

#### THE CITY OF SAN DIEGO

#### REPORT TO THE HEARING OFFICER

HEARING DATE: September 16, 2015

REPORT NO. HO-15-113

ATTENTION:

Hearing Officer

SUBJECT:

HIRMEZ APPLETREE ALCOHOL CUP / NDP

PROJECT NUMBER: 406797

LOCATION:

4976 Newport Avenue

APPLICANT:

William Holcomb

#### **SUMMARY**

<u>Issue(s)</u>: Should the Hearing Officer approve a Conditional Use Permit to allow the operation of an alcohol and beverage outlet for the sale of beer and wine for off-site consumption within a proposed market and a Neighborhood Development Permit to resume the retail/commercial use with previously conforming parking for a site located at 4876 Newport Avenue within the Ocean Beach Community Plan area?

<u>Staff Recommendation</u> - **APPROVE** Neighborhood Development Permit No. 1497820 and Conditional Use Permit No. 1430940.

<u>Community Planning Group Recommendation</u> – On June 03, 2015, the Ocean Beach Planning Board voted 11-0-0 to recommend approval of the project with conditions. Please reference the Discussion section of the report (Attachment 10).

Environmental Review: The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section (15301 – Existing Facilities). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on 08/11/2015, and the opportunity to appeal that determination ended 08/25/2015 (Attachment 8).

#### **BACKGROUND**

The project proposes a Conditional Use Permit for an alcohol beverage outlet, a transfer of an existing Type 21 liquor license, to allow the sales of alcoholic beverages within a 7,324-square-foot proposed grocery store. The 0.321-acre site is zoned CC-4-2 zone and located within the Coastal Overlay Zone and the Parking Impact Overlay zone. The site is designated as Community Commercial within the Ocean Beach Precise Plan and Local Coastal Program. , The CC-4-2 zone allows for commercial and retail developments by right. Documentation submitted by the applicant concluded that the property was originally built in 1961 as a bank and the project site has overseen different uses within the same commercial/retail category over the years. Additionally, staff has established that previously existing commercial/retail uses have been abandoned for more than 2 years.

The project proposes a tenant improvement to convert the vacant space to a market, and to maintain the existing parking spaces. The site is currently deficient in parking based on current standards. Due to the project's location within the Parking Impact Overlay Zone, and, the fact that the previously existing uses have been vacated for more than 2 years, a Neighborhood Development Permit is sought to assert previously conforming rights to maintain the existing parking pursuant to 142.0510(d)(4), 142.0510(d)(5), 143.0303, 143.0305 and 143.0375 of the SDMC.

The remodeled commercial space includes 7,324 square feet of grocery area and 2,166 square feet of office space accessory to the market. Beer, wine, and specialty foods would be sold in the grocery store area. No expansion is proposed with the project. To the north, east, and south are additional retail and commercial services that are oriented towards pedestrians- both local residents and tourists. To the west, commercial uses prevail.

#### **DISCUSSION**

The project proposes a Conditional Use Permit for a Type 21 liquor license. Sales of alcohol would be limited between 6:00 a.m. and 12:00 a.m each day of the week. (Store Hours proposed for the grocery store are 8:00 a.m to 10:00 p.m. Monday through Saturday, and 9:00 a.m. to 9:00 p.m. Sunday.) The Conditional Use Permit includes 20 year expiration.

The pending Alcohol Beverage Control (ABC) license (Type 21) is defined as "off sales" which would require retail sales of alcohol sold at the market to be consumed off the premises. Alcoholic beverage outlets are permitted by right as a "Limited Use" pursuant to SDMC section 141.0502(b) of the Land Development Code (LDC). A limited Use may be permitted by right in the zone if the alcohol beverage outlet meets all of the development regulations and location criteria of a separately regulated use. Alcoholic beverage outlets that do not comply with the location criteria of this section may still be permitted with a Conditional Use Permit pursuant to SCMC section 141.0502(c). Section 141.0502(b) determines when the limited 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 limited 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 California Business and Professional Code section 23958.4;
- Within a Redevelopment Area.
- Within 600 feet of a public or private accredited school, a public park, playground or recreational area, a church, hospital or a San Diego County Welfare District Office.
- Within 100 feet of residentially zoned property.

A Conditional Use Permit is required for the subject project because the property is located within 600 feet of the Ocean Beach Park and Recreation Center.

The San Diego Police Department (SDPD) has recommended approval of the requested Conditional Use Permit to allow the sale of alcohol of off-site consumption at this location. Their support for this request is based on several factors including the commercial location of the site. The site contains multiple commercial uses and is highly visible from the public right-of way where access by law enforcement is not restricted. The proposed alcohol beverage outlet was found to not be detrimental to the public health, safety, and welfare of the community and the city. Requirements within the draft permit include restriction for hours of alcohol sales, lighting requirements, and sign requirements. All Police Department conditions have been added to the draft permit (Attachment 5, Police Department Requirements).

