

ATTACHMENT H
HEARING OFFICER STAFF REPORT
Dated February 19, 2021



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: February 17, 2021

TO: Hearing Officer

SUBJECT: Conditional Use Permit #6816

LOCATION: 1827 E. Villa Street

APPLICANT: Kevin Franklin on behalf of Linda Rosa Market

ZONING DESIGNATION: CL (Commercial Limited) and RM-12 (Multi-Family Residential, Two-Units per Lot)

GENERAL PLAN DESIGNATION: Low Commercial

CASE PLANNER: Jennifer Driver

STAFF RECOMMENDATION: Adopt the Environmental Determination and Specific Findings in Attachment A to **disapprove** Conditional Use Permit #6816.

PROJECT PROPOSAL: Conditional Use Permit: To allow the off-site sale of a full line of alcoholic beverages (Beer, Wine, and Distilled Spirits, Type 21 ABC License) in conjunction with the operation of an existing, 3,782 square-foot grocery store (Food Sales land use).

ENVIRONMENTAL DETERMINATION: This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(5); Administrative Code, Title 14, Chapter 3, §15270(a), Projects Which are Disapproved. This Statutory Exemption states that CEQA does not apply to projects which a public agency rejects or disapproves.

BACKGROUND:

Site characteristics: The subject 15,006 square-foot site is currently improved with a 6,464 square-foot commercial building and surface parking lot. The subject market currently occupies the largest of the tenant spaces, measuring 3,782 square feet, while the remaining tenant spaces are occupied by a

hair salon and a restaurant. The site is split zoned, with the eastern portion zoned RM-12 and developed with a surface parking lot with 18 parking spaces and the western portion zoned CL and developed with the commercial building. The subject property is on the north side of E. Villa Street and is bounded by E. Villa Street on the south and Baldwin Alley on the north. The closest major north/south street is N. Allen Avenue, approximately 60 feet to the west. Vehicular and pedestrian access to the project site is from both Villa Street and Baldwin Alley.

Adjacent Uses: North – Single-Family Residential
South – Gas Station and Multi-Family Residential
East – Single and Multi-Family Residential
West – Liquor Store and Restaurant

Adjacent Zoning: North – RS-6 (Single-Family Residential, 0-6 dwelling units per acre)
South – CL (Commercial Limited) and RM-12 (Multi-Family Residential, two dwelling units per lot)
East – RM-12 (Multi-Family Residential, two dwelling units per lot)
West – CL (Commercial Limited)

Previous Cases: Conditional Use Permit #4030– Approved on June 7, 2004. Application included a Conditional Use Permit and Variance. The Conditional Use Permit was a request to allow the sale of a limited line of alcohol (beer and wine) for on-site alcohol sales in a 1,744 square foot restaurant (Puebla Tacos 2). The Variance was a request to deviate from the minimum number of parking spaces for the restaurant.

Variance #7325: Approved on March 25, 1965. The Variance was a request to use the RM-12 zoned portion of the property for automobile parking in connection with the shopping center.

PROJECT DESCRIPTION:

The applicant, Kevin Franklin, representing Linda Rosa Market, has filed a Conditional Use Permit (CUP) application to allow for full alcohol sales (beer, wine and spirits) for off-site consumption from an existing 3,782 square-foot Food Sales land use (Linda Rosa Market). The site currently sells beer and wine for off-site consumption and this is a request for an upgrade from limited to full alcohol sales. A Conditional Use Permit is required for the upgrade of off-site sales to full alcohol.

ANALYSIS:

The subject site is located within the CL (Commercial Limited) and RM-12 (Multi-Family Residential, Two-Units per Lot) zoning districts. The current use of the site as a Food Sales land use (Linda Rosa Market) is allowed by-right. The market currently sells beer and wine and has had an Alcoholic Beverage Control (ABC) Liquor License, Type 20, since 1990. The ability to sell beer and wine in the market is considered “Deemed Approved” per Pasadena Municipal Code Chapter 8.18, as CUP’s for alcohol sales were not required at that time. However, the proposed upgrade to the sale of full alcohol (beer, wine and spirits) for off-site consumption requires approval of a Conditional Use Permit pursuant to Table 2-5 of Zoning Code Section 17.24.030 (Commercial and Industrial Allowed Land Uses and Permit Requirements).

