

Location:	311 Oak St. (See map on reverse)
Assessors Parcel Numbers:	001-0163-012-00
Proposal:	Application for a Major Conditional Use Permit to establish alcoholic beverage sales commercial activity.
Applicant:	“Sierra Deli and Market” Tuan Quach 510-427-5660
Owner:	Houng Luu
Planning Permits Required:	Major Conditional Use Permit for alcoholic beverage sales commercial activity.
General Plan:	Mixed Use
Zoning:	C-45
Environmental Determination:	Exempt, Section 15301; State CEQA Guidelines; minor alterations to existing facility
Historic Status:	Non-historic property (NHP)
Service Delivery District:	4
City Council District:	3
Date Filed:	7/14/2005
Last Date for Consideration:	11/2/2005
Support/Opposition:	There is support for this project
Staff recommendation:	Approve application with attached conditions.
For further information:	Contact Case Planner Jacob Graef at 510-777-8672 or Jgraef@oaklandnet.com

SUMMARY

This is an application for the addition of the sales of beer and wine to an existing deli and convenience store. Based upon the application submitted, staff recommends that the Planning Commission affirm the proposed Categorical Exemption cited above and approve the Conditional Use Permit and recommended conditions of approval based on the attached findings.

PROJECT DESCRIPTION

The proposed project is to add the sales of beer and wine to an existing 2,000 sqft deli and convenience store selling a variety of fresh and packaged foods. The applicant proposes that 2,000-sqft will be dedicated to the sale of alcoholic beverages. According to the plans submitted, alcohol sales will occur in three areas of the store. There will be two dedicated coolers for beer (200-sqft), one shelving unit for wine (50-sqft). The store will be open on Monday thru Friday from 6:30 AM to 8:00 PM and on Saturday from 7:00 AM to 6:00PM, closed on Sundays.

PROPERTY DESCRIPTION

The site is a newer multi-story structure with a convenience store and other light commercial uses on the ground floor and residential units above. There is adequate street parking along 3rd Avenue and Oak Street to accommodate patrons. There are no other off-sale liquor outlets in the area.

GENERAL PLAN ANALYSIS

This location is designated as Mixed Use. The General Plan is silent regarding Alcoholic Beverage Sales in this area. The General Plan does call for "Neighborhood Commercial Mixed Uses." The overall project is a mixed-use project combining a store that will sell a variety of fresh and packaged food, a deli, as well as alcohol and thus meets a community need for convenient food shopping.

ZONING ANALYSIS

The sales of fresh and packaged food, is a permitted in the C-45, Shopping Center Commercial Zone. A Major Conditional Use Permit is required for Alcoholic Beverage Sales Commercial Activity in the C-40 Zone. In addition, the regular Conditional Use Permit findings per Section 17.134.050 and special findings for Alcoholic Beverage Sales Commercial Activities per Section 17.102.210 must be made. The new location at 950 International Blvd. is not in a census tract with an over-concentration of Alcoholic Beverage Sales Commercial Activities, therefore, a State Department of Alcoholic Beverage Control finding of Public Connivance or Necessity is not required.

On February 1, 2000, the Oakland City Council passed Resolution #75490 establishing a no net increase policy in the number of alcoholic beverage sales commercial activities in Oakland neighborhoods to protect the health, safety and welfare of residents. This resolution states that new off-sale and on-sale retail alcoholic beverage sales licenses should only be permitted if one or more criteria are met. One of these criteria is that the liquor license being transferred comes from within the City of Oakland. The applicant owns the license and is transferring it from 441-443 Ninth Ave.; therefore this prohibition does not apply.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines list projects, which are categorically exempt from environmental review. Section 15301 exempts facilities, which consist of minor alterations to existing structures, involving negligible or no expansion of use beyond that previously existing, including interior or exterior alteration. This project involves no external changes to the building approved under separate Design Review. Therefore, this project is considered categorically exempt from the provisions of CEQA pursuant to Sections 15301 of the State CEQA guidelines.

KEY ISSUES AND IMPACTS

The proposed convenience store activities will have the capacity to accommodate up to 30 patrons with adequate street parking for patrons who do not live in the area. If operated properly, the proposed addition would provide a greater variety of services while generating minimum nuisance due to the implementation alcohol license restrictions

With appropriate conditions regarding hours, alcohol sales limitations and inclusion in the Deemed Approved Program (Sec. 17.156) this project will meet all of the Use Permit Criteria pursuant Section 17.134.050, which are attached herein and are hereby incorporated into this report.