#### **Project Issue**

#### **Neighborhood Development Permit**

The project proposes a Neighborhood Development Permit to resume a discontinued use with previously conforming parking pursuant to SDMC Section 142.0510 (d)(5). As described above, as the project site is located within the Parking Impact Overlay Zone, a Neighborhood Development Permit is required to assert previously conforming rights to existing parking. Currently, 24 parking spaces would be required for the parking.

The site has 11 existing parking spaces adjacent to the building, accessed from Newport Avenue.

#### **Community Plan Analysis**

The Ocean Beach Precise Plan recommends moving toward a more pedestrian orientation along Newport Avenue, with an emphasis on reducing vehicle and pedestrian incidents. A specific goal of the Community Plan is to discourage automobile use for shorter intra-community trips through the encouragement of public transit, bicycle, and pedestrian traffic. The project would convert 1 space to an accessible space, provide accessibility improvements to the site (striping and signage), and include bicycle parking areas. These improvements will benefit the community by increasing the visibility of pedestrian pathways and orienting the project towards a more pedestrian and bicycle orientation, while discouraging automobile use. The recommendations of the Community Plan include the provision of commercial services to ensure

the availability of a full range of consumer goods and services to meet the needs of the public. Resuming the use of a grocery store would meet those goals of the Community Plan.

#### **Community Planning Group Vote**

The Ocean Beach Community Planning group recommended approval of the project with conditions (Attachment 10). The minutes reference the San Diego Police Department's Petition for Conditional Licens which contain draft conditions and recommendations of approval. All of these items have been included in the draft permit. Staff and the applicant are in agreement with each of these conditions and recommendations.

#### **ALTERNATIVES**

- 1. **Approve** Neighborhood Development Permit No. 1497820 and Conditional Use Permit No. 1430940, with modifications.
- 2. **Deny** Neighborhood Development Permit No. 1497820 and Condition Use Permit No. 1430940, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

Francisco Mendoza, Development Project Manager

#### Attachments:

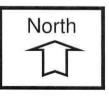
- 1. Aerial Photograph
- 2. Community Plan Land Use Map
- 3. Project Location Map
- 4. Draft Permit with Conditions
- 5. Draft Permit Resolution with Findings
- 6. SDPD Recommendations
- 7. Environmental Exemption
- 8. Project Plans
- 9. Community Planning Group Recommendation and Attachment
- 10. Ownership Disclosure Statement





## **Location Aerial Photo**

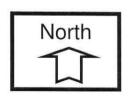
Hirmez Appletree Alcohol CUP / NDP 4976 Newport Ave. Project No. 406797

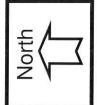




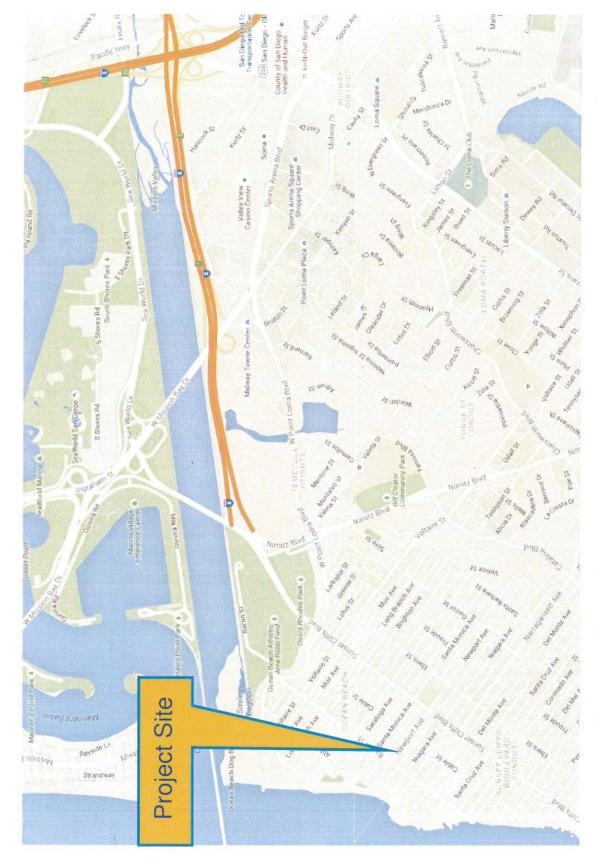
## Land Use Map

Hirmez Appletree Alcohol CUP / NDP 4976 Newport Ave. Project No. 406797











# Project Location Map

Hirmez Appletree Alcohol CUP / NDP 4976 Newport Ave. Project No. 406797

#### RECORDING REQUESTED BY

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

PROJECT MANAGEMENT PERMIT CLERK MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**INTERNAL ORDER NUMBER: 24005544** 

