

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 09/07/04
AGENDA ITEM 9
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Approval of Use Permit/Variance PL-04-0176/0207 to Allow an Off-Sale Alcoholic Beverage Outlet Less Than 500 Feet from Another Outlet – Crossroads World Market (Applicant/Owner)/ COMMPRE (Appellant) – The Property is Located at 230 Jackson Street

RECOMMENDATION:

The Planning Commission (4:0) and staff recommend that the City Council adopt the attached resolution finding that the project is categorically exempt from environmental review, denying the appeal and approving the project, subject to the attached conditions of approval.

DISCUSSION:

The Zoning Ordinance requires a use permit for new off-sale alcoholic beverage outlets with the exception of large retailers, restaurants and special event functions. It also requires a separation of 500 feet from any other alcoholic beverage outlets. Country Liquors, located across 201 Jackson Street, is within 500 feet of Crossroads World Market and therefore a variance is required. Since the City Council last considered the applicant's similar request, the West Coast Meat Market at 147 Jackson Street, which sold wine, closed. Although there are plans to convert the building containing the former meat market into a grocery store, the use of the ABC license associated with the West Coast Meat Market is unknown at this time.

Crossroads World Market is reapplying for a use permit and variance to allow it to carry specialty wine and beers (ABC Type 20, off-sale beer and wine license) to complement its unique line of ethnic foods. Crossroad World Market first applied for a use permit and variance in January 2002. The application was approved by the Planning Commission (4:1) on March 28, 2002 and overturned by City Council (4:3) on May 21, 2002. Crossroad World Market reapplied in April 2004 and on June 24, 2004, the Planning Commission approved (4:0) the use permit and variance. During the hearing, Hayward Citizens for Responsible Liquor Outlets and several Crossroads World Market customers spoke in favor of the application. COMMPRE and the Country Liquors proprietor opposed the new off-sale liquor license. The Country Liquors proprietor expressed concern about the impact Crossroads World Market would have on its business. Planning Commissioners indicated that Crossroads World Market is the type of business the City was trying to attract and retain.

In its appeal letter, COMMPRE states that the granted variance does not meet the criteria of a variance, and it grants the applicant a special privilege. In its opinion, approving the application would weaken the provisions of the Zoning Ordinance pertaining to the sale of alcoholic beverages. In staff's opinion, the findings in support of the variance can be made, particularly as they relate to the special circumstance of the location of the property. Staff believes the highway provides a special circumstance (physical constraint) supportive of a variance. The highway median and width, along with the speed and volume of traffic, creates a boundary between the north and south side of Jackson Street/Route 92. There were no off-sale alcoholic beverage outlets on the north side of Jackson Street serving the westbound traffic, and the effective distance between Crossroads World Market and Country Liquors by car or walking, is greater than 500 feet.

The *State Department of Alcoholic Beverage Control* (ABC) has determined that there is an over-concentration of off-sale liquor licenses in the census tract in which this property lies. Its records indicate that there are nine off-sale licenses (including restaurants) operating where they consider that five licenses would be appropriate for the population in that census tract. When an ABC license is requested in a census tract where there is an over-concentration of ABC licenses, the ABC requires the City to make a finding that the sale of alcoholic beverages would serve the public convenience or necessity. With regard to the census tract at issue, there is only one business with an off-sale liquor license along Jackson Street in this census tract; the remaining are on A Street (6) and West Winton Avenue (2), some distance from Crossroad World Market. Additionally, Crossroad World Market's selection of specialty products from different cultures makes the market unique and serves the public convenience by providing these specialty beverages in one store. Given these circumstances, staff recommends adoption of the finding that the sale of alcoholic beverages at Crossroad World Market would serve the public convenience or necessity.

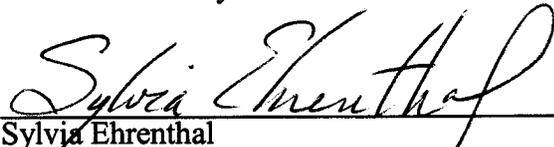
The conditions of approval would assure that public health and safety concerns are addressed with respect to the sale and use of alcoholic beverages at their establishment. No chilled wine or beer would be sold, inventory would be limited to imported specialty wines and beers, floor area shall not exceed 2.5 percent of the floor area, no liquor advertising would be posted, and the hours of operation would be limited to 10 am to 7 pm Monday through Saturday, and 10 am to 5 pm on Sunday. Therefore, staff recommends that the City Council deny the appeal and approve the use permit and variance.

Prepared by:



Carl Emura
Associate Planner

Recommended by:



Sylvia Ehrental
Director of Community and Economic Development

Approved by:

Jesus H. Armas, for

Jesús Armas, City Manager

Attachments: Exhibit A. Appellant's Letter Dated July 1, 2004
Exhibit B. Planning Commission Staff report Dated June 24, 2004
Exhibit C. Planning Commission Meeting Minutes of June 24, 2004
Exhibit D. Findings and Conditions of Approval
Draft Resolution

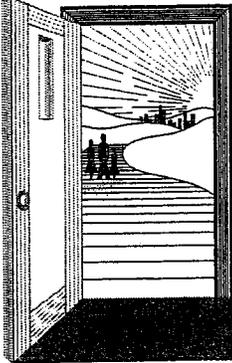
8/25/04

EXHIBIT A
RECEIVED

JUL 02 2004

PLANNING DIVISION

COMMPRE



July 1, 2004

Carl Emura, Associate Planner
Hayward Planning Department
777 B Street
Hayward, CA 94541

Re: **Appeal of Planning Commission decision to allow
PL-2004-0176, Hani Haddad (Applicant)**

22652 Second Street
Hayward, CA 94541
(510) 247-8207
(510) 247-8210 fax



A program of
Horizon Services, Inc.

