



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: October 10, 2013 **REPORT NO.:** PC-13-101

ATTENTION: Planning Commission, Agenda of October 17, 2013

SUBJECT: UNIVERSITY MARKET APPEAL – PROJECT NO. 271129,
PROCESS 3

REFERENCE: Hearing Officer, Report No. HO-13-060

**OWNER/
APPLICANT:** Jamil Gappy
Nazar Toma

SUMMARY

Issue(s): Should the Planning Commission grant or deny an appeal of the Hearing Officer's decision to approve a Conditional Use Permit to allow the sale of beer and wine in accordance with a Type 20 liquor license within an existing market in the Mid-City Community Planning area?

Staff Recommendation: Deny the appeal and uphold the Hearing Officer decision to Approve Conditional Use Permit No. 952883.

Community Planning Group Recommendation: On May 7, 2012, the City Heights Area Planning Committee voted 12-1-3 to recommend denial of the project (See Discussion Section of this report).

Environmental Review: The proposed activity is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (existing facility) of the State CEQA Guidelines which allows for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing facilities (public or private) involving negligible or no expansion of use beyond that existing at the time of the determination. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on April 9, 2012, and the opportunity to appeal that determination ended on April 30, 2012.

Fiscal Impact Statement: None. All staff costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact: None with this action.

Housing Impact Statement: None with this action.

BACKGROUND

This item is an appeal of the Hearing Officer's decision to approve a Conditional Use Permit for a Type 20 liquor license to allow the sales of beer and wine within a 900 square-foot market on a site developed with other retail services. The site is located at 4950 University Avenue in the CC-5-4 zone within the Central Urbanized Planned District within the Colina Park neighborhood of the City Heights Community of the Mid-City Communities Plan area. The existing market is on a site shared with a laundromat and a water sales store. Surrounding the site is a mix of uses including a religious facility, medical assistance facility, automotive repair, restaurants, residential, and a convenience store. To the north of the site are multi-unit residential developments. The market has been at this location for over 25 years selling a variety of staples and food items.

A Conditional Use Permit is required for the subject site because the site is within a census tract, or within 600 feet of a census tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent, is within a redevelopment area, within close proximity to residential property and a religious facility.

DISCUSSION

The Hearing Officer considered the project on July 10, 2013. Public testimony was presented in favor and in opposition to the project. Several individuals spoke in opposition including Ms. Patty Vaccariello, chair of the City Heights Area Planning Committee. Opponent's concerns raised at the hearing included issues of the health and safety, religious beliefs, and the negative influence that may be caused by the sales of beer and wine. The proponents of the project contend the owner has been a responsible businessman for over 25 years serving the community with no problems and that the sales of beer and wine will not change his reputation. After deliberation and upon close of public testimony, the Hearing Officer approved the project.

Two appeal applications were filed by Bashir Hassan, et al, and The City Heights Area Planning Committee. Issues identified in the appeal are outlined below.

City Heights Area Planning Committee Appeal:

On July 24, 2013, the City Heights Area Planning Committee submitted an appeal application. Several items were listed as the basis for the appeal however, staff believes the items can be summarized as relating to compliance with the Municipal Code, Community Plan, findings, and that the Hearing Officer's decision was based heavily on the staff report which the appellant claims contained erroneous information (Attachment 1).

Staff Response: In summary, the project was reviewed for compliance with all applicable Land Development Code (LDC) requirements and community plan policy documents. The appellant contends that the LDC "prohibits" alcohol beverage outlets at this site because it is within a redevelopment area, within close proximity to residential property and a religious facility and

that the project proposed deviations due to this prohibition. The project does not propose any deviations and the LDC does not prohibit ABC outlets in these circumstances. Municipal Code section 141.0502(c) sets forth a discretionary approval process for the applicant to obtain a Conditional Use Permit for an alcoholic beverage outlet when the regulations set forth in Section 141.0502(b) cannot be met. Municipal Code Section 141.0502 states, "Proposals for alcoholic beverage outlets that do not comply with the regulations in Section 141.0502(b) may be permitted with a Conditional Use Permit decided in accordance with Process Three subject to the regulations in Section 141.0502(c)." Due to the fact that the current site is within a redevelopment area, within close proximity to residential property and a religious facility, the regulations under section 141.0502(b) cannot be met and the applicant is required to obtain a Conditional Use Permit in accordance with section 141.0502(c). The project is located in the CC-5-4 zone which allows for the sale of beer and wine upon the issuance of a Conditional Use Permit and the issuance of an Alcohol Beverage Control license by the State of California.

The Hearing Officer in his independent judgment considered the staff recommendation, the community planning group recommendation, and all public testimony prior to making the decision.

Bashir Hassan, et al appeal

On July 24, 2013, Bashir Hassan, et al. submitted an appeal application. Several items were listed as the basis for the appeal. Staff believes the items can be summarized as relating to factual errors from San Diego Police Department (SDPD) crime statistics and census tract numbers, unsupported findings, and that a public convenience and necessity determination cannot be made (Attachment 2).

Staff Response: Staff analyzed the project for consistency with all applicable requirements regulating a Conditional Use Permit for an Alcohol Beverage Outlet (ABO). San Diego Municipal Code (SDMC) section 126.0305 contains Findings for a Conditional Use Permit and SDMC section 141.0502 contains land use requirements for ABO's. The proposed project was reviewed in accordance with SDMC section 141.0502 and found to be in compliance with all ABO regulations. In addition, the SDPD included requirements to the Conditional Use Permit limiting the square-footage of the sales of beer and wine to ten-percent of the market's square-footage. Additionally hours in which beer and wine can be sold will be limited from 6:00 a.m. to midnight each day of the week. The proposed use, sales of beer and wine, is consistent with the commercial designation of the Mid-City Community Plan which permits retail sales of items. Alcoholic beverage sales for off-site consumption has been determined to serve a public convenience or necessity by the San Diego Police Department (SDPD). The SDPD staff has determined that the proposed sales of beer and wine is a small component of the market and is not the principal sales product. Therefore, findings from SDMC section 126.0305 can be made with this application.

Subsequent to the July 10, 2013 Hearing Officer Public Hearing, SDPD provided updated census tract information and verified census tract 27.07 changed its allowances with the 2010 census tract update (Attachment 3). The 2000 allowances for census tract 27.07 were to allow five off-sales Type 20 license. The 2010 update decreased the number to three. However, currently there are two Type 20 alcohol licenses. The addition of the applicants Type 20 will not create an over-concentration. Additionally, adjacent census tracts Census Tract 27.08, 27.09, and 27.10

collectively do not constitute an over-concentration of alcohol beverage outlets. In combining the four census tracts, a total of 10 off-sale alcohol licenses are allowed per statute and only eight currently exist. Of the four census tracts mentioned above the average alcohol crime rate of the census tracts is 77-percent where a percentage above 120 is classified as a high crime rate.

CONCLUSION:

Staff has determined that the project complies with San Diego Municipal Code requirements regulating Conditional Use Permits for an ABO. Staff has also determined all required findings can be made as the project meets the applicable San Diego Municipal Code regulations and requirements. Staff recommends approval of the project as approved by the Hearing Officer and the appeal be denied.

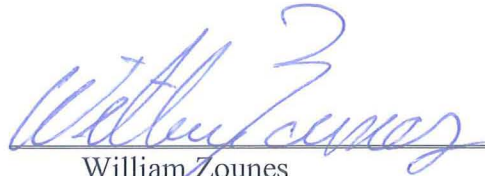
ALTERNATIVE(S)

1. **Deny** the appeal and **Approve** Conditional Use Permit No. 952883, as approved by the Hearing Officer on July 10, 2013;
2. **Approve** the appeal and **Deny** Conditional Use Permit No. 952883.

Respectfully submitted,



Mike Westlake
Acting Deputy Director
Development Services Department



William Zounes
Development Project Manager
Development Services Department

TT/WZ

Attachments:

1. Appeal Application from the City Heights Area Planning Committee
2. Appeal Application from Bashir Hassan, et al.
3. San Diego Police Department Statistics
4. Hearing Officer Report No. HO-13-060



City of San Diego
 Development Services
 1222 First Ave. 3rd Floor
 San Diego, CA 92101
 (619) 446-5210

Page 1 of 9
Development Environmental Determination Appeal Application DS-3031
 OCTOBER 2012

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
 Process Three Decision - Appeal to Planning Commission
 Process Four Decision - Appeal to City Council
 Environmental Determination - Appeal to City Council
 Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name: City Heights Area Planning Committee E-mail Address: CHARC_Chair@yahoo.com
 Address: P.O. Box 5859 City: San Diego State: CA Zip Code: 92165 Telephone: (619) 284-2184

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Jamil GAPPY & NAZAR TOMA

4. Project Information

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
<u>Draft C.U.P. 952883</u>	<u>July 10, 2013</u>	<u>W. ZOUNES</u>

Decision (describe the permit/approval decision): To Approve the Application and Issue C.U.P. 952883 ITS 271129

5. Grounds for Appeal (Please check all that apply)

- Factual Error
 Conflict with other matters
 Findings Not Supported
 New Information
 City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

Please refer to Attached pages

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JUL 24 2013

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6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: Patty Vaccariello Date: 7-23-13
PATTY VACCARIELLO
Chairwoman

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

APPEAL OF HEARING OFFICER DECISION TO GRANT PERMITS FOR AN ABC LICENSE
AT 4950 UNIVERSITY AVENUE, SAN DIEGO CA 92105

Application Part 5:

The decision in this case does not take account of the requirements of the Land Development Code (LDC) and does not take account of testimony that was offered at the hearing.

§126.0301 of the LDC is explicit that conditional use permits (CUP) are to enable "...uses that may be desirable". It is further explicit that "...the intent is that each use be developed so as to fully protect the public health, safety, and welfare of the community."

Alcohol sales are not desirable uses especially near a school, near a mosque, near residential housing, and in a high-crime area as obtains in this case. The LDC's prohibition is well founded.

Alcohol sales, moreover, do not "protect the public health, safety, and welfare". No sale of an alcoholic beverage has ever added to the safety, health, or welfare of the public or any member of the public. There was no testimony at the hearing or in the staff report to the Hearing Officer making that claim. The hearing officer determination, therefore, does not conform to plain language of §126.0301 of the LDC and does not take account of the absence of any testimony claiming that alcohol sales protect the public safety, health, or welfare.

The overwhelming witness testimony and even the staff report indicate that the property in question does not meet the requirements of LDC §141.0502(b). The staff report and the Police statement of public convenience or necessity indicate that the property lies in a census tract with a crime rate exceeding the city wide average by more than 20% (i.e. more than 120% of the city wide average). This census tract containing the premises is also adjacent to another census tract with a crime rate over 120% of the city wide average. Allowing alcohol sale at the property does not, cannot, will not reduce the crime rate. If anything, it will increase the crime rate.

LDC §141.0502(b) forbids licenses in adopted Redevelopment Project areas. The property lies within the City Heights Redevelopment Project Area. Whether the State has ended the redevelopment funding mechanism does not change that the property is within a Redevelopment Project Area. The City has become the successor agency to the former Redevelopment Agency, but the City has not disestablished any of the Project Areas. The LDC forbids licenses in Redevelopment Projects; the property is still within a Redevelopment Project Area. The City, including its permit issuance department, may not ignore those facts.

LDC §141.0502(b) forbids siting licenses within 600 feet of schools, churches, and other specified uses. The proposed license lies within

600 feet of an elementary school and a mosque, both of which emphasize work with children and services to children. Children form a large percentage of the foot traffic near the property. LDC §141.0502(b)(2) does allow a decision maker to ignore the distance standards if there are "natural or built barriers" between a licensed premises and the uses measured by the distance criterion. No such barriers exist, and that exemption does not apply.

LDC §141.0502(b) forbids licenses within 100 feet of residentially zoned property. The requested license lies within 100 feet of residentially zoned property. LDC §141.0502(b)(2) similarly does allow a decision maker to ignore the distance standards if there are "natural or built barriers" between the licensed premises and the uses measured by the distance criterion. No such barriers exist, and that exemption does not apply.

Testimony from Social Advocates for Youth, San Diego (SAY) described the crime conditions in the census tract in question and in nearby census tracts and categorized the crimes by type. The most frequent type of crime in a radius of one mile around the property is "alcohol related". A pie chart and recently compiled statistics from the SAY testimony are attached to this appeal. SAY, as an advocate for youth, has extensive experience with the damage done to youth by alcohol use. The hearing officer determination did not account for that testimony.