The Deemed Approved Alcoholic Beverage Retail Sale Ordinance (Pasadena Municipal Code Chapter 8.18) was adopted to insure that alcoholic beverage retail sales establishments which are nonconforming because they do not have a conditional use permit for alcohol sales have no adverse impact on the community. Linda Rosa Market does not have a conditional use permit but its operation is “deemed approved” pursuant to Chapter 8.18. The ordinance requires that these “deemed approved” stores comply with the performance standards relating to public nuisance set forth in Section 8.18.060. If an establishment fails to adhere to imposed performance standards, the City is able to impose additional conditions through the code compliance process.

Conditional Use Permit – Sale of full alcohol for off-site consumption

The City’s review of a Conditional Use Permit for alcohol sales entails an analysis of whether the proposed location of alcohol sales would affect the general welfare of the surrounding property owners, would lead to an over-concentration of establishments that sell alcohol, and whether the proposed use would result in an aggravation of existing alcohol-related problems such as loitering, public drunkenness, sales to minors, noise, and littering. The Hearing Officer may consider existing calls for police response to make a determination of whether there is an undesirable concentration of alcohol uses near the project site.

Proximity to Sensitive Uses

The sale of alcohol shall be designed and operated to avoid any adverse impact on adjacent or nearby residential (single- or multi-family), parks (e.g., public parks or recreation centers), playgrounds (e.g., public or parochial), religious facilities, or schools (e.g., public, parochial, or private elementary, junior high, or high schools). Except for the limited commercial uses at the intersection of Allen Avenue and Villa Street, the uses within 1,000 feet are either single- or multi-family developments, north of the 210 Freeway, which is approximately 620 feet to the south. Single-family residences are located immediately to the north of the site and share access to their properties from Baldwin Alley. Directly to the east, and south, are multi-family developments. The closest school is Tiny World Pre School, which is approximately 950 feet to the east. Other schools nearby include: Jefferson Elementary, which is 0.25 miles to the southwest; Marshall Fundamental Secondary School, which is approximately 0.33 miles to the north; and, Our School, which is approximately 0.5 miles to the north. Jefferson Recreation Center, the closest park, is approximately 0.25 miles to the southwest. The closest religious facilities are: the Calling Church, which is 0.25 miles to the southwest; Epicentre Church, which is approximately 0.33 miles to the north; and, between 0.25 and 0.35 miles to the east are several churches, including Qodesh Family Church, the Love of Christ Church, Oak Villa Gospel Hall, Crossroads Christian Fellowship, Pasadena Orthodox Presbyterian Church and Central Japanese American Community SDA Church.

Off-site alcohol sales establishments have the potential to create problems such as loitering, public drunkenness, noise, littering, and other negative impacts. As the proposal for alcohol sales is in close proximity to existing residential, educational and religious uses, staff recommends disapproval of the application for a Conditional Use Permit to allow a full line of alcohol sales for off-site consumption at this location.

Concentration of Alcohol Sales

The Conditional Use Permit application for alcohol sales requires the applicant to identify all uses that sell alcohol for either on-site or off-site consumption within 1,000 feet of the project site. Currently, there are four (4) establishments within 1,000 feet of the subject site, property line to property line, that sell alcohol for on- or off-site consumption, including the subject market, as analyzed in Table 1 below:

Table 1: Businesses with Liquor Licenses within 1,000 Feet

Number	Business Name	Business Address	ABC License Type
1	M & S Liquor*	490 N. Allen Avenue	Off-Sale General (21)
2	Fair Market	354 N. Allen Avenue	Off-Sale Beer and Wine (20)
3	Puebla Tacos 2**	1817-19 E. Villa Street	On-Sale Beer and Wine (41)
4	Linda Rosa Market	1827 E. Villa Street	Off-Sale Beer and Wine (20)

* Located on adjacent parcel.

** Located in the same shopping center as the subject market.

During the review process for a new off-site sale liquor license, it is also necessary to determine if there is an over-concentration in the census tract in which the subject site is located. If it is determined that there would be an over-concentration of off-site sale licenses with the proposed project, the decision maker is required to make a finding of Public Convenience or Necessity. The project site is located within census tract 4627. This census tract extends from North Hill Avenue on the west to North Oak Avenue on the East and from East Orange Grove Boulevard on the North to the East Colorado Boulevard on the South.

According to the California Board of Alcoholic Beverage Control (ABC), a maximum of three off-site sales licenses are allowed in the census tract, as a function of the population in the census tract. Currently there are four off-site sales licenses within the census tract (Table 2), including the off-site license for beer and wine (Type 20) for the subject market. While no additional license is proposed as part of this application, there is an existing over-concentration of off-site licenses in the census tract, and the current request to upgrade the license to the off-site sale for a full line of alcohol would be counterintuitive as it would support the increase in availability of alcohol sales beyond what the ABC deems sufficiently appropriate for the population in the census tract, which currently has an “undue concentration” of alcohol licenses.