Staff has verified that the implementation of land use restrictions to curtail nuisance activity has been extraordinarily effective at other similar locations. It has been proven that restrictions on the hours of

operation in reference to the selling of alcoholic beverages will significantly reduce the opportunity for nuisance activity to occur. Staff recommends that the hours for the sale of alcoholic beverages be allowed only between the hours of 6:30AM and 7:00 PM unless limited further by the department of Alcoholic Beverage Control.

Staff has also received positive support for the application from Councilwoman Nadel. The council member feels the use will be good for the community in regards to the services provided.

The Oakland Police Departments ABAT unit has determined that this use will create minimal amount of nuisance activity if managed properly. As a part of the Deemed Approved Program ABAT will be responsible for monitoring this location. Through active enforcement and police assistance this use will remain safe and successful.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
 2. Approve the Major Conditional Use Permit based on the ability to make the findings subject to the attached conditions.

Prepared by:

JACOB GRAEF,
Administrative Analyst II / Planner II

Approved by:

GARY PATTON
Deputy Director of Planning and Zoning

Approved for forwarding to the
City Planning Commission:

CLAUDIA CAPPIO
Director of Development

FINDINGS FOR APPROVAL:

This proposal meets the required findings under Sections 17.134.050, General Use Permit Criteria, 17.102.210(A)&(B) Special Use Permit Criteria, as set forth below, and Section 17.148.050, Variance Findings. Required findings are shown in **bold** type; explanations as to why these findings can be made are in normal type.

Section 17.134.050 (General Use Permit Criteria):

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

The proposed addition of alcohol sales to an existing mixed-use project containing a grocery store will be compatible with adjacent and surrounding residences and businesses. As approved the activity with limited operating hours and other operating characteristics will not adversely affect livability or appropriate development. The building is existing, and Oak Street can support the anticipated traffic.

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

The existing development will provide a convenient and functional living, working and shopping environment by providing a convenient shopping location for fresh food, packaged goods and alcohol.

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

The addition of alcohol sales to the existing store will enhance the area by providing one stop shopping. The overall project, a grocery store, will provide an essential service to the adjacent community.

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

The building is existing.

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

The General Plan allows for general food sales and is silent regarding sales of alcohol. The general plan allows for businesses that will not cause undue nuisance activity. The proposed activity is part of an overall project containing a grocery store that will help meet community needs and as conditioned will cause a minimum of nuisance activity.

Section 17.102.210 (A) Special Use Permit Criteria:

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

The proposal will not result in a net increase in such uses and the activity is in conjunction with other desired activities. As conditioned, the activity will not contribute significantly to problems of crime and loitering. Oak Street is capable of the projected traffic without affecting the level of service.

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

There are no sensitive uses in the area.

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

There will be no direct effect on people along Oak Street, which is an important pedestrian street.

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

The building is existing.

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

There is no proposed signage.

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

As conditioned, there will be one non-flammable trash container installed outside the entrance of the store within the parking lot and litter will be removed from the sidewalk and gutter in front of and to twenty feet beyond the premises along Oak Street.

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

As conditioned, the business will open at 6:30 AM and close at 7:00 PM.

CONDITIONS OF APPROVAL

STANDARD CONDITIONS:

1. Approved Use.

a. Ongoing.

The project shall be constructed and operated in accordance with the authorized use as described in this staff report and the plans submitted on July 25, 2003 and as amended by the following conditions. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval. The approved activity is the sales for off premise consumption of beer, wine, and distilled alcohol in conjunction with the sales of fresh and packaged foods during the hours and with the conditions stated below.

2. Effective Date, Expiration, and Extensions

a. Ongoing.

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire on October 29, 2006, unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the City Planning Commission.

3. Scope of This Approval; Major and Minor Changes

a. Ongoing.

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes and requirements imposed by other affected departments, including but not limited to the Building Services Division and the Fire Marshal. Minor changes to approved plans may be approved administratively by the Zoning Administrator; major changes shall be subject to review and approval by the City Planning Commission.

4. Modification of Conditions or Revocation

a. Ongoing.

The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved facility is violating any of the Conditions of Approval or the provisions of the Zoning Regulations.

5. Recording of Conditions of Approval

a. Prior to issuance of building permit or commencement of activity.

The applicant shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.

6. Reproduction of Conditions on Building Plans

a. Prior to issuance of building permit.

These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.