The Police Department issued, then re-issued a statement of public convenience or necessity, each time recommending approval, both times acknowledging that the crime rate is excessive in the vicinity of the property. The fact is that alcohol sales are never a necessity, in the sense contemplated by the LDC, i.e. in the same way that food and medicine are necessities. This alcohol sales permit is not necessary.

The requested permit also does not provide a new convenience to the public, not now available to it. There is a type-20 license located at the 7/11 store diagonally opposite the property, 230 feet or about 100 steps away, along a safe walk path through a lighted area across a traffic-light-controlled intersection. The 7/11 serves the community convenience now and can continue to do so. An overhead view of the locale is attached.

In the draft permit offered to the Hearing Officer, the Development Project Manager (DPM), when discussing the first finding on page 2 of 4 of the permit, noted that the Mid-City Communities Plan (M-CCP) does not identify alcohol sales as an item to include in an "expanded array of goods and services". He then selectively took language from the plan to imply that the M-CCP does look favorably on alcohol sales. The M-CCP does not support alcohol sales directly, or by implication, as part of the goods and services that should be available to our neighbors. The DPM's citing of the M-CCP was selective and pointed. It was not fair-minded.

In the draft permit offered to the Hearing Officer, the Development Project Manager (DPM), when discussing the second finding on page 2 of 4 of the permit, wrote that "The products sold at the store vary in diversity and will serve mostly other commercial establishments and the surrounding neighborhood." Nothing in the application, nothing in the staff report to the hearing officer, and nothing in the testimony at the hearing supports that contention. The DPM created "other commercial establishments" out of thin air. The Hearing Officer relied heavily on the staff report, including the offered draft permit with the "other commercial establishments" language, confirming that the Hearing Officer made a wrong decision.

In the draft permit offered to the Hearing Officer, the Development Project Manager (DPM), when discussing the third finding on page 3 of 4 of the permit, writes that "No development regulation deviations are being proposed with this application." In fact, the San Diego PD Vice Division, the Community Planning Group, the community testimony at the hearing, and the Land Development Code itself contemplate conditions on the permit. The DPM is simply wrong to state that no deviations are being proposed. The Hearing Officer relied heavily on the staff report with its erroneous claims, and came to the wrong conclusion about this permit application.

In the draft permit offered to the Hearing Officer, the Development Project Manager (DPM), when discussing the fourth finding on page 3 of 4 of the permit, writes that "The SDPD has determined that the proposed sales of beer and wine at the proposed site would not be detrimental to the public health, safety, and welfare." The sentence correctly states the SDPD position. The SDPD Vice Division's investigation took account only of numbers of licenses and crime percentages. It did not consider any qualitative data or demographic data or sociological data in arriving at its determination. The Department's conclusion is correct numerologically, but it is the wrong conclusion to reach when children, crime, and the social fabric are considered. This appeal hopes and urges that those things be considered.

In the draft permit offered to the Hearing Officer, the Development Project Manager (DPM), when discussing the fourth finding on page 3 of 4 of the permit, notes that the business in question has been in operation for more than 25 years. We note, additionally, that its record of success has been achieved without alcohol sales. With the recovering economy, including in San Diego and even in City Heights, the store should continue to succeed without alcohol sales. We urge the Commission to remember that, once issued, an ABC permit is a part of the community forever. If the applicant ever sells the business and transfers the license, there is no assurance that any successor will have a decent respect for the community or the neighbors.

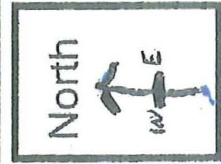
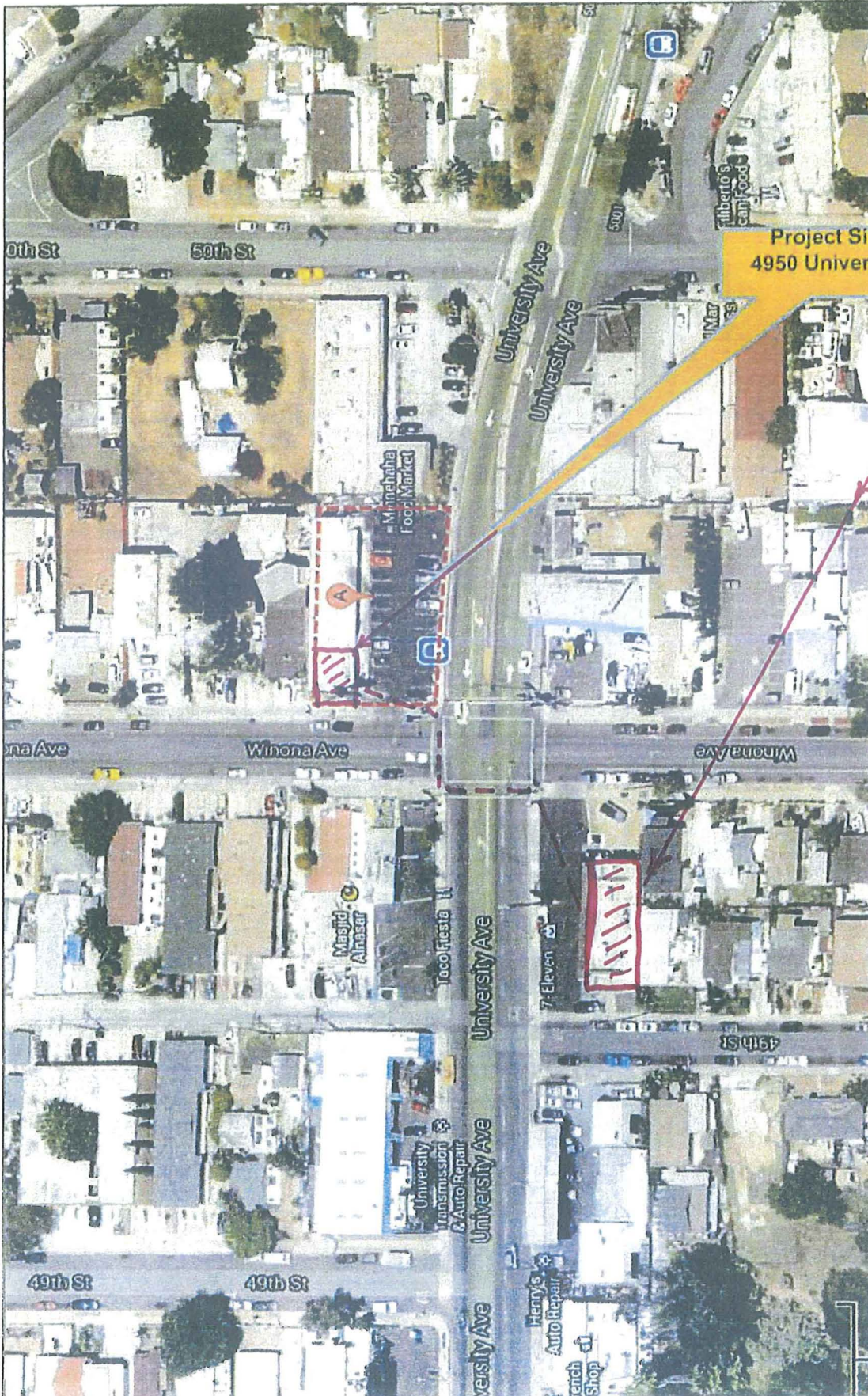
In granting permits, the Hearing Officer adopted the conditions recommended by the LDC, by the Police Department, and by the Development Project Manager. None of those conditions nor all of them together will have any effect on the crime rate. The crime rate is beyond the

City's control. Denying this appeal and allowing the requested permit will add to the crime rate, not subtract from it.

If issued, the license will continue to lie within a census tract with a crime rate greater than 120% of the city wide average. It will continue to lie within 600 feet of a school, within 100 feet of a mosque, within 100 feet of residentially zoned property, and within a Redevelopment Project Area. None of that will change by issuing a permit and allowing a license. The conditions enumerated in the LDC as reasons to prohibit ABC licenses will exist undiminished. The adopted conditions do not and cannot change that.

The correct action in this matter is for the Planning Commission to recognize that the Hearing Officer made a wrong determination. It should sustain this appeal and overturn the Hearing Officer's determination. That action is strongly recommended.

Aerial Photograph of Site



Project Site
4950 University

7/11 CONVENIENCE
STORE

Aerial Photograph (Birds Eye)
University Markekl- Project No. 271129
4950 University Ave

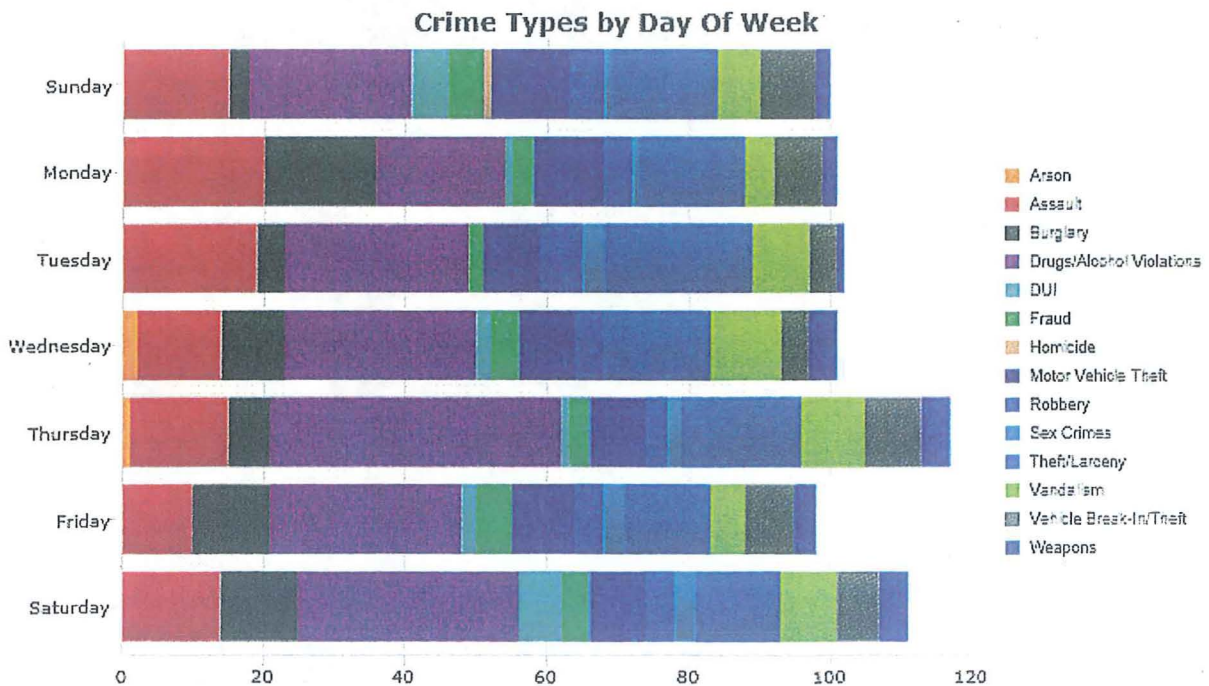
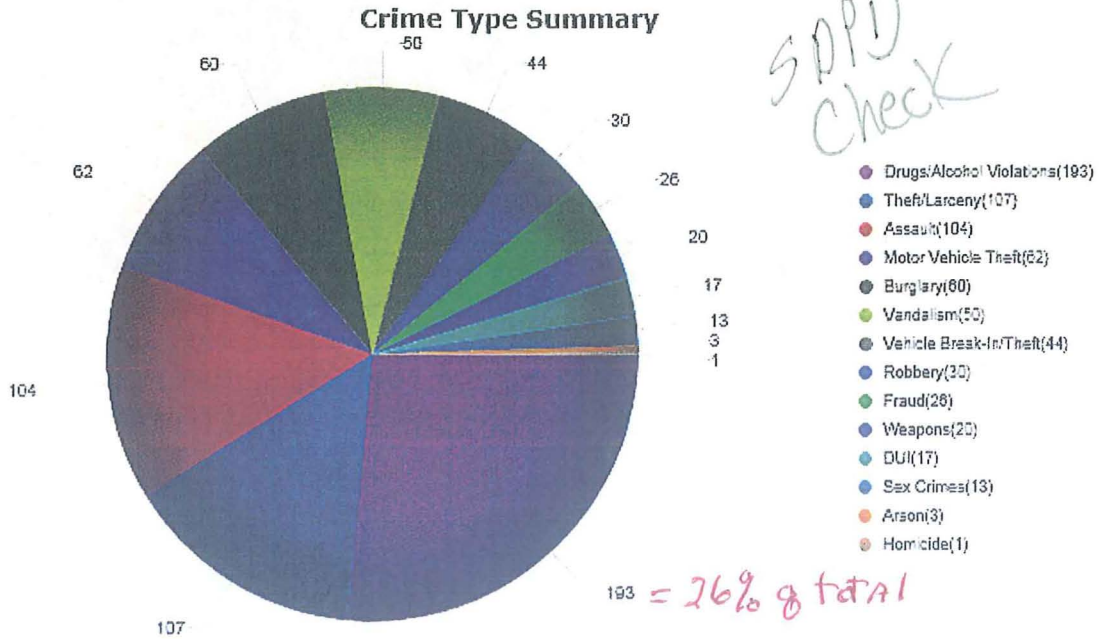