# CONDITIONAL USE PERMIT NO. 1430940 AND NEIGHBORHOOD DEVELOPMENT PERMIT NO. 1497820 HIRMEZ ALCOHOL CUP / NDP PROJECT NO. 406797 HEARING OFFICER

This Conditional Use Permit No. 1430940 and Neighborhood Development Permit No. 1497820 is granted by the Hearing Officer of the City of San Diego to HB NEWPORT LLC, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0305 and 126.0404. The 0.321-acre site is located at 4976 Newport Avenue in the CC-4-2 zone of the Ocean Beach Precise Plan and Local Coastal Program, the Coastal Overlay Zone and the Parking Impact Overlay Zone. The project site is legally described as: Lots 5,6,7 & 8, Block 60 according to Map 5730.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to resume a discontinued use (commercial / retail) with previously conforming off-street parking within the Parking Impact Overlay Zone and to operate an alcoholic beverage outlet conditioned upon the issuance of a 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 September 16, 2015, on file in the Development Services Department.

The project shall include:

- a. Operation of an alcoholic beverage outlet for the sale of beer and wine for off-site consumption within a proposed grocery market conditioned upon the issuance/transfer of a Type 21 license from the State Department of Alcoholic Beverage Control;
- b. Resumption of a discontinued use (commercial / retail) with previously conforming offstreet parking within the Parking Impact Overlay Zone.

#### 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 October 1, 2018.
- 2. This Conditional Use Permit [CUP] and corresponding use of this site shall expire on October 1, 2035.
- 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/Permittee 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. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
- 11. 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/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(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.

12. 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.

#### PLANNING/DESIGN REQUIREMENTS:

13. Owner/Permittee shall maintain a minimum of eleven (11) off-street parking spaces on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

- 14. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.
- 15. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

#### POLICE DEPARTMENT REQUIREMENTS:

- 16. The sales of alcoholic beverage shall be permitted between the hours of 6:00 a.m. and 12:00 a.m. Midnight each day of the week.
- 17. Exterior advertising of alcoholic beverages, or interior advertising of alcoholic beverages that is visible from the exterior of the premises shall be prohibited.
- 18. The Owner/Permittee shall post and maintain a professional quality sign facing the premises parking lot 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.

#### POLICE DEPARTMENT RECOMMENDATIONS FOR ABC LICENSE:

- The sale of distilled spirits in containers less than 375 milliliters is prohibited.
- Wine shall not be sold in containers of less than 750 milliliters, with the exception of wine coolers, beer coolers, or pre-mixed distilled spirit cocktails must be sold in four-pack containers or more per sale.
- Beer, Malt beverages and Wine coolers in containers of 16 ounces or less cannot be sold in single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.
- Wine shall not be sold with an alcoholic content greater than 15 percent by volume except for "Dinner Wines" which have been aged two years or more.

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

APPROVED by the Hearing Officer of the City of San Diego on September 16, 2015 and [Approved Resolution Number].

#### **ATTACHMENT 4**

Conditional Use Permit No.: 1430940
Neighborhood Development Permit No.: 1497820
Date of Approval: 09-16-2015

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Francisco Mendoza
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.

HB Newport LLC Owner

By Saad Hirmez
TITLE

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

# HEARING OFFICER RESOLUTION NO. XXXXXX CONDITIONAL USE PERMIT NO. 1430940/ NEIGHBORHOOD DEVELOPMENT PERMIT NO. 1497820 HIRMEZ ALCOHOL CUP/NDP PROJECT NO. 406979

WHEREAS, HB NEWPORT LLC, Owner/Permittee, filed an application with the City of San Diego for a permit to resume a discontinued use (commercial/retail) with previously conforming parking. and to operate an alcoholic beverage outlet (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit Nos. 1430940 and 1497820), on portions of a 0.321-acre site;

WHEREAS, the project site is located at 4976 Newport Avenue in the CC-4-2 Zone, Coastal Overlay Zone, Parking Impact Overlay Zone, within the Ocean Beach Precise Plan and Local Coastal Program;

WHEREAS, the project site is legally described as Lots 5,6,7 & 8, Block 60 according to Map 5730;

WHEREAS, on September 16, 2015, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 1430940 and Neighborhood Development Permit No. 1497820 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on August 11, 2015, 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 (Existing Facilities) 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 September 16, 2015.