Dear Mr. Emura,

This represents our appeal of the June 24, 2004 decision of the Planning Commission.

The variance that was granted is in violation of California state law. We are appealing because this application does not meet the criteria of a variance, and it grants the applicant a special privilege.

The Planning Director informed us today that there is a new filing fee of \$50.00. Please let us know how and when to pay the fee.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads 'Linda Pratt'.

Linda A. Pratt, M.A.
Program Director



CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 6/24/04

Agenda Item 1

TO: Planning Commission

FROM: Carl T. Emura, Associate Planner

SUBJECT: Use Permit PI-2004-0176 – Hani Haddad (Applicant/ Owner): Request for New Off-Sale Alcoholic Beverage Outlet Located Less Than 500 Feet from Another Outlet

The Property Is Located at 230 Jackson Street (State Route 92) in the Neighborhood Commercial (CN) District

RECOMMENDATION:

Staff recommends that the Planning Commission find the project is categorically exempt from environmental review and approve the Conditional Use Permit and Variance based on the attached findings and conditions of approval.

DISCUSSION:

Crossroads World Market is a specialty ethnic food store. It carries an assortment of products from 30 different countries and cultures. It is located on the northerly side of Jackson Street (State Route 92), a 6-lane divided highway connecting Downtown with the San Mateo Bridge, in the CN District. It is located easterly of the *State Department of Motor Vehicles* building at Soto Road. Immediately to the west of the site is Morelia Meat Market and to the east is a barber shop. The properties along the opposite side of the street contain a mixture of retail and office commercial uses within the General Commercial (CG) and Commercial Office (CO) Districts. Single-family dwellings, in a Medium-Density Residential (RM) District, are located to the rear of the property.

Crossroads World Market is seeking a use permit to allow it to carry specialty imported wines and beers to complement its unique line of ethnic foods. The store would have a limited display area for these specialty beverages within 192 cubic feet of shelf area (four shelves), representing less than 1 percent of the store's floor area. No chilled alcoholic beverages will be sold and no liquor window advertising for alcoholic beverages would be posted. The store is open 10 am to 7 pm Monday through Saturday, and 10 am to 5 pm on Sunday.

The Zoning Ordinance requires a use permit for new off-sale alcoholic beverage outlets with the exception of specified establishments (large retailers, restaurants and special event functions). It does not allow new off-sale outlets within 500 feet radius of any other alcoholic beverage outlets with the exception of the specified establishments. An off-sale alcoholic beverage outlet, Country Liquors (201 Jackson Street), is located on the southerly side of Jackson Street, across the street (110-foot radius) from Crossroads World Market. In addition, West Lake Restaurant (320 Jackson Street), is located easterly of the market and serves beer and wine as part of its food service.

According to the *State Department of Alcoholic Beverage Control* (ABC), there is an over-concentration of off-sale liquor licenses in the census tract in which this property lies. Its records indicate that there are nine off-sale licenses (includes restaurants) operating where five licenses would be considered appropriate for the population. This census tract extends from the northerly side of Jackson Street to a portion of Sunset Boulevard, and between *BART* to the east and the Union Pacific Railroad tracks to the west. Only one business has an off-sale liquor license along Jackson Street in this census tract, the remaining are on A Street (6) and West Winton Avenue (2).

Previous Application

Crossroad World Market applied for a use permit and variance in January 2002. Staff supported the application because the market is unique and the highway median and width, along with the speed and volume of traffic, created a boundary between the north and south side of Jackson Street/State Route 92. There were no off-sale alcoholic beverage outlets on the north side of Jackson Street serving the westbound traffic and the effective distance, to get from Crossroads World Market to Country Liquor across the street, by car or walking is greater than 500 feet. There were nine off-sale liquor licenses at the time the application was filed. West Coast Meat Market (147 Jackson Street) has subsequently closed. The Hayward Citizens for Responsible Liquor Outlets and the Hayward Police Department supported the project. The applicant also provided 512 signatures of customers who supported his application.

The Planning Commission concurred with staff, and on March 28, 2002, approved (4:1) the use permit and variance application for the reduced separation. The Planning Commissioners who supported the project pointed to the uniqueness of the business, the limitations on the sales (restricted hours, limited display area, and no window advertising) and that Jackson Street separates businesses on either side of the street such that the effective separation between liquor stores exceeds 500 feet.

On May 21, 2002, the City Council overturned (4:3) the Planning Commission decision. City Council Members stated that approval would be inconsistent with the Council's previous actions on similar applications (El Tapatio at A and Grand Streets, and a former Korean market at Foothill Boulevard and Russell Way) and that the store could thrive without alcohol sales.

New Application

The applicant is applying for a use permit to sell specialty imported wine and beers (ABC Type 20 - Off Sale Beer & Wine). The applicant believes that his selection of specialty products from different cultures makes his market unique and serves the public convenience by providing these specialty products in one store. Providing specialty imported wines and beers would only add to the public convenience by making it convenient to purchase both food and drink in one store. Furthermore, The General Plan Economic Development Policies encourages attraction of this type of business. *“Conduct outreach to identify upscale retail (such as bookstores, coffee stores, gourmet food shops, etc.) that could serve the Hayward community, the surrounding region and commuters.”*

The applicant also believes that measures are in place to assure public health and safety with respect to the sale and use of alcoholic beverages. No chilled wine or beer would be sold, inventory would be limited to imported specialty wines and beers, no liquor advertising would be posted, and his hours of operation would be limited to 10 am to 7 pm Monday through Saturday, and 10 am to 5 pm on Sunday.

