Saturday, October 03, 2009 12:08 PM

To: Valeska, David; Miller, Scott; michaelcolbruno@clearchannel.com; blake.huntsman@seiu1021.org; sgalvez@phi.org; dboxer@gmail.com; mzayasmart@sf.wrtdesign.com; VienV.Truong@gmail.com; vincegibbs.opc@gmail.com

Subject: Jo Jo's Market- 6400 Shattuck Ave.

City of Oakland Planning Department
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Jo Jo's Market- 6400 Shattuck Ave.
City of Oakland Permit Case No: CMV09-0111

Dear Planning Dept. & Commissioners:

I support the Pannell Family application to re-open their store in its current condition and including the sales of liquor, beer and wine. I am a resident in the neighborhood near Jo Jo's Market at Shattuck and Alcatraz Avenue. I have known the Pannell family and visited his market numerous times over the last 31 years.

I am appalled that this family who have been upright citizens of Oakland, and have run this family business for so long, without incident, has got to go through this.

Thank you for you consideration.

Sincerely,

Cassilda M Gabbadon

10/5/2009

Valeska, David

From: Bigalyoung1@aol.com
Sent: Saturday, October 03, 2009 3:38 AM
To: Miller, Scott; Valeska, David; Michaelcolbruno@clearchannel.com; blake.huntsman@seiu1021.org; sgalvez@phi.org; dboxer@gmail.com; mzayasmart@sf.wrtedesign.com; VienV.Truong@gmail.com; vincegibbs.opc@gmail.com
Subject: Pannell liquor application

City of Oakland Planning Department
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Jo Jo's Market- 6400 Shattuck Ave.
City of Oakland Permit Case No: CMV09-0111

Dear Planning Dept. & Commissioners:

I support the Pannell Family application to re-open their store with its' current physical layout and including the sales of liquor, beer and wine. As a long time patron of the market I was glad to see it reopen. Mr. and Mrs. Pannell operated that store for a number of years prior to closing it down. Prior to reopening, Mr. Pannell attempted to sell the liquor license on several occasions and the City of Oakland opposed the sale on every occasion. Then, when it gets to a point where they either need to use the license or lose it, they reopen, are approved for the sale of liquor by your department, only to have someone come back and challenge that approval.

The whole thing seems a bit strange to me. They have never had any problems at their location and have a physical setup that makes it unattractive for anyone to attempt to hangout in front of their store and Mr. Pannell, as a retired Alameda County Sheriffs Deputy, wouldn't allow it if they tried.

Additionally, why is that your department is trying hard to restrict one of the few, if not the only, Black owned liquor stores in the City from operating? Strangely enough, there are a host of other stores, operated by individuals of select ethnic groups, which seem to be all over the rest of the City. How is that they are allowed to conduct business unimpeded? And, the Pannell's were in business long before most of the other owners, of these other stores, were even in this country!

Stop hindering the Pannell's from doing business and approve their permit to allow them to sell liquor. As stated previously, they've done business at that location for years with no problems!

In addition to the Planners and Commissioners listed below, I will be forwarding a copy of this letter to the Mayor's Office and the appropriate City Council Person.

Sincerely,

Lewis A. Young

Planners

Scott Miller - smiller@oaklandnet.com
Dave Valeska - dvalueska@oaklandnet.com

Commissioners

Michael Colbruno - michaelcolbruno@clearchannel.com
Blake Huntsman - blake.huntsman@seiu1021.org
Sandra Galvez - sgalvez@phi.org
Doug Boxer - dboxer@gmail.com
Madeleine Zayas-Mart - mzayasmart@sf.wrtedesign.com
Vien Truong - VienV.Truong@gmail.com
Vince Gibbs - vincegibbs.opc@gmail.com

10/5/2009

Valeska, David

From: i.flowers7@comcast.net
Sent: Thursday, October 01, 2009 5:10 PM
To: Miller, Scott; Valeska, David; blake.huntsman@seiu1021.org; sgalvez@phi.org; dboxer@gmail.com; mzayasmart@sf.wrtdesign.com; VienV.Truong@gmail.com; vincegobbs.opc@gmail.com; michaelcolbruno@clearchannel.com
Cc: RedboneQ45@aol.com
Subject: Re: Jo Jo's Market-

City of Oakland Planning Department
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Jo Jo's Market- 6400 Shattuck Ave.
City of Oakland Permit Case No: CMV09-0111

Dear Planning Dept. & Commissioners:

I support the Pannell Family application to re-open their store in its current condition by adding liquor, beer and wine. I am a resident in the neighborhood near Jo Jo's Market at Shattuck and Alcatraz Avenue. I have known the Pannell family and visited his market numerous times over the last 40 years.

Thank you for you consideration.

Sincerely,

Planners

Scott Miller - smiller@oaklandnet.com
Dave Valeska - dvalueska@oaklandnet.com

Commissioners

Michael Colbruno - michaelcolbruno@clearchannel.com
Blake Huntsman - blake.huntsman@seiu1021.org
Sandra Galvez - sgalvez@phi.org
Doug Boxer - dboxer@gmail.com
Madeleine Zayas-Mart - mzayasmart@sf.wrtdesign.com
Vien Truong - VienV.Truong@gmail.com
Vince Gibbs - vincegobbs.opc@gmail.com

10/2/2009

Valeska, David

From: heather walls [heather.ariana.walls@gmail.com]
Sent: Thursday, October 01, 2009 4:01 PM
To: Valeska, David
Subject: Re: Jo Jo's Market- 6400 Shattuck Ave. City of Oakland Permit Case No. CMV09-0111

City of Oakland Planning Department
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Jo Jo's Market- 6400 Shattuck Ave.
City of Oakland Permit Case No. CMV09-0111

Dear Mr. Valeska,

I support the Pannell Family application to re-open their store in its current condition by adding liquor, beer and wine. I am a resident in the neighborhood, a few doors down from Jo Jo's Market at Shattuck and Alcatraz Avenue. I have known the Pannell family and visited the market numerous times over the last year since they were able to return from illness.

Thank you for your consideration,

Sincerely,

Heather Walls

668 Alcatraz
Oakland Ca, 94609

THE LAW OFFICE OF CLINTON KILLIAN

ATTORNEY AT LAW
LEAMINGTON BUILDING
1814 FRANKLIN STREET, SUITE 805
OAKLAND, CALIFORNIA 94612

TELEPHONE (510) 625-8823
FAX (510) 625-8829
Email: clintonkillian@yahoo.com

September 30, 2009

David Valeska, PlannerII
Scott Miller, Zoning Manager
City of Oakland Planning Department
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

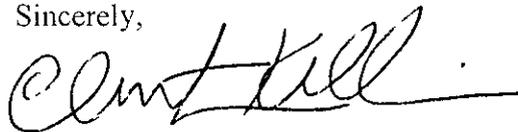
**RE: Jo Jo's Market - 6400 Shattuck Ave.
City of Oakland Permit Case No:CMV09-0111**

Dear Mr. Valeska and Mr. Miller:

Enclosed please find a copy of the Petition in Regards to Jo Jo's Market signed by over 310 members of the community in support of the operators "selling groceries, sundries, hand packed ice cream, slush, sodas, nachos and alcoholic beverages." As you will notice, the operators began the signatures gathering in July, 2009 and the results reflect the community members who shopped at the store. This petition reflects the voluntary support of the neighborhood customers. Please be sure and include this material in the planning commissioners' packet.

Thank you for your consideration.

Sincerely,



Clinton Killian

CK:ed

05-15-09

THIS PETITION IS IN REGARDS TO JO JO'S MARKET @
6400 SHATTUCK AVENUE
OAKLAND, CA 94609

JO JO'S MARKET HAS BEEN IN OPERATION FOR 30 YEARS AS NIC NAC LIQUORS. THROUGHOUT THE YEARS OF OPERATION THIS BUSINESS HELD AN EXEMPLARY RECORD. THE BUSINESS WAS CLOSED FOR APPROXIMATELY 5 YEARS DUE TO THE OWNER BECOMING ILL. THE BUSINESS RE-OPEN ON MARCH 14, 2009, AS JO JO'S MARKET. PRIOR TO RE-OPENING, THE BUSINESS LICENSE WAS RE-ACTIVATED BY ZONING AND ALCOHOLIC BEVERAGE CONTROL. ON APRIL 29, 2009, THE OWNER RECEIVED A LETTER FROM ZONING, RESCINDING THE PREVIOUSLY APPROVED PERMISSION TO SELL ALCOHOLIC BEVERAGES.

IF YOU RESIDE IN THE COMMUNITY (DISTRICT 1) AND ARE IN FAVOR OF JO JO'S MARKET ALSO KNOWN AS NIC NAK CONVENIENT MARKET SELLING THE FOLLOWING MERCHANDISE; GROCERIES, SUN DRIES, HAND PACKED ICE CREAM, SLUSH, SODAS, NACHOS, AND ALCOHOLIC BEVERAGES YOU MAY SIGN THIS PETITION.