#### Neighborhood Development Permit (NDP) - Section 126.0404

#### a.) The proposed development will not adversely affect the applicable land use plan;

The proposed project is the resumption of a discontinued use on a premise with previously conforming parking spaces. The site is located within the CC-4-2 Zone, the Coastal Overlay Zone and the Parking Impact Overlay Zone within the Ocean Beach Precise Plan and Local Coastal Program (OBPP). The development proposes a 7,324-square-foot grocery store within an existing building where the previous business, a financial institution use (bank), had been discontinued for more than 2 years. The project would establish a commercial use (market) within the existing building. The premises provides 11 parking spaces where current regulations require 24 spaces. A bank and a market are within the same use category ("retail sales/commercial services") pursuant to the General Parking Regulations of the Land Development Code Section 142.0530, Table 142-05E, therefore requiring the same number of parking spaces. Documentation submitted to establish the previous uses includes building records and Business Tax Certificates. As such, the premise may maintain the previously conforming right to reduced parking spaces. Within the Parking Impact Overlay Zone, if a use has been discontinued for a period of 2 or

more consecutive years, and the new use is proposed within the same use category, current parking standards must apply unless a Neighborhood Development Permit is approved pursuant to Land Development Code Section 142.0510 (d)(2)(4) to allow a reduction in spaces The project proposes to maintain the existing parking spaces and convert one space to an accessible parking space.

The site is designated for Community Commercial uses within the OBPP which allows commercial developments and related uses specifically tailored to the Ocean Beach community. The site is also located within an area identified as the "Newport Center" of the OBPP, a focal point of commercial activity and convenience center. The proposed food market provides a centrally located grocery store specifically tailored for the local residents of the Ocean Beach Community.

The recommendations of the OBPP include the provision of commercial services to ensure the availability of a full range of consumer goods and services to meet the needs of the public, while also minimizing the impact of vehicles upon pedestrians and upon the overall movement of traffic. A specific goal of the OBPP is to discourage automobile use for shorter intra-community trips through the encouragement of public transit, bicycle, and pedestrian traffic. The applicant will convert 1 space to a handicap accessible space; provide accessibility improvements to the site (striping and signage), and include bicycle parking areas. The location of the project is also less than 1 block west of two bus stops. By resuming the use with previously conforming parking, the intent of the OBPP goals and recommendations are met. Therefore, the proposed development will not adversely affect the applicable land use plan.

#### b.) The proposed development will not be detrimental to the public health, safety, and welfare;

The proposed project is the resumption of a discontinued use on a premise with previously conforming parking spaces. The site is located within the CC-4-2 Zone, the Coastal Overlay Zone and the Parking Impact Overlay Zone. The development proposes a 7,324-square-foot grocery store within an existing building where the previous business, a financial institution use (bank), had been discontinued for more than 2 years. The project would establish a commercial use (market) within the existing building. The premises provides 11 parking spaces where currently 24 spaces would be required.

No expansion to the floor area is proposed to the existing building. The existing site has been vacant for over 2 years and the proposed tenant improvement will revitalize the site by creating a grocery/food market catered to the local Ocean Beach Community with site improvements that include a handicap accessible parking space, striping and signage, accessible pathways, and bicycle parking. The project was determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15301 (Existing Facilities). All proposed improvements plans will be reviewed prior to issuance of construction permits and inspected during construction to assure the project will meet or exceed all relevant and applicable building, electrical, mechanical, plumbing, and fire codes. Therefore, the proposed development will not be detrimental to the public health, safety, and welfare.

# c.) The proposed development will comply with the applicable regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code.

The project proposes a tenant improvement to allow a market to be established within an existing vacant building. The existing uses within the building were abandoned and the resumed use proposed is within the same use category of the original use. The proposal is an allowable use in the CC-4-2 Zone, and will not adversely affect the Ocean Beach Precise Plan and Local Coastal Plan's Community Commercial designation as described above in

Neighborhood Development Finding No. 1. No deviations are requested. Therefore, the proposed development is consistent with the Land Development Code.

#### Conditional Use Permit (CUP) - Section 126.0305:

#### (a) The proposed development will not adversely affect the applicable land use plan;

The development proposes an alcohol beverage outlet to sell beer and wine through the transfer of an existing Type 21 alcohol beverage license within a proposed 7,324-square-foot grocery store. The site is designated for Community Commercial uses within the Ocean Beach Precise Plan and Local Coastal Program, which allow commercial developments and related uses specifically tailored to the Ocean Beach community, such as convenience goods, financial and personal services, automotive service, variety store items, hardware, apparel, food, and specialty items. The site is also within an area identified as the "Newport Center" in the OBPP, a focal point of commercial activity and convenience center.

The recommendations of the OBPP include the provision of commercial services to ensure the availability of a full range of consumer goods and services to meet the needs of the public. The OBPP does not contain recommendations for alcohol beverage outlets. The addition of another product type, supplementary to the market, may facilitate additional sales at this small business location. The proposed addition of off sale beer and wine to this food market may assist in facilitating the General Plan goal and recommendation to promote business vitality and small business enterprises. Therefore, the proposed development will not adversely affect the applicable land use plan.

