

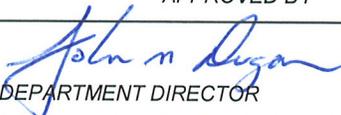
AGENDA ITEM NO. **VII-A**
COMMISSION MEETING 10-19-11

October 14, 2011

FROM: KEVIN FABINO, Planning Manager
Development Services Division 

THROUGH: MIKE SANCHEZ, Planning Manager
Development Services Division 

BY: JACK VAN PATTEN, AICP, Planner II
Development Services Division 

APPROVED BY

DEPARTMENT DIRECTOR

SUBJECT: CONSIDERATION OF CONDITIONAL USE PERMIT APPLICATION NO. C-11-028
AND ENVIRONMENTAL FINDING FOR ENVIRONMENTAL ASSESSMENT NO.
C-11-028

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

1. **APPROVE** the finding of a Categorical Exemption for Environmental Assessment No. C-11-028 issued May 31, 2011.
2. **DENY** the appeal and **UPHOLD** the Director's action approving Conditional Use Permit Application No. C-11-028 for an up-grade of a State of California Alcoholic Beverage Control Type 20 license (*off-sale beer & wine*) to a Type 21 (*off-sale liquor, beer, & wine*) ABC License, subject to the following conditions:
 - a. Development shall comply with Exhibits A and F, dated June 1, 2011.
 - b. Development shall comply with the operational statement for the project dated February 23, 2011.
 - c. Development shall comply with the Development & Resource Management Department's (D&RM, hereafter) Revised Conditions of Approval dated October 19, 2011.

EXECUTIVE SUMMARY

Larry McKenry, of ABC Brokers, on behalf of the applicant, Mr. Abdulla Mansour Nasr, the proprietor of Zack's Market, filed Conditional Use Permit Application No. C-11-028 requesting authorization to up-grade a Type 20 ABC License to a Type 21 ABC License.

The project is located on the southwest corner of East California Avenue and South Martin Luther King, Jr. Boulevard. The site is zoned C-5, *General Commercial District*.

This matter first came before the Planning Commission on August 17, 2011. After receiving testimony, from staff, the applicant, and the community, the Planning Commission continued the hearing and directed staff to return on September 21, 2011, with additional information. On September 21, 2011, staff, with the applicant's concurrence, requested the matter be, again, continued until October 19th. At that time staff indicated that they had been working with the Police Department, but had not obtained all of the information requested by the Planning Commission.

On September 9, 2011, at the direction of the Planning Commission, Planning staff contacted the Office of Councilmember Baines asking for assistance in obtaining information related to this matter (See Exhibit J). On September 21, 2011 Planning Staff received an e-mail from the Fresno Police Department indicating their support for the project, contingent upon the conditions of approval related

to C-08-314 (See Exhibit K). As you may recall from the previous public testimony, Conditional Use Permit Application Number C-08-314 came before the Planning Commission several years ago, and was denied. As a result, Planning staff contacted the Police Department requesting further clarification, and recommended that standardized conditions of approval be issued specific to this application, location, and operator. In response the Police Department issued their standardized conditions as incorporated into the Conditions of Approval (See Exhibits G & H). The Police Department has, again, stated their support of this application, based upon acceptance of the standard conditions of approval by the applicant.

Staff recommends that the Planning Commission approve Conditional Use Permit Application No. C-11-028, subject to the Revised Conditions of Approval noted above. The conditional use permit is appropriate for the site and all findings required by Fresno Municipal Code (FMC) Section 12-405-A-2 can be made. In addition, granting of the requested special permit would not result in a significant impact under the California Environmental Quality Act (CEQA).

PROJECT INFORMATION

PROJECT	Conditional Use Permit Application No. C-11-028 requests authorization to up-grade a Type 20 ABC License to a Type 21 ABC License (from off-sale beer & wine to off-sale liquor, beer, & wine).		
APPLICANT	Abdulla Mansour Nasr, by his agent, Larry McKenry		
LOCATION	854 East California Avenue, located on the southwest corner of East California Avenue and Martin Luther King, Jr., Boulevard (APN: 478-053-21) (Council District 3, Councilmember Baines)		
SITE SIZE	0.66-acres		
LAND USE	Existing	-	Neighborhood Commercial
ZONING	Existing	-	Same
PLAN DESIGNATION AND CONSISTENCY	Conditional Use Permit Application No. C-11-028 is proposed in accordance with the <i>neighbourhood commercial</i> land use identified in the Edison Community Plan and the 2025 Fresno General Plan.		
ENVIRONMENTAL FINDING	Categorical Exemption, dated May 31, 2011		
PLAN COMMITTEE RECOMMENDATION	N/A (Committee not fully established at time of review, although Councilmember Baines expressed interest about the project in a letter [enclosed] dated March 9, 2011)		
STAFF RECOMMENDATION	Approve Conditional Use Permit Application No. C-11-028		

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Medium Density Residential	R-2-A, <i>Low Density Multiple Family Residential District</i>	Medium Density Residential
South	Medium-High Density Residential	R-2, <i>Low Density Multiple Family Residential District</i>	Medium-High Density Residential
East	Commercial Office	C-P, <i>Administrative and Professional Office District</i>	Commercial Office
West	Neighbourhood Commercial	C-5, <i>General Commercial District</i>	Neighbourhood Commercial

ENVIRONMENTAL FINDING

Conditional Use Permit Application No. C-11-028 requests authorization to up-grade a Type 20 ABC License to a Type 21 ABC License (from off-sale beer & wine to off-sale liquor, beer, & wine). This project is not expected to have an adverse impact on the environment and is categorically exempt pursuant to the CEQA, Sections 15301/Class 1 and 15332/Class 32.

BACKGROUND / ANALYSIS

Conditional Use Permit Application No. C-11-028 has been filed by Larry McKenry, of ABC Brokers, on behalf of the applicant, Abdulla Mansour Nasr, of Zack’s Market, requesting authorization to up-grade a Type 20 ABC License to a Type 21 ABC License.

The subject property, of which 854 East California Avenue is a tenant space, is approximately 0.66-acres in size and is located on the southwest corner of East California Avenue and South Martin Luther King, Jr., Boulevard. The property is currently zoned C-5, *General Commercial District*. The Edison Community Plan and the 2025 Fresno General Plan designate the land use of the site as *neighbourhood commercial*.

LAND USE PLANS AND POLICIES

2025 Fresno General Plan

The 2025 Fresno General Plan designates the subject site for *neighbourhood commercial* planned land uses and provides objectives to guide in the development of these projects. Conditional Use Permit Application No. C-11-028 meets all policies and objectives of the 2025 Fresno General Plan. The following are excerpts of such objectives.

Policy C-12-a of the 2025 Fresno General Plan is to ensure that all commercial land uses are developed and maintained in a manner complementary to and compatible with adjacent residential land uses, to minimize interface problems with the surrounding environment and to be compatible with public facilities and services.

DIRECTOR'S ACTION ON CONDITIONAL USE PERMIT

The Development and Resource Management Department Director took action on June 1, 2011. In accordance with Government Code Section 65091 (Planning and Zoning Law) and the Special Permit Procedure of the Fresno Municipal Code, a notice of granting of the conditional use permit application was mailed to surrounding property owner with 350 feet of the subject property (Noticing Map attached as Exhibit C). The special permit does not become effective until 15 days from the date the special permit is granted, in order to allow time for any interested parties to file an appeal. One appeal (dated June 6, 2011) was received during the 15-day appeal period from 'The H.E.A.T FOR SouthWest Fresno Community' (HEAT, hereafter). This appeal is attached as Exhibit M.

APPEAL AND ANALYSIS OF THE APPEAL

The applicant, through his attorney, Bruce Leichty, has asserted that the 'appeal' by 'The H.E.A.T. for SouthWest Fresno Community' (HEAT, hereafter) of the Director's Action on this application is invalid (see Attachment N). The issues raised by Mr. Leichty pertain to such matters as missing signature; lack of identity of the appellant; the issue of protest of prior action, rather than an appeal of the Director's action; non-compliance with the municipal code and with State Law by the appellant; as well as other issues.

While staff recognizes the applicant's points of contention regarding the validity of the appeal, the protest letter submitted by HEAT is deemed a valid appeal.

The appellant raises, by reference to the enclosure to the appeal, only one issue:

- (1) "... an over abundance of venues for the sell [*sic*] and consumption of alcoholic beverages in SW Fresno."

The appellant has enclosed with his letter a three page excerpt from a preliminary report by Keyser Marston Associates, Inc., which was done in 2008 for the amendments to Merger Number 1, a Redevelopment Agency project. The three pages discuss the link between crime and alcohol use, the creation of the Department of Alcohol Beverage Control, and include a table (Table 25, on page 69 of the report) showing the concentration of on- and off-sale licenses within the Merger No. 1 project area, the City as a whole, and the County as a whole.