Name Mr. Darryl Leon Washington
Address 1111 1111 1111

Name 1834-63-Dover Berk. CA
Address Con. 5 Williams

Name Louis Williams Jr
Address 63rd 707 Oak. CA

Name Sabrina Shankman
Address 6020 Rader St Oakland CA 94609

Name Andre Allen
Address 602 Alcatraz Apt Oakland CA 94609

Name WYNONA BUSH
Address 608 65th Street Oakland CA 94609

Name Darryl Lander 6427
Address 6427 Shattuck Ave Oakland CA 94609

Name Samuel Phuu
Address 6427 Shattuck Ave Oakland CA 94609

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Michael Morris

Address 3025 Dublin St. Apt. B Oak CA

Name Arden Delree

Address 6615 Tremont Street Oak. CA

Name Cari Dameron

Address 6615 Tremont St Oak. CA

Name all Bayer

Address 6563 Shattuck AVE #2 Oak. CA.

Name Kirstin Evans

Address 6605 Shattuck AVE OAK CA. 94609 AP #5

Name Miriam Greenberg

Address 5650 Broadway Oak CA 94618

Name Joseph D Bell

Address 674-65 Th St 94609, #510

Name Heather Walls

Address 1668 Alcatraz Oak CA 94609

Name Von Chan

Address 2425 Channing Way #Pmb 551 94707

Name Jose E Rodriguez

Address 2362 Bancroft Way. 94704 245355

Name Elan Hewitry

Address 6332 Shattuck Oakland CA 94609

Name Rebecca Wang

Address 572 62nd St. Oakland CA 94609

Name Nick Raymond

Address 583 58th St Oakland, CA 94609

Name Molly McCoy

Address 583 58th St Oakland, CA 94609

Name Rose Williams

Address 5965 Shattuck Ave 94609 One

Name Nicole Madison

Address 5965 Shattuck Ave 94609 Oak

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Carl Johnson

Address 573 Alcatraz Ave Apt B Oakland 94609

Name Kimberly M. Jones 667 Alcatraz Ave.

Address Oakland Ca. 94609

Name Tinisha Wicks

Address 663 Alcatraz Ave #1 Oakland CA 94609

Name Angelique Lacy

Address 663 Alcatraz Ave #1 Oakland CA 94609

Name Bernadette R. Norman

Address 667 Alcatraz Ave Oakland ca. 94609

Name Frank Agiron

Address 6426 Shattuck AVE - Oakland CA. 94609

Name MICHAEL DAWSON OWNER Bob's Mother Body Shop

Address 6426 SHATTUCK AVE OAKLAND CALIF 94609

Name Abby Mayes - Ron's MUFFLER

Address 6432 SHATTUCK AVE OAK. CALIF 94609

Name TERRY CARAL B

Address 6432 SHATTUCK AVE OAK. CA. 94609

Name Marcus Serrao

Address 6432 Shattuck Ave OAK Calif 94609

Name RON LARSEN

Address 6432 SHATTUCK AT 68TH OAKLAND CA. 94609

Name Adeli Schenker (Adele Schenker)

Address 6510 Wheeler St. 94609

Name Michelle Bayless

Address 6616 Whitney St. Oak. 94609

Name Tara Shakeshaft

Address 6229 Shattuck St., Oakland, CA

Name TOM JONES

Address 6229 SHATTUCK AVE OAKLAND CA

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Muriel Shelby

Address 5965 Shattuck Ave

Name ~~Patrick Caspous~~

Address 6200 SHATTUCK AVE OAK

Name Michael WESTBROOKS

Address 6611 TREMONT ST. OAK,

Name BRETT RADELE

Address 823 55TH OAKLAND, CA 94608

Name Amanda Gonzales

Address 455 1st St. OAKLAND CA 94609

Name Sarah Radford

Address 455 1st Street Oakland CA 94609

Name Breton E. Nicholson

Address 15223 Shattuck Ave #5 Oakland CA 94609

Name Joanna Meyer 6563 Shattuck Ave #5 Oakland, CA 94609

Address _____

Name Waklean MacLean

Address 6531 Tremont St Oakland CA 94609

Name CARY PENGOVIC

Address 1072 ALLEN ST. OAKLAND 94609

Name Howard Hill

Address 3132 Sacramento St Berkeley CA 94702

Name Rafael Diaz

Address 773 Alcatraz Av. Oakland 94605

Name Dan Branch

Address 6327 Shattuck Ave 94609

Name R. J.

Address 6403 Shattuck Ave Oakland CA 94609

Name Eric Robinson 6929 Shattuck Ave

Address _____

Name Gusty Goede

Address 534 25th St OAKLAND, CA 94612

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO JO'S MARKET

Name Joseph La Chand

Address 685 65th st Oakland, CA

Name Beverly Robinson

Address 6408 Shattuck Avenue Oakland, CA 94609

Name GEORGE LUCKY

Address 1304 INTERNATIONAL BLVD. #1 OAKLAND, CA 94606

Name Khrista Chisum

Address 6222 Shattuck Ave. Oakland, CA (510) 959-8613

Name Janie Wilson

Address 6222 Shattuck Ave. Oakland, CA 94609

Name Tanya Brown

Address 1044 Filbert Oakland, CA

Name Carlos Martinez

Address 6222 Shattuck Ave Oakland California 94609

Name Jan Cornelius

Address 538 Alcatraz Oakland, Ca. 94607

Name Kay Mizutani

Address 6224 Shattuck Ave Oakland CA

Name Tiffany Brown

Address 1044 Oakland CA 94612

Name William Gordon 1936 (944) 2118 94606

Address Ronald King 646 Fairview St, 94609

Name Cornelia SONES

Address 765 59th St OAKLAND, CA 94609

Name Ben Nunez 765 59 St OAKLAND 94609

Address Rich Davis " " " "

Name Dona Eastey

Address 644 61st Oakland CA

Name Janac More

Address 755 Alcatraz Apt E

we welcome you!

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Merrell Dodman

Address 6563 - Shattuck Ave #2

Name JOHN JACKSON

Address 5610 DAVEN ST. OAKLAND

Name AHMAD NORRIS

Address 637 Alcatraz Ave OAKLAND CA. ~~94609~~

Name 644 ALCATRAZ AVE. OAKLAND CA

Address SCOTT JODICE

Name Edgardo Lopez

Address 2206 Woolsey St, #2 94705

Name OTHELLE PERENA

Address 12525 SHATTUCK AVE 94609

Name Latie Faulkner

Address 694 63rd ST. OAKLAND, CA 94609

Name Kristina Landy

Address 754 Alcatraz St Oakland CA 94609

Name DAVID BLOCH

Address 649 65th St. Oakland, CA 94609

Name Steven Shun

Address 603 63rd St Oakland CA 94609

Name ANDRE BRADFORD

Address 697 Fairview St. Oakland CA 94609

Name ERIC OLSON

Address 450 Alcatraz Ave Oakland

Name JAMES MILLS 2143 88 AVE OAKLAND CA 94621

Address Wanda Buckley 915 APGAR ST APT #11 92423

Name Melissa White 5951 Telegraph OAK 94609

Address

Name Lionna Huxit 6057 Outlook Ave, Oakland, CA 94605

Address 4900 Telegraph Ave, Oakland, CA 94609

Name MAURICE JACKSON (WORKPLACE)

Address 4900 TELEGRAPH AVE. OAKLAND, CA. 94609

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO

JO'S MARKET

Name Paul Burke

Address 641 61st

Name Salath Davis

Address 641 61st street Oakland Ca 94609

Name MICHAEL GREEN

Address 681 61st St.

Name Anthony Brown

Address 640 6th street Oakland Ca 94609

Name MARNIS WOOLER

Address 5807 SHATTUCK AVE OAKLAND 94609

Name Darrell Easley

Address 702 60th St

Name Dilysne Pierre

Address 555 61 Oakland 94609

Name Carly M. Allender

Address 633 C 60th Street apt. C

Name Angel Villarreal

Address 623 62nd Oakland CA 94609

Name Aam Smith

Address 624 Poirier St

Name Warren Horton CA 94609

Address 572 62nd Street

Name Alice Audibert

Address 590 63rd St. Oakland, CA 94609

Name SIAN WARD

Address 575-62nd ST. OAKLAND CA 94609

Name ROONEY AUBREY

Address 678 62 ST OAKLAND, CA 94609

Name Theresa Jones 60 62nd St 94609

Address ~~577-62nd Street Oak~~

Name John JERASSON Oakland 94609

Address 577-62nd St.

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Folrest Anne Brown
Address 592-62nd Street Oakland CA 94609

Name Michael Aubrey
Address 677 62nd St Oak CA 94609

Name Spri Trunna Harper
Address 6214 Shattuck Ave. Oakland 94609

Name John Simmons 3111 Harper St Oak 94609
Address _____

Name George W Blackman
Address 2305 SHATTUCK AVE

Name Joe Dorsey
Address 5817 SHATTUCK AVE. OAKLAND, CA. 94609

Name Kasha Wright
Address 447-59th St Oak CA 94609.