#### (b) The proposed development will not be detrimental to the public health, safety, and welfare;

The proposed project is a Conditional Use Permit to allow the sales of beer and wine within a proposed market located at 4976 Newport Avenue in the CC-4-2 Zone within the Ocean Beach Precise Plan and Local Coastal Program. A market is an allowable use within the zone and consistent with the Community Commercial land use designation as outlined in Conditional Use Permit Finding No. 1

The proposed development to allow off-sale general liquor has been determined to serve a public convenience or necessity by the San Diego Police Department (SDPD). Required conditions and recommendations to the California State Department of Alcoholic Beverage Control within the Permit include limitations on the hours of operation, quantity size of single containers of beer or malt beverages, restrictions on the sale of distilled spirits. Additional permit conditions provide for signs to restrict loitering and provisions to maintain the property in a neat and orderly fashion. The SDPD Vice Unit will work with the Permittee and the Department of Alcoholic Beverage Control to place additional conditions on the license to minimize law enforcement concerns, if necessary. In addition, the existing convenience store must abide by all Federal, State, and Local codes related to alcohol beverage sales. Therefore, the project will not be detrimental to the public health, safety, and welfare.

# (c) The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code; and

The project proposes an alcoholic beverage outlet to allow off-sale beer and wine within a proposed grocery store. Conditions include restrictions on hours of operation, illumination to the parking lot, and limitations on the size and packaging of beer, wine, and liquor. Additional permit conditions provide for signs to restrict loitering and provisions to maintain the property in a neat and orderly fashion. No variance or deviations

are requested as a part of this application. Therefore, the proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code.

#### (d) The proposed use is appropriate at the proposed location.

The proposed alcoholic beverage outlet to allow off-sale general liquor is a supplementary item to the proposed grocery store and would serve a local and regional public convenience. The site has been vacant for more than 2 years, and the proposed market will visually enhance the site by providing accessible site improvements; lighting, litter, and nuisance abatement; and other conditions that establishes a small business consistent with other small business establishments in the area. Therefore, with the various conditions and referenced exhibits within the permit, the proposed use is appropriate at the proposed location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer Conditional Use Permit No. 1430940 and Neighborhood Development Permit No. 1497820 are hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 1430940 and 1497820, a copy of which is attached hereto and made a part hereof.

Francisco Mendoza Development Project Manager Development Services

Adopted on: September 16, 2015

SAP Number: 24005544

# SAN DIEGO POLICE DEPARTMENT CONDITIONAL USE PERMIT RECOMMENDATION

PREMISE ADDRESS:	4976 Newport Avenue			
TYPE OF BUSINESS:	Convenience Market			
FEDERAL CENSUS TRACT:	75.02			
NUMBER OF ALCOHOL LICENSES	ALLOWED:	3		
NUMBER OF ALCOHOL LICENSES	EXISTING:	4 (Over-Concentrated)		
CRIME RATE IN THIS CENSUS TRA (Note: Considered High Crime If Exce		299.6% vide Average)		
THREE OR MORE REPORTED CRIMES AT THIS PREMISE WITHIN PAST YEAR ☐ YES ☐				⊠ NO
IS THE PREMISE WITHIN 600 FEET OF INCOMPATIBLE FACILITY				□ NO
IS THE PREMISE WITHIN 100 FEET	OF RESIDENTIA	LLY ZONED PROPERTY	☐ YES	⊠ NO
ABC LICENSE REVOKED AT THIS PREMISE WITHIN PAST YEAR ☐ YES ☐ NO				
HAS APPLICANT BEEN CONVICTED OF ANY FELONY ☐ YES ☒ N				⊠ 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 Conditional Use Permit for a Convenience Market with a Type 21 Off-Sale General license at 4976 Newport Avenue.				
Between 01/01/2014 to 12/31//2014, there were 46 calls for service at the location. There was 1 arrest and 1 crime case at the location and there were 206 arrests and 196 crime cases within a 0.2-mile radius of the location in 2014. There were also 462 alcohol related arrests in this census tract in 2014.				
The San Diego Police Department will support the issuance of this Type-21 license with the following conditions.				

#### SUGGESTED CONDITIONS:

- 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. The sale of distilled spirits in containers less than 375 ml. is prohibited.
- 3. Beer, Malt beverages and Wine coolers in containers of 16 ounce or less cannot be sold in 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 coctails must be sold in manufacturer pre-packaged multi-unit quantities.
- 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.
- 6. 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.

SAN DIEGO POLICE DEPART	TMENT RECOMMENDATION:
APPROVE_X_	DENY
ROBERT STIMSON  Name of SDPD Vice Sergeant (Print)	(619) 531- 2282 Telephone Number
Signature of SDPD Vice Sergeant	Date of Review