Staff Analysis

The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming from such uses. The 500-foot radius requirement addresses the quantitative but not the qualitative aspects of a business when determining whether or not to allow another off-sale liquor outlet. The highway provides a special circumstance (physical constraint) supportive of a variance and allows an opportunity to address the qualitative aspect of a business when the public convenience and necessity would be served and that measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages.

Staff believes Crossroads World Market is the type of upscale business the General Plan Policies encourages, it meets the public convenience and necessity requirements, and that measures to assure the public health and safety are provided. The store does not gear itself to sell to the mass market, rather it has a regional draw that brings customers from all over the bay area who are seeking these specialty products in one location. The storage and display of the alcoholic beverages would not encourage immediate consumption in that the product would not be refrigerated, the size of the area designated for display and the range of product available is limited, and the hours of operations are limited. The area of display is limited to a greater degree than has been enforced in other situations; typically, alcoholic beverages may occupy up to 5 percent of the floor area, whereas this store's display will be limited to 2.5 percent. The store never would be open beyond 7:00 pm, eliminating the ability to purchase alcoholic beverages during the evening hours. These factors would serve as built in mechanisms to deter alcohol abuse.

On the other hand El Tapatio did not meet the public convenience and necessity findings in that the products offered at El Tapatio are offered at two other markets on A Street are similar and already have off-sale liquor licenses. In addition, the Police Department reported a high number of service calls related to public consumption of alcohol and public drunkenness in the vicinity of El Tapatio and none associated with the liquor store in the vicinity of Crossroads World Market. Furthermore, Crossroads World Market is located along a major highway and separated some distance from similar establishments, whereas another liquor outlet is located next door to El Tapatio and members of the public (130 individuals) opposed the application of El Tapatio.

It also differs from the former Korean market on Foothill Boulevard in that a Use Permit was not required; it was exempt from the City's Alcoholic Beverage Outlet Regulations, having more than 10,000 square feet in area. The Planning Commission was asked only to make a finding for the Department of Alcoholic Beverage Control (ABC) that allowing the sale of alcoholic beverages at the Korean Market is necessary for the public convenience and welfare. Neither the Commission nor the Council could make a finding that it was necessary for the public convenience and welfare with the saturation of outlets in the downtown area, as there was no mechanism (e.g. use permit) for imposing conditions of approval (such as hours of operation, advertising, packaging) under which the market could operate if it were to sell alcoholic beverages.

Unlike these two markets, Crossroads World Market is a unique market that provides specialty products from 30 countries not found all in one location in Hayward. Residents from surrounding cities and across the bay come to Crossroads World Market because they cannot find the products offered elsewhere. Crossroads World Market offers a unique product line not duplicated elsewhere and allowing for the applicant to include specialty imported wine and beers would only enhance the line and add to the public convenience for residents of Hayward and the region. In staff's opinion, unlike the other markets, the findings for public convenience and necessity can be made for Crossroad World Market. Furthermore, there would be mechanisms to minimize alcohol abuse.

ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, Class 1 Existing Facilities.

PUBLIC NOTICE:

On April 23, 2004, a referral notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records, the Burbank and Jackson Triangle Task Force members and the Hayward Area Planning Association. The Referral Notice provided an opportunity for persons to comment on the project. There were 14 responses opposing another off-sale liquor outlet to the public notice as noted above. On June 14, 2004, a Notice of Public Hearing for the Planning Commission

meeting was mailed. COMMPRE was notified about the hearing and a staff report was sent to them.

CONCLUSION:

Staff believes the 500-foot radius requirement does not address the qualitative aspects of a business when determining whether to allow another off-sale liquor outlet nor the aspect of the regional draw of the business. The location of Crossroads World Market on Jackson Street/Highway 92 provides a special circumstance (physical constraint) in which a pedestrian or vehicle must travel over 500-feet (effective distance) to the nearest Off-Sale Liquor Outlet which provides sufficient grounds for a variance and allows an opportunity to address the qualitative aspect of a business.

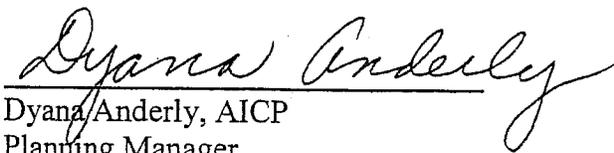
Staff believes this is the type of upscale business the City of Hayward is interested in attracting and retaining. The market is unique, has a regional draw and is not geared to the mass market. The operation of the market provides built-in mechanisms to deter some of the type of alcohol problems the Police Department are concerned about. Therefore staff recommends that the Planning Commission approve the use permit and variance to allow the applicant to provide his patrons the opportunity to purchase imported specialty wines and beers along with the specialty food products from around the world.