Name JERRY PITMAN SR
Address 641 AILEEN ST OAK, CA 94609

Name JAMES HAUSPARD
Address 649 AILEEN. ST CA. 94609

Name ANTIONETTE MONBY
Address 594 63rd St #2, Oak CA 94609

Name Stephen Mann
Address 634 15th St Rm 223 OAK. CA 94612

Name Melvin Townsend
Address 555 63rd St Oak Ca 94609

Name Jedias Jackson
Address 740 Alcatraz Ave #4 oakland CA 94607

Name Joyce Blawie 3030 Fremont St Berkeley CA 94703
Address _____

Name Charlotte McLeuffie Charlotte McDuffie
Address 6301 Shattuck ave. 94609

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO

JO'S MARKET

Name Mark Trimble
Address 1834 - 63rd Street 687-618 Street 94609

Name Daniel Kramer
Address 3113 Shattuck Ave #3, 94705 (Not in district)

Name SAMANTHA DOWNEY
Address _____

Name [Signature]
Address _____

Name LYNN RIVAS
Address 680 ALCATRAZ, OAKLAND CA 94609

Name MELISSA ROBERTS
Address 86 Linda Ave Oakland CA 94611 (Not in district 1)

Name Delores Maillet
Address 602 Alcatraz Berkeley CA (Not in district 1)

Name WYANNE HINES
Address 2425 SHATTUCK AVE

Name LOUIS MARZON 6506 WHEELER 94609
Address _____

Name Carmen Robinson
Address 667 Alcatraz Ave Oakland, CA 94609

Name 614 670A Oak
Address _____

Name DAVID WOOD
Address _____

Name TIM TURNER
Address 614 - 63rd OAKLAND 94609

Name PEPEY JOHNSON
Address 646 61st OAK 94509

Name James Redfern
Address 946 Arden Oakland Ca 94608

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name D Williams

Address 623 55th St, Oak 94609

Name L. EASON

Address 2169 Vicksburg Ave. OAK, CA 94601 (not in area)

Name TERRENCE McDONALD

Address 759 55th ST OAKLAND, CA 94609

Name Greg Neal

Address 630 61st OAKLAND, CA 94609

Name Malcolm Jones

Address 855 55th street OAKLAND CA 94608

Name MARCUS JONES

Address 2419 68th Ave OAKLAND CA 94605 (not in area)

Name Michael Meriton

Address Alcatraz ca 94609

Name Dary King 6018 SAN PABLO Oakland ca.

Address

Name Elizabeth Kelley Dover St. Oakland, CA 94609

Address

Name Andra Mackusky

Address Dover St. Oakland, CA 94609

Name FORNEROD guillame CA Oakland -

Address

Name AMON JIMENON

Address 560-62nd St. OAK 94609

Name Blaine Murray

Address 575-56th St. #3 Oak, Ca 94609

Name Elise Ward

Address 679 53rd Oak,

Name Jamie Schenker

Address 6510 Wheeler St. Oakland, CA 94609

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Allen David Young Allen David Young

Address 629 Aiken Street Oakland CA 94609

Name William J. Ferrara

Address 612 Aileen St OAKLAND CA 94609

Name Illois Paris 3608 Shattuck ave

Address _____

Name Bohnie Glenn

Address 6320 Shattuck ave 94609

Name JAI GEORGE

Address 2054 Wheeler St. 94705

Name Juan Day 1221 40th St

Address _____

~~XP~~ Name Elaine Herring (Sign twice)

Address 575-56th St - Oakland CA 94609

Name TOSKAMC Uyen 774 Alcatraz, Oakland, CA 94609 # 260-6761

Address _____

Name Sybil Straight

Address 1416-63rd St

Name MARK MORA

Address 416-63rd St

Name Anke Nee

Address 3301 Telegraph Ave. Apt 101 Oakland, CA 94609

Name Shela ~~Moran~~ Moran

Address 6578 Shattuck

Name Ned Kattatt

Address 693 Alcatraz CA

Name EDDIE THOMAS JR 4725 Colby AVE

Address _____

Name ~~Dez~~

Address _____

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Lynn Brewster
Address 1304 62nd St #5

Name PAMELA Dewberry
Address 670 VERNON ST. # 402, OAKLAND - 94610

Name GENE Ax Scott
Address 870-56th St, OAK, CA 94608

Name Erica Trauba
Address 6609 Whitney St. Oakland, CA 94609

Name Shannon Beahley
Address 470 41st Ave Oakland CA 94609

Name Emily Katz
Address 1118 Alcatraz Ave Oakland CA. 94609

Name Marilyn Turonek
Address 1519 Whitney St OAK CA 94609

Name Yasin Charko
Address 5210 Alcatraz Ave Oak CA 94609

Name Chris Layne
Address 661 65th OAKLAND CA 94609

Name Bernie (Bill) Cherry
Address 3856 WEST STREET / Oakland, CA 94608

Name Jillian Flavia
Address 6617 Shattuck Ave. 94609

Name Ray Suarez
Address 6621 Shattuck Ave #D 94609

Name 16210 Kerkut
Address 6531 Shattuck Ave # 6 94608

Name Jeremiah Whittington
Address 668 Alcatraz Ave Oakland CA 94609

Name Christine Chun
Address 668 Alcatraz Ave. Oakland, CA 94609

Name Jaroslav Potzinski
Address 668 Alcatraz Ave, Oakland CA 94609

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Curtis DRIGHT

Address 603-57th St OAK

Name Deborah Jellea

Address 5518-Dover St OAK

Name Tahlia Griffin

Address 5518 Dover St OAK

Name Elvelosquez 2-65

Address 65 D St 792 94609 Oakland

Name Willa Henderson

Address 1047 57th St #2, OAK. CA 94609

Name Laura Clossen

Address 763 Alcatraz St #4 Oakland, CA 94609

Name Kisha Miller

Address 1801 Dover St OAK 94609

Name Jason Henley

Address 6114 Shattuck Ave #5 Oakland CA 94609

Name Cathy White 1044 61st OAK 94609

Address Cleo Cooper 1046 61st OAK 94609

Name Keith Lander

Address 6565 Shattuck Ave #f Oakland CA 94609

Name Westin Kurlandek

Address 1471 Arch St Apt #1

Name Mike Bolon

Address 6019 Shattuck Ave

Name Matt Hightower

Address 647 Alcatraz, Berkeley CA 94609

Name Celia Hamman

Address 1163 Alcatraz Ave Oakland 94609

Name moon frost

Address 6332 Shattuck Ave, Oakland, CA 94609

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name elan Hawtrey
Address 6332 Shattuck Ave, Oakland, CA 94609

Name T. Baykal
Address 662 65th St. Oakland, CA 94609

Name Chris Bam
Address 950 Alcatraz Ave 94609

Name ERIC BREWER
Address 6414 IRWIN CT #2 OAKLAND, CA 94609

Name MARIE CHEVAL DOBSON
Address 6425 Shattuck ave Oakland CA 94609

Name Jessica Dugger
Address 6403 Irving St Oakland CA 94609

Name Kim Garner
Address 641 61st, Oakland 94609

Name ~~LUCAS BECKMAN~~
Address ~~7222 Brownst~~
CA, 94702

Name MARCO GONZALEZ
Address 65th Shattuck, Oakland, CA

Name ADRIAN JONES
Address 6009 SHATTUCK AVE

Name Vahio, Paulina - Pooklas
Address 1714 Franklin St Oakland, CA 94612

Name ilike Davis
Address 755 Alcatraz Ave 94609

Name Danny Green
Address 217 Hlue, Ca, Vallejo

Name Beatriz Aguilar
Address Alcatraz 2

Name Kaiser Fields (Oak, CA @ Alcatraz & Shattuck)
Address _____

05-15-09

THIS PETITION IS IN REGARDS TO JO JO'S MARKET @
6400 SHATTUCK AVENUE
OAKLAND, CA 94609

JO JO'S MARKET HAS BEEN IN OPERATION FOR 30 YEARS AS NIC NAC LIQUORS. THROUGHOUT THE YEARS OF OPERATION THIS BUSINESS HELD AN EXEMPLARY RECORD. THE BUSINESS WAS CLOSED FOR APPROXIMATELY 5 YEARS DUE TO THE OWNER BECOMING ILL. THE BUSINESS RE-OPEN ON MARCH 14, 2009, AS JO JO'S MARKET. PRIOR TO RE-OPENING, THE BUSINESS LICENSE WAS RE-ACTIVATED BY ZONING AND ALCOHOLIC BEVERAGE CONTROL. ON APRIL 29, 2009, THE OWNER RECEIVED A LETTER FROM ZONING, RESCINDING THE PREVIOUSLY APPROVED PERMISSION FROM ZONING TO SELL ALCOHOLIC BEVERAGES.

IF YOU RESIDE IN THE COMMUNITY (DISTRICT 1) AND ARE IN FAVOR OF JO JO'S MARKET ALSO KNOWN AS NIC NAC CONVENIENT MARKET SELLING THE FOLLOWING MERCHANDISE; GROCERIES, SUN DRIES, HAND PACKED ICE CREAM, SLUSH, SODAS, NACHOS, AND ALCOHOLIC BEVERAGES YOU MAY SIGN THIS PETITION.