CrimeMapping.com Set Bookmark Send Link Detailed Re

Trend Report for 4/1/2013 - 6/30/2013

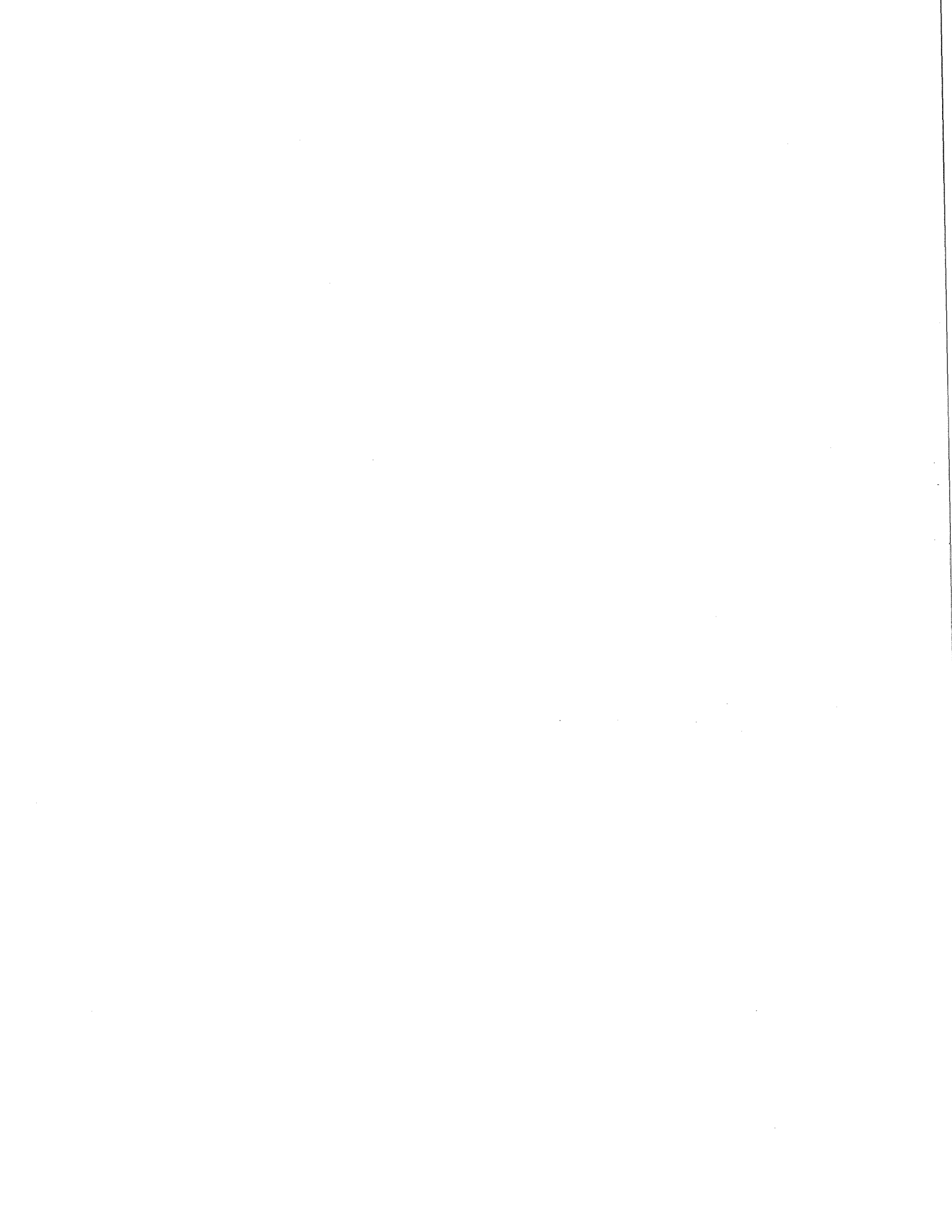
730 crimes found.

Within a 1 mile radius of 4950 University Ave, San Diego, CA, 92105



City Heights Census Tracts with Alcohol Licenses

Census Tract Total Licenses vs. Allowed (updated 7-2013)	Alcohol License Types	# of Alcohol Crimes & % city avg (2012)	Crime & Arrest Totals % city avg (2012)
27.07 4 Licenses 13 allowed (8-on; 5-off)	1 type 41 (on-sale) beer/wine rest. 1 type 48 (on-sale) bar/nightclub 1 type 20 (off-sale) pkg store 1 type 21 (off-sale) liquor store	<i>Adjacent C.T.</i> 57 127.4%	418 185.11%
27.08 7 Licenses 14 allowed (9-on; 5-off)	3 type 41's (on-sale) beer/wine rest. 1 type 47 (on-sale) restaurant 3 type 21's (off-sale) liquor store	<i>C.T. in Question</i> 47 105.1%	412 182.5%
27.02 7 Licenses 10 allowed (6-on; 4-off)	3 type 41's (on-sale) beer/wine rest. 1 type 47 (on-sale) restaurant 2 type 20's (off-sale) pkg stores 1 type 21 (off-sale) liquor store (+ 1 type 41 pending)	42 93.9%	404 178.9%
23.02 12 Licenses 13 allowed (8-on; 5-off)	7 type 41's (on-sale) beer/wine rest. 0 type 47's (on-sale) restaurant 1 type 20 (off-sale) pkg stores 4 type 21's (off-sale) liquor store	64 143.1%	557 246.7%
23.01 9 Licenses 6 allowed (4-on; 2-off)	7 type 41's (on-sale) beer/wine rest. 1 type 48 (on-sale) bar/nightclub 1 type 21 (off-sale) liquor store	29 64.8%	275 121.8%





City of San Diego
 Development Services
 1222 First Ave. 3rd Floor
 San Diego, CA 92101
 (619) 446-5210

THE CITY OF SAN DIEGO

Attachment 2
 Bashir Hassan, et al.
 Appeal
 Page 1 of 8
**Development
 Environmental Det
 Appeal Application**

OCTOBER 2012

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
 Process Three Decision - Appeal to Planning Commission
 Process Four Decision - Appeal to City Council
 Environmental Determination - Appeal to City Council
 Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name: Bashir Hassan, et al. (See attached for full list of Appellants) E-mail Address:
 Address: 4014 Winona Avenue City: San Diego State: CA Zip Code: 92105 Telephone: (619) 282-4407

3. Appellant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.
 Nazar Toma

4. Project Information
 Permit/Environmental Determination & Permit/Document No.: 571129 Date of Decision/Determination: July 10, 2013 City Project Manager: William Zounes

Decision (describe the permit/approval decision):
 The conditional use permit application seeks the allowance of the sale of alcohol in a convenience store. The Hearing Officer approved the issuance of the conditional use permit

5. Grounds for Appeal (Please check all that apply)
 Factual Error New Information
 Conflict with other matters City-wide Significance (Process Four decisions only)
 Findings Not Supported

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

See attached "Grounds for Appeal"

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 DEVELOPMENT SERVICES

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:  Date: July 23, 2013

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

GROUND FOR APPEAL

I. HISTORICAL SUMMARY

The Applicant, Naza Toma, owns and operates a convenience store. After application for a Type 20 off-sale liquor license, many members of the community, including the mosque directly across the street, opposed the issuance of the license.

This City Heights Area Planning Committee subsequently voted 12-1-3 to recommend denial of the project. At the request of the applicant, the Planning committee reheard the arguments in favor of the grant of a license, this time with a proposal for additional conditions. The Committee voted 0-12-0, and thereby affirmed its prior recommendation for denial.

The San Diego Police Department in its Public Convenience and Necessity Report found that an additional alcohol license would provide a public convenience and necessity for the community, and recommended approval of license issuance to applicant. Subsequently, it was found that SDPD's report contained omissions, including the fact that the proposed license would be operated within 600 feet of two incompatible uses. Thereafter, the SDPD simply added the omitted facts to its report and once again concluded – without stating why – that the license provided a public convenience and necessity to the community.

At the public hearing, the Hearing Officer went against the City Heights Planning Committee and decided in favor of issuing the license. The Appellants filed speaker slips and brought this appeal.

II. ARGUMENTS

A. Factual Errors -- The Report to the Hearing Officer, which provided the basis for the Hearing Officer's decision, is Inaccurate

The Report to the Hearing Officer, which provided the basis for the Hearing Officer's decision, stated on page two that "Census Tract No. 27.07 allows up to five alcoholic beverage outlets where two exist."

The true fact is that Census Tract Number 27.07 only allows for *three*, not five, licenses. [See Department of Alcoholic Beverage Control, Number of Licenses Authorized by Census Tract, attached as Exhibit "A."] Appellants submit that this is a material error that warrants reversal of the decision to grant the license.

B. The Finding Are Not Supported

New licenses for a retail location within 100 feet of a residence are not to be issued unless the applicant can establish that the operation of the proposed premises will not interfere with the quiet enjoyment of the property by residents. See § 23789 and ABC Rule 61.4; see also http://www.abc.ca.gov/questions/licenses_faq.html#Q.%2018. Thus far, Applicant advanced no such argument, and therefore, any finding in that regard is unsupported.

Additionally, the San Diego Police Department in its report concerning public convenience and necessity, while citing a number of facts (e.g., number of licenses allowed, crime rate, etc.), made no mention on why those facts support its conclusion that the proposed license would be a necessity and convenience to the community. Without such support, the SDPD report should be disregarded.

C. Conflict with other Matters

The conflicts in this matter can be summarized as, on one hand, the community does not want the license issued, while on the other, the Applicant and the San Diego Police Department believe the sale of alcohol offers the public a convenience and necessity.

When ruling on the issuance of a license, Section 22 of Article XX of the Constitution of California along with a string of case law require that rulings on applications for liquor licenses must be made with a view to protection of public welfare and morals.

Concerning public welfare, a census tract is considered to have high crime when the number of crimes is 120% or more of the city-wide census tract average (ABC Act, section 23958.4). As shown in Attachment 9 of the SDPD's Public Convenience and Necessity Form, the district overage is 244.7, while the subject tract, 27.07, is reporting 540 – not only in excess of the 120% to make it a high crime area, but nearly double that of the district average. Thus, Appellants' submit that the SDPD's finding that the introduction of *another* alcoholic beverage outlet into an area which already has nearly *double* the crime rate of the district would provide a "convenience and necessity," is not only absent of logic, it is also logically *against* the welfare of the community.

Related to morals, it is inescapable that the subject census tract (27.07) is heavily populated with members of the Muslim community. The proposed sale of alcohol is directly across the street from, and in plain sight of, the community's mosque's front door. Unlike religions such as Judaism or Catholicism, Islam does not allow the consumption of any alcohol in any form. As a result, the issuance of the license would be highly against the morals of the community. This fact was taken into consideration by the City Heights Area Planning Committee, and provided the Planning Committee, in part, the basis for recommending the denial of the application.

In a letter to the Project Manager dated May 8, 2012, which recommended denying the proposed application, the City Heights Area Planning Committee acknowledged it was unable to find, based on the fact that the proposed off-sale establishment was within 600 feet of both a school and a mosque (two incompatible uses), that "the proposed business would be beneficial to the public health, safety, and welfare of the community and the city."

For the foregoing reasons, applications for the issuance of any retail alcohol license need to be made with a eye toward the welfare and morals of the community, and the issuance of the requested off-sale license would be precisely contrary to those concerns.

III. CONCLUSION

As stated in *Deerings California Code, Annotated*, December 2012, Bus. & Prof. Code 19800 - 24199, at page 622:

"Any regulations of liquor traffic by way of exception in respect to churches and schools should be liberally construed in favor of such regulations and against applicants for license to sell liquor within prescribed areas."

Citing *Schaud's Inc. v Alcoholic Beverage Control*, 153 Cal App. 2d 858.

The Applicant and the SDPD believe that putting another alcohol outlet in a community with nearly double the crime of the district's average provides a necessity and convenience. Without any explanation of how that could possibly be, the application is unsupported, and should be denied.

Perhaps moreover the Appellants, along with the community's planning committee, do not want the license to be issued. The appellants submit that the majority will of the community should outweigh any arguments in favor of granting the proposed license permit.