Prepared by:



Carl T. Emura, ASLA
Associate Planner

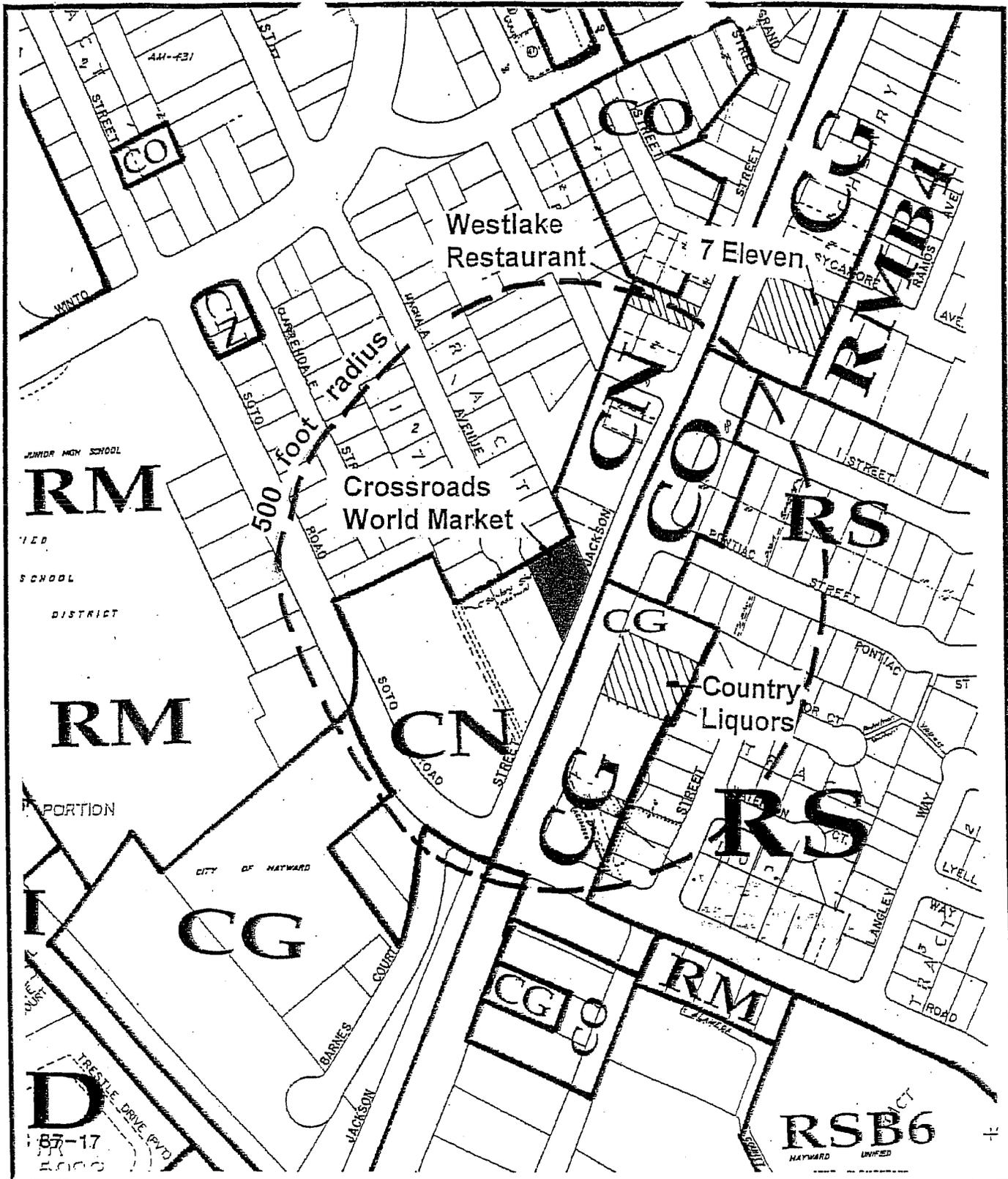
Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Approval
- C. Conditions of Approval
- D. List of Off-Sale Alcohol Licenses within Census Tract 4363
- E. List of Specialty Wines and Beers



Area Map/Map of Alcoholic Beverages

PL-2002-0025 UP

Address: 230 Jackson Street, North

Applicant: Hani Haddad

Owner: Hani Haddad & H. Banejad for Crossroads World Market

FINDINGS FOR APPROVAL
Conditional Use Permit PL-2004-0176
230 Jackson Street
Hani Haddad (Applicant/Owner)
6/24/04

1. The proposed project is Categorical Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, *Existing Facilities*.

Conditional Use Permit:

2. The proposed use is desirable for the public convenience and necessity. Crossroads World Market expands the diversity of uses along Jackson Street and serves both the neighborhood as well as the general public and enhances the character of the surrounding area. Specialty imported beers and wines would complement the specialty foods offered at this market, thereby providing a public convenience.
3. The proposed off-site sales of imported beer and wine at Crossroads World Market would not be detrimental to the public health, safety and general welfare. There are built-in mechanisms in the market's operations that deter the negative aspects associated with the sale of alcohol. The market is oriented to a select audience who are purchasing specialty items not commonly found in the local markets or alcoholic beverage outlets. The market is open for a limited number of hours and only a small area of the market would be devoted to the display of alcoholic beverages. No refrigerated alcoholic beverages will be sold which would discourage immediate consumption.
4. The market is in harmony with the City's policy and the intent and purpose of the CN District regarding the location of new off-sale alcoholic beverage outlets. The sale of alcoholic beverages at Crossroads Market is not proximate to, and will not detrimentally affect, any church, school, playground or park, or recreation center. The adjacent residential uses to the north are accessible from Winton Avenue, and not directly from Jackson Street or this property.
5. The other existing off-sale alcoholic beverage outlet within the 500-foot radius have operated without any criminal incidents.
6. Therefore the proposal should be evaluated considering only outlets on the northerly side of Jackson Street. Based on this interpretation, there would be no alcoholic beverage outlets within 500 feet of Crossroads World Market.