RESPONSE:

- (a) The Redevelopment Agency (RDA), the sponsor of the report cited by HEAT, has stated its non-objection to the approval of the Project, subject to conditions that have been incorporated within the Development & Resource Management Department's the Revised Conditions of Approval for the Project (enclosed as Attachment Exhibit G).
- (b) Subsequent to the continued hearing on September 21, 2011, the Fresno Police Department stated its approval for the Project, and forwarded to the D&RM the Police Department's Standard Conditions of Approval (the Police Department Standard Conditions of Approval, dated October 6, 2011, is enclosed as Exhibit H).
- (c) As can be seen in Table 25, there does seem to be a concentration of liquor licenses in the Merger No. 1 Area (the Project is located in Merger Area 2), as compared with the City as a whole. What Table 25 does *not* show is whether there are other areas within the City of Fresno with comparable, or higher, concentrations. Therefore, it is not known, from Table 25, whether the distribution of liquor licenses is uniquely higher in the Merger No. 1 Area or whether the Merger 1 Area is only one among others (some of which, perhaps, with higher concentrations).
- (d) According to the applicant, there were no adverse comments received during the State of California Department of Alcohol Beverage Control's comment period following the posting of the notice of intent.

DISTRICT 3 PLAN IMPLEMENTATION COMMITTEE

The District 3 Plan Implementation Committee was in process of formation at the time of the processing of this application. There is in the Application File a letter from Councilmember Baines, expressing his awareness of the application, stating that his office would be monitoring the progress of the application through the review process, and requesting that his office be made a 'copy addressee' on correspondence pertaining to this application. Councilmember Baines's letter, dated March 9, 2011, is enclosed as Exhibit L.

NOTICE OF PLANNING COMMISSION MEETING

The Development and Resource Management Department mailed notices of the August 17, 2011, Planning Commission hearing to all surrounding property owners within 350 feet of the Neighborhood Shopping Center site pursuant to Section 12-326-G-2 of the FMC. Only one letter in opposition to the Director's action has been received (Attachment M).

CONDITIONS OF APPROVAL

The applicant must show compliance with all conditions prior to operating under the new license.

FINDINGS

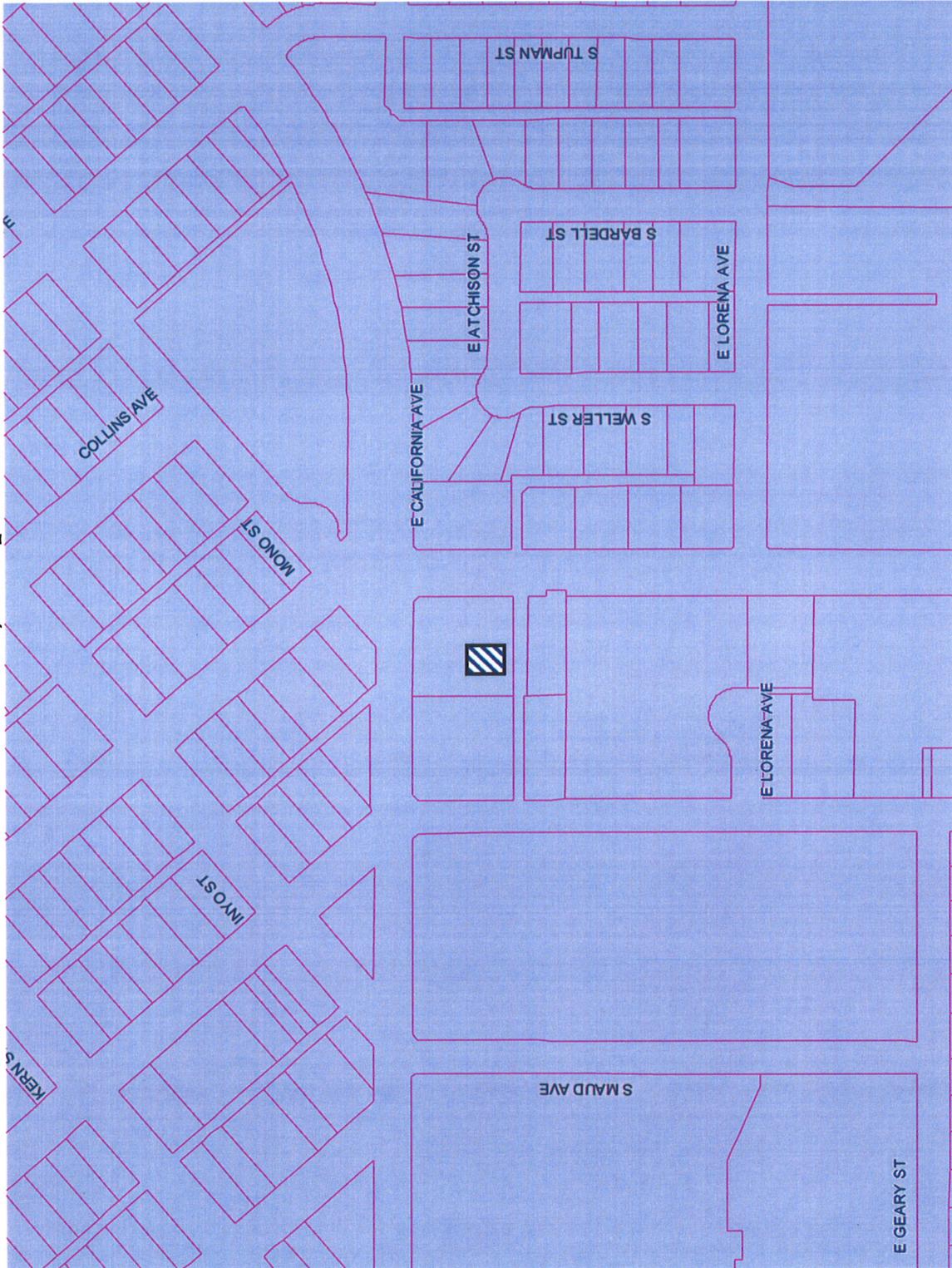
No special permit may be issued unless it is found that the privilege exercised under the permit, conforms to the findings of 12-405-A-2 of the FMC. Based upon analysis of the conditional use permit application, staff concludes that all of the required findings can be made for Conditional Use Permit Application No. C-11-028

Findings per Fresno Municipal Code Section 12-405-A-2	
<p>a. <i>All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,</i></p>	
Finding a:	<p>Conditional Use Permit Application No. C-11-028 will comply with all applicable codes, including parking, landscaping, walls, etc., as there is no new development proposed with this project.</p>
<p>b. <i>The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,</i></p>	
Finding b:	<p>Adjacent streets were assessed during the initial development of the subject site to ensure that the development would have less than significant impacts on traffic and the surrounding community.</p>
<p>c. <i>The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. The third finding shall not apply to uses that are subject to the provision of Section 12-306-N-30 of the FMC.</i></p>	
Finding c:	<p>The proposed use, a change from a Type 20 to a type 21 ABC license, will not have a negative impact on either the subject site, or neighboring properties given that there will be no change in the operation of the business. These conditions are intended to help protect the public health, safety and welfare of patrons and neighbors, alike.</p>

Attachments:

- A. Vicinity Map
- B. 2008 Aerial Photograph of site
- C. Noticing Map (350 foot radius)
- D. Exhibit A, Site Plan, dated February 23, 2011
- E. Exhibit F, Floor Plan, dated February 23, 2011
- F. Operational Statement, dated February 23, 2011
- G. D&RM Conditions of Approval, dated October 19, 2011
- H. City of Fresno Police Department Standard Conditions of Approval, dated October 7, 2011
- I. Redevelopment Agency of the City of Fresno Memo (revised) dated August 17, 2011
- J. Development & Resource Management Department (D&RM) E-mail to Council Member Baines Office (Kevin Fabino to Gregory Barfield) dated September 9, 2011
- K. City of Fresno Police Department E-mail to D&RM (Sgt Noll to Kevin Fabino), dated September 21, 2011
- L. Councilmember Baines letter of March 9, 2011
- M. 'The H.E.A.T. for SouthWest Fresno Community' letter of June 6, 2011, with attachments
- N. Bruce Leichty, Esq., attorney for Abdulla Mansour Nasr, letter of July 21, 2011
- O. Environmental Assessment No. C-11-028, dated May 31, 2011

Vicinity Map



Aerial Photograph of site.