For the foregoing reasons, Appellants respectfully request that the application be denied.



Bashir Hassan,
Chairman, Masjid Alansar Mosque



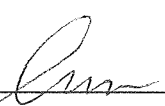
Patty Vaccarielo,
Chairwoman, City Heights Area Planning Committee



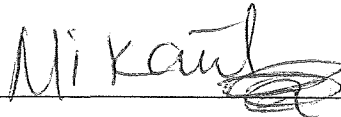
Jim Carnadore,
Secretary, City Heights Area Planning Committee



Jessie Sergent,
Member, City Heights Area Planning Committee



Abdullahi Yusuf,
Member, City Heights Area Planning Committee



Mikail Hussein,
President/CEO Taxi Company United Taxi workers of San Diego

EXHIBIT “A”

Department of Alcoholic Beverage Control
Number of Licenses Authorized by Census Tract

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
NUMBER OF LICENSES AUTHORIZED
BY CENSUS TRACT

COUNTY	CENSUS TRACT	POPULATION	ON SALE	OFF SALE
SAN DIEGO	0027.05	4,300	4	2
SAN DIEGO	0027.07	5,369	6	3
SAN DIEGO	0027.08	5,689	6	3
SAN DIEGO	0027.09	3,945	4	2
SAN DIEGO	0027.10	4,228	4	2
SAN DIEGO	0027.11	3,200	3	2
SAN DIEGO	0027.12	4,652	5	3
SAN DIEGO	0028.01	3,068	3	1
SAN DIEGO	0028.03	5,370	6	3
SAN DIEGO	0028.04	4,638	5	2
SAN DIEGO	0029.02	5,272	6	3
SAN DIEGO	0029.03	3,717	4	2
SAN DIEGO	0029.04	7,316	8	4
SAN DIEGO	0029.05	4,022	4	2
SAN DIEGO	0030.01	4,226	4	2
SAN DIEGO	0030.03	5,062	5	3
SAN DIEGO	0030.04	4,940	5	3
SAN DIEGO	0031.01	3,785	4	2
SAN DIEGO	0031.03	6,256	7	4
SAN DIEGO	0031.05	4,167	4	2
SAN DIEGO	0031.07	5,992	6	3
SAN DIEGO	0031.08	3,520	4	2
SAN DIEGO	0031.09	3,358	3	2
SAN DIEGO	0031.11	6,183	7	3
SAN DIEGO	0031.12	4,574	5	2
SAN DIEGO	0031.13	5,043	5	3
SAN DIEGO	0031.14	3,341	3	2
SAN DIEGO	0031.15	6,454	7	4
SAN DIEGO	0032.01	4,932	5	3
SAN DIEGO	0032.02	4,551	5	2
SAN DIEGO	0032.04	3,453	3	2
SAN DIEGO	0032.07	5,890	6	3
SAN DIEGO	0032.08	6,619	7	4
SAN DIEGO	0032.09	5,385	6	3
SAN DIEGO	0032.11	3,165	3	2
SAN DIEGO	0032.12	4,053	4	2
SAN DIEGO	0032.13	4,193	4	2
SAN DIEGO	0032.14	4,610	5	2
SAN DIEGO	0033.01	3,337	3	2
SAN DIEGO	0033.03	4,193	4	2
SAN DIEGO	0033.04	3,563	4	2
SAN DIEGO	0033.05	5,738	6	3
SAN DIEGO	0034.01	6,065	6	3
SAN DIEGO	0034.03	4,283	4	2
SAN DIEGO	0034.04	4,634	5	2
SAN DIEGO	0035.01	4,255	4	2
SAN DIEGO	0035.02	4,946	5	3
SAN DIEGO	0036.01	3,250	3	2
SAN DIEGO	0036.02	3,079	3	1
SAN DIEGO	0036.03	4,228	4	2
SAN DIEGO	0038.00	6,530	7	4
SAN DIEGO	0039.01	4,241	4	2
SAN DIEGO	0039.02	4,927	5	3
SAN DIEGO	0040.00	5,160	5	3



ABC Report

Required Parameters

Reporting Period: 01/2012 to 12/2012
 Agency: SAN DIEGO

Optional Parameters

Geographical Area:
 Group by: Census Tract
 Prior Report Number: B98S328R

Total Part 1 Crime and Part 2 Arrest for Agency: 67,054
 Total Census Tract: 297
 Average Total per Census Tract: 225.8

(120% or above is High Crime Area indicated by *)

	Census Tract	Totals	% Average by Census Tract
30	002502	340	150.6%*
31	002601	535	237.0%*
32	002602	215	95.2%
33	002702	404	178.9%*
34	002703	713	315.8%*
35	002705	93	41.2%
36	002706	308	136.4%*
37	002707	418	185.1%* - 3A - 2E
38	002708	412	182.5%*
39	002709	159	70.4% - 2A - 3E
40	002710	185	81.9%
41	002801	141	62.5%
42	002803	439	194.4%*
43	002804	256	113.4%
44	002902	258	114.3%
45	002903	138	61.1%
46	002904	370	163.9%*
47	002905	355	157.2%*
48	003001	145	64.2%
49	003003	132	58.5%
50	003004	215	95.2%
51	003101	115	50.9%
52	003103	243	107.6%
53	003105	119	52.7%
54	003107	108	47.8%
55	003109	49	21.7%
56	003111	314	139.1%*
57	003112	235	104.1%
58	003113	112	49.6%

San Diego Police Department
Alcohol Arrests & Cites - By Census Tract
(Excluding Unknown Tracts)
January to December 2012

2000 Census Tract	Alcohol Violations	Tract Total as % of Average Tract
000100	1	2.2%
000200	39	87.2%
000300	107	239.2%
000400	247	552.2%
000500	22	49.2%
000600	178	398.0%
000700	71	158.7%
000800	25	55.9%
000900	82	183.3%
001000	99	221.3%
001100	10	22.4%
001200	104	232.5%
001300	157	351.0%
001400	79	176.6%
001500	44	98.4%
001600	106	237.0%
001700	41	91.7%
001800	38	85.0%
001900	5	11.2%
002001	17	38.0%
002002	7	15.7%
002100	60	134.1%
002201	79	176.6%
002202	126	281.7%
002301	29	64.8%
002302	64	143.1%
002401	43	96.1%
002402	40	89.4%
002501	24	53.7%
002502	39	87.2%
002601	62	138.6%
002602	21	47.0%
002702	42	93.9%
002703	19	42.5%
002705	14	31.3%
002706	15	33.5%
002707	57	127.4%
002708	47	105.1%
002709	16	35.8%
002710	18	40.2%
002801	107	239.2%



California Department of Alcoholic Beverage Control
 For the County of SAN DIEGO - (Off-Sale Licenses)
 and Census Tract = 27.07

Report as of 7/9/2013

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	363955	ACTIVE	21	5/11/2000	4/30/2014	SHAO, ADEL YALDA 4815 EL CAJON BLVD SAN DIEGO, CA 92115 Census Tract: 0027.07	DISCOUNT LIQUOR	3850 UNIVERSITY AVE SAN DIEGO, CA 92105- 1324	3710
2)	489587	ACTIVE	20	12/2/2010 10:54:12 AM	11/30/2013	CHAU CAPITAL VENTURES INC 4029 EUCLID AVE SAN DIEGO, CA 92105- 1907 Census Tract: 0027.07	MINH HUONG SUPERMARKET		3710

--- End of Report ---

For a definition of codes, view our [glossary](#).



site are multi-unit residential developments. The market has been at this location for over 25 years selling a variety of staples and food items.

DISCUSSION

Project Description

The project proposes the off-site sales of beer and wine within a 900 square-foot market. A Conditional Use Permit for the off-site sale of alcoholic beverages is permitted pursuant to Section 141.0502(c) of the Land Development Code. The sales of beer and wine will be limited between the hours of 6:00 a.m. to 12:00 midnight, Monday through Sunday as conditioned by the San Diego Police Department (SDPD) and LDR-Planning review (Attachment 6).

Section 141.0502 determines when the off-site sale of alcohol is permitted by right or, when a Conditional Use Permit is required in accordance with a Process Three (Hearing Officer) decision. The sale of alcohol requires a Conditional Use Permit in the following instances:

- Within a census tract, or within 600 feet of a census tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent.
- Within a census tract, or within 600 feet of a census tract, where the ratio of alcohol beverage outlets exceeds the standards established by the California Business and Professional Code section 23958.4.
- In an adopted Redevelopment Project Area.
- Within 600 feet of a public or private accredited school, a public park, a playground or recreational area, a church except those established in association with section 141.0404(a), a hospital or a San Diego County welfare district office.
- Within 100 feet of a residentially zoned property.

A Conditional Use Permit is required for the subject site because the site is within a census tract, or within 600 feet of a census tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent, the project is within 100 feet of a residentially zoned property, and within 600 feet of a public or private accredited school, a public park, a playground or recreational area, a church except those established in association with section 141.0404(a), a hospital or a San Diego County welfare district office.

The project is located within Federal Census Tract No. 27.07. Statistics provided by the San Diego Police Department (SDPD) for Federal Census Tract No. 27.07 shows the area to be 220.70-percent of the city crime rate with alcohol related crime rate of 127.4-percent (Attachment 10). Census Tract No. 27.07 allows up to five alcoholic beverage outlets where two exist. Adjacent to the site is the RM-1-1 (a residential zone) and across Winona Avenue to the west is the Masjid Alnasar mosque and within 600 feet of the property is Ibarra Elementary School.

The San Diego Police Department (SDPD) reviewed the proposed project and found that the project provides a public convenience and necessity and recommends approval with recommendations and conditions for the Conditional Use Permit (CUP) (Attachment 5). Conditions within the permit include but are not limited to the time restriction for the sale of beer and wine advertising requirements for beer and wine, security assurance, and that no more than 10-percent of the square footage of the premises will only be used for the display of alcoholic beverages. All SDPD recommendations and conditions are included in the draft permit. The SDPD's Vice Unit will work with the applicant and the Department of Alcoholic Beverage Control to place additional conditions on the alcohol license to minimize the law enforcement concerns, if necessary.

Community Planning Group Vote

On May 8, 2012 the City Heights Area Planning Committee voted 12-1-3 to recommend denial of the project (Attachment 11). The memorandum summarizes that the basis for the vote which revolved around the high crime rate and the proximity of children, schools, a mosque, and other ABC licenses and the possibility of expanding the market.

At the request of the applicant, on March 14, 2013 the City Heights Area Planning Committee re-heard the project. A motion was made to recommend approval of the project with as conditioned by the San Diego Police Department however, the group recommended five additional conditions. (Please reference Attachment X). The Committee voted 0-12-0 and the motion failed and no new motion was suggested. As such, the original May 7, 2012 recommendation of denial stands.

San Diego Police Department Response:

The Public Convenience and Necessity (PC&N) determination was conducted by the San Diego Police Department (SDPD) on June 30, 2011. This form is submitted with the initial submittal. The purpose of the PC&N review is to identify the crime rate, census tract, and the number of alcohol beverage outlets allowed and, to make the PC&N determination based on this information. SDPD concluded the site would provide a public convenience and necessity.

During the processing of the discretionary permit, the SDPD follows up with a comprehensive review for applications and provides the Development Services Department with a formal list of recommendations and/or conditions to be included in the draft permit. This document is based upon several factors including whether or not the site is near an incompatible use or zone, crime activity in the area and crime history of the operator.

On March 28, 2012, the SDPD determined that the project is within 100 feet of residentially zoned property but inadvertently did not identify that the project was within 600 feet of an incompatible use. On May 15, 2012, a modified CUP recommendation was made which identified the site being 100 feet of residentially zoned property, within 600 feet of a incompatible use, and that there have been three or more reported crimes on the site within the last year. The conclusion by the SDPD was to recommend approval as conditioned by the CUP.

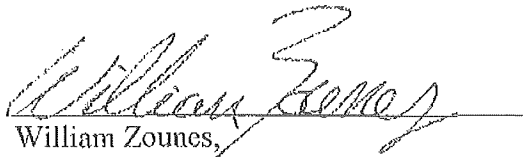
CONCLUSION

Staff has determined that the project complies with the development regulations of all applicable sections of the Land Development Code. Staff has also considered the alcohol beverage outlet statistics from the Department of Alcoholic Beverage Control and the recommendation and conditions from the SDPD-Vice Operations. Staff has determined that the required findings can be made as the project meets the applicable San Diego Municipal Code regulations and requirements. Staff recommends approval of the project as proposed.

ALTERNATIVES

1. Approve Conditional Use Permit No. 952883, with modifications or;
2. Deny Conditional Use Permit No. 952883, if the findings required to approve the project cannot be affirmed.