Variance:

7. There are special circumstances applicable to the property in that Jackson Street (State Route 92) provides a physical barrier such that the effective distance to travel by car or foot is greater than 500 feet.
8. The variance does not constitute a grant of a special privilege inconsistent with the limitation upon other properties in the vicinity. The hours of store operation and the floor area allowed for display of alcoholic beverages is limited to a greater degree than other establishments.
9. The approval of this permit will not create an undue concentration of establishments dispensing alcoholic beverages in that the other establishments within 500 feet of the Crossroads Market are located on the southerly side of Jackson Street. The location of the market is unique as Jackson Street (State Route 92) provides a strong barrier separating the properties on either side of the highway, because of the median island and the limited cross access points. Therefore the proposal should be evaluated considering only outlets on the northerly side of Jackson Street. Based on this interpretation, there would be no alcoholic beverage outlets within 500 feet of Crossroads World Market.

CONDITIONS OF APPROVAL
Conditional Use Permit PL-2004-0176
230 Jackson Street
Hani Haddad (Applicant/Owner)
6/24/04

1. Application No. PL-2004-0176 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time an off-sale liquor license has been obtained from the State Department of Alcoholic Beverage Control (ABC) and all conditions of approval have been met, or a time extension of this application is approved.
2. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the expiration date.
3. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
4. There shall be no on-site advertisement of the sale of alcoholic beverages visible from the exterior of the building.
5. Beer, malt beverages and wine coolers in containers of 16 oz. or less shall not be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. Wine shall not be sold in bottles or containers smaller than 750 ml. and wine coolers, beer coolers, or pre-mixed distilled spirit cocktails (if allowed by the license) must be sold in manufacturer pre-packaged multi-unit quantities.
6. Alcoholic beverages shall not be sold in a refrigerated, or otherwise cooled, condition.
7. The sale of products, other than beer and wine, measured by gross receipts on an annual basis, shall exceed the annual sale of beer and wine products, measured by gross receipts. Not more than 2.5 percent of the floor area of the store shall be devoted to the sale, display and storage of alcoholic beverages.
8. The permittee shall prominently post signs inside permittee's premises and adjacent to each entrance/exit door stating that the consumption of alcoholic beverages in public is prohibited by law pursuant to Section 4-2.10 of the Hayward Municipal Code.

9. The permittee and all employees engaged in the dispensing of alcoholic beverages shall attend Responsible Beverage Service training within 6 months of approval of this permit. Any employee hired after this permit is approved shall attend Responsible Beverage Service training within 6 months of his/her date of hire.
10. The operating hours of the market is limited to 10 am to 7 pm Monday thru Saturday, and 10 am to 5 pm Sunday.
11. Two 24-inch box street trees shall be provided along the Jackson Street frontage. Street trees shall be located in the landscape setback rather than adjacent to the street to allow better visibility of oncoming traffic at the driveway. Landscaping shall be provide along the parkway strip down to the east property line with groundcover or shrubs that shall not exceed 30 inches in height.
12. The existing irrigation system shall be restored and converted to an automatic irrigation system. Irrigation heads shall be added to provide complete coverage to all landscape areas without over spraying onto walks, drives or parking areas.
13. All missing, dead and damaged plant material throughout the landscape areas shall be replaced. Groundcover shall be provided to cover the entire landscape area. The two trees adjacent to the building shall be replaced. One tree shall be planted in each of the end caps at the end of the row of parking.
14. Trees shall not be topped or severely pruned at any time. Any trees that are topped or severely pruned shall be replaced with trees of equal caliper to the damaged trees immediately upon notification by the City.
15. Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) Such criminal offense is found to be detrimental to the public health, safety, or general welfare shall be independent grounds for permit revocation.
16. Any violation by the permittee or any employee of the premises of these conditions or of any rule or regulation issued by the Department of Alcoholic Beverage Control or any law concerning the sale and distribution of alcohol is cause for revocation of the permit before the duly authorized review body.

Census Tract 4363 – Off-Sale Liquor Outlets

<u>Licensee/Premise</u>	<u>License Type</u>
Hoang, Thuhang Thi 566 Jackson Street	21
Kim, Byung 370 Winton Avenue	20
Bajwa, Bachan Singh 396 Winton Avenue	21
Hernandez, Guadalupe 112 A Street	20
Bajwa Brothers 210 A Street	21
Singh, Bahadar 218 A Street	20
Villarreal, Ernestina F. 236 A Street	20
Ramirez, Anton 340 A Street	20
Quik Stop Markets, Inc 505 A Street	20

License Types

- 20 OFF SALE BEER & WINE – (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on premises.
- 21 OFF SALE GENERAL – (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold.

List of Specialty Wines and Beers

DIME Group International distributes the following product;

Wines from	Romania	Murfatlar
	Yugoslavia	Vranac Burgundy, Montenegro Chardonnay
	Moldova	Kagor, Muscat
	Georgia	Kindzmarauli, Khvanchkara
	Ukraine	Massandra collection
Beers from	Poland	Tickie Kmicic
	Russia	Baltica
	Ukraine	Obolon
	Yugoslavia	Niksicko Pivo
	Estonia	Saku

These are the current accounts that sell product of DIME in East Bay area:

Frimont – Sousa's Liquor
Walnut Greek - Babushka
Concord - Polsky Delikateski, European Food
San Francisco – Europa Express, New World Market
European Food L.L.C

PUBLIC HEARINGS

1. Use Permit PL-2004-0176 – Hani Haddad (Applicant/Owner) – Request for New Off-Sale Alcoholic Beverage Outlet Located Less Than 500 Feet from Another Outlet – The Project is located at 230 Jackson Street (State Route 92)

Associate Planner Emura described the ethnic food store, Crossroads World Market, and discussed the application for a new off-sale liquor license. He explained that the ABC had determined that there was an over concentration of licenses in the census tract. The applicant believes he should be granted a variance to carry specialty wines and beers to complement the food he carried in the store. Staff agreed to support the variance request since the right-of-way and the median is a physical which requires someone going by foot or car to travel over 500 feet. Associate Planner Emura noted 14 calls opposed to the use permit. Their reasons included over-concentration in the area, unequal treatment for others. He added that Commpre had requested a continuance since they received notification a week before the hearing. However, staff believes that if it were approved or denied, it would probably be appealed to the City Council.