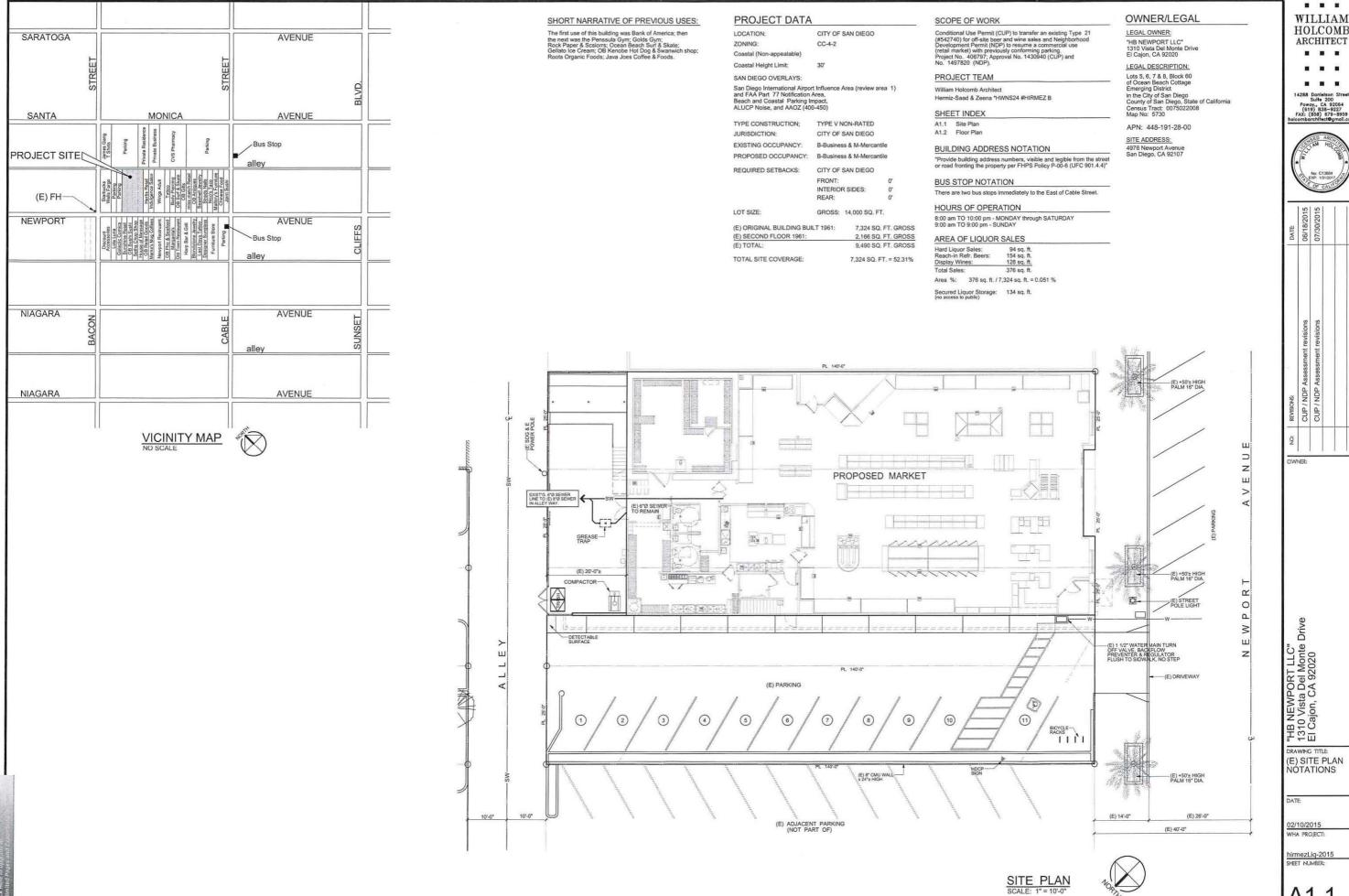
#### NOTICE OF EXEMPTION

(Check one or both)				
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 DIEGO DEVELOPMENT SERVICES DEPARTMENT 1222 FIRST AVENUE, MS 501 SAN DIEGO, CA 92101		
PROJECT TITLE/ NO.: HIRMEZ APPLETREE CUP/NDP / 406797				
PROJECT LOCATION-SPECIFIC: 4976 Newport Avenue, San Diego	, California	92107		
PROJECT LOCATION-CITY/COUNTY: San Diego/San Diego				
DESCRIPTION OF NATURE AND PURPOSE OF THE PROJECT: A CONDITION DEVELOPMENT PERMIT to transfer an existing Type 21 ABC licensubject site, a proposed grocery store. The project site is currently develouilding. A Neighborhood Use Permit is required to resume the retail/Parking Impact Overlay Zone. The proposed hours of operation are M from 9:00am to 9:00pm. There is a concurrent process in review for a under PTS 394465. The 0.321 acre site is located at 4976 Newport Avcommunity commercial per the community plan. Additionally, the proprecise Plan and the Local Coastal Program. The Overlay Zones that in Federal Aviation Administration Part 77 Notification Area, Coastal He Parking Impact, Airport Land Use Compatibility Plan Noise, and Airport 5, 6, 7, & 8, Block 60 according to Map No. 5730.)	reloped with commercial londay throu Change of Urenue. The loject site is long map on site a sight, City C	coholic beverages for off-site consumption to the an existing 9,490 square-foot two-story retail a use with previously conforming parking within the 19th Saturday from 8:00am to 10:00pm, and Sunday and Tenant Improvement for a Building Permit land use designation for the project site is located within the CC-4-2 zone in the Ocean Beach are Airport Influence Area (Review Area 1), and coastal Non-Appealable Area 2, Beach and Coastal		
Name of Person or Agency Carrying Out Project: William Hold (619) 957-9000	comb, 1310	Vista Del Monte Drive, El Cajon, California 92020,		
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))  (X) CATEGORICAL EXEMPTION: 15301 (EXISTING FACILITIES)  ( ) STATUTORY EXEMPTIONS:				
REASONS WHY PROJECT IS EXEMPT: The City of San Diego conducted an environmental review which determined the project would not have the potential for causing a significant effect on the environment in that the project is consistent with the community plan and the applicable zone. The project would not result in any significant environmental impacts. The project meets the criteria set forth in CEQA Section 15301 which consists of the operation, permitting, or licensing of existing public or private structures involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Furthermore, the exceptions listed in 15300.2 would not apply.				
LEAD AGENCY CONTACT PERSON: ELIZABETH SHEARER-NGUYEN	Tī	ELEPHONE: 619-446-5369		
IF FILED BY APPLICANT:  1. ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING.  2. HAS A NOTICE OF EXEMPTION BEEN FILED BY THE PUBLIC AGENT ( ) YES ( ) NO	ICY APPROVI	ING THE PROJECT?		
IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED	) THE ABOVE	E ACTIVITY TO BE EXEMPT FROM CEQA.		
SIGNATURE/TINLE Sr. Planner		August 11, 2015 DATE		
CHECK ONE:				

DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:

(X) SIGNED BY LEAD AGENCY

( ) SIGNED BY APPLICANT



. . . WILLIAM HOLCOMB

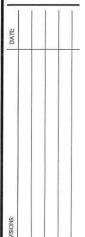
. . .



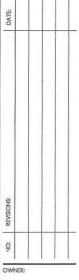
DRAWING TITLE:

WHA PROJECT:

hirmezLiq-2015







Page 3 of 3

- o For: John, Jane, Tom, Blake, Pete, Drew, Georgia, Nanci, Andrew, Craig.
- o Against: Valerie (CAP promoted by private org., too aggressive/infeasible timeline)

#### **ACTION #2: APPLE TREE MARKET**

- John Noted that the project was discussed extensively at the May 3, 2015 meeting, and that the item is being brought back to the agenda for the Board to make a recommendation.
- Georgia Asked about OB Farmers Market booths in parking lot. Saad Hrimez (Applicant)
  replied that he intends to keep the Farmers Market setup as-is. The worst-case scenario is
  eliminating one row of vendors, but he is hoping not to do that.
- Craig Asked about liquor restrictions. Saad replied that he believed they were: hours of sale 6am-midnight; no fortified wines; no miniature liquor bottles; no 1/2 pint liquor bottles; no cans of beer under 24 oz.
- Motion from Jane to approve the permit as presented. Craig offered a friendly amendment to approve the permit, subject to approval of the alcohol sales conditions from ABC as shown in Attachment #3. Jane agreed to the amendment. Seconded by Tom.
  - Motion passes, 11-0-0.

#### ACTION #3: DEL MAR 3 RESIDENCES

- John The Project Review Committee supported the project as presented.
- Eric Myrmel (Applicant) Presented summary of project with drawings.
- Brad Whitman (Neighbor) Supports project. Also read aloud a letter of support from another neighbor.
- Frank Gormlie (OB Rag) Asked for details on underground parking. Eric replied that the existing garage is roughly 550 sqft, and the new garage will be 1200 sqft. It will require 365 cubic yards of excavation.
- John Asked about stormwater retention. Eric replied that a stormwater plan is part of the site grading plan, and that stormwater will drain to permeable areas on site.
- Georgia Asked whether the applicant intends to condoize units. Eric replied yes, and that a map waiver will be processed after the project is permitted.
- Motion from Craig to approve project as presented, seconded by Pete.
  - Motion passes, 11-0-0.

#### CHAIR ANNOUNCEMENTS & COMMUNITY LIAISON REPORTS

- OB Town Council: Seeking to curtail U-T San Diego fiver circulations.
- OB Mainstreet Association (OBMA) & Crime Prevention Committee: Received funding from City to continue security patrols.
- OB Historical Society: Next meeting 6/18 7pm, topic is "San Diego Legends."
- OB Community Development Corporation: Still raising funds for Saratoga Beach Park.
- Valerie: Landmark Forum is a scholarship opportunity for young adults seeking training to take on community leadership.