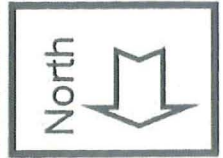
Respectfully submitted,


William Zounes,
Development Project Manager

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Draft Permit with Conditions
6. Draft Resolution with Findings
7. Ownership Disclosure Statement
8. Project Chronology
9. SDPD Public Convenience and Necessity Form June 30, 2011
10. SDPD Conditional Use Permit Recommendation March 28, 2012
11. SDPD Conditional Use Permit Recommendation May 15, 2012
12. Community Planning Group Recommendation May 8, 2012
13. Community Planning Group Recommendation March 14, 2013
14. Notice of Exemption
15. Project Plan

Attachment 1 Aerial Photograph of Site



Project Site
4950 University

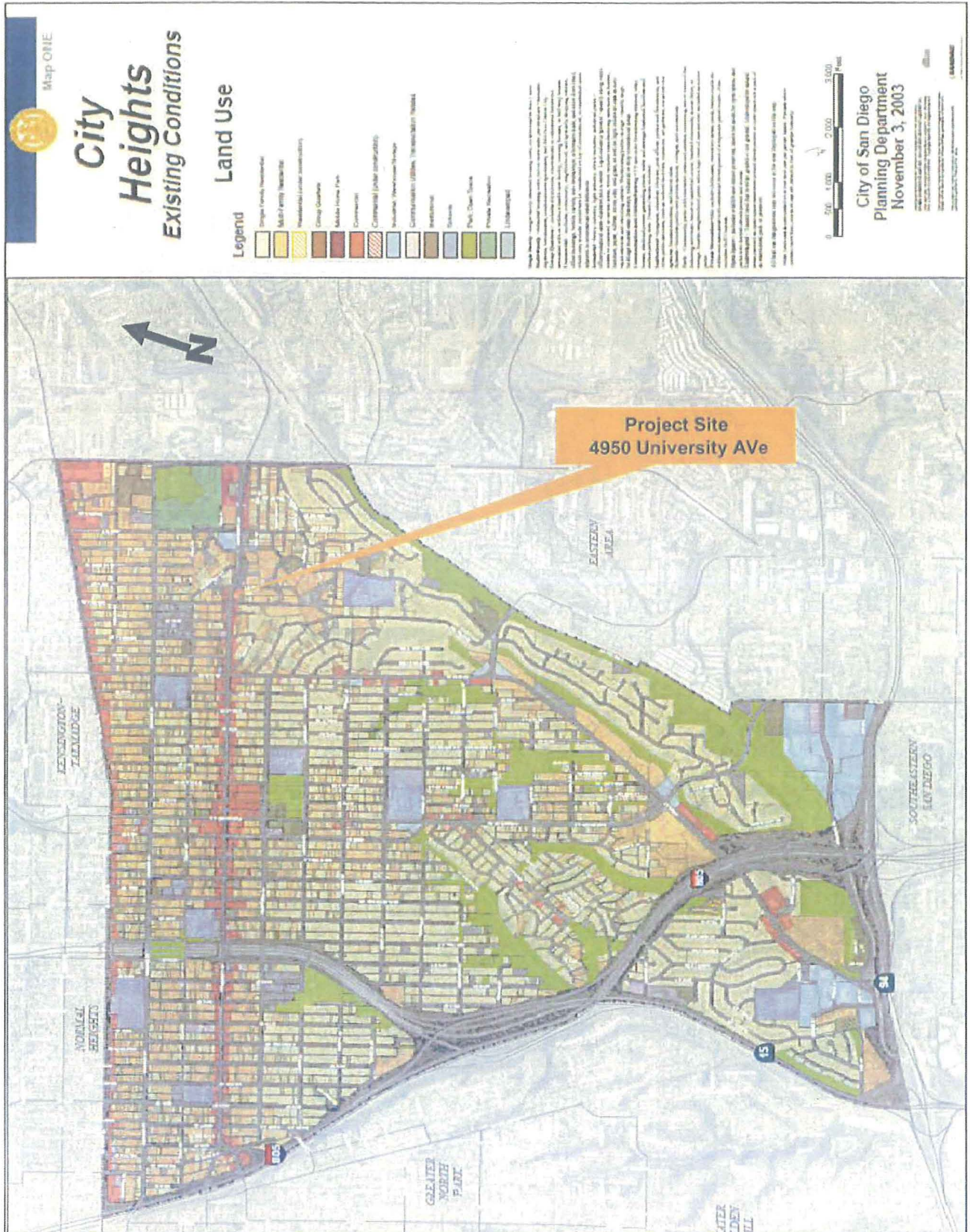
Aerial Photograph (Birds Eye)

University Market - Project No. 271129

4950 University Ave



Attachment 2 Land Use Plan



PROJECT DATA SHEET

PROJECT NAME:	University Market	
PROJECT DESCRIPTION:	Conditional Use Permit to allow the sales of beer and wine in accordance with a Type 20 liquor license within a convenience store .	
COMMUNITY PLAN AREA:	Mid-city	
DISCRETIONARY ACTIONS:	Conditional Use Permit	
COMMUNITY PLAN LAND USE DESIGNATION:	General Commercial	
<u>ZONING INFORMATION:</u>		
ZONE: CC-5-4 Zone HEIGHT LIMIT: 30 feet LOT SIZE: 0.14-acres FLOOR AREA RATIO: 1.0 FRONT SETBACK: 10 or N/A feet SIDE SETBACK: 10/0 feet STREETSIDE SETBACK: 10 or N/A feet REAR SETBACK: 10/0 feet PARKING: 22 spaces		
<u>ADJACENT PROPERTIES:</u>	LAND USE DESIGNATION & ZONE	EXISTING LAND USE
NORTH:	Residential, RM-1-1	Residential
SOUTH:	General Commercial CC-5-4	Commercial retail
EAST:	General Commercial & Residential, CC-5-4 & RM-1-1	Residential, general retail, and religious facility
WEST:	General Commercial & Residential, CC-5-4 & RM-1-1	Commercial retail, restaurants
DEVIATIONS OR VARIANCES REQUESTED:	None	
COMMUNITY PLANNING GROUP RECOMMENDATION:	On May 7, 2012 the City Heights Area Planning Committee voted 12-1-3 to recommend denial of the project.	

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24002476

CONDITIONAL USE PERMIT NO. 952883
UNIVERSITY MARKET PROJECT NO. 271129
HEARING OFFICER

This Conditional Use Permit No. 952883 is granted by the Hearing Officer of the City of San Diego to JAMIL GAPPY, Owner and NAZAR TOMA, Permittee, pursuant to San Diego Municipal Code [SDMC] section 141.0502 and 126.0303. The 0.14-acre site located at 4950 University Ave in the CC-5-4 Zone within the City Heights Neighborhood of Central Urbanized Planned District in the Mid City Communities Plan Area. The project site is legally described as: Lots 11 and 12 in Block "A" of Subdivision of Oak Park, in the city of San Diego, County of San Diego, State of California, according to Map thereof No. 1732, filed in the office of the County Recorder of San Diego County on June 22, 1923.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to operate an alcoholic beverage outlet to sell beer and wine within a market conditioned upon the issuance of a Type 20 license from the State Department of Alcoholic Beverage Control and subject to the City's land use regulations] described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 10, 2013, on file in the Development Services Department.

The project shall include:

- a. Operation of an alcoholic beverage outlet within a market conditioned upon the issuance of a Type 20 license from the State Department of Alcoholic Beverage Control;
- b. Sales of alcoholic beverage shall be permitted between the hours of 6:00 a.m. and 12:00 midnight each day of the week.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by July 24, 2016.

2. This Conditional Use Permit will expire and become void 20 years from the approval date of the Conditional Use Permit. The applicant may request that the expiration date be extended in accordance with the provisions of Municipal Code Section 141.0502(c)(7). Any other conditions may be recommended by the San Diego Police Department.

3. The utilization of this CUP is contingent upon the approval of a license to sell alcohol at this location by the California Department of Alcoholic Beverage Control [ABC]. The issuance of this CUP does not guarantee that the ABC will grant an alcoholic beverage license for this location.

4. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

a. The Owner/Committee signs and returns the Permit to the Development Services Department, and

b. The Permit is recorded in the Office of the San Diego County Recorder.

5. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

6. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittce shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ENGINEERING REQUIREMENTS:

12. the applicant/owner shall reconstruct the existing pedestrian ramp at the northeast corner of University Avenue and Winona Street to the current City Standards SDG-132, 134, or 136 satisfactory to the City Engineer. The applicant/owner shall provide proof of upgrade to the City development project manager within 90 days of the public hearing of the CUP. If this pedestrian ramp reconstruction is not completed within 90 days of the approval of the CUP, the permit shall be deemed to be out of compliance with the CUP, and will be subject to rescission by the Development Services Director"

PLANNING/DESIGN REQUIREMENTS:

13. Pool or billiard tables, foosball or pinball games, arcade style video and electronic games, or coin-operated amusement devices are not permitted on the premises.

14. Exterior public pay phones that permit incoming calls are not permitted on the premises, adjacent public sidewalks, or areas under the control of the owner or operator.

15. The owner or operator shall provide illumination, at a minimum level of 0.4 foot candles per square foot, on the exterior of the alcoholic beverage outlet, including adjacent public sidewalks and areas under the control of the owner or operator. The illumination shall be in operation during all hours of darkness while the outlet is open for business so that persons standing on or near the premises at night are identifiable by law enforcement personnel. The required illumination shall be shielded and directed so that it does not shine on adjacent properties.

16. The sign area pertaining to or referencing alcoholic sales or beverages shall not exceed 630 square inches.

17. The owner or operator of the alcoholic beverage outlet shall post a prominent, permanent sign or signs stating, "No loitering, consumption of alcoholic beverages, or open alcoholic beverage containers are allowed inside the premises, in the parking area, or on the public sidewalks adjacent to the premises."

18. The owner or operator shall list the business address and telephone number in the Pacific Bell/San Diego telephone directory, or other similarly distributed directory.

19. The owner or operator shall provide trash receptacles, conveniently located for use by patrons, inside and outside the alcoholic beverage outlet, including adjacent public sidewalks and areas under the control of the owner or operator. At least one 13-gallon trash receptacle shall be located inside the premises. At least one 32-gallon trash receptacle shall be located outside the alcoholic beverage outlet, and at least one additional 32-gallon trash receptacle shall be located in the parking areas under the control of the owner or operator.

20. The owner or operator shall maintain the premises, adjacent public sidewalks, and areas under the control of the owner or operator, free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. The owner or operator shall eliminate graffiti within 48 hours of application.

21. The owner or operator shall post a copy of the Conditional Use Permit conditions in the licensed premises in a place where they may be readily viewed by any member of the general public or any member of a government agency.

POLICE DEPARTMENT REQUIREMENTS:

22. The permittee(s) shall post and maintain a professional quality sign facing the premises parking lot that reads as the following: NO LOITERING, NO LITERING, NO DRINKING OF

ALCOHOLOIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.

23. The site shall include a Video surveillance system that monitors, records, and stores for a minimum of 15 days, the interior, exterior and parking lot area in control of the store and is readily accessible to law enforcement.
24. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within 48 hours of being applied.
25. There shall be no amusement machines or video game devices on the premises at any time.
26. No pay telephone will be maintained on the interior or exterior of the premises.
27. No loitering on the premises and if necessary a security guard to control enforcement of this provision will be required.
28. No more than 10-percent of the square footage of the premises will be used for the display of alcoholic beverages.

POLICE DEPARTMENT RECOMMENDATIONS FOR ABC LICENSE:

- Wine shall not be sold in containers of less than 750 milliliters and shall not have an alcoholic content greater than 15-percent by volume, except for "Dinner Wines" which have been aged two years or more.
- Beer, malt beverages or wine cooler products, regardless of container size, must be sold in multi-unit quantities of no less than three (3).
- No for sale distilled spirits are allowed with this Type 20 license.