Commissioner McKillop asked what was different in this request from that made in 2002.

Associate Planner Emura said there was virtually no difference.

Chairperson Zermeño asked about the unequal treatment.

Associate Planner Emura explained that there was a concern as to whether the City of Hayward would interpret the concept of physical constraint for other businesses along Jackson Street as a justification for a variance as well.

The public hearing opened at 7:41 p.m.

Hani Haddad suggested that the past two years had seen Hayward change. He said he was happy to see Neumanali open up, since he felt they fall into the same category of specialty wine and beer. He was encouraged by Commpre not appealing an application four or five months ago. He said they work hard to provide convenience and necessity to their customers. The wine and beer are the only two items of the hundreds of things in the store that they provide for their ethnic customers. This is a specialty store. Hayward will soon be the standard in the Bay Area. Soon people will say, "What's good for Hayward will be good for other cities in the Bay Area." He announced that Palo Alto had invited them to bring their store to that city. They will be located on San Antonio. He noted that they are a food market and will not be a liquor store. He commented that liquor stores have nothing but liquor and bottles. He emphasized that they would like the license to provide more convenience for their customers.

Commissioner Sacks said she did go by and look at the store. She asked where the beer and wine would be located.

REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD

Council Chambers

Thursday, June 24, 2004, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

Mr. Haddad suggested it would be against the wall with the chocolates, an alternative would be to locate them among the olives, cheese and crackers but away from the doors and windows.

Commissioner Bogue asked about the square footage in the store, adding that he did speak to Mr. Haddad on the phone and also roamed through the store.

Mr. Haddad said they were shooting for half the amount of space of a normal retail store.

Commissioner McKillop said she had met Mr. Haddad about 20 years ago at Cal State where he had the falafel concession. She commented that the Crossroads Market is an amazing and remarkable place.

Lisa Taylor has known Mr. Haddad a number of years. She said she works in the store as well. Many of the customers give them a lot of feedback. A number of people from throughout the area drive great distances to come to this market. He started from small roots and is customer centered. This market is different. She emphasized his responsibility in maintaining this store saying he would be equally responsible in maintaining the wine and beer sales.

Diane Ferchel asked for this request to be met. She described the variety of foods available. She mentioned Mr. Haddad as an asset to the market and area.

Stephania Widger said she met Mr. Haddad when they were at Cal State and worked with him to keep his falafel stand. She said she has a large family and all their important events call for Greek wine. At this point the nearest outlet is in Modesto. She urged support for this application.

Linda Pratt, director of Commpre, emphasized their 15 years of service to Hayward and Alameda County. She noted that they were not informed of this item until late last week so they were not able to prepare a response. She added that community members were informed in April.

Commissioner McKillop said this application came up in 2002 and were they involved then.

Ms. Pratt said she could not comment since they had not seen this latest application.

Commissioner McKillop said it would most likely be appealed if passed.

Hank Duong, owner of County Liquors market across the street, had his daughter read his statement against the permit. Jackson Street does not create a buffer zone. He argued that Crossroad's Market was too close to his liquor store, emphasizing that the ABC says the census tract is over saturated at this point. One store has closed down but the license is being transferred. He said that imported beer and wine could be substitutable. The market is saturated.

Tony Meshal, a customer of Crossroads who lives in Dublin, said he thought most of the people who shop at Crossroad come there because they are not able find what they want somewhere else. Most of the customers come to find specialty items not carried in other supermarkets. He said he would like to shop for specialty wines from other countries at this store, noting that many families have their own traditions in which they use these.

Jorge Vieytes said he has known Hani Haddad for years. He said he shops at this market because of the prices and the merchandise. As of now, he goes to Trader Joe's in Castro Valley for his wine although he would like to buy his wine at Crossroads in Hayward. This would be totally different from the liquor store. He emphasized that he would not shop at the Country liquor store for various reasons.

Commissioner Bogue asked Mr. Haddad for his thoughts regarding the Hayward Citizens for Responsible Liquor Outlets who asked whether he would be agreeable to their request of no 40 ounce malt liquor be available.

Mr. Haddad said he would agree with that condition, adding that this group is very good about going out into the field and checking on the outlets as to whether they are abiding by the rules. They are very effective and doing a good job for the community.

Chairman Zermeño asked about his selling gallons and cheaper twist-off top wines.

Mr. Haddad said those would not be available in his store. He noted that the prices would also be higher in his store.

The public hearing closed at 8:18 p.m.

Commissioner McKillop then asked staff whether the findings this time were different from two years ago.

Associate Planner Emura said the findings are the same.

Commissioner Sacks responded that the differences are described in the staff report, that there had been a liquor store closure in the area and the comparison with other stores.

Commissioner Sacks **moved**, seconded by Commissioner Bogue, to accept the staff recommendation. Commissioner Bogue asked to include the recommendations outlined in the letter from Hayward Citizens for Responsible Outlets. This was accepted into the motion.

Commissioner Sacks said she was very impressed with the comments made at this hearing. She was sorry Country Liquor is having a slow down in their business. However, she was very impressed with World Market adding that it is clean and nice looking. She believes that these are good people with a good heart. Although she commented that she, herself, does not drink this seems to be a reasonable request.

Commissioner McKillop said it is a wonderful and unique store. Hayward is very lucky to have it. She added that she agreed with the staff findings and would support the motion.