#### **MEETING ADJOURNED**

7:55 pm

# BEFORE THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION OF

BADRY HIRMEZ, NAJAH HIRMEZ, SAAD HIRMEZ,	}	FILE 21-553335
SAMI GIRGIS HIRMEZ	}	
APPLE TREE MARKET	}	REG.
4976 NEWPORT AVE	}	
SAN DIEGO, CA 92107	}	
	}	
	}	
	}	PETITION FOR CONDITIONAL
	}	<b>LICENSE</b>

For Issuance of an Off-Sale General - License

Under the Alcoholic Beverage Control Act

WHEREAS, petitioner(s) has/have filed an application for the issuance of the above-referred-to license(s) for the above-mentioned premises; and,

WHEREAS, the San Diego Police Department filed a protest against the issuance of the applied-for license; and,

WHEREAS, the protest(s) deal(s) with the proposed operation of the applied-for premises; and,

WHEREAS, pursuant to Section 23958 of the Business and Professions Code, the Department may deny an application for a license where issuance would result in or add to an undue concentration of licenses; and,

WHEREAS, the proposed premises are located in Census Tract 0075.02 where there presently exists an undue concentration of licenses as defined by Section 23958.4 of the Business and Professions Code; and,

WHEREAS, the proposed premises are located in a crime reporting district that has a 20% greater number of reported crimes, as defined in subdivision (c) of Section 23958.4, than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency; and,

WHEREAS, the petitioner(s) stipulate(s) that by reason of the aforementioned high crime and over concentration of licenses, grounds exist for denial of the applied-for license; and,

WHEREAS, the proposed premises and/or parking lot, operated in conjunction therewith, are located within 100 feet of residences(s); and,

WHEREAS, issuance of the applied-for license without the below-described conditions would interfere with the quiet enjoyment of the property by nearby residents and constitute grounds for the denial of the application under the provisions of Rule 61.4, of Chapter 1, Title 4, of the California Code of Regulations; and,

-			4	
In	11	11	119	ς

WHEREAS, the issuance of an unrestricted license would be contrary to public welfare and morals;

NOW, THEREFORE, the undersigned petitioner(s) do/does hereby petition for a conditional license as follows, to-wit:

- Sales and service of alcoholic beverages shall be permitted only between the hours of 6:00AM and 12:00AM midnight each day of the week.
- 2 No distilled spirits shall be sold in bottles or containers smaller than 375ml.
- 3 Beer, malt beverages, and wine coolers in containers of 16 oz. or less cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.
- 4 No wine shall be sold with an alcohol content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more.
- 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 licensee) must be sold in manufacturer pre-packaged multi-unit quantities.

This petition for conditional license is made pursuant to the provisions of Sections 23800 through 23805 of the Business and Professions Code and will be carried forward in any transfer at the applicant-premises.

Petitioner(s) agree(s) to retain a copy of this petition on the premises at all times and will be prepared to produce it immediately upon the request of any peace officer.

The petitioner(s) understand(s) that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license(s).

DATED THIS	DAY OF		
Applicant/Petitioner		Title	



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

## Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested:  Neighborhood Development Permit  Site Development Permit	
Variance Tentative Map Vesting Tentative Map Map Waive	Land Use Plan Amendment • Other
Project Title	Project No. For City Use Only
Apple Tree BOOK SLEPER MARKET	406 797
Project Address:	
4976 Newport Avenue	
5-D CA 92107	
Part I - To be completed when property is held by Individual(s)	
By signing the Ownership Disclosure Statement, the owner(s) acknowledge above, will be filed with the City of San Diego on the subject property, with below the owner(s) and tenant(s) (if applicable) of the above referenced p who have an interest in the property, recorded or otherwise, and state the ty individuals who own the property). A signature is required of at least one of from the Assistant Executive Director of the San Diego Redevelopment Agreement (DDA) has been approved / executed by the Cit Manager of any changes in ownership during the time the application is be the Project Manager at least thirty days prior to any public hearing on the information could result in a delay in the hearing process.	n the intent to record an encumbrance against the property. Please list roperty. The list must include the names and addresses of all persons up of property interest (e.g., tenants who will benefit from the permit, all of the property owners. Attach additional pages if needed. A signature ency shall be required for all project parcels for which a Disposition and by Council. Note: The applicant is responsible for notifying the Project ing processed or considered. Changes in ownership are to be given to
Additional pages attached Yes X No	
Name of Individual (type or print):  SAAD HIZMEZ  Owner Tenant/Lessee Redevelopment Agency  Street Address:  City/State/Zip:  Phone No:  Signature:  Date:  I - J 4- L 4  Name of Individual (type or print):  SAMI FIRMEZ  Owner Tenant/Lessee Redevelopment Agency  Street Address:  City/State/Zip:  A 92 10 2	Name of Individual (type or print):  BADRY H
S-D CA 92102  Phone No: 222-0102	Phone No: 619-540-2295 619-222-0107 Signature: Date: 11-24-14
-Cl	