Name Irma Lopez
 Address 1985 105th St Oak. Calif 94609

Name Maria Wilson
 Address 628 Alameda St Oakland Ca

Name James J. Jones Jr.
 Address 5518-Dover St Oakland, CA 94609

Name Shirley Summers
 Address 1040 Aileen St Oakland, Ca. 94609

Name Dawn Livingston
 Address 6011 Dover St Oakland

Name C Peterson
 Address 779 Aileen St Oakland, CA 94609

Name Shirley Kunkel
 Address 729 Aileen St Oakland, CA 94609

Name Blanca Smith
 Address #12 94609

05-15-09

THIS PETITION IS IN REGARDS TO JO JO'S MARKET @
6400 SHATTUCK AVENUE
OAKLAND, CA 94609

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Name Edward F. Pickett

Address 688 63rd street 94609

Name Marcia Finn

Address 5945 Shattuck Ave. 94609

Name Diane Jones-Aloney

Address 654 63rd Street Oakland 94609

Name Farley Wright

Address 641-68th Oakland 94609

Name Joyce Martin

Address 651 63rd St Oakland 94609

Name 645-63rd St Oak 94609

Address John E. Johnson

Name Robyn Brooks

Address P.O. Box 3586 Berkeley CA 94703 / 618 63rd St #

Name Diana Kaulfchava

Address 601 43rd St 94609

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Don Hughes

Address 630 Fairview, Oakland 94609

Name Anna Zarewsky

Address 6509 Wheeler St Oakland CA 94609

Name JAMES DUNBAR

Address 673 65th OAKLAND CA 94609

Name Trina Jones

Address 673 65th Oakland CA 94609

Name Isaac Wilcox

Address 673 65th Oakland Ca 94609

Name Bertha L. Beys Oakland Ca 94

Address 1899 65th St Oakland Ca 94609

Name Sharon Walker

Address 674 65th St Oakland 94609

Name Rosie Walker 674 65th

Address Oakland 94609

Name Ebony Spencer 682 65th Street

Address Oakland CA 94609

Name Timothy Murphy 682 65th Street

Address Oakland CA 94609

Name Jerome Spencer

Address 682 65th st Oakland CA 94609

Name Josell Conover Oakland Ca 94609

Address 635 ALCATRAZ

Name Leah Kaplan

Address 2024 Woolsey St Berkeley 94703

Name Shirley King

Address 1834 63rd St Berkeley Ca. 94703

Name Jessica Rose Area 94362

Address

Name Pat Armstrong

Address 668-65th St. CA

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name AHMED Madry
Address 5650 Market ST OAK CA 94612

Name Laine Rotenberg
Address 638 67th OAK CA

Name Chris Winston
Address 682 65th Street

Name Jessica Anthony
Address 675 Alcatraz Ave Oakland, CA 94609

Name MELISSA PANUR
Address 663 ALCATRAZ Ave #3 Oakland CA 94609

Name Bin Karpania
Address 577 51st B Oakland

Name Joel Johnson
Address 3024 MLK way Oakland, CA 94609

Name 5936 MLK way OAKLAND, CA 94609
Address ANTONIA JOHNSON

Name Priscilla Dancy
Address 618 63rd St Oakland, CA

Name Jay Paule
Address 717 ALCATRAZ AVE 94609

Name Fred Lockett
Address 819 - 54th ST OAK. 94608

Name NESTOR ASETHAR
Address 1412 FAIRVIEW ST # B Berkeley CA 94703

Name JON FISHER
Address 1902 Alcatraz Ave Berkeley, CA 94703

Name Jinda Brown
Address 4525 West St. Oakland CA. 94608

Name Annik Chiera
Address 695 Fairview St. Oakland CA 94609

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Laurie Ball

Address 2031 Woodsey St. Bklyn, CA 94703

Name Cleann D. Logan

Address 6200 Shattuck Ave Oak CA 94609

Name C. Jensen

Address 5203 SHATTUCK AVE

Name CAMERON MACKENZIE

Address 604 ALCATRAZ AVE, OAKLAND, CA 94609

Name Zain M. M. 510-486-8222 ★

Address 3050 King St Berkeley, CA 94713

Name Lloyd Gilbert

Address 525 Canal Street 94609

Name Lestania Green 647-6310 94609

Address Red D. Tibbs

Name 554 63rd St.

Address Oakland, CA 94609

Name Roy Woodrow

Address 674 53rd St OAKLAND CA 94609

Name Joseph Lane

Address 5600 Geneva Street

Name Martin Lawson

Address 5133 West St. Oakland, CA 94601

Name BRIAN MONTANA

Address 690 61st Oakland, CA 94609

Name Helen A. Flowers

Address 667-66th St. OAKLAND CA. 94609-1003

Name _____

Address _____

Name _____

Address _____

Name _____

Address _____

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name ADRIANNE BORGIA

Address 670 FAIRVIEW ST., OAKLAND, CA 94609

Name Polo Gallardo

Address 670 Fairview St Oakland CA 94609

Name Barbara McCoy 759-55th OAK, 94609

Address 759-55th Street OAK 94609

Name Eric Price

Address 759-55th OAKLAND, CA 94609

Name Crystal Eason

Address 759 55th Street Oakland CA 94609

Name _____

Address _____

05-15-09

THIS PETITION IS IN REGARDS TO JO JO'S MARKET @
6400 SHATTUCK AVENUE
OAKLAND, CA 94609

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Name Carey Williams
Address 2914 Newbury St. Berkeley, CA 94703
Name Harold A. Mayberry
Address 530 37th Street / Oak Grove, CA 94607
Name Melinda Wiggins 510-919-6951
Address 2310 Fulton St # 308 Oak Berkeley, CA 94704
Name DERON Cavalletti
Address 6889 Fairview St. Oakland, CA 94609
Name Gretchen Wegner
Address 6440 Irwin Court Oakland, CA 94609
Name Luke Blueford
Address 689-607 Street Oakland, CA 94609
Name Catherine O'Neal
Address 482 40th Street apt #9 Oakland, CA 94609
Name Jerry & Delaine Sims Oakland, CA 94605
Address 4101-Maryland Ave, (510) 644-4261

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Aryean Vanden Baer

Address 16905 Shattuck Ave #2 Oakland 94609

Name YUSUF Samra 5960 RE. OAKLAND 94609

Address _____

Name Mercedes Marchbanks

Address 2415 Dwight Ave #32 Berkeley CA 94704

Name TRINA Williams

Address 8305 MITCHELL AVE Oakland CA 94609

Name Tracey Stewart

Address Unknown

Name Kristina Davis

Address unknown

Name Sylvia Curry

Address 559-66th St. Oakland, CA 94609

Name Benjamin Baker

Address 6380 Shattuck Ave, Oakland, CA 94609

Name Donald Dorsey

Address 5817 Shattuck OAKLAND, CA 94609

Name Michael Smith

Address 6563 Shattuck, #6 Oakland, CA 94609

Name Meah Almer

Address 6629 Alameda D. Oakland CA 94611

Name Lana Ahmad

Address Kerrin Pugh

Name 923 Kerrin Pugh

Address Oakland CA 94612

Name GRACIA CURRY 4115 SHATTUCK AVE OAKLAND CA 94609

Address Claude Curf

Name Robin Kischbaum

Address 6458 Colby Street Oakland 94615

Name Malika Entwistle

Address 722 Alcatraz Ave Oakland, CA 94702

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Andrea Williams

Address 791 Alcatraz Ave. #C Oakland, CA

Name Kureita Smith

Address 755 Alcatraz Ave #B Oakland CA 94609

Name Kate Milke

Address 738 65th St Oakland, CA

Name Elizabeth Gray

Address 650 Alcatraz Ave #C Oakland, CA 94609.

Name Ben Kozik

Address 604 Alcatraz #3 Oakland, CA 94609

Name Vincent Murray

Address 1521 Alcatraz Ave Berkeley CA 94703.

Name Susana Flores

Address 6605 Shattuck Ave. Apt #1 Oakland CA 94609

Name Janene Martinez

Address 6605 Shattuck Ave #1 Oakland, CA 94609.

Name Kate Mathis

Address 1641 123rd St Berkeley CA 94709

Name Danny Edwards

Address 6121 - Shattuck Ave Apt-3 - Oakland - Calif.

Name Jonathan Musselman

Address 770 Alcatraz Oakland CA 94609

Name C.G. Bsoal 9239826

Address Lisa Stoneman

Name 656 Alcatraz Ave Oakland

Address

Name Don Knight

Address 1930 Filberts St Oak 94607

Name Hans K Petersen

Address 651 Alcatraz Ave, Oakland CA 94609

05-15-09

CONTINUED NAMES ON PETITION REGARDING JO
JO'S MARKET

Name Tana Wood

Address 545 60th Oakland CA

Name D. J. Muro

Address 6330 Shattuck Oakland CA

Name Elicity Weigert

Address 17261 Dorance Dr San Jose

Name T. mothy Weigert

Address 17261 Dorance Drive. San Jose

Name Andres Dawkins

Address 648 57th Street Apt 2 Oakland, CA 94609

Name Catie Lowder

Address 630 Fairview St Oakland.