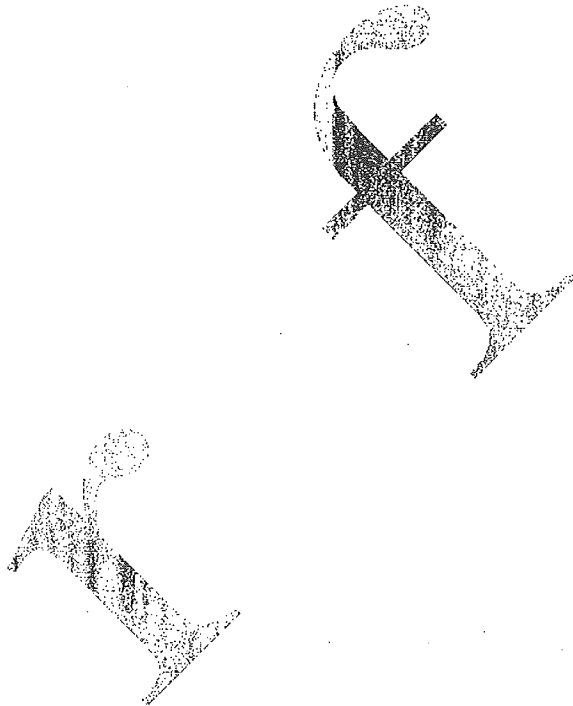
INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.

**Attachment 5
Draft Permit with Conditions**

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Hearing Officer of the City of San Diego on July 10, 2013.



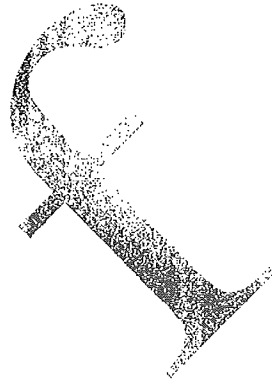
Attachment 5
Draft Permit with Conditions

Permit Type/PTS Approval No.: CUP No. 952883

Date of Approval: July 10, 2013

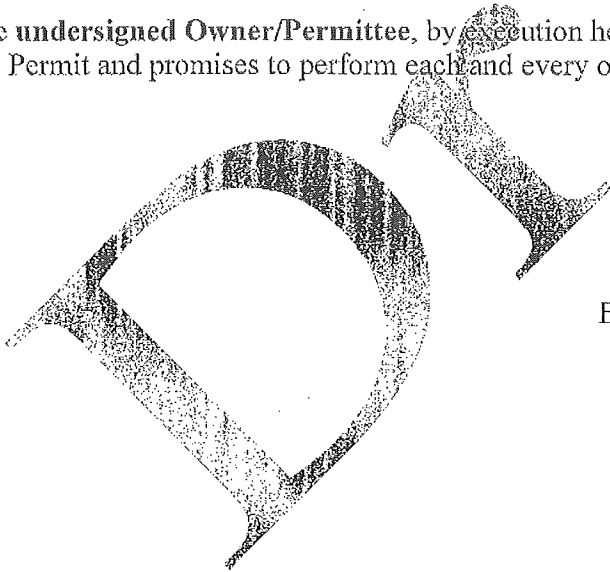
AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

William Zounes
Development Project Manager



**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**



Owner

By _____

Jamil Gappy

Permittee

By _____

Nazar Toma

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

HEARING OFFICER
RESOLUTION NO. HO-XXXX
CONDITIONAL USE PERMIT NO. 952883
UNIVERSITY MARKET PROJECT NO. 271129

WHEREAS, JAMIL GAPPY, Owner and NAZAR TOMA permittee, filed an application with the City of San Diego for a permit to operate an alcoholic beverage outlet to sell beer and wine within a market conditioned upon the issuance of a Type 20 license from the State Department of Alcoholic Beverage Control and subject to the City's land use regulations and subject to the City's land use regulations (as described in and by reference to the approved Exhibits "A), on portions of a 0.14-acre site;

WHEREAS, the site is located at 4950 University Ave in the CC-5-4 zone within the City Heights Neighborhood of Central Urbanized Planned District in the Mid City Communities Plan Area;

WHEREAS, the project site is legally described as Lots 11 and 12 in Block "A" of Subdivision of Oak Park, in the city of San Diego, County of San Diego, State of California, according to Map thereof No. 1732, filed in the office of the County Recorder of San Diego County on June 22, 1922;

WHEREAS, on July 10, 2013, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 952883 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on April 9, 2012, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15301 and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

BE IT RESOLVED by the Hearing Officer of the City of San Diego as follows:

That the Hearing Officer adopts the following written Findings, dated July 10, 2013.

FINDINGS:

Conditional Use Permit - Section 126.0305

- 1. The proposed development will not adversely affect the applicable land use plan.**

The project proposes a Conditional Use Permit for a Type 20 liquor license to allow the sales of beer and wine within a market on a site developed with other retail services. The site is located at 4950 University Avenue in the CC-5-4 Zone within the Central Urbanized Planned District within the Colina Park Neighborhood of the City Heights Community of the Mid-City Communities Plan area.

The CC-5-4 zone, with the Central Urbanized Planned District Ordinance, is intended to provide for a pedestrian oriented mix of heavy commercial and limited industrial uses and residential uses located along collector streets, major streets, and public transportation lines. The standards are designed to create

small to medium scale development that is pedestrian-friendly. Retail sales represent the dominant commercial activity in the Mid-City community plan area. The CC-5-4 zone was placed at this site to implement the Mid-City Communities Plan recommendations for the Colina Park neighborhood of the City Heights Community. The Land Use designation for the site in the Community Plan is Commercial and Mixed-Use.

Although the sales of beer and wine is not specifically identified in the Mid-City Community Plan, the Commercial Element of the plan recommends that an expanded array of commercial goods and services be provided in neighborhoods, through appropriate regulatory and promotional activities. Additionally the plan recommends that the establishment and continuation of neighborhood businesses such as corner stores at appropriate crossroad locations in the neighborhoods, continue to exist.

The proposed use, the limited sales of alcoholic beverages within a market, implements a recommendation of the Community Plan encouraging an array of commercial goods and services are provided. Therefore, the proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The project proposes a Conditional Use Permit for a Type 20 liquor license to allow the sales of beer and wine within a market on a site developed with other retail services. The site is located at 4950 University Avenue in the CC-5-4 Zone within the Central Urbanized Planned District within the Colina Park Neighborhood of the City Heights Community of the Mid-City Communities Plan area.

Alcoholic beverage sales for off-site consumption has been determined to serve a public convenience or necessity by the San Diego Police Department (SDPD). The SDPD staff has determined that the proposed sales of beer and wine is a small component of the market and is not the principal sales product. The products sold at the store vary in diversity and will serve mostly other commercial establishments and the surrounding neighborhood. The San Diego Police Department supports the sale of beer and wine as conditioned by the Conditional Use Permit to ensure that the sale of alcoholic beverages is maintained as an incidental part of the store. Conditions within the permit restrict the hours that beer and wine can be sold, beer and wine advertising requirements, security obligations, and that no more than 10-percent of the square footage of the premises will be used for the display of alcoholic beverages. All Police Department recommendations have been added to the draft permit as conditions or recommended conditions to the Department of Alcoholic Beverage Control (ABC). The San Diego Police Department's Vice Unit will work with the applicant and the ABC to place additional conditions on the alcohol license to minimize the law enforcement concerns, if necessary. The SDPD has determined that the proposed off-sales of beer and wine at the proposed site would not be detrimental to the public health, safety, and welfare.

The project was determined to be exempt from the California Environmental Quality Act (CEQA) 15301 (Existing Facilities). Therefore, the proposed development will not be detrimental to the public health, safety, and welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The project proposes a Conditional Use Permit for a Type 20 liquor license to allow the sales of beer and wine within a market on a site developed with other retail services. The site is located at 4950 University Avenue in the CC-5-4 Zone within the Central Urbanized Planned District within the Colina Park Neighborhood of the City Heights Community of the Mid-City Communities Plan area.

The site is designated for Commercial within the Mid City Community Plan which in general, recommends a broad array of uses. The proposed sales of alcoholic beverages within an established market will be in accordance with the San Diego Municipal Code and is contingent upon the issuance of a license by the State of California Alcohol Beverage Control Board (ABC). The San Diego Police Department has reviewed the project and concluded the proposed use will provide a public convenience or necessity. No development regulation deviations are being proposed with this application. For the reasons above the proposed development will comply with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location.

The project proposes a Conditional Use Permit for a Type 20 liquor license to allow the sales of beer and wine within a market on a site developed with other retail services. The site is located at 4950 University Avenue in the CC-5-4 Zone within the Central Urbanized Planned District within the Colina Park Neighborhood of the City Heights Community of the Mid-City Communities Plan area.

The proposed use, to sell beer and wine as an accessory use within a market, is consistent with the existing commercial use of the property and implements the Commercial land use designation of the Community Plan. The convenience store is located in a zone which allows the sales of beer and wine in association with the issuance of a Conditional Use Permit. The San Diego Police Department (SDPD) made the public necessity or convenience determination to recommend approval of the project. The SDPD staff has determined that the proposed sales of beer and wine is a component of the market and is not the principal sales product. The SDPD has determined that the proposed sales of beer and wine at the proposed site would not be detrimental to the public health, safety, and welfare. The permit prepared for this project includes various recommendations which include but are not limited to time of night and day beer and wine can be sold, beer and wine advertising limitations, security requirements, and that no more than 10-percent of the square footage of the convenience store will be used for the display of alcoholic beverages.

The existing use is located an established market having existed for over 25 years. The SDPD has determined the proposed use is appropriate at this location in that the community plan recommends an array of commercial uses and the fact the site in a Federal Census Tract which allows up to five Alcohol Beverage Control licenses and two exist. Therefore the proposed use is appropriate at the proposed location.

**Attachment 6
Draft Resolution with Findings**

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 952883 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 592883, a copy of which is attached hereto and made a part hereof.

William Zounes
Development Project Manager
Development Services

Adopted on: July 10, 2013

Job Order No. 24002476



City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ow

Statement

Approval Type: Check appropriate box for type of approval (s) requested; Neighborhood Use Permit Coastal Development Permit
 Neighborhood Development Permit Site Development Permit Planned Development Permit Conditional Use Permit
 Variance Tentative Map Vesting Tentative Map Map Waiver Land Use Plan Amendment Other

Project Title

Project No. For City Use Only

271129

Project Address:

4950 University Avenue, San Diego, CA 92105

Part I - To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached Yes No

Name of Individual (type or print):

Jamil Gappy (property owner)

Owner Tenant/Lessee Redevelopment Agency

Street Address:

1906 Corona Vista

City/State/Zip:

El Cajon, CA 92019

Phone No:

619-244-1731

Fax No:

Signature:

Jamil Gappy

Date:

1-4-11

Name of Individual (type or print):

Nazar Toma (owner of business and lessee)

Owner Tenant/Lessee Redevelopment Agency

Street Address:

34591. Saurwood way

City/State/Zip:

Winchester - CA

Phone No:

951-760-8746

Fax No:

Signature:

Nazar Toma

Date:

01-01-2012

Name of Individual (type or print):

Salma Gappy (property owner)

Owner Tenant/Lessee Redevelopment Agency

Street Address:

1906 Corona Vista

City/State/Zip:

El Cajon, CA 92019

Phone No:

Deceased

Fax No:

Signature:

Deceased

Date:

Name of Individual (type or print):

Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Project Chronology
University Market
Project No. 271129

Date	Action	Description	City Review Time	Applicant Response
3/12/12	First Submittal	Project Deemed Complete and distributed		
4/5/12	First Submittal Assessment Letter out		24 days	
5/1/13	Second submittal In	Normal Submittal		391 days from First Assessment Letter
5/15/13	Second Submittal Assessment Letter out		14 days	
7/10/13	Hearing Officer Hearing		56 days	
TOTAL STAFF TIME**			3 month 4 days	
TOTAL APPLICANT TIME**				13 months 1 days
TOTAL PROJECT RUNNING TIME**		From Deemed Complete to HO Hearing	16 months 5 days	

**Based on 30 days equals to one month.

FORM PER SECTION 23958.4 B&P

CITY OF SAN DIEGO
For Off-Sale, On-Sale Beer, and Public Premises Licenses

- 1. PREMISE ADDRESS: 4950 University Ave SD 92105
- 2. LICENSE TYPE: 20 (off sale...)
- 3. TYPE OF BUSINESS: Brewery Business

CRIME REPORTING DISTRICT 0027.07 02 0330*11 13:25 N000038 PLU
77299PCN \$228.00
P

NUMBER OF LICENSES ALLOWED 5 NUMBER EXISTING 2

DISTRICT AVERAGE 244.7 X 120% = 293.64 = HIGH CRIME

CRIMES IN THIS REPORTING DISTRICT 540 = 220.7

If the above premises are located in an area which has an over-concentration of alcoholic beverage licenses and/or a higher than average crime rate as defined in Section 23958.4 of the Business and Professions Code:

02 0330*11
77299PCN
P

- 4. WILL PUBLIC CONVENIENCE OR NECESSITY BE SERVED BY ISSUANCE OF THIS ALCOHOLIC BEVERAGE LICENSE?
(This section to be completed by SDPD Vice Section)

YES NO

02 0330*11 13:26 N000038 TND
CHECK \$228.00
T

Linda Griffin, Sgt
Name of SDPD Vice Officer
(Please print name and title)

619 531 2349
Phone Number

[Signature]
Signature of SDPD Vice Officer

06-30-11
Date

Under the penalty of perjury, I declare the information in this affidavit is true to the best of my knowledge. I acknowledge that any false or misleading information will constitute grounds for denial of the application for the license or if the license is issued in reliance on information in this affidavit which is false or misleading, then such information will constitute grounds for revocation of the license issued.

