

1/21/02

Jane,

Due to questions about the fairness of the process and application of our procedure, I would like to call up to the City Council VARIANCE # 3890 (Tommy's Burgers).

Please agendaize this for Council consideration at a convenient time.

Thank you,

Paul Little

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PLANNING AND PERMITTING DEPARTMENT

January 17, 2002

Bergman Architecture
Pako Pimsaquan
13745 Seminole Drive
Chino, CA 91710

RE: Conditional Use Permit #3890
162-180 North Hill Avenue
Council District #2

Dear Mr. Pimsaquan:

Your application for a **Conditional Use Permit** at **162-180 North Hill Avenue**, was considered by the **Board of Zoning Appeals** on **January 16, 2002**.

CONDITIONAL USE PERMIT - To allow a new Tommy's take-out restaurant. A conditional use permit is required for the drive-thru and the request for 24-hour operation of the restaurant. A variance is also requested from the 500-foot distance requirement between take-out uses.

After careful consideration of this application, and with full knowledge of the property and vicinity, the Board of Zoning Appeals made the findings as shown on Attachment A to this letter.

Based upon the findings, the Board of Zoning Appeals decided to sustain the decision of the Zoning Hearing Officer and **deny** the application.

You are hereby notified that the decision of the Board of Zoning Appeals is not subject to further appeal. This decision becomes effective on the eleventh day from the date of the decision. The effective date for this case is **January 29, 2002**. However, prior to the effective date, a member of the City Council may stay the decision and request that it be called-up to the City Council for review.

Projects, which are denied, are statutorily exempt from the California Environmental Quality Act. Please note that the time within which judicial review of this action must be sought is governed by Section 1094.6 of the California Code of Civil Procedure.

Appeal of Conditional Use Permit #3890
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For further information regarding this case, please contact Jennifer Paige-Saeki at (626) 744-7231.

Board of Zoning Appeals, by



DENVER E. MILLER
Zoning Administrator

DEM:jps:ac

Enclosures: Attachment A

xc: City Clerk, City Council, Building Division, Public Works, Power Division, Water Division, Design and Historic Preservation, Hearing Officer, Code Enforcement-George Chapjian, Case File, Decision Letter File, Planning Commission (9).

ATTACHMENT A
FINDINGS OF FACT FOR CONDITIONAL USE PERMIT #3890

Conditional Use Permit: To establish a new drive- thru

1. *The conditional use will not comply with the provisions of Title 17, including any specific condition required for the proposed conditional use in the district in which it would be located* in that the take-out use for which the drive-thru is a part, is not permitted without a variance. Staff is recommending denial of the variance based on the proximity of another take-out restaurant across the street. The addition of the drive-thru requires food to be served in disposable containers, which changes the entire use to a take-out restaurant. Therefore the proposal does not comply with the provisions of Title 17.

Conditional Use Permit: To allow 24-hour operation

2. *The conditional use will be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, or injurious to properties or improvements in the vicinity* in that a 24-hour operation may create noise and other disturbances to the abutting residential uses and parcels which are located directly behind the subject site.

Variance: To allow a new take-out use within 500 feet of another take-out use

3. *There are no exceptional or extraordinary circumstances or conditions applicable to the project site that do not apply generally to sites in the same zone district* in that the drainage channel under the project site is 2.91 miles long traversing a number of commercial and residential parcels. The existence of the drainage channel is not a condition unique to this particular project site. In addition, the General Commercial zone allows a variety of different uses including a restaurant without take-out, retail and office all of which can be accommodated by a building of the same construction type as a take-out restaurant. The applicant could develop a restaurant without take-out service or a drive-thru without any discretionary approvals.
4. *Granting the application is not necessary for the preservation and enjoyment of a substantial property right of the applicant, or to prevent unreasonable property loss or hardship or unnecessary hardship* in that the property can still be developed with a building that can support a variety of other uses. Uses such as office, retail, public assembly etc. can operate in a structure similar to that used by a take-out restaurant. In addition the site is large enough to accommodate a structure and surface parking that is required for the uses. If a take-out restaurant is not permitted, the property may still be developed. For example a restaurant without take-out service or a drive-thru could be developed without any discretionary approvals; therefore it is not necessary to allow a take-out restaurant specifically at this site.