Table 2: Businesses within Census Tract 4627 with Off-Sale Liquor Licenses

Number	Business Name	Business Address	ABC License Type
1	M & S Liquor*	490 N. Allen Avenue	Off-Sale General (21)
2	Fair Market	354 N. Allen Avenue	Off-Sale Beer and Wine (20)
3	Mobil Gas Station	1813 E. Colorado Boulevard	Off-Sale Beer and Wine (20)
4	Linda Rosa Market	1827 E. Villa Street	Off-Sale Beer and Wine (20)

* Located on adjacent parcel.

As such, a finding of 'public convenience or necessity' is required to be made by the Hearing Officer in order to obtain the alcohol license from ABC. Local governing agencies are required to make a finding of 'public convenience or necessity' when a new off-sale license is proposed to an existing area that has an "undue concentration" of alcohol licenses. To make a finding of 'public convenience or necessity', the Hearing Officer is required to make all of the following findings in the affirmative:

- a) The project will result in a substantial net employment gain on the site;
- b) The project will result in a substantial increase in business taxes;
- c) The project is a unique business addition to the community;
- d) The project will contribute to long-term overall development goals; and,
- e) The project will result in a positive upgrading of the area.

Based on the information provided, staff is unable to make all the necessary findings in the affirmative and finds that public convenience or necessity is not served with the inclusion of the sale of a full line of alcohol for off-site consumption. The addition of distilled spirits would not provide a unique business addition to the community as alcohol sales are already substantially provided for in the immediate vicinity by two other off-site sale locations within 1,000 feet of the site, and four existing off-site alcohol outlets within the census tract. The addition of the requested license would intensify an existing undue concentration of alcohol establishments in the surrounding area. Furthermore, the City of Pasadena's Police Department has reported that since January 2020, there have been 192 calls for service within 500 feet of the subject site/store, with the highest number of calls to the 1800 block of Villa Street and to the intersection of Villa Street and Allen Avenue, which are in the immediate proximity to the store, for theft, public disturbances, loitering, vandalism, burglary and public drunkenness, without the sale of a full line of alcohol at this site. The introduction of a full line of alcohol at this site would not help curtail these issues and would not result in a positive upgrade of the area.

Therefore, it is staff's assessment that the sale of full line of alcohol for off-site consumption at the site would negatively impact the general welfare of the surrounding property owners, would result in an undesirable concentration of premises that sell alcohol in the vicinity, would aggravate existing alcohol-related problems, and that the necessary findings cannot be made to approve the proposed Conditional Use Permit or make a finding of 'public convenience or necessity'.

GENERAL PLAN CONSISTENCY:

The existing food sales land use (Linda Rosa Market) is consistent with the General Plan land use designation of Low Commercial but the request to include the sale of full alcohol for off-site consumption is not consistent with the goals and objectives of the General Plan Land Use Element (General Plan). General Plan Policy 3.7 (Alcohol and Drug Abuse) intends to manage the distribution and operation of alcohol uses through regulating and monitoring of establishments that sell alcohol in an effort to reduce the impact of alcohol problems. General Plan Policy 3.1 (High Impact Uses) seeks to avoid the concentration of uses and facilities in any neighborhood or district where their intensities, operations, and/or traffic could adversely impact the character, safety, health, and quality of life. The purpose of ABC's determination of undue concentration is to prevent the over concentration of such uses and the impact of alcohol problems. As the proposed site is located within 1,000 feet of two other established businesses that sell alcohol for off-site consumption, the project is not in compliance with the main provision of Policy 3.7 of the General Plan. Furthermore, based on the information provided by the Pasadena Police Department, since January 2020, there have been 192 calls for service to within 500 feet of the subject site/store for theft, public disturbances, loitering, vandalism, burglary and public

drunkenness, without the sale of a full line of alcohol at this site. Approval of the request to include the sale of full alcohol for off-site consumption would exacerbate the existing safety and quality of life problems in the neighborhood and would not be in compliance with Policy 3.1 of the General Plan.

ENVIRONMENTAL REVIEW:

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(5); Administrative Code, Title 14, Chapter 3, §15270(a), Projects Which are Disapproved. This Statutory Exemption states that CEQA does not apply to projects which a public agency rejects or disapproves.