Name SEPENR VAKII

Address 347 WARWICK AVE OAKLAND, CA 94610

Name DANIEL WEINSTEIN

Address 5582 Lawton Ave Oakland CA 94618

Name CHEVALIERE RILEY

Address 2004 ESSEX CT - BERKELEY

Name _____

Address _____

Detail Operation for Jo Jo's Market

Date: 06-18-09

Ashrious Pannell Sr.
Owner

ITEM 2
ATTACHMENT D
APPLICANT STATEMENT &
OPERATIONS PLAN
6400 SHATTUCK AVE.

Detail Operation

Jo Jo's Market alcoholic beverages will consist of selective alcohol, beer and wine.

The type of beverages served at Jo Jo's Market will be a variety flavors of slushes.

A list of items sold in the business will be attached to the application.

Parking is an asset to the business. The business will provide parking for the customers and will prevent the customers from blocking public driveways, red zones, yellow zones etc. and bus zones. The parking lot will be controlled because of hours of operation. The parking lot will only be available during the hours of operation.

The business operation of hours will be the following:

Sunday 10:00 AM-10:00 PM

Monday closed

Tuesday closed

Wednesday 10:00 AM-10:00 PM

Thursday 10:00 AM-10:00 PM

Friday 10:00 AM-12:00 PM

Saturday 10:00 AM-12:00 PM

Precaution to prevent alcohol and cigarettes services to minors will be handled by asking for ID as well as a sign indicting if you want cigarettes we must see your ID.

Regarding Loitering and Crime

The business have signs indicating there is no **Loitering, Soliciting or Drinking Alcoholic beverages** on this property. Jo Jo's Market also have **Surveillance Cameras** that provide visual security surrounding the building.

Staff

All staff are part time staff:

Lindia La Chaux

Brett Pannell

Ashrious Pannell Jr.

Joseph La Chaux

Sandra Owens as needed.

Edward Wright as needed

Salsa

Ketchup

Hot Sauce/Tabasco

Taco Sauce

Barbecue Sauce

Steak/Soy/Teriyaki Sauces

Worcestershire sauce

Spaghetti Sauce

Mayonnaise

Mustard

Tomato Sauce

Peanut Butter

Jelly

Chicken Broth

Dried Beans-Pinto, Navy, Black

String Beans/Corn

Vienna Sausages

Dried Shrimp

Tuna Albacore

Sardines

Olives-Green/Black

Pineapple Chunks/Slice

Fruit Cocktail

Pasta

Corn Meal/Flour

Mac & Cheese

Crackers Ritz Unsalted

Cheez-its

Top Ramen

Cup of Noodle

Soups, Pea, Chicken, Tomato

Noodle, Vegetable, Clam Chowder

Chicken & Beef Bouillon

Ravioli

Chili Beans

Variety/Cereal

Oatmeal

Grits

Flour

Pancake Mix

Syrup

Cake Mixes & Frostings

Rice

Rice Roni

Pickles

Relish

Kool Aid

Raisins

Honey

Sugar/Brown Sugar

Seasonings

Garlic Salt/Powder

Chili Pepper

Red Pepper

Cinnamon

Honey

Salt/Kosher/Sea Salt

Black Pepper

Baking Soda

Baking Powder

Taco Seasoning

MILK

Yogurt

Sour Cream

Half/Half Milk

Canned Milk

Soft Drinks

Cold Cuts

Hot Dogs
Cheese
Hot Links
Bacon
Bread
Kool Aid
Raisins
Honey
Cinnamon
Vanilla Flavor
Sugar
Salt/Kosher/Sea Salt
Black Pepper
Baking Soda
Baking Powder
Taco Seasoning
Cookies Variety

Variety of Candy, Gum, Mints

Variety of Chips

Vitamin Drinks

Cold Drinks/Soda

Juices/Orange Apple, Cranberry

Ice Tea, Snapple

WATER

Hand Packed Ice cream

Slush

Energy Drinks/Bull/Monster

Gatorade

6
Toilet Paper
Kleenex
Paper Towels
Foil
Saran Wrap
Sandwich Bags
Dish Washing Liquid
Plastic Gloves
Bath Soap
Detergent
Laundry Pins
Bleach
Comet
Furniture Polish
Spic Span
Pine Sol
Window Cleaner

Fabric Softener
Air Freshener
Garbage Bags
Plastic Gloves
Scotch Tape
Light Bulbs Appliance Bulbs
Envelopes/Short and Long
Bic Shavers/Razors
Thread Kit
Thread
Lotion
Q-tips
Shampoo/Conditioner
Wave Caps
Eye Drops
Cotton Balls
Finger Nail Polish

Band Aids
Deodorant
Baby & Adult Tylenol
Aspirin
Aleve
Motrin
Allergy Medication
Cold Medicine
Cough Syrup
Cough Drops
Antibiotic Ointment
Hydrocortisone Cream
Baby Shampoo
Baby Lotion
Destin/Baby Rash
Baby Wipes
Female Personals

7
Condoms

Epsom Salt

Vaseline

Rubbing Alcohol

Peroxide

Tooth Paste

Tooth Brushes

Paper Plates/Plastics Forks

Paper Cups

Paper Bowls

Pencils

Cigarettes, Cigars

Cigarette Lighters

Alcohol Beverages

Beer

Wine

APPEAL, 6400 SHATTUCK AVENUE

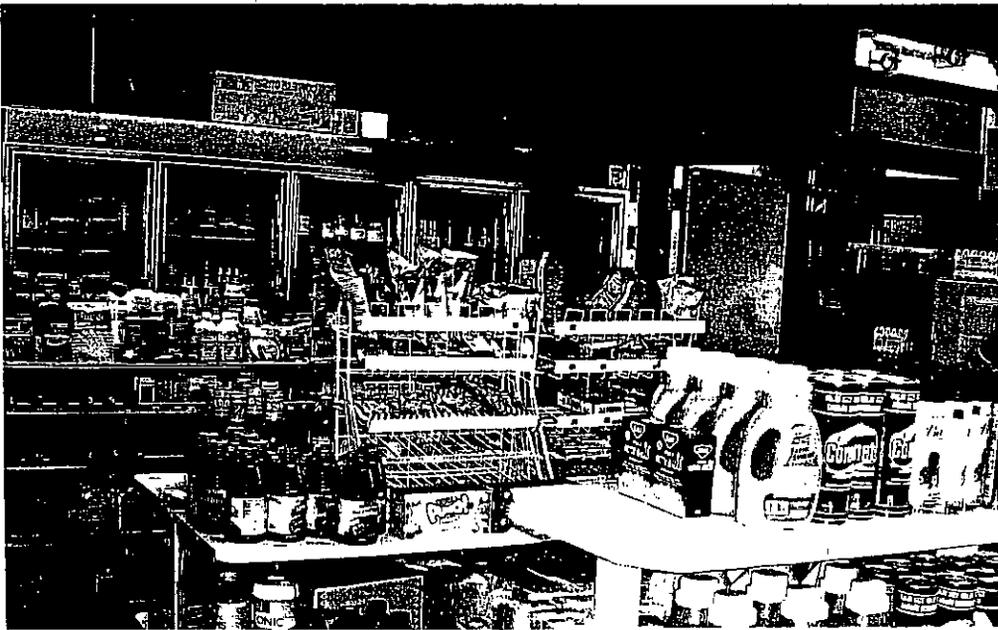
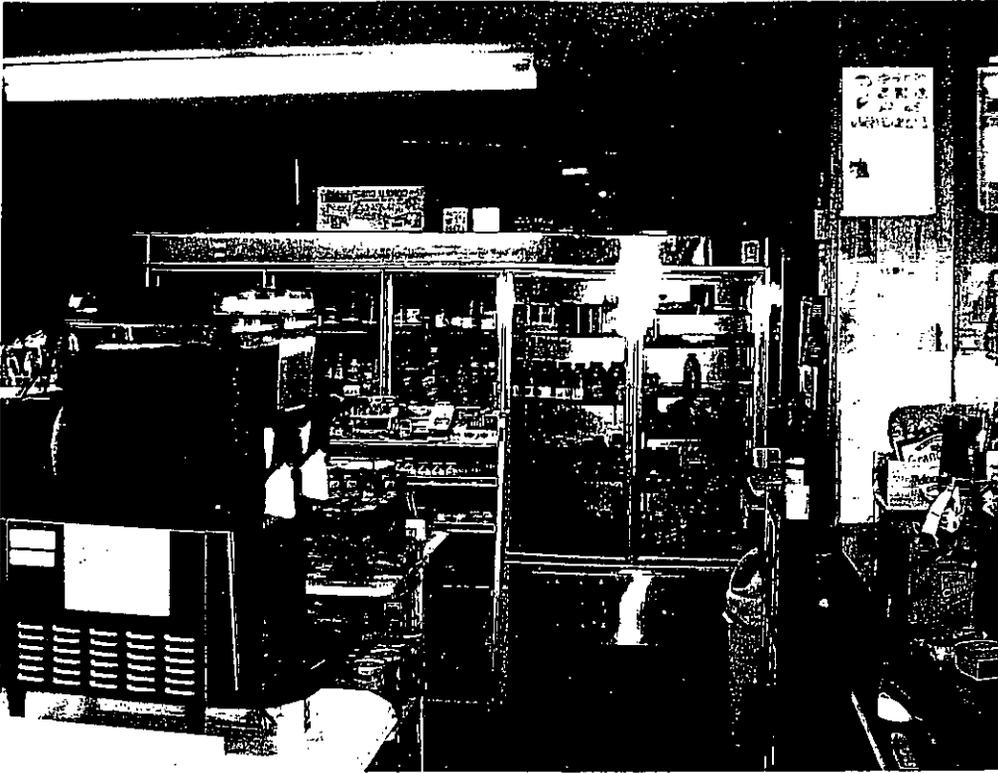
**ATTACHMENT F: MAPS & PHOTOGRAPHS
ASSOCIATED WITH CMVM09-111**



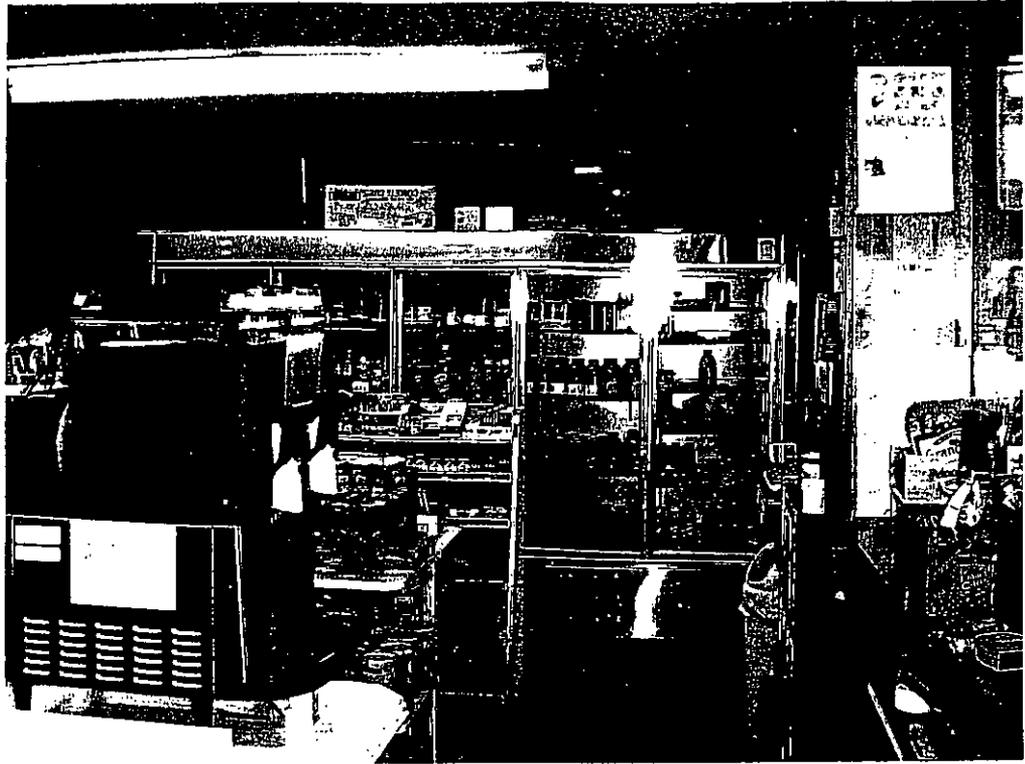
ITEM 2
ATTACHMENT C
PLANS & PHOTOGRAPHS
6400 SHATTUCK AVE.



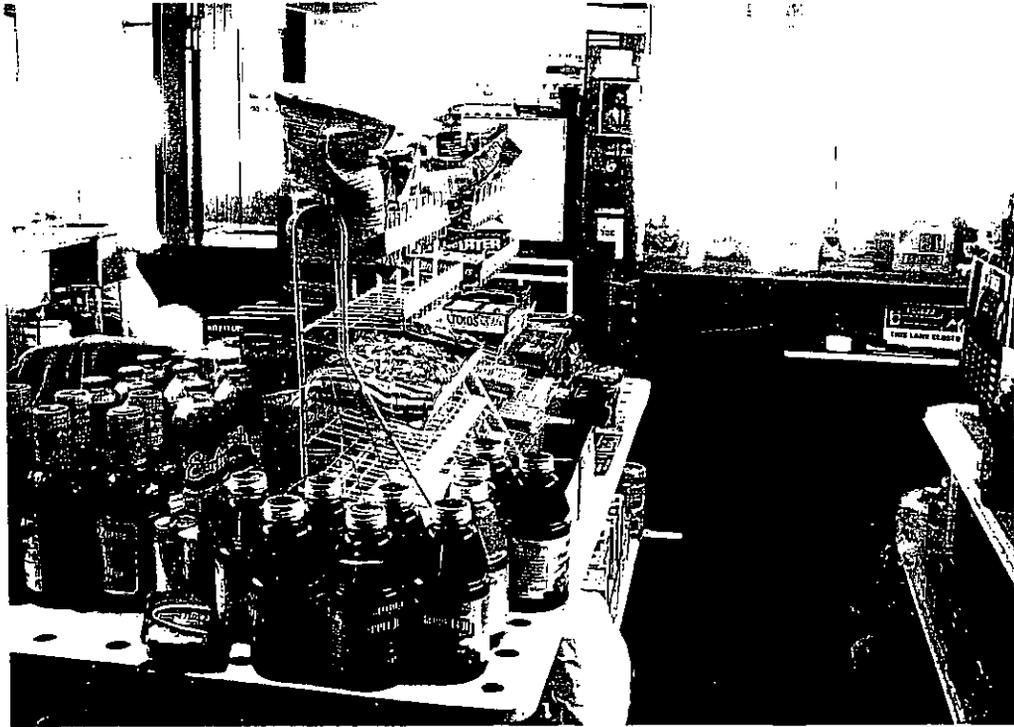
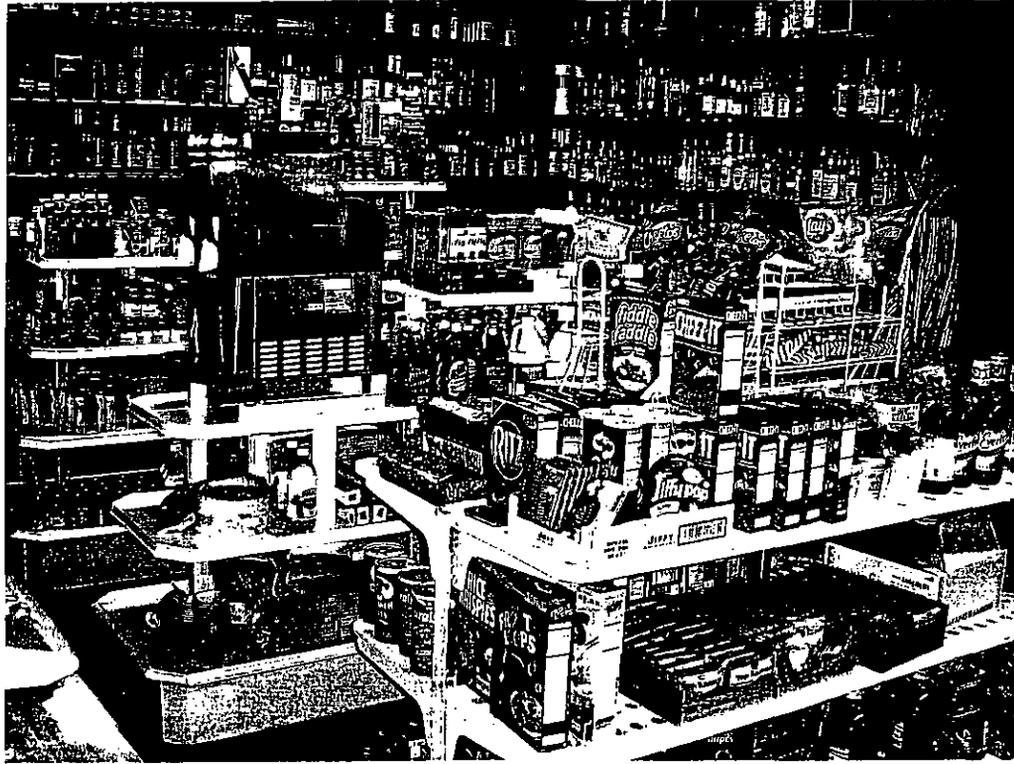