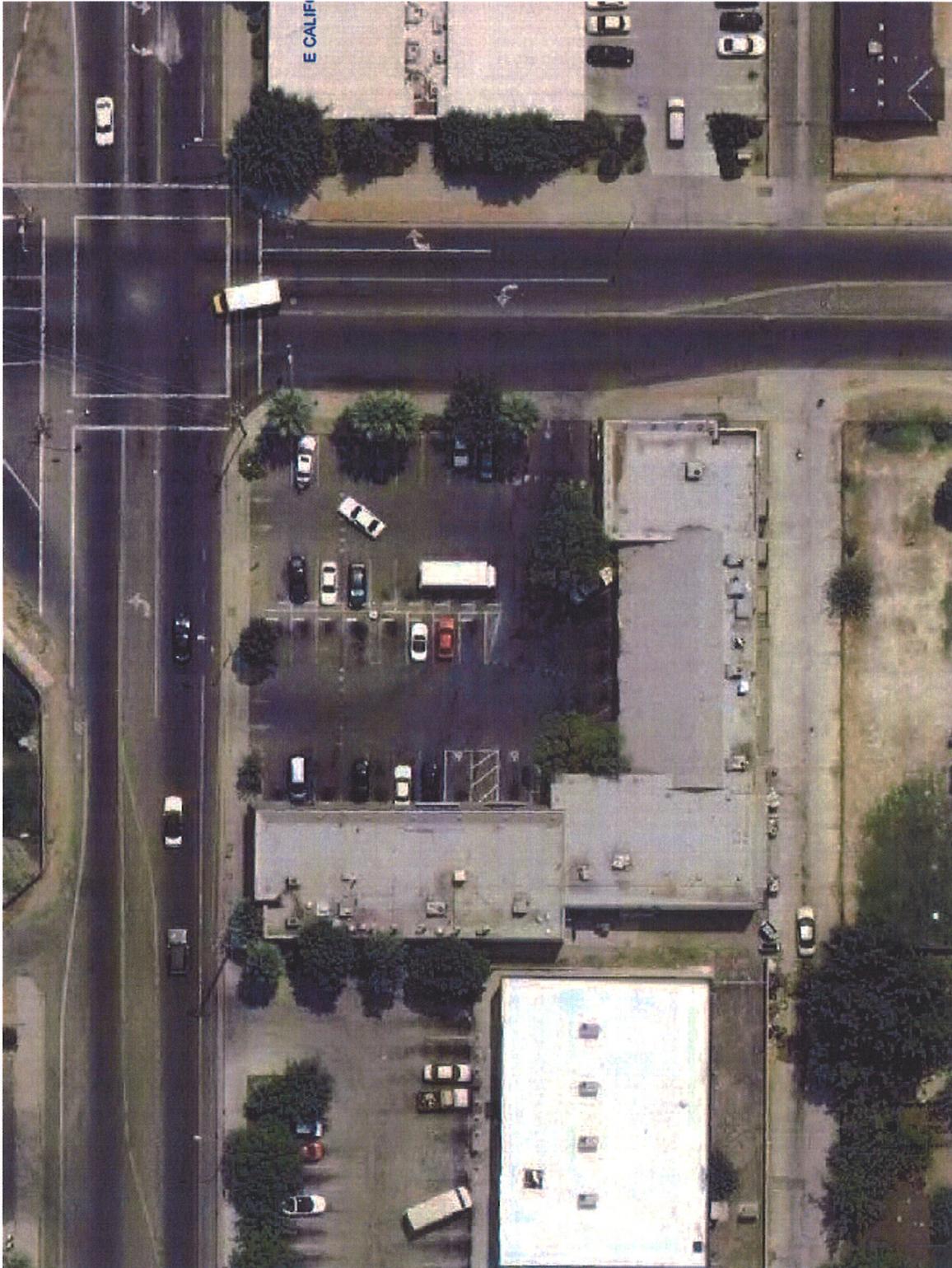
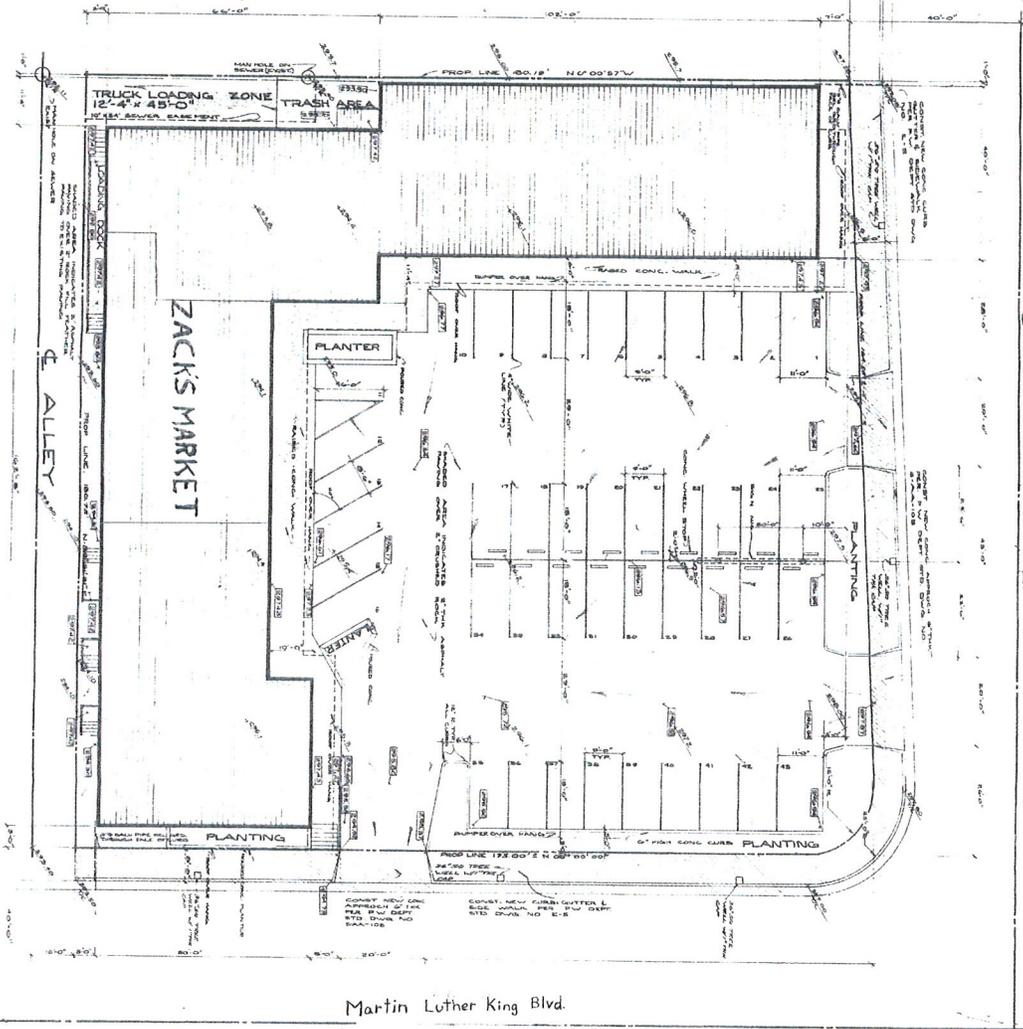


EXHIBIT B

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SITE PLAN



LEGEND DESCRIPTION:
 1. EXISTING CONSTRUCTION
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 3. EXISTING UTILITIES
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 5. EXISTING LANDSCAPE
 6. NEW LANDSCAPE
 7. EXISTING DRIVEWAYS
 8. NEW DRIVEWAYS
 9. EXISTING SIDEWALKS
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NO.	DESCRIPTION
1	FOUNDATION PLAN
2	FLOOR PLAN
3	SECTION ELEVATIONS
4	ROOF FRAMES PLAN
5	MECHANICAL PLAN
6	ELECTRICAL PLAN
7	PLUMBING PLAN
8	LANDSCAPE PLAN
9	UTILITIES PLAN
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SHOPPING CENTER FOR :
MR. GEORGE MARCUS
 FRESNO, CALIFORNIA

EXHIBIT D

MARKS & SORFIELD • CODEL, INC. • ARCHITECTURE • ENGINEERING

3102 N. BLACKSTONE AVE. FRESNO, CALIFORNIA • (209) 222-3471



DATE: 5-2-77

4

Operational Statement Template

Please use this template as a specific guide to explaining the scope of your project. This required information will assist all individuals, departments and agencies in their review and drafting of their comments, conditions and suggestions. Our goal is to facilitate an accurate and complete description of your project in order to avoid unnecessary delays in gathering additional information. If you have any questions about the requested information or need help completing any portions of this form please call the Development Partnership Center at (559) 621-8180. This form must be completed and submitted in order to process your application. If this operational statement is not submitted or incomplete your application will not be accepted for processing.

Project Description: Former Type License 20 off sale Beer & Wine
Type 21 off sale Liquor Beer & Wine
License - Up-grade is being submitted by L. McKerry of ABC Brokers on behalf of Zacks Market and pertains to 1/2 acres of property located at 854 E. California Ave
APN: 2 and is zoned C with a planned land use of Commercial Strip Center
2 is requesting authorization to:

Change in Alcoholic Beverage License from Type 20 to Type 21
The proposed development will consist of:

Just upgrade license
The existing site currently exists of 42 with 2 existing parking spaces. 2 Handicapped
The proposed hours of operation are from 7 to 10 on 7 days

Other facts pertinent to this project are as follows:
The premises are already licensed to sell off sale Beer & Wine
Deli foods and Grocery items, Wic Program, Food Stamps in a small
Strip Mall that already has a Clothing Store, Subway, Loundromat, Insurance,
Beauty Salon. This is the only Grocery Store in the immediate area
for past 20 years. The store formerly had a Type 21 license operating at this
Location around 4 years ago. Tenant pulled license & sold it to another area.

Operational Narrative: (This is your opportunity to communicate in detail all other characteristics of your property that would be important to consider when reviewing for completeness and contemplating approval. Describe your proposed operation/development in as much detail as possible including information such as name of business, product or service, anticipated traffic-customers, deliveries, etc., any special events, number of employees, required equipment, on-site storage, demolition or adaptive reuse of existing structures, noise generation, any hazardous materials, etc.)