APPLICANT'S SIGNATURE: [Signature] DATE: 03-29-2011

(Please Print)
APPLICANT'S NAME: NAZAR G. TOMA

MAILING ADDRESS: 4950 UNIVERSITY AVE S.D CA 92105
34811 Soquel Ave, San Jose, CA 95126

TELEPHONE NUMBER: 619-584-8087

SAN DIEGO POLICE DEPARTMENT CONDITIONAL USE PERMIT RECOMMENDATION

PREMISE ADDRESS: 4950 University Ave, San Diego, CA

TYPE OF BUSINESS: Grocery Store

FEDERAL CENSUS TRACT: 27.07

NUMBER OF ALCOHOL LICENSES ALLOWED: 5

NUMBER OF ALCOHOL LICENSES EXISTING: 2

CRIME RATE IN THIS CENSUS TRACT: 293.64%
(Note: Considered High Crime If Exceeds 120% of City-wide Average)

THREE OR MORE REPORTED CRIMES AT THIS PREMISE WITHIN PAST YEAR YES NO

IS THE PREMISE WITHIN 600 FEET OF INCOMPATIBLE FACILITY YES NO

IS THE PREMISE WITHIN 100 FEET OF RESIDENTIALLY ZONED PROPERTY YES NO

ABC LICENSE REVOKED AT THIS PREMISE WITHIN PAST YEAR YES NO

HAS APPLICANT BEEN CONVICTED OF ANY FELONY YES NO

WILL THIS BUSINESS BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY,
AND WELFARE OF THE COMMUNITY AND CITY YES NO

COMMENTS/OTHER FACTORS CONSIDERED: The applicant is applying for a CUP for a Grocery Store with a Type 20 Beer & Wine License. Currently, the space is a small market with a water store & small laundrymat next to it. The liquor store will assume the two other premises and develop their grocery store. It appears that the proposed business will benefit the area, as many of the residents do not have cars for transportation. The applicant has a history in the neighborhood, and is familiar with the challenges of managing a business in this area.

The sale of alcohol will be an accessory and not the primary commodity.

There are several children focused parks, schools, and businesses in this densely populated area.

SUGGESTED CONDITIONS: Although the grocery store would be good for the community in a general sense, there are issues that would need to be controlled. Due to its location in a high crime area, transients in the area, and a demographic including families, special considerations should be taken with conditions placed on the off-sale privileges. The following recommended conditions should be incorporated into the regulatory licenses and land use for this location:

The San Diego Police Department agrees to the issuance of the CUP as long as the following conditions are included in the Alcoholic Beverage Control License:

1. Sales of alcoholic beverages shall be permitted only between the hours of 6:00 AM and 12:00 Midnight each day of the week.

2. Wine shall not be sold in bottles or containers smaller than 750 ml and wine coolers or beer coolers must be sold in manufacturer pre-packaged multi-unit quantities.
3. No wine shall be sold with an alcoholic content greater than 15% by volume except for "Dinner Wines" which have been aged two years or more.
4. Beer, malt beverages or wine cooler products, regardless of container size, must be sold in manufacturer pre-packaged multi-unit quantities.
5. The petitioner(s) shall post and maintain a professional quality sign facing the premises parking lot(s) that reads as the following: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.
6. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within 48 hours of being applied.
7. There shall be no amusement machines or video game devices on the premises at any time.
8. No pay telephone will be maintained on the interior or exterior of the premises.
9. No loitering on the premises and if necessary a security guard to control enforcement of this provision.
10. Illumination in the parking lot. Security camera covering both interior and exterior premises.
11. No more than 20-percent of the square footage of the premises will be used for the display of alcoholic beverages.
12. No distilled spirits.

Including any additional conditions that may be appropriate as a result of an establishment being located within a Redevelopment area, or for increased public safety.

SAN DIEGO POLICE DEPARTMENT RECOMMENDATION:

APPROVE

DENY

S. PARNLEE ALBREKTSEN
Name of SDPD Vice Sergeant (Print)

619 531 2349
Telephone Number

[Signature]
Signature of SDPD Vice Sergeant

3/28/12
Date of Review

**SAN DIEGO POLICE DEPARTMENT
CONDITIONAL USE PERMIT RECOMMENDATION**

PREMISE ADDRESS: 4950 University Ave, San Diego, CA

TYPE OF BUSINESS: Grocery Store

FEDERAL CENSUS TRACT: 27.07

NUMBER OF ALCOHOL LICENSES ALLOWED: 5

NUMBER OF ALCOHOL LICENSES EXISTING: 2

CRIME RATE IN THIS CENSUS TRACT: 220.7% per Crime Analysis on 5/21/12
(Note: Considered High Crime If Exceeds 120% of City-wide Average)

THREE OR MORE REPORTED CRIMES AT THIS PREMISE WITHIN PAST YEAR YES NO

IS THE PREMISE WITHIN 600 FEET OF INCOMPATIBLE FACILITY YES NO

IS THE PREMISE WITHIN 100 FEET OF RESIDENTIALLY ZONED PROPERTY YES NO

ABC LICENSE REVOKED AT THIS PREMISE WITHIN PAST YEAR YES NO

HAS APPLICANT BEEN CONVICTED OF ANY FELONY YES NO

WILL THIS BUSINESS BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY,
AND WELFARE OF THE COMMUNITY AND CITY YES NO

COMMENTS/OTHER FACTORS CONSIDERED: This CUP is revised based on misinformation regarding the expansion of the market into the existing businesses in the strip mall.

The applicant is applying for a CUP for a Grocery Store with a Type 20 Beer & Wine License. Currently, the space is a small market with a water store & small laundromat next to it. It appears that the proposed business could benefit the area, as many of the residents do not have cars for transportation. The applicant has a history in the neighborhood, and is familiar with the challenges of managing a business at this location. However, there is a population of the community that doesn't support alcohol being added to the University Market as there is a 7/11 across the street and a grocery store with alcohol just two blocks away (Rock City Market-5231 University). San Diego Police Mid-City Division & Vice Unit understand the CUP process is to implement the land use regulations in this business district which is a separate issue from the State Alcohol Beverage Control (ABC) process.

The sale of alcohol will be an accessory and not the primary commodity.

There are several children focused parks, schools, and businesses in this densely populated area. There is a church located across the street from the market at 4014 Winona, San Diego, CA.

There were 10.01 hours of calls for service to 4950 University and 124.27 hours of police contacts at 4900 University Ave between 5/19/2011-5/19/2012, per crime analysis. In the census tract 27.07 there were 76 alcohol related arrests and cites in 2010 (the most current year available).

SUGGESTED CONDITIONS: Although the grocery store would be good for the community in a general sense, there are issues that would need to be controlled. Due to its location in a high crime area, transients in the area, and a demographic including families, special considerations should be taken with conditions placed on the off-sale privileges. The following recommended conditions should be incorporated into the regulatory licenses and land use for this location:

The San Diego Police Department agrees to the issuance of the CUP as long as the following conditions are included if an alcohol license is issued by the Alcoholic Beverage Control:

POLICE DEPARTMENT RECOMMENDATIONS FOR ABC LICENSE:

1. Sales of alcoholic beverages shall be permitted only between the hours of 9:00 AM and Midnight each day of the week.
2. Wine shall not be sold in bottles or containers smaller than 750 ml, and wine coolers or beer coolers must be sold in manufacturer pre-packaged multi-unit quantities.
3. No wine shall be sold with an alcoholic content greater than 15% by volume except for "Dinner Wines" which have been aged two years or more.
4. Beer, malt beverages or wine cooler products, regardless of container size, must be sold in manufacturer pre-packaged multi-unit quantities.
5. The petitioner(s) shall post and maintain a professional quality sign facing the premises parking lot(s) that reads as the following: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.
6. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within 48 hours of being applied.
7. There shall be no amusement machines or video game devices on the premises at any time.
8. No pay telephone will be maintained on the interior or exterior of the premises.
9. No loitering on the premises and if necessary a security guard to control enforcement of this provision.
10. Illumination in the parking lot. Security camera covering both interior and exterior premises.
11. No more than 20-percent of the square footage of the premises will be used for the display of alcoholic beverages.
12. No distilled spirits.

Including any additional conditions that may be appropriate as a result of an establishment being located within a Redevelopment Area, or as needed for increased public safety.

SAN DIEGO POLICE DEPARTMENT RECOMMENDATION:

APPROVE

DENY

SANDRA RAPALIE ALBREKTSEN
Name of SDPD Vice Sergeant (Print)

619 531 2349
Telephone Number

Sandra AlbrektSEN
Signature of SDPD Vice Sergeant

5/15/12
Date of Review

#4854

City Heights Area Planning Committee
PO Box 5859
San Diego CA 92165

May 8, 2012

MEMORANDUM FOR: William Zounes
Development Project Manager

From: Committee Chairwoman
Patty Vaccariello _____

Subj: University Market Project No. 271129

1. At its May 7, 2012 meeting the Committee heard a request to support a CUP for a beer and wine license at University Market, located at 4950 University Avenue. After discussion, it was moved and seconded to deny the CUP for a Type 20 license. The Committee voted 12/1/3/(chair not voting) and the motion passed.

2. The Committee's discussion revolved around the issue of whether a valid notice of Public Convenience or Necessity existed. One of the factors the Police used in coming to a decision revolved around the proposal by the applicant to develop a much larger grocery store than the current 900 sq ft by assuming the two other premises at the site (a small Laundromat and water store). According to the applicant's agent, and the manager of the market for the past 25 years, there are no plans to enlarge the market.

The PC&N also incorrectly states that the premises are not within 600 ft of an incompatible use. According to the cycle issues, Herbert Ibarra Elementary School and a nearby mosque that contains a school that conducts numerous youth activities are within 600 ft of the site.

For the reasons above the CHAPC was unable to make the finding that the proposed business would be beneficial to the public health, safety, and welfare of the community and the city.

Patty Vaccariello

CITY HEIGHTS AREA PLANNING COMMITTEE

Postoffice Box 5859
City Heights CA 92165
(619) 284-2184

March 14, 2013

MEMORANDUM FOR: William Zounes
Development Project Manager

From: Committee Chairwoman
Patty Vaccariello _____

Subj: University Market CUP, PTN271129

1. At its March 4, 2013 meeting the Committee re-heard a request to approve a CUP for a beer and wine license (Type 20) at the University Market located at 4950 University Avenue. After discussion, it was moved and seconded to recommend approval with all twelve conditions listed in the San Diego Police CUP Recommendations (attached) and five additional conditions which would: require conformance with the City's transparency rules, limit the size of advertising, list the licensee's business address and telephone number in the directory serving the premises, post the conditions prominently at the premises, and have the permit expire ten years after issuance. The Committee voted 0/12/0 (chair not voting) and the motion failed.

2. There was a wide-ranging discussion among the Committee members and the public. Objections were based on the high crime rate and the proximity of children, schools, a mosque, and other ABC licenses. There were questions about police responses to the address and vandalism issues.

Recommended conditions from the San Diego Police Department:

1. Sales of alcoholic beverages shall be permitted only between the hours of 9:00 AM and Midnight-each day of the week.-
2. Wine shall not be sold in bottles or containers smaller than 750 ml, and wine coolers or beer coolers must be sold in manufacturer pre-packaged multi-unit quantities.
3. No wine shall be sold with an alcoholic content greater than 15% by volume except for "Dinner Wines" which have been aged two years or more.
4. Beer, malt beverages or wine cooler products, regardless of container size, must be sold in manufacturer pre-packaged multi-unit quantities.
5. The petitioner(s) shall post and maintain a professional quality sign facing the premises parking lot(s) that reads as the following: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES, VIOLATORS ARE SUBJECT TO ARREST, The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.
6. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within 48 hours of being applied.
7. There shall be no amusement machines 'or video game devices on the premises at any time,
8. No pay telephone will be maintained on the interior or exterior of the premises.
9. No loitering on the premises and i f necessary a security guard to control enforcement of this provision.
10. Illumination in the parking lot. Security camera covering both interior and exterior premises.
11. No more than 20-percent of the square footage of the premises will be used for the display of alcoholic beverages.
12. No distilled spirits.