In the event the Hearing Officer decides to approve Conditional Use Permit #6816, the project could qualify for an exemption pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15301, Class 1, Existing Facilities), and there are no features that distinguish this project from others in the exempt class; therefore there are no unusual circumstances. Class 1 exempts the operation, permitting, licensing or minor alteration of existing structures where there is negligible or no expansion of the use. The sale of a full line of alcohol for off-site consumption in conjunction with a food sales land use is considered a negligible expansion of a commercial use.

REVIEW BY OTHER CITY DEPARTMENTS:

The proposal was reviewed by the Department of Transportation, Fire Department, Department of Public Works, Building and Safety Division, the Design and Historic Preservation (DHP) Section and the Police Department. The Department of Transportation, Fire Department, Department of Public Works, the Building and Safety Division, and the DHP Section had no comments at this time. In the event that the project be approved, the Police Department has recommended conditions of approval, related to removing signage obscuring exterior windows in order to allow for visibility into the market.

CONCLUSION:

It is staff's assessment that the findings necessary for approving a Conditional Use Permit for the off-site sales of a full line of alcohol cannot be made. Specifically, staff finds that the sale of alcohol would negatively impact the general welfare, would intensify the over-concentration of off-site alcohol sales in the area and would aggravate existing alcohol-related problems. Approval of such a request would be contrary to the intent of the General Plan Land Use Policy 3.1 and 3.7 and would further compound the number of liquor licenses in this census tract and immediate vicinity. In addition, the finding of public convenience and necessity cannot be made in this case because the proposed use is not a unique business addition to the community and would not be a positive upgrade to the area. Furthermore, the sale of full alcohol for off-site consumption at the site would be detrimental to the public health, safety, and general welfare and is not in compliance with the General Plan. Therefore, staff is recommending denial of the proposed applications based on the findings in Attachment A.

Attachment:

Attachment A: Specific Findings of Disapproval

ATTACHMENT A
SPECIFIC FINDINGS FOR CONDITIONAL USE PERMIT #6816

Conditional Use Permit – Sale of full alcohol for off-site consumption

1. *The proposed location of the site for the Conditional Use Permit will adversely affect the general welfare of the surrounding property owners.*

The City of Pasadena's Police Department has reported that since January 2020, there have been 192 calls for service within 500 feet of the subject site/store, with the highest number of calls to the 1800 block of Villa Street and to the intersection of Villa Street and Allen Avenue, which are in the immediate proximity to the store, for theft, public disturbances, loitering, vandalism, burglary and public drunkenness, without the sale of a full line of alcohol at this site. The Conditional Use Permit, for the sale of full-alcohol for off-site consumption, will exacerbate the existing issues and will adversely affect the general welfare of the surrounding property owners. The Alcoholic Beverage Control has determined that the subject site is located in an area of undue concentration, and a finding of public convenience and necessity is required to be made by the governing body. Two other establishments with off-site alcohol sales are located within 1,000 feet of the subject site, with one liquor store, with off-site full alcohol sales, located on the adjacent parcel to the west at 490 N. Allen Avenue. As such, the finding of public convenience and necessity cannot be made.

2. *The proposed location of the site for the Conditional Use Permit will result in an undesirable concentration of premises for the sale of alcoholic beverages, including beer and wine, in the area.*

Based on the data from the Department of Alcohol Beverage Control, only three off-site sales licenses are permitted in this census tract, and currently there are four existing off-site alcohol licenses, including the subject site's Type 20 license for off-site sale of beer and wine. While the request for a Type 21 license (off-site sale of a full line of alcohol), if approved, wouldn't result in an increase in the number of licenses, it would intensify the availability of distilled spirits. As such, approval of this Conditional Use Permit will further exacerbate this existing over-concentration. In addition, there are two business that sell alcohol for off-site consumption within 1,000 feet of the use. As a result, approval will result in an undesirable concentration of off-site sales of alcohol within the immediate area.

3. *The proposed location of the site for the Conditional Use Permit will detrimentally affect the nearby surrounding area after giving special consideration to the proximity and nature of the proposed use with respect to the following: a. Residential uses and residential districts; b. Hospitals, park and recreation facilities, places of public assembly, public or private schools, and religious assembly uses that attract minors and other similar uses; and c. Other establishments offering alcoholic beverages (including wine) for sale for consumption both on- and off-site.*

The sale of alcohol shall be designed and operated to avoid any adverse impact on adjacent or nearby residential (single- or multi-family), parks (e.g., public parks or recreation centers), playgrounds (e.g., public or parochial), religious facilities, or schools (e.g., public, parochial, or private elementary, junior high, or high schools). Except for the limited commercial uses at the intersection of Allen Avenue and Villa Street, the uses within 1,000 feet are either single- or multi-family developments, north of the 210 Freeway, which is approximately 620 feet to the south. Single-family residences are located immediately to the north of the site and share

access to their properties from Baldwin Alley. Directly to the east, and south, are multi-family developments. The closest school is Tiny World Pre School, which is approximately 950 feet to the east. Other schools nearby include: Jefferson Elementary, which is 0.25 miles to the southwest; Marshall Fundamental Secondary School, which is approximately 0.33 miles to the north; and, Our School, which is approximately 0.5 miles to the north. Jefferson Recreation Center, the closest park, is approximately 0.25 miles to the southwest. The closest religious facilities are: the Calling Church, which is 0.25 miles to the southwest; Epicentre Church, which is approximately 0.33 miles to the north; and, between 0.25 and 0.35 miles to the east are several churches, including Qodesh Family Church, the Love of Christ Church, Oak Villa Gospel Hall, Crossroads Christian Fellowship, Pasadena Orthodox Presbyterian Church and Central Japanese American Community SDA Church.

As the site is already prone to arrests for public intoxication and disturbances, theft and loitering, adding the sale of full alcohol for off-site consumption will only further exacerbate these issues, which affects the general welfare of the abutting and nearby residents.

4. *The proposed location of the site for the Conditional Use Permit will aggravate proposed problems created by the sale of alcohol (e.g., littering, loitering, noise, public drunkenness, and sales to minors).*

The City of Pasadena's Police Department has reported that since January 2020, there have been 192 calls for service within 500 feet of the subject site/store, with the highest number of calls to the 1800 block of Villa Street and to the intersection of Villa Street and Allen Avenue, which are in the immediate proximity to the store, for theft, public disturbances, loitering, vandalism, burglary and public drunkenness, without the sale of a full line of alcohol at this site. The Conditional Use Permit, for the sale of full-alcohol for off-site consumption, will exacerbate the existing issues and will adversely affect the general welfare of the surrounding property owners.

5. *The proposed use is not in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan.*

The existing food sales land use (Linda Rosa Market) is consistent with the General Plan land use designation of Low Commercial but the request to include the sale of full alcohol for off-site consumption is not consistent with the goals and objectives of the General Plan Land Use Element (General Plan). General Plan Policy 3.7 (Alcohol and Drug Abuse) intends to manage the distribution and operation of alcohol uses through regulating and monitoring of establishments that sell alcohol in an effort to reduce the impact of alcohol problems. General Plan Policy 3.1 (High Impact Uses) seeks to avoid the concentration of uses and facilities in any neighborhood or district where their intensities, operations, and/or traffic could adversely impact the character, safety, health, and quality of life. The purpose of ABCs determination of undue concentration is to prevent the over concentration of such uses and the impact of alcohol problems. As the proposed site is located within 1,000 feet of two other established businesses that sell alcohol for off-site consumption, the project is not in compliance with the main provision of Policy 3.7 of the General Plan. Furthermore, based on the information provided by the Pasadena Police Department, since January 2020, there have been 192 calls for service to within 500 feet of the subject site/store for theft, public disturbances, loitering, vandalism, burglary and public drunkenness, without the sale of a full line of alcohol at this site. Approval of the request to include the sale of full alcohol for off-site consumption would exacerbate the existing safety and quality of life problems in the neighborhood and would not be in compliance with Policy 3.1 of the General Plan.

6. *Public convenience or necessity is not served in that:*

- a. *The project is not a unique business addition to the community.* The off-site sale of alcohol will not be a unique business addition to the community in that there is already an undue concentration of other retail sale land uses with alcohol sales for off-site consumption within the census tract, including next door. The addition of the requested license for an upgrade to the off-site sale of a full line of alcohol will intensify an existing undue concentration of establishments with alcohol sales for off-site consumption within the census tract.
- b. *The project will not result in a positive upgrading of the area.* The City of Pasadena's Police Department has reported that since January 2020, there have been 192 calls for service within 500 feet of the subject site/store, with the highest number of calls to the 1800 block of Villa Street and to the intersection of Villa Street and Allen Avenue, which are in the immediate proximity to the subject store, for theft, public disturbances, loitering, vandalism, burglary and public drunkenness, without the sale of a full line of alcohol at this site. Two other establishments with off-site alcohol sales are also located within 1,000 feet of the subject site, including one liquor store, with off-site full alcohol sales, located on the adjacent parcel to the west at 490 N. Allen Avenue. The Conditional Use Permit, for the sale of full-alcohol for off-site consumption, will exacerbate the existing issues and will adversely affect the general welfare of the surrounding property owners.