Part 3 item 25 (ABC form 225)

The herein described location was approved for an upgrade from Type 20 license, which it now has, to a Type 21 Conditional Use Permit, by the City of Fresno, under the previous owner of this Store, than called Marcus Market, by Michael Marcus, within the last six years. The Marcus family owns this Center. The Marcus family, owners of this SW Fresno Center, are in favor of allowing their tenant, (now applicant Mansour Abdulla), to upgrade his license at this time as a benefit to draw new and additional business to the Shopping Center. This approval is already written into applicant's lease. The Center already draws its business customers from a diversified list of customers with the recent reopening of the Laundromat, clothing store, beauty salon, Subway franchise, and Zacks Market and Insurance office. The more diversified the product supply list, (Thus a Type -21 Liquor upgrade), merely enhances an additional draw to the overall good of the center, and to Zacks Market, (Already selling Beer and Wine). In addition Zacks Market sells Groceries, Hot Deli items, fountain drinks, ice cream products, Wic Program, Food Stamps, Check Cashing and is in the process of adding a full hot Deli, a limited meat department and fresh produce to round out its customer base making it a total service grocery store in a cleanly run center in the heart of Southwest Fresno. A great deal of customers to Zacks Market and to this Shopping Center are foot traffic and do not own vehicles which is even a greater reason for approval of this license upgrade being granted. Few business's succeed in the lower income areas and that is all the more reason the ones that do succeed, such as this one, be given every opportunity to diversify their product lines to the community they attempt to serve. It should furthermore be mentioned that this location used to have a Type 21 license here for some 10 years or more prior to 2005. Although there are other Beer and Wine licenses in the area there are only two liquor licenses and they are over 1 mile away and cannot conveniently supply the foot traffic for shopping convenience. There are virtually several thousand people who walk to this center which is a beacon of light to SW Fresno. The owners of this center and the applicant run a clean operation and do not believe that this license upgrade would in any way have a negative impact on the area. Other businesses are not in conflict but complimentary to the store. Many of school staff and DayCare frequent this center for both the Subway and Zacks Market. The only school is approximately 600 feet or more away from Zacks, as is, the nearest church. The only possible objection would be the Day Care School and we do believe they are not in objection. There are only a few residences within 100 feet of the store approximately 6. Three behind the store and 3 over 100 ft across the street. Your kind consideration is greatly appreciated.

CITY OF FRESNO
DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT

REVISED CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT APPLICATION NO. C-11-028

September 7, 2011

October 19, 2011

1. The property identified in Application No. C-11-028 is located within the adopted Southwest Fresno General Neighborhood Renewal Area and is subject to all requirements of the Redevelopment Plan.
2. Redevelopment Agency recommends the development to receive a favorable evaluation from the Fresno Police Department and adjacent property owners, and that the continued operation of the market is in conformance with all requirements of the Redevelopment Plan and the C-5 (General Commercial) zone district and Section 12-304 (including subsequent applicable Section of the Fresno Zoning Ordinance.
3. The project shall be subject to all applicable requirements associated with any active approved Site Plan or permits that are enforced for the development of the overall site.
4. The project identified in this entitlement application shall be developed in accordance with the Operational Statement and Site Plan (or as revised by the City of Fresno) submitted for Conditional Use Permit Application No. C-11-028.
5. Approval of this entitlement applies only to the development identified in Application No. C-11-028, any modifications or additions shall not be allowed without the modification of this Conditional Use Permit Application No. C-11-028 with prior approval from the City of Fresno Development and Resource Management Department.
6. All existing and future landscaped areas shall be properly maintained and any dead plants, trees or ground cover will be removed and immediately replaced with the appropriate landscaping. All landscaping irrigation systems on site shall be properly maintained or repaired to ensure the healthy growth of plants and trees.

- ~~7. The State Mandated Training of Liquor Sales and Handling shall be required for all new employees prior to start of employment and will be implemented in the operational polity of the market (business).~~
8. All outdoor storage on-site shall be screened from view of public streets and in conformance with requirements of the City's Municipal Code.
9. The City of Fresno and Redevelopment Agency shall be informed of any deviation from the conditions of this Entitlement or the Statement of Operations, including any change in the established use of the property and hours of operation.
10. Development shall comply with the requirements of the attached City of Fresno Police Department Southwest Area Commander memo dated October 6, 2011. Please contact Detective Jaime Campos, at (559) 621-6129, or Detective Raymond Eddy at (559) 621-6144 for further information. Video Camera: Prior to exercising any privileges granted by CUP No. C-11-028, the applicant must install a fully functional color digital video camera system ("System") that meets the following requirements:
 - ~~a. The System must continuously record, store, be capable of playing back images, and be fully functional at all times, including during any hours the business is closed. The System must be maintained in a secured location inside of the business.~~
 - ~~b. The System shall have the correct date and time stamped onto the image at all times.~~
 - ~~c. The System's camera storage capacity should be for at least one week (seven calendar days of real-time activities). Such cameras must be capable of producing a retrievable and identifiable image that can be made a permanent record, and that can be enlarged through projection or other means.~~
 - ~~d. The System shall be capable of producing a CD or digital playback feature and may be provided to an authorized representative of the~~

~~Fresno Police Department within 24 hours of the initial request relating to a criminal investigation only.~~

- ~~e. The interior of the business must have at least one camera placed to focus on each cash register transaction, to include the clerk as well as the customer waiting area. There should be at least one camera focused on the entrance and the camera view should clearly show an image of the color coded height tape installed on the inside of the door jamb.~~
 - ~~f. There shall be exterior cameras placed so as to record activities in the primary customer parking areas of the business. There shall be exterior cameras placed adjacent to or in or to provide coverage of the primary customer parking area(s) of the business sufficient to record activity and traffic (vehicle and pedestrian) relating to the business, and Applicant shall work with the City of Fresno Police Department to determine and provide what is sufficient. These cameras should be of sufficient quality to be able to identify persons and vehicles using the business parking lot. The applicant shall work with the Fresno Police Department to ensure adequate video coverage of the parking lot and external front.~~
 - ~~g. All interior cameras shall record in color.~~
 - ~~h. All exterior cameras shall record in color, and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.~~
- ~~11. Development shall comply with State of California, Business and Professions Code, Section 25612.5, as may be amended, including the following operating standards;~~
- ~~a. A prominent, permanent sign or signs stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee.~~

- b. ~~A prominent, permanent sign or signs stating "NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee.~~
- e. ~~No alcoholic beverages shall be consumed on the premises of an off-sale retail establishment, and no alcoholic beverages shall be consumed outside the edifice of an on-sale retail establishment.~~
- d. ~~The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the licensee, shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, the required illumination shall be placed so as to minimize interference with the quiet enjoyment of nearby residents of their property.~~
- e. ~~Litter shall be removed daily from the premises, including adjacent public sidewalks and all parking lots under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.~~
- f. ~~Graffiti shall be removed from the premises and all parking lots under the control of the licensee within 72 hours of application. If the graffiti occurs on a Friday or weekend day, or on a holiday, the licensee shall remove the graffiti 72 hours following the beginning of the next weekday.~~
- g. ~~No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to premises where there are no windows, or where~~

~~existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises.~~

- ~~h. Upon request of the local law enforcement agency in whose jurisdiction the licensed premises are located or at the discretion of the department, each public telephone located on off-sale premises (or located in an adjacent area under the control of the off-sale licensee) shall be equipped with devices or mechanisms that prevent persons from calling into that public telephone.~~
12. Development shall take place in accordance with the C-5, *General Commercial District*, defined in Section 12-221 of the Fresno Municipal Code.
 13. Development shall take place in accordance with Exhibits A and F dated February 23, 2011. The correct address for the subject application is 854 East California Avenue. All exhibits shall reflect the correct address.
 14. Development shall take place in accordance with the Standards Specifications and Standard Drawings of the City of Fresno Public Works Department. Transfer all red line notes, etc., shown on all original site plan exhibits dated February 23, 2011, to the final site plan. CORRECTIONS SHALL INCLUDE ALL THOSE LISTED IN THIS DOCUMENT AND THOSE LISTED IN THE CORRECTION LIST PROVIDED BY THE PLAN CHECK PROCESS.
 15. Development shall take place in accordance with all city, county, state and federal laws and regulations.
 - ~~16. Development shall comply with the requirements of the attached City of Fresno Redevelopment Agency memo dated August 16, 2011, as amended by Items 1 through 11, above. Please contact Terry Cox, Project Manager/Management Analyst III at (559) 621-7622 for further information.~~
 17. The exercise of rights granted by this special permit must be commenced by October 19, 2015, (four years from the date of approval). **There is no extension.**



October 06, 2011

City of Fresno, Development Department
Director of Planning & Development
Special Permit, Conditional Use Permit
2600 Fresno Street
Fresno, California, 93721-3604

Attn. Abdulla Mansor Nasr

Re: SPECIAL PERMIT NO. C-11-028
Zack's Mart
854 E. California
Fresno, Ca 93706

Dear Mr. Nasr

Pursuant to your Department's request, the Fresno Police Department has reviewed the special ABC permit application for property located at **854 E. California**. The property has been zoned C-5 for commercial development. The Fresno Police Department's primary concern with the application is the propensity of the operations on the premises to generate calls for police service, and therefore, be detrimental to the public welfare.

As you know, to approve any Conditional Use Permit, the City must make the following findings:

1. All applicable provisions of the Fresno Municipal Code are complied with and the site of the proposed use is adequate in size and shape to accommodate the use, and all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,
2. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,
3. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. This third finding shall not apply to uses which are subject to the provisions of Section 12-306-N-39 of the Fresno Municipal Code (Regulating Adult Businesses).

EXHIBIT H

The conditions are established to ensure public safety, and to minimize any impact to the surrounding area. If approved, this Conditional Use Permit would allow for an upgrade to a **off-sale Type 21 ABC license**. We request the following conditions be included as Conditions of Approval for Conditional Use Permit **C-11-028-ABCUP**. These conditions will help to insure and maintain an environment that is least likely to generate criminal activity, public complaints and police calls for service.