Commissioner Bogue said he agreed with the findings and that this is a unique store. He noted that this application has more conditions and designates a smaller space. There will be no advertising allowed making anyone aware of the alcohol on the premises. He commented on the shape and size of the Census tract noting where the concentration of alcoholic beverage outlets were. He added that this should probably be two tracts, given the size of it.

Chairperson Zermeño said he could not support this application, if this were just another liquor store. This is almost our Trader Joe's. It is unique in Hayward.

The motion carried by the following vote:

AYES:	COMMISSIONERS Sacks, McKillop, Bogue CHAIRPERSON Zermeño
NOES:	None
ABSENT:	Thnay, Fraas, One Vacancy
ABSTAIN:	None

2. **Appeal of the Planning Director's Denial of Variance No. PL-2004-0117 – Dindo and Glenda Lahip (Applicants/Owners) – Request for a Variance to Allow a 3-Foot 8-Inch Side Yard for a Patio Room Addition Where a 5-Foot Setback is Required – The Project is Located at 881 Saint Bede Lane**

Assistant Planner Koonze described the property noting its similarity to others in the area. He commented on an illegal room addition already on the property. He described the various illegalities of the present addition. The application was denied by the Planning Director on April 9. There is no special circumstance to justify the appeal.

The public hearing was opened at 8:30 p.m.

Dindo Lahip said he bought the house six years ago. At that time, he believed a permit had been issued to the former owner when the patio room was built. He enclosed the room and regrets that he did not apply for the proper permits. After the denial of the variance, he went through his neighborhood to see whether there were others with similar setback violations. He had pictures of a number of other violations in his area. He noted that he had made no substantial changes to the patio from that of the previous owner. He asked for reconsideration.

Commissioner Sacks asked what the pictures show.

Mr. Lahip explained that they are all similar setback violations to his property.

Chairperson Zermeño asked how difficult it would be to install a window to the outside to have the existing bedroom conform to UBC regulations.

FINDINGS FOR APPROVAL
Conditional Use Permit PL-2004-0176
Variance PL-2004-0207
230 Jackson Street
Hani Haddad (Applicant/Owner)
6/24/04

1. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, *Existing Facilities*.

Conditional Use Permit:

2. The proposed use is desirable for the public convenience and necessity. Crossroads World Market expands the diversity of uses along Jackson Street and serves both the neighborhood as well as the general public and enhances the character of the surrounding area. Specialty imported beers and wines would complement the specialty foods offered at this market, thereby providing a public convenience.
3. The proposed off-site sales of imported beer and wine at Crossroads World Market would not be detrimental to the public health, safety and general welfare. There are built-in mechanisms in the market's operations that deter the negative aspects associated with the sale of alcohol. The market is oriented to a select audience who are purchasing specialty items not commonly found in the local markets or alcoholic beverage outlets. The market is open for a limited number of hours and only a small area of the market would be devoted to the display of alcoholic beverages. No refrigerated alcoholic beverages will be sold which would discourage immediate consumption.
4. The market is in harmony with the City's policy and the intent and purpose of the CN District regarding the location of new off-sale alcoholic beverage outlets. The sale of alcoholic beverages at Crossroads Market is not proximate to, and will not detrimentally affect, any church, school, playground or park, or recreation center. The adjacent residential uses to the north are accessible from Winton Avenue, and not directly from Jackson Street or this property.
5. The other existing off-sale alcoholic beverage outlet within the 500-foot radius have operated without any criminal incidents.
6. Therefore the proposal should be evaluated considering only outlets on the northerly side of Jackson Street. Based on this interpretation, there would be no alcoholic beverage outlets within 500 feet of Crossroads World Market.

Variance:

7. There are special circumstances applicable to the property in that Jackson Street (State Route 92) provides a physical barrier such that the effective distance to travel by car or foot is greater than 500 feet.
8. The variance does not constitute a grant of a special privilege inconsistent with the limitation upon other properties in the vicinity. The hours of store operation and the floor area allowed for display of alcoholic beverages is limited to a greater degree than other establishments.
9. The approval of this permit will not create an undue concentration of establishments dispensing alcoholic beverages in that the other establishments within 500 feet of the Crossroads Market are located on the southerly side of Jackson Street. The location of the market is unique as Jackson Street (State Route 92) provides a strong barrier separating the properties on either side of the highway, because of the median island and the limited cross access points. Therefore the proposal should be evaluated considering only outlets on the northerly side of Jackson Street. Based on this interpretation, there would be no alcoholic beverage outlets within 500 feet of Crossroads World Market.

CONDITIONS OF APPROVAL
Conditional Use Permit PL-2004-0176
Variance PL-2004-0207
230 Jackson Street
Hani Haddad (Applicant/Owner)
6/24/04

1. Application No. PL-2004-0176/PL-2004-0207 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time an off-sale liquor license has been obtained from the State Department of Alcoholic Beverage Control (ABC) and all conditions of approval have been met, or a time extension of this application is approved.
2. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the expiration date.
3. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
4. There shall be no on-site advertisement of the sale of alcoholic beverages visible from the exterior of the building.
5. Beer, malt beverages and wine coolers in containers of 16 oz. or less shall not be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. Wine shall not be sold in bottles or containers smaller than 750 ml. and wine coolers, beer coolers, or pre-mixed distilled spirit cocktails (if allowed by the license) must be sold in manufacturer pre-packaged multi-unit quantities. Fortified and/or malt beverages in 40 oz. containers shall not be sold at the store.
6. Alcoholic beverages shall not be sold in a refrigerated, or otherwise cooled, condition.
7. The sale of products, other than beer and wine, measured by gross receipts on an annual basis, shall exceed the annual sale of beer and wine products, measured by gross receipts. Not more than 2.5 percent of the floor area of the store shall be devoted to the sale, display and storage of alcoholic beverages.
8. The permittee shall prominently post signs inside permittee's premises and adjacent to each entrance/exit door stating that the consumption of alcoholic beverages in public is prohibited by law pursuant to Section 4-2.10 of the Hayward Municipal Code.