7. Indemnification

a. Ongoing.

The applicant shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney’s fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Office of Planning and Building, Planning Commission, or City Council. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

8. Waste Reduction and Recycling

a. Prior to issuance of a building or demolition permit

The applicant may be required to complete and submit a “Waste Reduction and Recycling Plan,” and a plan to divert 50 percent of the solid waste generated by the operation of the project, to the Public Works Agency for review and approval, pursuant to City of Oakland Ordinance No. 12253. Contact the City of Oakland Environmental Services Division of Public Works at (510) 238-7073 for information.

9. Recycling Space Allocation Requirements

a. Prior to issuance of building permit

The design, location and maintenance of recycling collection and storage areas must substantially comply with the provision of the Oakland City Planning Commission “Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas”, Policy 100-28. A minimum of two cubic feet of storage and collection area shall be provided for each dwelling unit and for each 1,000 square feet of commercial space.

STANDARD CONDITIONS FOR ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY:

10. Security.

a. Ongoing

The applicant/property owner shall keep windows clear of visual obstructions including, but not limited to signage beyond 10% window coverage, any advertising displays, chip/product racks, refrigerated equipment, cardboard, trash, wire mesh/security bars, reflective coatings, or other materials. Note that this is more restrictive than the state regulations related to signage. The purpose of this condition is to maintain good sight lines in and out of the store to allow police to monitor activity inside and to allow store staff to monitor and discourage inappropriate activity in front of the store.

11. Hours.

a. Ongoing.

The business may be open from 6:30 AM to 7:00 PM daily.

12. Conformance with State Department of Alcoholic Beverage Control regulations

a. Ongoing.

This use shall conform to all provisions of the State ABC license. The state license and state conditions shall be posted along with these Conditional Use Permit conditions in a place visible to the public. This use shall also conform to all State Retail Operating Standards, Section 25612.5 of the Business and Professions Code and local Performance Standards, Section 15210, where applicable including any future changes in the above regulations. The intent of these standards is to reduce nuisance, litter, loitering, and

crime associated with alcohol outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

b. Ongoing

Lighting shall be maintained to meet the B&P code section providing enough illumination to identify loiterers standing in front of the store and in the parking lot. Such illumination shall remain lit during all hours of darkness when the business is open.

c. Ongoing

The licensees/property owners shall clear the parking lot and gutter and sidewalks twenty feet beyond the property lines along these streets of litter twice daily or as needed to control litter. In addition to the requirements of B&P Section 25612.5, (sweep or mechanically clean weekly) the licensee shall clean the sidewalk with steam or equivalent measures once per month.

13. Compliance with City of Oakland special regulations for Alcoholic Beverage Sales Commercial Activities.

a. Ongoing.

Within 30 days of the date of decision, at least one sign (one square foot maximum) shall be posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to the store. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

b. Ongoing.

The applicant/property owners shall clear the sidewalks adjacent to her property of all "Street Furniture" including mattresses, crates, pads, and other items for sitting or laying on by loiterers on a daily basis.

c. Ongoing.

Graffiti shall be removed from the premises within 72 hours (3 days) of application.

d. Ongoing.

No pay phones are permitted outside the building.

e. Ongoing.

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiters who refuse to leave. Persons hanging around the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team.

f. Ongoing

Applicant shall conform to Ordinance 12390 related to securing sites after hours to discourage loitering and crime in parking lots.

14. Trash and litter

a. Prior commencement of use and ongoing.

The applicant/property owner shall install and maintain at least one; non-flammable trash can, located near the entrance of the store.

15. Sales of beverages, container sizes and bagging

a. Ongoing

Beer and Malt Beverages: **The applicant has voluntarily agreed to limit the availability of single can or bottle service for containers under 24 fluid ounces. All beer and malt beverage units must be sold in 6, 12, and 24 pack containers. (Therefore there will be no selling of individual 6oz, 12oz, or 16oz, single containers)**

b. Ongoing.

All containers of any beverage (including, but not limited to, milk, soda, juice, water) shall be sold either unbagged or bagged in clear plastic bags such that officers can readily identify the contents without removing the beverage container from the bag.

16. Inclusion of conditions in State Department of Alcoholic Beverage Control license.

a. Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit.

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions number 1, 10, 11, 12 and 15 in the conditions of their ABC license. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the applicant fails to include the above conditions in the ABC license.

APPROVED BY: City Planning Commission: _____ (date) _____ (vote)
City Council