The Fresno Police Department is not in opposition of this Conditional Use Permit, providing the applicant agrees to the listed conditions. If the following conditions are not included as conditions of approval the Fresno Police Department shall oppose the approval of this Conditional Use Permit, and shall appeal such approval to the Planning Commission. As such, we request that you provide Detective Jaime Campos with notice of the Director's decision regarding this Conditional Use Permit as well as a complete copy of the conditions of approval, if the Director approves the Conditional Use Permit.

Requested Conditions of Approval:

1. Fresno Municipal Codes

The applicant shall comply with all applicable provisions of the Fresno Municipal Codes ("FMC"), including but not limited to:

- FMC 9-502 (Amusement Devices - Permit Required)
- FMC 9-1803 (Hours of Operation of Billiard Hall)
- FMC 9-1804 (Restriction on Attendance of Minors in Billiard Rooms)
- FMC 9-1805 (Minors allowed: Family Billiard Rooms)
- FMC 9-1905 (Public Dancing - Permit Required)
- FMC 10-105 (Noise Ordinance)
- FMC 10-708 (Unlawful Nuisances - High Calls for Police Service)
- FMC 12-224 (C-M Zone, Adult Theater activities not permitted, see 12-105-T-1.1 for definition of Adult Theater, and 12-306-N-30 for additional limitations on Adult Business activities.)
- FMC 9-2501 Loitering for the purpose of Soliciting Act of Prostitution
- FMC 9-2502 Loitering for Drug Activities

A current version of the Fresno Municipal Code may be viewed at the City of Fresno's website: www.Fresno.gov. The link to the FMC is located on the Home Page of that website.

2. State and Federal Law

The applicant shall comply with all applicable state and federal law, rules and regulations, including but not limited to the following California Business and Professions Code sections and ABC rules:

- BP 24046 (Required to Post ABC License on Premises)
- BP 25612.5 (Loitering, Open Alcoholic Beverage Containers, Consuming Alcoholic Beverages on Premises, Exterior Lighting, Litter Removal, Graffiti Removal, Signs and Barriers in Windows and Doors, Public Phones Blocked From Incoming Calls, Areas to Display Harmful Matter, Required Copies of Operating Standards Available for Public Viewing)
- BP 25631 (No sale of alcoholic beverages between 2:00 a.m. and 6:00 a.m.)
- BP 25665 (Minors Remaining in Public Premises)
- ABC Act Rule 106 (No Buy One Get One Free Drinks)
- ABC Act Rule 107 (No One Under 21 Allowed Signs Posted)
- ABC Act Rule 139 (Interior Lighting Required for Identification of Patrons)

3. Video Camera

Prior to exercising any privileges granted by this **CUP NO. C-11-028** the applicant must install a fully functional color digital video camera system ("System") that meets the following requirements:

- 3.1 The System must continuously record, store, be capable of playing back images and be fully functional at all times, including during any hours the business is closed. The System must be maintained in a secured location inside of the business.
- 3.2 The System shall have the correct date and time stamped onto the image at all times.
- 3.3 The camera storage capacity should be for at least one week (seven calendar days). Such cameras must be capable of producing a retrievable and identifiable image than can be made a permanent record and that can be enlarged through projection or other means.
- 3.4 Digital video recorder must be capable of storing at least seven days of real-time activities.
- 3.5 The System shall be capable of producing a CD or digital playback feature and may be provided to an authorized representative of the Fresno Police Department within 24 hours of the initial request relating to a **criminal investigation only**.
- 3.6 The interior of the business must have at least one camera placed to focus on each cash register transaction to include the clerk as well as the customer waiting area. There should be at least one camera focused on the entrance and the camera view should clearly show an image of the color coded height tape installed on the inside of the door jamb.

3.7 There shall be four (4) exterior cameras placed so as to record activities in the primary customer parking areas of their business. These cameras should be of sufficient quality to be able to identify persons and or vehicles utilizing the business parking lot.

3.8 All interior cameras shall record in color.

3.9 All exterior cameras shall record in color and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.

It is recommended, but not required, that the owner/operator provide the IP address(s) to the Fresno Police Department Communications Center for any system that is browser-based or viewable from a remote site. The Fresno Police Department may perform periodic inspections of the System to ensure compliance with these specifications. An inoperable System may be good cause for seeking revocation of this Conditional Use Permit.

4. **ABC Education**

Any and all employees hired to sell alcoholic beverages shall provide evidence that they have either:

4.1 Completed training from the State of California Department of Alcoholic Beverage Control--Fresno District Office-administered "Leadership and Education in Alcohol and Drugs" (LEAD) Program as confirmed by receipt of an ABC-issued certificate of completion; or,

4.2 Completed equivalent training acceptable to the ABC-- Fresno District Office to ensure proper distribution of beer, wine, distilled spirits, tobacco, and inhalants to ensure proper distribution of beer, wine, distilled spirits, tobacco, and inhalants to adults of legal age.

If any prospective employee designated to sell alcoholic beverages, tobacco or inhalants does not currently have such training then:

4.3 The ABC-licensed proprietors shall have confirmed with the Development Department within 15 days of the final approval of the CUP, that a date certain has been scheduled with the local ABC Office for said prospective employees to take the LEAD Program course; and

4.4 Within 30 days of taking said course the employee(s) or responsible employer shall deliver to the Planning Department each required LEAD Program Certificate evidencing completion of said course.

5. **Sale of Malt and Wine-Cooler Alcoholic Beverages**

5.1 Malt liquor or malt beverage products shall not be sold in less than six (6) pack quantities for sale. They must be sold in manufacturer pre-packaged multi-unit quantities. This will include all sizes of containers.

5.2 Malt liquor in containers of 40 oz. or less shall not be sold in units of less than a four pack. All malt beverage and wine cooler products must be sold in manufacturer pre-packaged multi-unit quantities.

5.3 Single Sales of any other beer product, of any size, is permitted.

6. Wine Alcohol Per Volume

No wine shall be sold with an alcoholic content greater than 24% volume, except premium dessert wines priced at \$10.00 or more.

7. Non-refrigerated Alcoholic Beverages

Non-refrigerated "hard" liquor or "distilled spirits," shall be placed within the cashier's area or, shall be located either in a locked cabinet, or other locked shelving system, with access controlled with either manual or remote control locking devices. During the hours of midnight and 2:00 a.m. the cabinet or shelving system shall be locked and opened only after an authorized employee has verified that the customer seeking to purchase items within the cabinet or shelving system is of "legal age."

8. Posting Property

The applicant shall post the property with the appropriate Fresno Municipal Code signs advising that consumption of alcoholic beverages, gambling, trespassing or loitering will be in violation of municipal ordinances. The applicant must send a letter to the Fresno Police Department, signed and dated by the applicant, every 180 days that authorizes FPD peace officers to enter the applicant's real property and/or establishment to enforce against the aforementioned activities at the business. The owners and employees are responsible for abating those activities when they occur during business hours.

9. Consumption of Alcoholic Beverages and Loitering.

9.1 The establishment shall not allow alcoholic beverages to be consumed outside the building premises or any other adjacent property under its control. No alcoholic beverage will be consumed on any property adjacent to the premises (i.e., parking lot and sidewalks). If the alcoholic beverages are consumed on property not owned or controlled by the applicant, the applicant shall immediately report such consumption to the Fresno Police Department.

- 9.2 The establishment shall not allow any loitering on building premises or any adjacent property under its ownership or control.
- 9.3 The establishment shall not allow any gambling on building premises or any adjacent property under its control.

10. Property Responsibility

“Frequent” responses by the Fresno Police Department arising out of or relating to the operation or management of the real property owned or controlled by the permittee causing any combination of the following: animal disturbances; violent criminal acts; illegal consumption of intoxicants in public view; gaming activities; and juvenile disturbances, or any of the other activities set forth in the Fresno Municipal Code section 10-708(g) may result in an FPD recommendation to the Director of Planning and Development to commence proceedings to revoke the Conditional Use Permit for violation of the Management of Real Property Ordinance. In addition to recommending the commencement of revocation proceedings, the FPD may pursue any of the other remedies set forth in FMC, section 10-710, including assessing fines against the proprietor for the violations of the Management of Real Property Ordinance.

“Frequent” means response by the Fresno Police Department is occurring more than 1.5 times the average number of such responses (3 calls for every 2) for property of a similar size and character within the same policing district.

- 11. The establishment shall ensure that all employees are aware of and comply with these conditions. The establishment shall have each employee sign a written acknowledgment that he/she has reviewed and understood each of these conditions. The written acknowledgement shall be maintained by the establishment and made available to the Fresno Police Department upon reasonable request.**

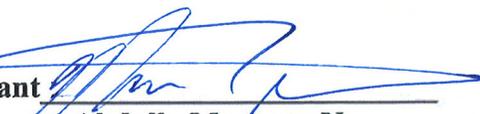
If you have any questions do not hesitate to call Detective Jaime Campos at (559) 621-6129 or Detective Raymond Eddy at (559) 621-6144.