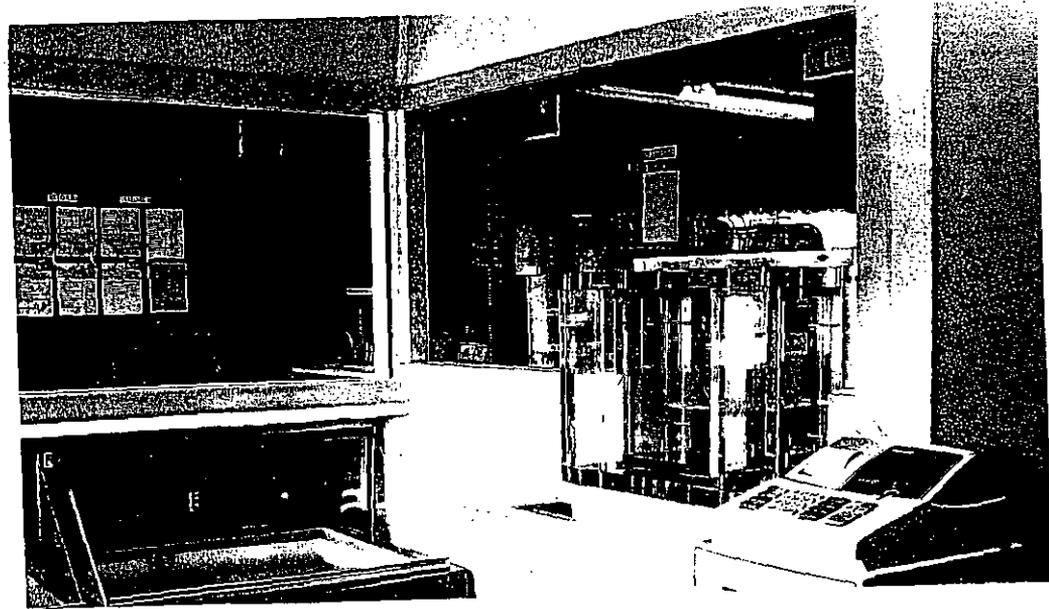
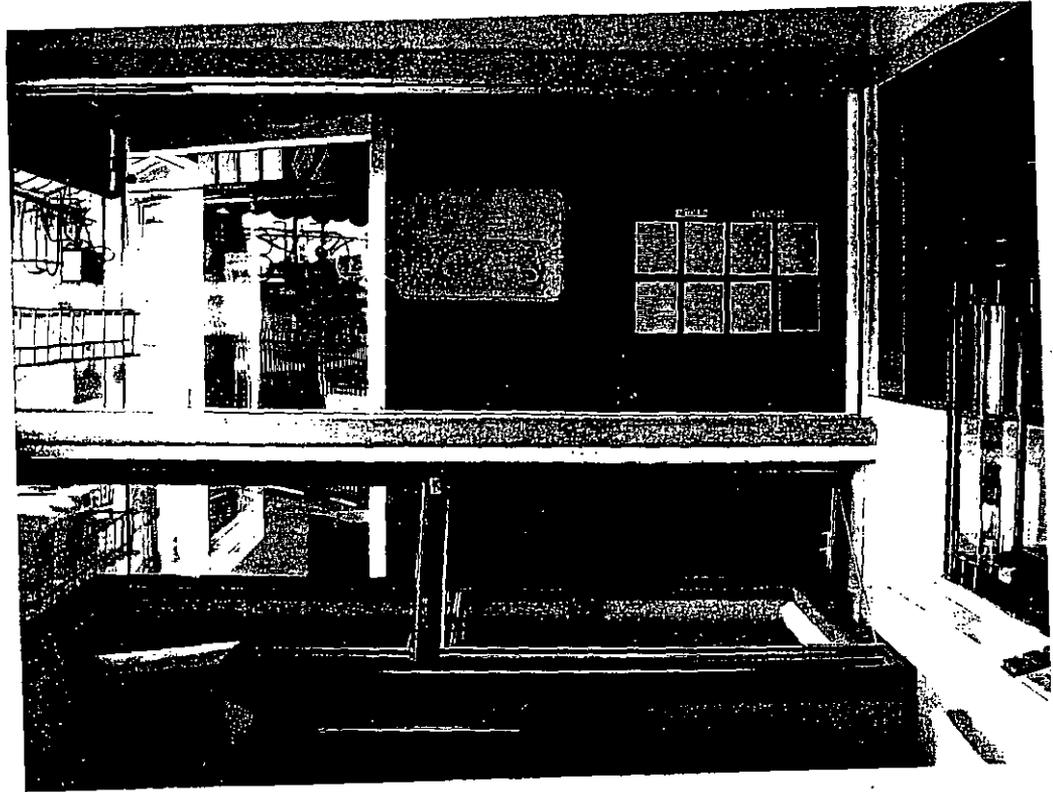


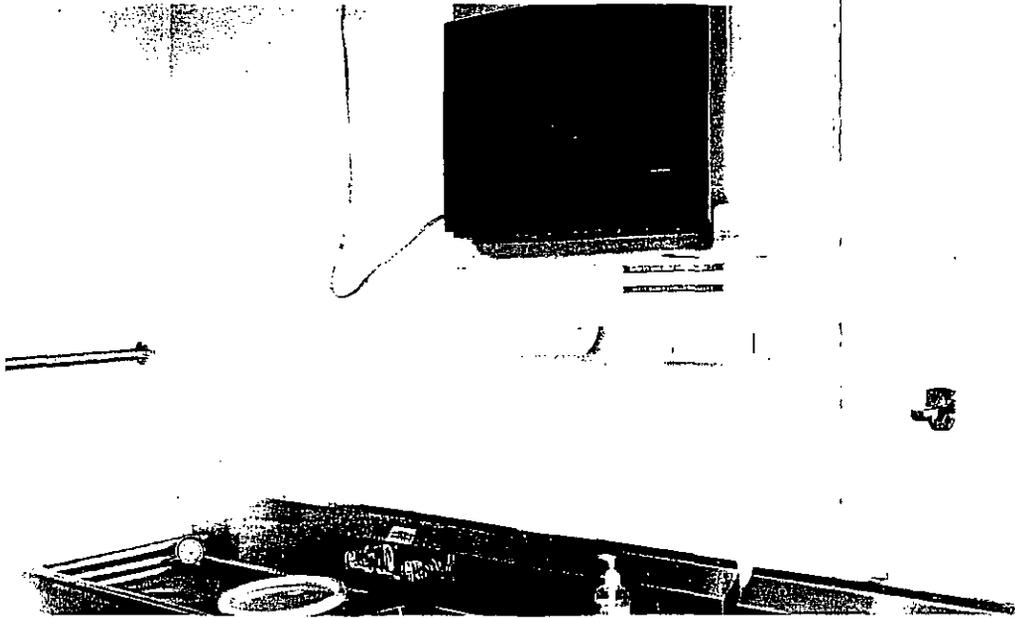


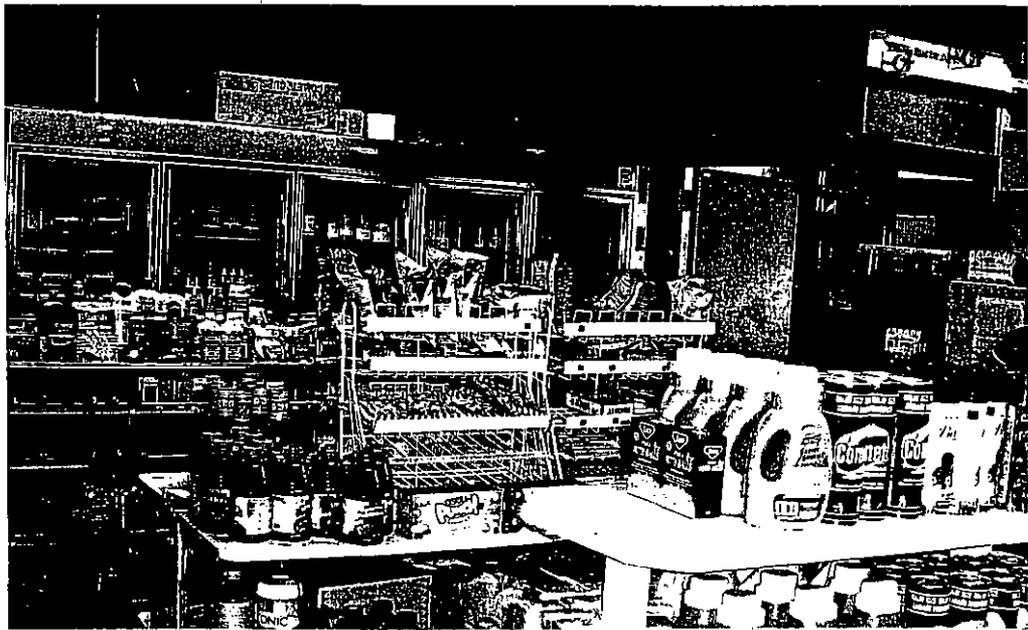
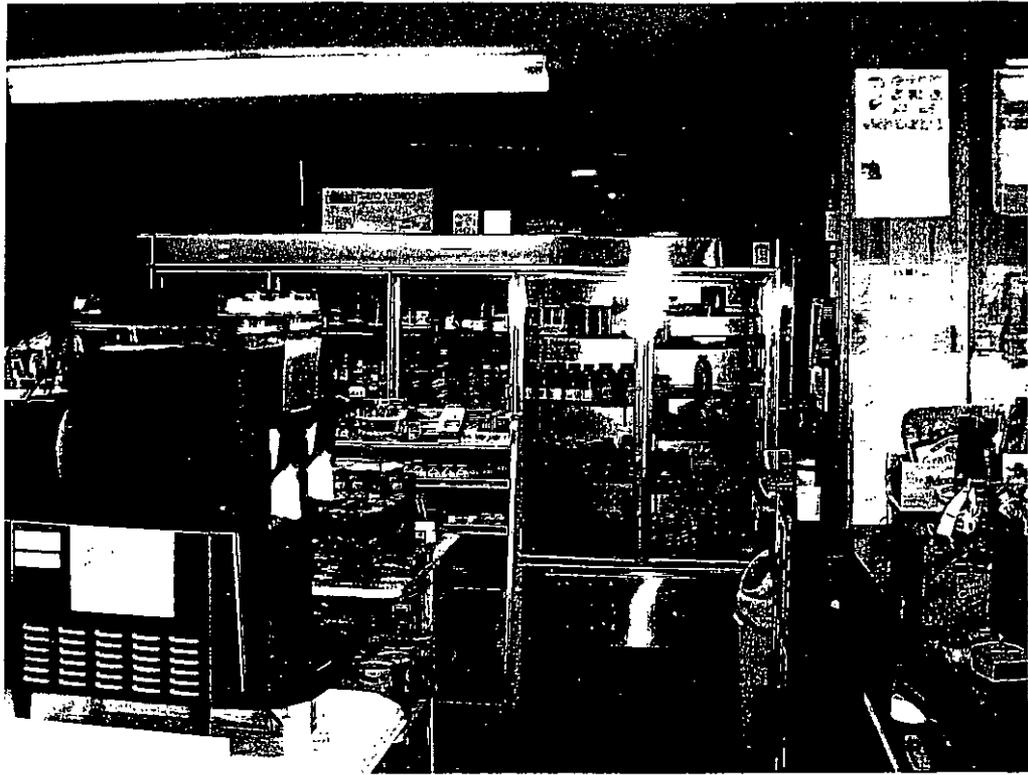


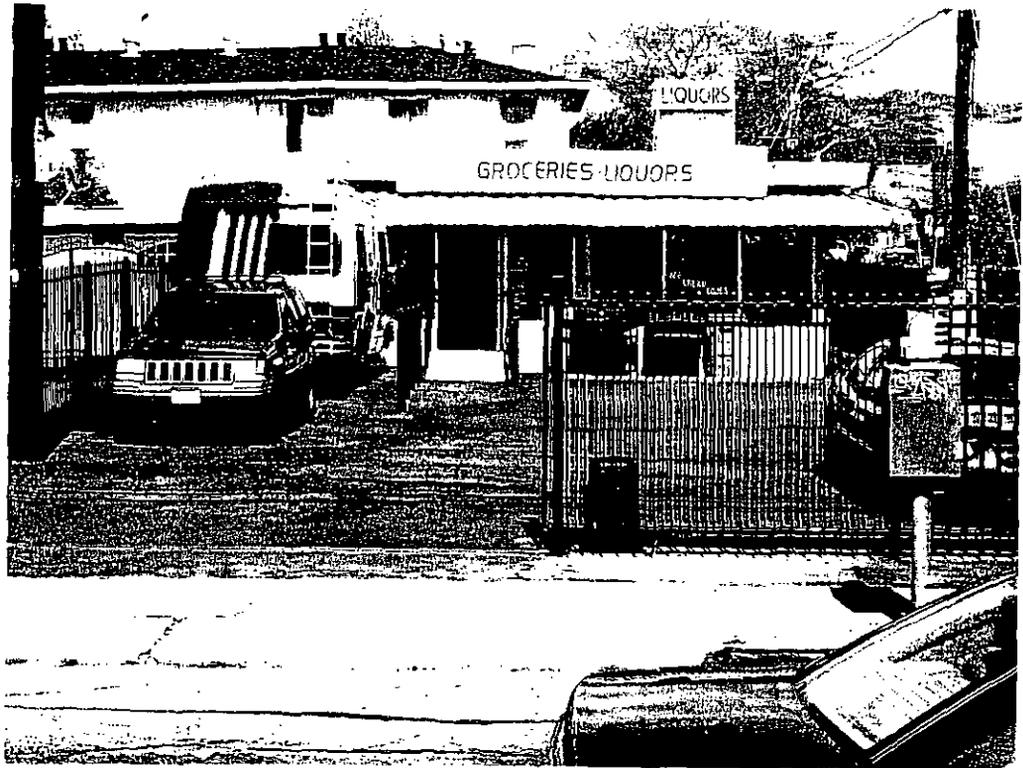




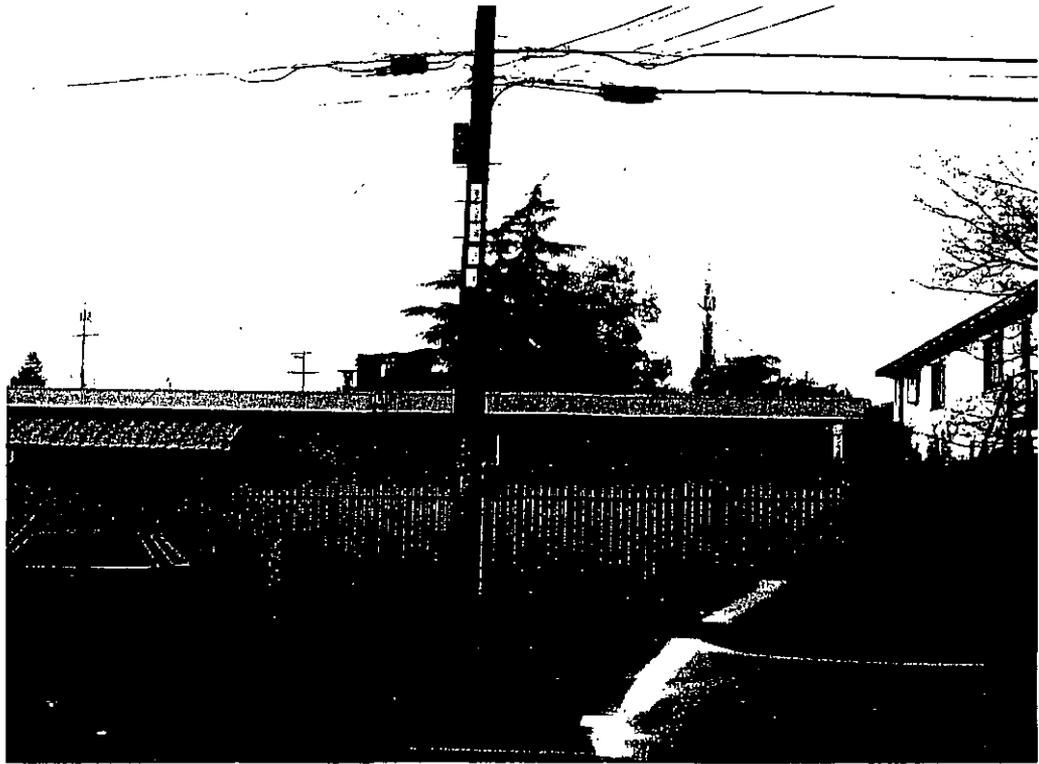














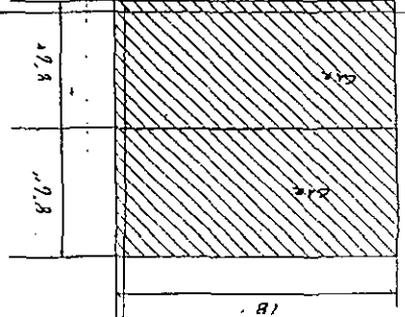
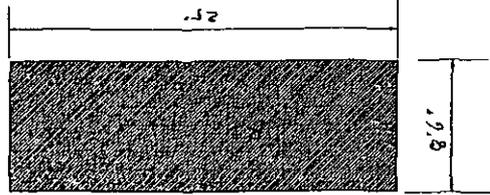
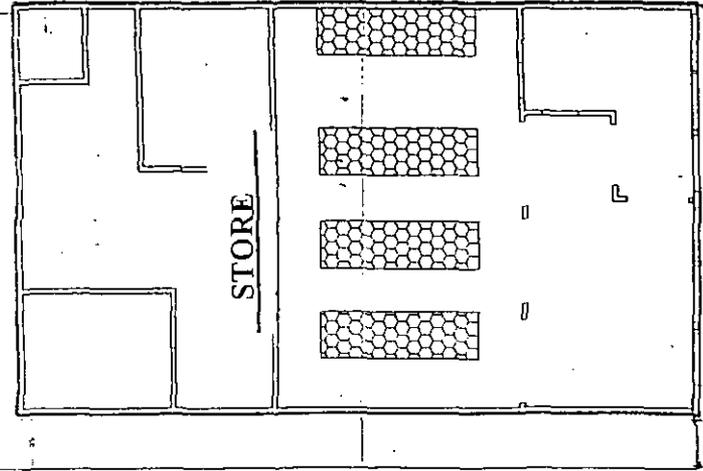


ALCATRAZ

CITY PLANNING COMMISSION
ZONING DIVISION

PARKING

STORE



SHATTUCK