Additional Recommendations from the City Heights Area Planning Committee:

13. The premises shall conform to the transparency requirement for the zone in which it is located, and the licensee shall not post signage, or position displays or any other objects that interfere with the transparency requirement.
14. The total area of advertising signage that indicates alcoholic beverages or alcohol sales shall not exceed 630 square inches total for the and premises and should not be placed so as to interfere with transparency.
15. The licensee shall list the business address and telephone number in the telephone directory that serves the premises.
16. The licensee shall conspicuously post a copy of these Conditions at the premises and maintain them visible so they may be seen by the public or by any government official.
17. This Conditional Use Permit will expire and become void (10) years from its approval date.

NOTICE OF EXEMPTION

TO: X RECORDER/COUNTY CLERK
P.O. BOX 1750, MS A-33
1600 PACIFIC HWY, ROOM 260
SAN DIEGO, CA 92101-2422

OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET, ROOM 121
SACRAMENTO, CA 95814

FROM: CITY OF SAN
DEVELOPMENT SERVICES DEPARTMENT
1222 FIRST AVENUE, MS 501
SAN DIEGO, CA 92101

PROJECT No.: 271129 PROJECT TITLE: UNIVERSITY MARKET

PROJECT LOCATION-SPECIFIC: 4950 University Avenue, San Diego, California 92105
PROJECT LOCATION-CITY/COUNTY: San Diego/San Diego

DESCRIPTION OF NATURE AND PURPOSE OF THE PROJECT: Conditional Use Permit (CUP) for beer and wine sales for an existing market on a 0.14 acre site.

NAME OF PUBLIC AGENCY APPROVING PROJECT: City of San Diego

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Bill Epstein (Agent)
12525 Semillon Blvd
San Diego, California 92131
(619) 444-2244

EXEMPT STATUS: (CHECK ONE)

- MINISTERIAL (SEC. 21080(b)(1); 15268);
- DECLARED EMERGENCY (SEC. 21080(b)(3); 15269(a));
- EMERGENCY PROJECT (SEC. 21080(b)(4); 15269 (b)(c))
- CATEGORICAL EXEMPTION: CEQA EXEMPTION 15301 (EXISTING FACILITIES)
- STATUTORY EXEMPTIONS:

REASONS WHY PROJECT IS EXEMPT: The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment. The project meets the criteria set forth in CEQA Section 15301 which allows for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing facilities (public or private) involving negligible or no expansion of use beyond that existing at the time of the determination. A CUP to allow for Type 20 alcohol license for an existing commercial building is a negligible expansion of use. In addition; the exceptions listed in CEQA Section 15300.2 would not apply.

LEAD AGENCY CONTACT PERSON: Rhonda Benally TELEPHONE: (619) 446-5468

IF FILED BY APPLICANT:

1. ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING.
2. HAS A NOTICE OF EXEMPTION BEEN FILED BY THE PUBLIC AGENCY APPROVING THE PROJECT?
 YES NO

IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED THE ABOVE ACTIVITY TO BE EXEMPT FROM CEQA

Amal. McMurdo AICP/Senior Planner
SIGNATURE/TITLE

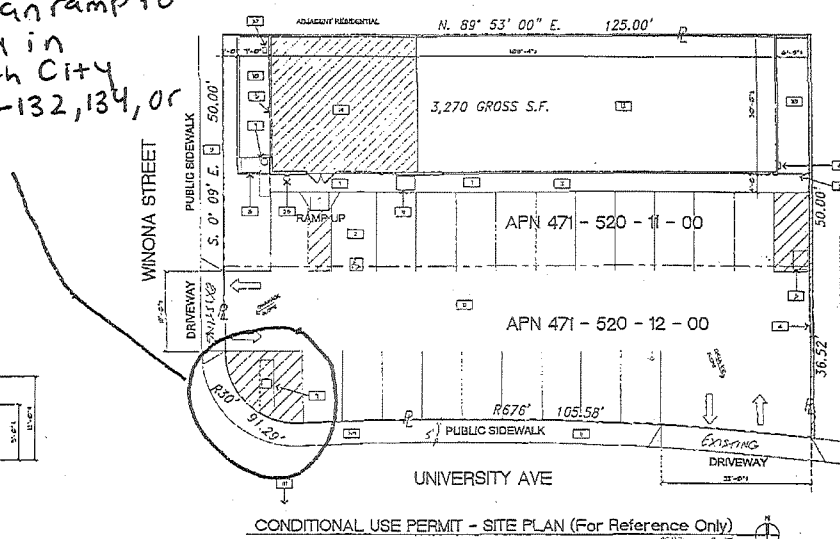
April 4, 2012
DATE

CHECK ONE:

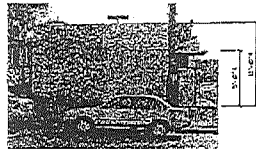
- SIGNED BY LEAD AGENCY
- SIGNED BY APPLICANT

DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:

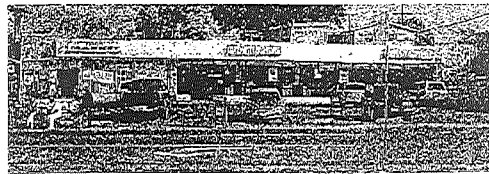
Existing pedestrian ramp to
be reconstructed in
accordance with City
Standard SDG - 132, 134, or
136.



NOTE:
THIS AREA IS EXTERIOR
ACCOMMODATING PROFESSIONAL
THIS CONTRACT / CLIP.

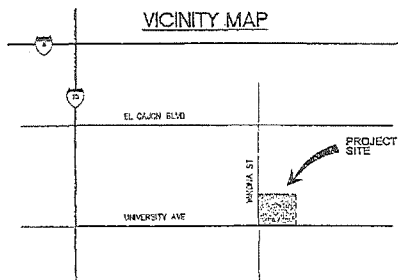


WEST PHOTOGRAPH (ELEVATION)

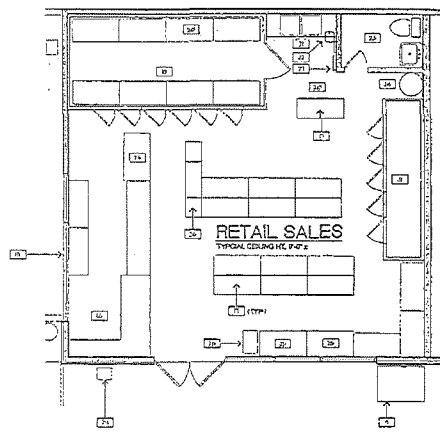


SOUTH PHOTOGRAPH (ELEVATION)

MARKET EXTERIOR PHOTOGRAPHS ②



CONDITIONAL USE PERMIT - SITE PLAN (For Reference Only)



MARKET DEVELOPMENT PLAN ①

PLAN SPECIFIC NOTES

- 1 PERMANENT SITE PAVING
- 2 ACCESSIBLE PARKING SPACE
- 3 TRASH RECYCLING CURB/PIT
- 4 EXISTING 1 1/2" DIA. SBT RETAINING WALL
- 5 EXISTING 4" DIA. SBT RETAINING WALL
- 6 EXISTING ELECTRICAL PANELS AND SERVICE ENCLOSURE
- 7 EXISTING FIRE BOX TO REMOVE
- 8 EXISTING WATER EXPOSURE/PLUMBING
- 9 EXISTING ICE MAKING
- 10 EXISTING LANDSCAPE AREA
- 11 EXISTING REBAR/RETAINING WALL
- 12 EXISTING ADA/ACCESSIBLE CONCRETE PAVING AT RAMP AS NOTED
- 13 EXISTING LAUNDRY METAL SCAFF
- 14 EXISTING PLUMBING METAL SPACE AND NOTED
- 15 EXISTING EXTERIOR WALKER COATING WITH PAVEMENT
- 16 RETAINING WALLS COULDER / EACH RAMP/STAIR AREA
- 17 TYPICAL TERRAZZO/CERAMIC TILE IN THIS AREA/STAIRS
- 18 WALK-IN COOLER - SALES ACCESS FRONT DOORS
- 19 WALK-IN COOLER - SALES ACCESS FRONT DOORS
- 20 STORAGE AREA
- 21 ACCESSORY HALL
- 22 WALKWAY
- 23 WALKER HANGER (EXPANDED TO WALL AT THIRD POINT)
- 24 WALKER HANGER (EXPANDED TO WALL AT THIRD POINT)
- 25 ICE/MONEY COOLER WALKER CHEST
- 26 DRIP/SPRAY/PAVEMENT
- 27 METAL SHEET SPACE ELECTRICAL PANEL
- 28 APPLIANCE
- 29 EXISTING FLOOR FINISH
- 30 FINISH FLOOR FINISH
- 31 FRESH AIRLINE (DIRECTLY ABOVE WALKER COULDER)
- 32 EXISTING SANITARY LOCATION TO REMOVE

PUBLIC WORKS DEPARTMENT NOTES
OPERATIONS SHALL INCLUDE SUPERVISIONS OF THE BEST MANAGEMENT PRACTICES (BMP) AS
FOLOWING:
1. BMP'S SHALL BE PERFORMED TO PREVENT SEDIMENTATION, EROSION, BACKFLOW OF TRASH, DEBRIS OR
WASTEWATER TO THE STORM DRAIN SYSTEM AND PROTECT PROPERTIES.
2. BMP'S TO BE PERFORMED TO PROTECT LOCAL FLORA, WILDLIFE AND FISH AND WATERSHED FROM POLLUTION.
3. PARKING LOTS, PAVED WALKWAYS AND WALKWAY RAMP LAYOUTS SHALL BE STRICTLY PROHIBITED.
4. CROPPED VEGETATION SHALL BE MAINTAINED THROUGHOUT THE PROJECT.
5. DISBURSE OF WASTEWATER PROHIBITED.
6. CALL UTILITIES BEFORE THE PROJECT SHALL BEGIN. COUNCILOR, WATER AND GAS SHALL BE CONTACTED.
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BUILDING DATA

LEGAL DESCRIPTION 471-520-12 LOT 8 BLDG. A TRACT NUMBER 122 (SEE TRACT ATTACHED)
 BUILDING DEPARTMENT 1949 BLDG. A BLDG. B BLDG. C BLDG. D BLDG. E BLDG. F BLDG. G BLDG. H BLDG. I BLDG. J BLDG. K BLDG. L
 BUILDING CODES 1949 BLDG. A BLDG. B BLDG. C BLDG. D BLDG. E BLDG. F BLDG. G BLDG. H BLDG. I BLDG. J BLDG. K BLDG. L
 SITE ADDRESS 2930 UNIVERSITY AVENUE
 LOT SIZE 348 AC / 43286 SQ FT
 TENANT UNIVERSITY MARKET / FRESH
 USAGE RETAIL / MARKET
 BUILDING OCCUPANCY RETAIL - M / M (PHYS. ATTACHED)
 TYPE OF CONSTRUCTION 1949 UNIMPROVED
 SPRINKLERED NO
 NUMBER OF STORES / HEIGHT 01 ONE
 PRODUCT CODES
 THE SCOPE OF THIS PROJECT IS APPROXIMATELY AN ALCOHOL, BEER & WINE LICENSE ONLY. THERE ARE NO OTHER
 ENTIREMENTS UNDER THIS PROJECT.
 SOCIAL SERVICE FACILITY INFORMATION
 CAPACITY NUMBER OF OPERATIONS: 4000 (SEE DRAWING) (SEE DRAWING) (SEE DRAWING)
 PREPARED NUMBER OF DAYS AND HOURS OF OPERATION: 7 DAYS A WEEK (SEE DRAWING) (SEE DRAWING) (SEE DRAWING)
 PREPARED NUMBER OF DAYS AND HOURS OF OPERATION: 7 DAYS A WEEK (SEE DRAWING) (SEE DRAWING) (SEE DRAWING)

PROPERTY OWNER
Name: JAMES G. CARTER
Date: 1945 Oceanside, CA 92019
Phone: (619) 244-1931

CITY OF SAN DIEGO
 CONDITIONAL USE PERMIT NO. _____
 APPLICANT: Nazari Tomo
 APPLICATOR/PANEL NUMBER: 471-520-11-00
 REQUEST: CONDITIONAL USE PERMIT FOR AN ALCOHOLIC, BEER & WINE BEVERAGES LICENSE ONLY
 DRAWN BY: JACK E. CARTER
 APPROVED BY: _____
 ADDRESS: 3635 OLEANDER DR.
 SAN DIEGO, CA 92108
 PHONE: 760.310.2439
 DATE: _____
 SIGN TITLE: _____
 SITE & DEVELOPMENT PLAN/ELEVATIONS