Sincerely,



Capt. Greg Garner
Southwest District Commander

I agree and accept the listed conditions

Applicant 
Abdulla Mansour Nasr

RECEIVED

1/15 11:2011

3:10 P.M. - PBT

REVISED 8/16/11

Planning Division
Planning & Development Dept
CITY OF FRESNO

REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

2344 Tulare Street, Suite 200, Fresno, CA 93721 (559) 621-7600

Application No.: C-11-028-ABCUP
(Jack Van Patten)
Assessor Parcel No. 478-053-21
Site address: 854 E California Avenue
Redevelopment Area: Southwest Fresno GNRA

Date: 3/15/2011 8/16/2011
Reviewer: Terry Cox,
Project Manager/
Management Analyst III
Telephone: 621-7622

Agency Staff Recommendation:

DO NOT APPROVE:

- 1 Based on an blight study conducted by Keyser Marston Associates, Inc. for Southwest Fresno GNRA and Fruit/Church Project Areas (Merger II) it has been determined that there is an excess of existing liquor licenses within the Southwest Fresno GNRA Project Area based on the State of California Alcohol Beverage Control (ABC) established restrictions for limits of issued liquor licenses per capita.

ABC has established limits for Off Sale Beer & Wine + General combined at 1 license per 1,250 persons. Southwest Fresno has 2.06 Off Sale Beer & Wine + General licenses per 1,250 persons. More than double the ABC's restricted limits per capita

- 2 California Community Redevelopment Law definition of blight includes the following; Section 33031(b)(6) "An excess of bars, liquor stores or adult oriented businesses that has resulted in significant public health, safety and welfare problems" and Section 33031(b)(7) "A high crime rate that constitutes a serious threat to the public safety and welfare." Studies conducted have provided links between the excess availability of alcohol's contribution to alcohol-related crime and other social problems. Approval of this project will further contribute to the condition of blight in Southwest Fresno.

IF PROJECT IS APPROVED PLEASE APPLY THE FOLLOWING CONDITIONS:

1. The property identified in Application No. C-11-028-ABCUP is located within the adopted Southwest Fresno General Neighborhood Renewal Area and is subject to all requirements of the Redevelopment Plan.
2. Agency recommends the development receive a favorable evaluation from the Fresno Police Department and adjacent property owners, and that the continued operation of the market is in conformance with all requirements of the Redevelopment Plan and the C-5 (General Commercial) zone district and Section 12-304 (including subsequent applicable Sections of the Fresno Zoning Ordinance.

PLEASE MAKE APPLICANT AWARE OF AGENCY COMMENTS

EXHIBIT I

3. The project shall be subject to all applicable requirements associated with any active approved Site Plan or permits that are enforced for the development of the overall site.
4. The project identified in this entitlement application shall be developed in accordance with the Operational Statement and Site Plan (or as revised by the City of Fresno) submitted for Conditional Use Permit Application No. C-11-028-ABCUP.
5. Review of this entitlement applies only to the development identified in Application No. C-11-028-ABCUP, any modifications or additions shall not be allowed without the modification of this Conditional Use Permit Application with prior approval from the City of Fresno Development Department and the Redevelopment Agency
6. The project shall also be subject to and be in conformance with the requirements of the Industrial Development Design Guidelines as applicable.
7. All existing and future landscaped areas shall be properly maintained and any dead plants, trees or ground cover will be removed and immediately replaced with the appropriate landscaping. All landscaping irrigation systems on site shall be properly maintained or repaired to ensure the healthy growth of plants and trees.
8. The State Mandated Training of Liquor Sales and Handling shall be required for all new employees prior to start of employment and will be implemented in the operational policy of the market (business).
9. Agency recommends a Master Sign Plan with a signage pattern that will enhance the appearance of the building and its association with the frontages of California Avenue and Martin Luther King, Jr. Boulevard.
10. All outdoor storage on-site shall be screened from view of public streets and in conformance with requirements of City code.
11. The City of Fresno and Redevelopment Agency shall be informed of any deviation from the conditions of this Entitlement or the Statement of Operations, especially any change in the established use of the property and hours of operation.
12. The Agency reserves the right to reconsider the issuance of Conditional Use Permit Application No. C-11-028 ABCUP to the market (business) should the City of Fresno or the Redevelopment Agency of the City of Fresno receives any complaints about the market's operations and/or sales of alcohol beverages inconsistent with the requirements of Application No. C-11-028 ABCUP; which can result in a recommendation to the Alcoholic Beverage Control (ABC) Department of the State of California to revoke the license

EXHIBIT I P.2

PLEASE MAKE APPLICANT AWARE OF AGENCY COMMENTS

From: Kevin Fabino
Sent: Friday, September 09, 2011 2:11 PM
To: Gregory Barfield
Cc: Jack VanPatten
Subject: Zach's Market - C-11-028, Appeal

Greg,

Thanks for the discussion and help yesterday regarding this CUP application. The Planning Commission did continue the hearing and wanted additional information from the Police Department regarding the existing business requesting a modification from a Type 20 to a Type 21 license from ABC.

Given the Planning Commission's direction, and the Police Department's limited resources, do you think the following items could be helpful to PD in responding to their request?

1. Are the Revised Conditions of Approval acceptable to the Police Department? These are the conditions we added (See Attached, Items 10 & Item 11).
2. Does the Police Department supports or oppose the application with the Revised Conditions of Approval imposed on the project?
 - a. If the Police Department opposes the project, does it have substantial evidence as to why the unique conditions of this particular CUP would warrant denial as compared to other CUP applications for off-sale license modifications?
3. What are the ABC license concentration levels in the area?
4. Will the modification of this Type 20 to Type 21 change the concentration levels?
5. How do the calls for service for this particular business and owner (Zack's Market, which the owner said opened in May of 2010) generally compare to similar businesses in the area?
6. What is the crime rate for the surrounding area as compared to the City-wide general crime rate?
7. Does the Police Department currently has any evidence or other information (studies or a specific analysis, based on existing data) to establish a link between a modification of an existing Type 20 use to a Type 21 use to an increase in nuisances/crime. In other words, does the City have evidence establishing that crime/nuisances increase when an existing liquor license establishments changes its ABC license from a Type 20 to a Type 21? If so, the information, studies, data, etc, should be provided.

The Commission asked for PD to either provide a written or appear at the next PC hearing (September 23). If helpful, and if PD can gather the information I am more than happy to help craft a written response. We will need this response by the 14th to be able to get it out in the PC Agenda packets. Thanks much for your help!

Kevin Fabino, Planning Manager
City of Fresno, Development & Resources Management Depart.
2600 Fresno Street
Fresno, California 93721-3604
(559) 621-8046

Jack VanPatten

From: Kevin Fabino
Sent: Wednesday, September 21, 2011 5:04 PM
To: Greg Noll
Cc: Gregory Barfield; Gregory Garner; Raymond Eddy; Jaime Campos; Jack VanPatten
Subject: RE: Zak's Market 854 E. California

Thank you!

From: Greg Noll
Sent: Wednesday, September 21, 2011 2:41 PM
To: Kevin Fabino
Cc: Gregory Barfield; Gregory Garner; Raymond Eddy; Jaime Campos
Subject: Zak's Market 854 E. California

Hi Kevin,

Captain Garner and I have met with the ownership of this location and after reviewing calls for service and examining the area, we do not protest the upgrade in the ABC license as long as the owner agrees to the attached CUP conditions that were written up under C-08-314. I have attached the conditions and request they be incorporated in the final CUP that goes to the Planning Commission with the name of the updated ownership (Mr. Abdulla Mansour Nasr) to be included in the document. I will be forwarding these conditions to the Department of Alcoholic Beverage Control for inclusion in the ABC license.

Sergeant Greg Noll
SW Investigations
(559) 621-6105

EXHIBIT K



OLIVER L. BAINES III
Councilmember, District Three

March 9, 2011

Development and Resources
Management Department
2600 Fresno Street, Third Floor
Fresno, California 93721-3604

REGARDING: CUP No. 11-028 ABCUP
854 East California Avenue,

Dear DARM Staff:

Please accept this letter as an initial review of **Conditional Use Permit No. 11-028**, by this office.

Based on the information presented it appears that this project may be a negative aspect in my district. I understand this is the latest attempt to establish a Type 21 license on this site which has a day care center on one side and Edison High School down the street from it.

My office will monitor this project as it navigates the appropriate committees and reviews already established within the City of Fresno's planning and development process.

We request that this letter be made part of the permanent public record for this project and any additional correspondence regarding this matter should be copied to the attention of Gregory Barfield in my office at 621-7834.

Sincerely,

Oliver L. Baines III
Member of the Fresno City Council,
District Three

cc: Capt. Greg Garner, SW Police District

OLBCUPapplicationreview11-028.frm

EXHIBIT L

The H.E.A.T for SouthWest Fresno Community

(Hope Effort Appropriately Thriving)

P O Box 12571

Fresno, CA 93778

e-mail:HEATSWFC@aol.com

RECEIVED

JUN -6 2011

Planning Division
Planning & Development Dept
CITY OF FRESNO

June 6, 2011

Mark Scott, Interim Director

Jack VanPatten

Development & Resource Management Department

2600 Fresno St., Room 3076

Fresno, CA 93721

Re: Conditional Use Permit Application No. C-11-028

Please be advised that H.E.A.T. for SW Fresno Community is opposed to the above-mentioned Conditional Use Permit Application No. C-10-124 filed by Larry McHenry on behalf of Abdulla Mansour Nasr, of Zack's Market.

We are residents of South West Fresno, residing in the area of this store. There is an over abundance of venues for the sell and consumption of alcoholic beverages in SW Fresno. Attached are three pages from the Preliminary Report for the Amendments to the Merger No. 1, prepared for the Redevelopment Agency of the City of Fresno, dated July 21, 2008, prepared by Keyser Marston Associates, Inc.. Starting on page 67 at #5, including the footnote, and continuing on pages 68 & 69 (tables 24 & 25) are issues raised by the preparers of this report. These issues are valid and are of great concern to the residents of SW Fresno.

Based on the information provided in this letter, H.E.A.T. for SW Fresno Community request that the granting of special permit, Conditional Use Permit Application No. C-11-028 be denied.

Sincerely,

H.E.A.T. for SW Fresno Community

Cc: Councilmember Oliver Baines

EXHIBIT M

There were a total of 498 incidents of these conditions noted affecting 400 or 14 percent of parcels in the Project Area.

These data indicate that the Project Area has a significant number of overcrowded housing units and that overcrowding is continuing to become a more severe problem. The high levels of overcrowding coupled with the deteriorated condition of many of the housing units (as described herein and shown on Figure 6) and high levels of code complaints, indicate that there are unsafe, unhealthy and overcrowded living conditions in portions of the Project Area.

5. An Excess of Bars, Liquor Stores and Other Liquor Outlets

The links between the availability of alcohol and threats to the public health and safety have been well established throughout the U.S. Problems such as traffic accidents and fatalities, homicides and violent assaults have been shown to be aggravated by the use of alcohol.³⁴ An article published in *USA Today* described the crackdown on drunk driving instituted in the City of Fresno to reduce driving fatalities where alcohol is involved by setting up checkpoints and bar sting operations.³⁵

In order to promote temperance in the use and consumption of alcoholic beverages, and to protect the safety, welfare, health, peace, and morals of the people of California, the State Legislature enacted Section 23000 et seq. of the California Business and Professions Code, i.e., the "Alcoholic Beverage Control Act." The regulations are administered by the California Department of Alcoholic Beverage Control (ABC) throughout California. The ABC reviews applications for licenses to sell or distribute alcoholic beverages and controls the number of licenses issued. ABC retail licenses fall into two broad categories: "on-sale" licenses for the sale of alcoholic beverages to be consumed on the premises of the sale and "off-sale" licenses for the sale of alcoholic beverages to be consumed off the premises of the sale. The most common types of retail licenses are summarized on Table 24.

³⁴ An analysis of the prevalence of alcohol involvement in crime by the U.S. Department of Justice found that an estimated 32 percent of fatal accidents involved an intoxicated driver or pedestrian (the majority were drivers). Among violent crime victims who provided information about the offender's use of alcohol, 35 percent of the victimizations involved an offender who had been drinking. Among victims who suffered violence by an intimate (a current or former spouse, boyfriend or girlfriend), two-thirds reported the offender had been using alcohol. Source: *Alcohol and Crime. An Analysis of National Data on the Prevalence of Alcohol Involvement in Crime* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, revised April 28, 1998, pages v and vi.

³⁵ Copeland, Larry, "Some see Fresno's DUI crackdown as a model," *USA Today*, 6 November 2006, downloaded March 25, 2008 at: http://www.usatoday.com/news/nation/2006-11-05-fresno-dui-model_x.htm

Table 24: Types of Retail Alcoholic Beverage Licenses

License Type	Description
On-Sale General	Authorizes the sale of all types of alcoholic beverages (beer, wine and distilled spirits) for consumption both on the premises and the sale of beer and wine for consumption off the premises. Bars and restaurants that serve alcohol would be included in this category.
Off-Sale General	Authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers. Supermarkets and liquor stores generally fall into this category.
On-Sale Beer and Wine	Authorizes the sale of all types of wine and malt beverages for consumption on and off the premises. Typical businesses in this category include restaurants that serve beer and wine only.
Off-Sale Beer and Wine	Authorizes the sale of all types of wine and malt beverages for consumption off the premises in original, sealed containers. Mini- and quick-stop markets (i.e. 7-Eleven or an AM-PM Mini Mart) would fall into this category.

Source: ABC website at: http://www.abc.ca.gov/questions/licenses_faq.html

The ABC has the authority to refuse to issue a license under certain conditions and may also place restrictions on the operations of a licensee. For example, the ABC may limit the hours of operation or impose other restrictions to alleviate objections to the premises' operation. Such restrictions have been imposed on operations in the vicinity of churches, schools and residential areas.

In addition to regulating the types of establishments that sell alcohol and their operations, there are also restrictions on the number of licenses that may be issued at any one time based upon the number of licenses per capita city-wide and/or county-wide. The ABC may limit the number of new licenses issued to conform to those limits. As shown in the following table, the number of on-sale general and off-sale general licenses are limited on a county-wide basis; the number of off-sale beer and wine licenses is limited on a city-wide and county-wide basis; and the number of off-sale beer and wine and off-sale general licenses combined is limited on a city-wide and county-wide basis. Nevertheless, the control of licenses on a city- or county-wide basis does not prevent over-concentration of liquor outlets within specific communities. Furthermore, the ABC does not impose a limit on the number of on-sale beer and wine licenses in a county or a city. As shown on Table 25, the Project Area includes a significantly higher proportion of liquor outlets than the City and the County overall.

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Table 25: Comparison of Alcohol License Ratios

License Type and Limit	ABC Limit	Project Area	Fresno City	Fresno County
On-Sale General (limit per 2,000 persons Countywide)	1	2.25	0.97	0.78
Off-Sale General (limit per 2,500 persons County)	1	2.11	1.24	0.97
Off-Sale Beer and Wine (limit per 2,500 persons City and County)	1	3.51	1.55	1.57
Off-Sale Beer and Wine AND Off-Sale General (limit per 1,250 persons City and County)	1	2.81	1.4	1.27
On-Sale Beer and Wine per 1,000 persons	NA	1.59	0.66	0.60
Retail Licenses per 1,000 persons	NA	4.97	2.26	2.01

NA = not applicable. Sources: 2007 Population estimates from Claritas; ABC license data from the ABC website: <http://www.abc.ca.gov/>

While the number of on-sale and off-sale licenses in the County are below the ABC limits, the number of such licenses within the Project Area is more than double the ABC limit. While the number of off-sale licenses (both general and beer and wine) exceed the ABC limits in both the City and the County overall, the number of licenses within the Project Area is more than double the rate of licenses in the City and the County. While the higher concentration of on-sale licenses may be attributable to the high daytime population in the City's downtown that would frequent restaurants and bars, this would not account for the higher proportions of off-sale licenses. In addition, the overall number of retail alcohol licenses per capita (per 1,000) in the Project Area is more than double the number for both the City and County. These data indicate that there is an over-concentration and excess of retail outlets for alcohol in the Project Area.

6. A High Crime Rate That Constitutes a Serious Threat to the Public Health and Safety

The 1998 Report included an analysis of per capita crime rates (per 100 persons) in the Project Area census tracts in comparison to the crime rate Citywide for a one-year period (November 1995 through October 1996). The crime rate in the Project Area was over 89 percent higher, at 36.78 versus only 20.83 percent Citywide.

Crime data was obtained from the Fresno Police Department (FPD) for the period 1998-2006. As shown in Table 26, crime rates for both violent crime (homicide, rape, robbery and aggravated assault) were considerably higher in the Project Area, as were crime rates for property crime (burglary, larceny (theft) and motor vehicle theft). Overall, from 1998 through 2006, the rate of homicides was more than 3.5 times higher, the rate of

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BRUCE LEICHTY

ATTORNEY AT LAW

625-A Third Street • Clovis, California 93612
(559) 298-5900 • Fax (559) 322-2425

July 21, 2011

BY FACSIMILE TRANSMISSION -- 488-1020 -- AND U.S. MAIL

Mark Scott, Interim Director
Attention: Jack VanPatten
Current Planning Division
Development and Resource Management Department
City of Fresno
2600 Fresno Street, Third Floor
Fresno, California 93721-3604

Re: "Appeal" of Approval of CUP Application C-11-028
By The H.E.A.T. for SouthWest Fresno Community

Dear Mr. Scott:

I have been retained by Mansour Nasr Abdulla, applicant under Conditional Use Permit Application No. C-11-028 filed by Larry McHenry of ABC Brokers concerning property located at 854 E. California Ave., Fresno, California (the "CUP Application").

Request is respectfully made that, to the extent that the City of Fresno has not already made this determination for itself, the City decline to recognize as a proper "appeal" that certain letter dated June 6, 2011 on letterhead of "The H.E.A.T. for SouthWest Fresno Community," a copy of which is attached hereto.

There are multiple reasons why the attached letter does not qualify for treatment as an appeal under the terms set forth in the approval of the CUP Application:

First, the letter is not signed. The typewritten words "H.E.A.T. for WS Fresno Community" (hereinafter referred to as "HEAT") does not qualify as a signature. We know an appeal has to be signed both because it must be presented by an interested person and because of City of Fresno Municipal Code Section 12-401(H), which states in the section on withdrawals that "all withdrawals shall be in writing and signed by all persons who signed the appeal." That section necessarily requires that the initial appeal be signed.

It cannot be determined from the letter what form of organization "HEAT" purports to be, and the applicant should not be forced to speculate about who he is dealing with, but let us say that "HEAT" is an association. True, an interested person can include an association, but there is nothing in California law which allows an

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association to act--and particularly to present a legally cognizable document--without a signature of one of its members. Because a signature is lacking, therefore, the attached letter is not legally cognizable as an appeal or anything else.

Even more dispositive on the issue of the signature requirement, Municipal Code Section 12-401(J)(1) states that "whenever a written...appeal must be filed...all statements and matters of fact in a form must be sworn to under penalty of perjury by the signers of the form," and (J)(2) states that "No form shall be deemed to be filed until accepted by the Director." Even if the putative appellants would protest that they have not submitted any "statements [or] matters of fact"--which is patently incorrect--that would not excuse submission of an appeal form without "signers." An appeal form without "signers" is not a cognizable appeal at all.

Parenthetically, it should be noted that the letter does not even purport to be an appeal. It purports to object to approval of the C.U.P. ("request that the granting...be denied"). However, as of June 6 when the letter was sent, the C.U.P. had already been approved and an appeal was the only thing that could have prevented the approval from becoming final. Not only does the letter not identify itself as an appeal, it does not identify the decision or action appealed from, which is the June 1 approval of the C.U.P., and therefore it is fatally defective under yet another provision of the Municipal Code, namely Section 12-401(H)(1) which states that the "appeal form" shall include "the decision or action appealed."

The fact that City of Fresno has not acted on the letter as if it were an appeal prompts the applicant to surmise that City of Fresno has already determined that the letter does not qualify as an appeal. Under City of Fresno Municipal Code Sections 12-406(F) and 12-401(B), a hearing on appeal must be set "within forty days after the initiation of the...action which gives rise to the requirement." Already 45 days have elapsed since June 6. We believe that City of Fresno has rightly recognized that the submission on June 6 of the attached letter is not an action which gives rise to a hearing requirement, and therefore no hearing was set for that reason, but even if our surmise is incorrect, we ask that City of Fresno make that determination at this time.

That is not the end of the reasons why "HEAT's" letter should not be recognized as an appeal, however. Under Municipal Code Section 12-401(H)(1), any "appeal form" presented by an appellant must include "the appellant's interest in or relationship to the subject

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property...." That interest is merely asserted but is not adequately documented in the attached letter.

The only information provided by "HEAT" on its interest in or relationship to the subject property is found in this statement: "We are residents of SouthWest Fresno, residing in the area of this store." However, no residential addresses have been provided. Indeed the only address of "HEAT" to appear at all on the appeal is a post office box. Applicant submits that vague statement is plainly insufficient under the meaning and intent of Section 12-401(H)(1), but beyond that, that the City's failure to require more information on "interest" or "relationship" in an appeal could easily lead to abuse. Anyone can obtain a post office box in a neighborhood. Indeed anyone can say "we are residents...residing in the area of the store," if they don't have to provide their actual addresses. Applicant disputes that HEAT is composed of anyone with an actual interest in or relationship to the neighborhood of the store (including for reasons set forth below). For example, Applicant gave notice of the application to all addresses in the neighborhood of the store, and no one objected. If any of the residents composing HEAT in fact were residing in the area of the store, they had ample opportunity to state their street addresses in the appeal; their failure to document their interest in or relationship to the property in the form of a street address should be regarded as a fatal defect.

Alternatively, the "interest" that HEAT has asserted in the property is not cognizable because HEAT has admitted that they would object to any request for a liquor license in southwest Fresno (on-sale or off-sale), and therefore their objection (and interest) are not specific to a property. This admission by HEAT came in the context of a meeting that applicant arranged with HEAT, at which applicant tried to explain its goals and also to determine the basis and good faith for the opposition, and asked for withdrawal of the challenge. This fact is attested to by Mansour Abdulla, applicant, who attended that meeting and whose signature appears below. HEAT professed no interest in applicant's presentation, including applicant's evidence of the accessibility and quality of its management and the shopping center in which the market is located, or the potential for added growth of the shopping center based on approval of the C.U.P., but instead said they were intent on opposing all liquor licenses in southwest Fresno simply because any further licenses would stand in the way of the community getting more redevelopment funds from the State. This species of "interest" (in redevelopment funds) does not qualify as an interest in an identified property for the purposes of an appeal under the City Municipal Code.

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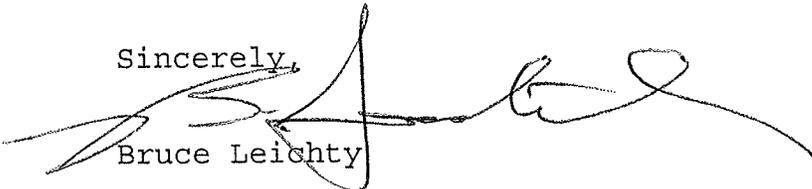
Finally, Applicant submits that even if HEAT is an association or a partnership, if HEAT has not complied organizationally with applicable law, its letter should not be recognized as an appeal for that reason as well. Applicant sought to determine whether HEAT (regardless of its form) had complied with the fictitious business names law of the state. As set forth in the second attachment hereto, no fictitious business name registration can be found for HEAT. Nor is HEAT a corporation recognized in California. Applicant asserts that HEAT may not qualify as an "interested person" for the reason that it is simply a "name," but that even if it is an association, it should be estopped from preventing lawful approval of a C.U.P. by its own unlawful conduct.

A question is also presented by the above facts as to who is entitled to withdraw any appeal presented by the attached letter. It would appear that applicant would be as entitled as anyone to withdraw this "appeal," by simple appropriation of the name appearing on the letter attached hereto. Because anyone could withdraw the appeal if the mere use of the name "HEAT" could be deemed to be a signature, the City is asked to recognize this letter as a withdrawal by HEAT of the appeal to the extent that it recognizes the attached letter as an appeal to begin with.

Applicant declines to address the substance of the attached letter, except to note that most of it is boilerplate incorporation of a "Preliminary Report" of a consultant dating back three years (to 7/21/08), the weight and relevance of which to the specific property in question, in the year 2011, are not made clear. Applicant of course does not rely on any substantive arguments to assert that the attached letter is not cognizable as an appeal.

Based on all the foregoing reasons, Applicant respectfully submits that the City should not--based on either legal or equitable reasons--regard the attached letter as an appeal, and that the City should confirm that its June 1 approval of the C.U.P. of Applicant controls.

Sincerely,


Bruce Leichty

I have read the above letter, and as to all facts and statements made therein that are not legal arguments, they are all true and correct.

Date: 7/21/2011

see attached

MANSOUR ABDULLA

EXHIBIT N 7.4

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Finally, Applicant submits that even if HEAT is an association or a partnership, if HEAT has not complied organizationally with applicable law, its letter should not be recognized as an appeal for that reason as well. Applicant sought to determine whether HEAT (regardless of its form) had complied with the fictitious business names law of the state. As set forth in the second attachment hereto, no fictitious business name registration can be found for HEAT. Nor is HEAT a corporation recognized in California. Applicant asserts that HEAT may not qualify as an "interested person" for the reason that it is simply a "name," but that even if it is an association, it should be estopped from preventing lawful approval of a C.U.P. by its own unlawful conduct.

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Based on all the foregoing reasons, Applicant respectfully submits that the City should not--based on either legal or equitable reasons--regard the attached letter as an appeal, and that the City should confirm that its June 1 approval of the C.U.P. of Applicant controls.

Sincerely,

Bruce Leichty

I have read the above letter, and as to all facts and statements made therein that are not legal arguments, they are all true and correct.

Date: 7/21/2011

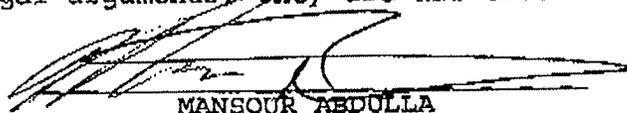

MANSOUR ABDULLA

EXHIBIT N P.5

**CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. C-11-028**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: Larry McHenry
ABC Brokers
2525 Alluvial Avenue, Suite 121
Clovis, CA 93611

PROJECT LOCATION: 854 East California Avenue, located on the southwest corner of East California Avenue and Martin Luther King, Jr. Boulevard (APN: 478-053-21)

(Council District 3, Councilmember Baines)

PROJECT DESCRIPTION: Conditional Use Permit Application No. C-11-028 has been filed by Larry McHenry, of ABC Brokers, on behalf of Abdulla Mansour Nasr, of Zack's Market, requesting authorization to up-grade a Type 20 ABC License to a Type 21 ABC License.

This project is exempt under Section 15301/Class 1 and Section 15332/Class 32 of the State of California CEQA Guidelines.

EXPLANATION: Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Up-grade from a Type 20 Alcohol Beverage Control (ABC) license to a Type 21 ABC license.

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section. (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.

By current standards, this subject site and surrounding neighborhoods are identified as "in-fill" within an urban setting.

The above described project is consistent with the 2025 Fresno General Plan and the Edison Community Plan without negatively impacting the characteristics of the area, and complies with all conditions described in Section 15332/Class 32, Section

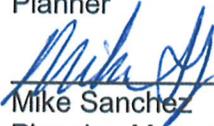
15303/Class 3 of California CEQA Guidelines. No adverse environmental impacts will occur as a result of the proposed project.

Finally, there is no substantial evidence in the record that any of the exceptions to these Categorical Exemptions, set forth in CEQA Guidelines section 15300.2, apply to this project

Date: May 31, 2011

Prepared By: Jack Van Patten, AICP
Planner

Submitted By: _____


Mike Sanchez
Planning Manager
City of Fresno
Development and Resource Management
Department
(559) 621-8277