9. The permittee and all employees engaged in the dispensing of alcoholic beverages shall attend Responsible Beverage Service training within 6 months of approval of this permit. Any employee hired after this permit is approved shall attend Responsible Beverage Service training within 6 months of his/her date of hire.
10. The operating hours of the market is limited to 10 am to 7 pm Monday thru Saturday, and 10 am to 5 pm Sunday.
11. Two 24-inch box street trees shall be provided along the Jackson Street frontage. Street trees shall be located in the landscape setback rather than adjacent to the street to allow better visibility of oncoming traffic at the driveway. Landscaping shall be provide along the parkway strip down to the east property line with groundcover or shrubs that shall not exceed 30 inches in height.
12. The existing irrigation system shall be restored and converted to an automatic irrigation system. Irrigation heads shall be added to provide complete coverage to all landscape areas without over spraying onto walks, drives or parking areas.
13. All missing, dead and damaged plant material throughout the landscape areas shall be replaced. Groundcover shall be provided to cover the entire landscape area. The two trees adjacent to the building shall be replaced. One tree shall be planted in each of the end caps at the end of the row of parking.
14. Trees shall not be topped or severely pruned at any time. Any trees that are topped or severely pruned shall be replaced with trees of equal caliper to the damaged trees immediately upon notification by the City.
15. Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) Such criminal offense is found to be detrimental to the public health, safety, or general welfare shall be independent grounds for permit revocation.
16. Any violation by the permittee or any employee of the premises of these conditions or of any rule or regulation issued by the Department of Alcoholic Beverage Control or any law concerning the sale and distribution of alcohol is cause for revocation of the permit before the duly authorized review body.

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 04-

Introduced by Council Member _____

Mal
8/23/04

RESOLUTION DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF USE PERMIT/VARIANCE PL-04-0176/0207

WHEREAS, Crossroads World Market first applied for a use permit and variance in January 2002 which was approved by the Planning Commission on March 28, 2002, and overturned by the City Council on May 21, 2002; and

WHEREAS, Crossroads World Market is reapplying for a use permit and variance to allow it to carry wine and beer to complement its unique line of ethnic foods which was approved by the Planning Commission on June 24, 2004; and

WHEREAS, the City received an appeal from Community Prevention of Alcohol Related Problems (CommPre) stating that although it has expressed its support of the sale of alcoholic beverages at Crossroads World Market the granted variance does not meet the criteria of a variance, and grants the applicant a special privilege; and

WHEREAS, the City Council of the City of Hayward hereby finds and determines:

1. The proposed project is Categorical Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15301, Existing Facilities.

Conditional Use Permit

2. The proposed use is desirable for the public convenience and necessity. Crossroads World Market expands the diversity of uses along Jackson Street and serves both the neighborhood as well as the general public and enhances the character of the surrounding area. Specialty imported beers and wines would complement the specialty foods offered at this market, thereby providing a public convenience.
3. The proposed off-site sales of imported beer and wine and Crossroads World Market would not be detrimental to the public health, safety and general welfare. There are built-in mechanisms in the market's operations that deter the negative aspects associated with the sale of alcohol. The market is oriented to a select audience who are purchasing specialty items not commonly found in the

local markets or alcoholic beverage outlets. The market is open for a limited number of hours and only a small area of the market would be devoted to the display of alcoholic beverages. No refrigerated alcoholic beverages will be sold which would discourage immediate consumption.

4. The market is in harmony with the City's policy and intent and purpose of the CN District regarding the location of new off-sale alcoholic beverage outlets. The sale of alcoholic beverages at Crossroads Market is not proximate to, and will not detrimentally affect, any church, school, playground or park, or recreation center. The adjacent residential uses to the north are accessible from Winton Avenue, and not directly from Jackson Street or this property.
5. The other existing off-sale alcoholic beverage outlet within the 500-foot radius have operated without any criminal incidents.
6. The proposal should be evaluated considering only outlets on the northerly side of Jackson Street. Based on this interpretation, there would be no alcoholic beverage outlets within 500 feet of Crossroads World Market.

Variance

7. There are special circumstances applicable to the property in that Jackson Street (State Route 92) provides a physical barrier such that the effective distance to travel by car or on foot is greater than 500 feet.
8. The variance does not constitute a grant of special privilege inconsistent with the limitation upon other properties in the vicinity. The hours of store operation and the floor area allowed for display of alcoholic beverages is limited to a greater degree than other establishments.
9. The approval of this permit will not create an undue concentration of establishments dispensing alcoholic beverages in that the other establishments within 500 feet of the crossroads Market are located on the southerly side of Jackson Street. The location of the market is unique as Jackson Street (State Route 92) provides a strong barrier separating the properties on either side of the highway, because of the median island and the limited cross access points. Therefore the proposal should be evaluated considering only outlets on the northerly side of Jackson Street. Based on this interpretation, there would be no alcoholic beverage outlets within 500 feet of Crossroads World Market.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the appeal of the Planning Commission's approval of Use Permit/Variance Application No. PL-04-0176/0207, regarding the request to allow an off-sale alcoholic beverage outlet less than 500 feet from another outlet is denied, and the Planning Commission's approval of the project is upheld subject to the attached conditions of approval.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward