

# Agenda Report

November 22, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Planning and Community Development Department

**SUBJECT: APPEAL OF THE BOARD OF ZONING APPEALS' DECISION ON  
CONDITIONAL USE PERMIT #6816  
1827 EAST VILLA AVENUE**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Adopt the Environmental Determination, that the project is exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); 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.
2. Uphold the Board of Zoning Appeal's decision and disapprove Conditional Use Permit #6816.

## **EXECUTIVE SUMMARY:**

On February 17, 2021, the Hearing Officer considered, at its regularly noticed hearing, Conditional Use Permit (CUP) #6816. The CUP application was requested to allow the off-site sale of a full line of alcoholic beverages (beer, wine, and distilled spirits, a Type 21 Alcoholic Beverage Control (ABC) License) in conjunction with the operation of an existing, 3,782 square-foot grocery store (Linda Rosa Market). The store currently sells beer and wine for off-site consumption. A CUP is required for the upgrade of off-site sales of full alcohol (beer, wine, and distilled spirits).

Staff's recommendation to the Hearing Officer was to disapprove CUP #6816. Staff assessed the proposed project, and, based on the analyses, concluded that the findings necessary for approving the CUP could not be made. At the conclusion of the public hearing, and after public testimony, the Hearing Officer disapproved CUP #6816 (Attachment G).

On March 1, 2021, the applicant and owner of the market, Sukhraj Kau, filed an appeal with the Board of Zoning Appeals, of the Hearing Officer's decision (Attachment F).

On May 20, 2021, the Board of Zoning Appeals considered at its regularly noticed hearing, an appeal of the Hearing Officer's decision to disapprove CUP #6816. At the conclusion of the public hearing, the Board of Zoning Appeals made a motion to uphold the Hearing Officer's decision and to disapprove the CUP #6816 (Attachment C). The motion resulted in a 5-0 vote by the five members present.

On June 1, 2021, the applicant and owner of the market, Sukhraj Kau, filed an appeal application with the City Council, of the Board of Zoning Appeals decision (Attachment B).

On September 20, 2021, the appeal application was scheduled to be heard by the City Council, but was not noticed in accordance to the requirements of Zoning Code Section 17.60.080. As a result, the hearing was rescheduled to the current City Council meeting. The hearing before the City Council is a *de novo* hearing where the Council has no obligation to honor the prior decisions and has the authority to make an entirely different decision.

Based on the previous analysis, staff recommends that the City Council uphold the Board of Zoning Appeals May 20, 2021, decision and disapprove CUP #6816, based on the findings provided in Attachment A.

### **BACKGROUND:**

The subject 15,006 square-foot site is currently improved with a 6,464 square-foot, multi-tenant, commercial building and a 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 (multi-family residential, two dwelling units per site) developed with a surface parking lot with 18 parking spaces. The western portion is zoned CL (Limited Commercial) and is developed with the commercial building. The 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.

The applicant, Sukhraj Kau, owner of Linda Rosa Market, filed a 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) on January 21, 2021. 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.

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 on the Site:

*Conditional Use Permit #4030:* Approved on June 7, 2004. Application included a CUP and Variance. The CUP 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. The restaurant is located in tenant space at 1817 East Villa Street.

*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.

Hearing Officer Public Hearing

The application was presented to the Hearing Officer at a public hearing on February 17, 2021. Staff's recommendation to the Hearing Officer was to disapprove CUP #6816, as Staff determined that all six required findings for the CUP could not be made, including the finding for Public Convenience or Necessity (PCN).

During the Hearing Officer hearing, the applicant provided a brief presentation of the project and spoke in favor of the project. Nine public comments in support of the project were received prior to or at the Hearing Officer hearing. Also included was a petition submitted by the applicant with 85 signatures in support of the project (Attachment I). These comments and petition were provided to the Hearing Officer.

At the conclusion of public testimony, the Hearing Officer disapproved CUP #6816. This decision was based on the findings in Attachment G. To supplement the decision, the Hearing Officer provided an addendum with explanation for disapproval of the application (Attachment E).

### Board of Zoning Appeal's Public Hearing

On March 1, 2021, the applicant and owner of the market filed an appeal with the Board of Zoning Appeals, of the Hearing Officer's decision (Attachment G) citing a disagreement with the decision of the Hearing Officer. The appellant stated that each of the six required findings could be made and the hearing officer erred in his decision. In the appeal application, the applicant indicated that there is no increase in the number of licenses issued for the census tract with the approval of the request because the existing beer and wine ABC license (Type 20) is already included in the count in the Census Tract, and because ABC does not differentiate the type of license in their count of licenses allowed or existing in each census tract (i.e. the Type 20 beer and wine and Type 21 full alcohol licenses are counted the same). The appellant stated that the store has operated for over 30 years with beer and wine, and that no protests were made by the community at the Hearing Officer hearing nor by the Police Department. The appellant indicated that conditions of approval would alleviate concerns related to the use. The applicant also stated that approval would not add to the existing over concentration in the area because the market already sells beer and wine. Furthermore, the applicant contended that approving the application to upgrade to a full alcohol license will provide a convenience to its customers for "one-stop" shopping and will allow for competitive pricing for distilled spirits with an adjacent Type 21 licensed business.

On May 20, 2021, the Board of Zoning Appeals considered at a noticed public hearing, an appeal of the Hearing Officer's decision to disapprove CUP #6816. A response to the appellant's claims was provided to the Board of Zoning appeals as a component of the May 20, 2021, Board of Zoning Appeals staff report (Attachment D). Staff presented the project and recommended that the Board of Zoning Appeals adopt the environmental determination and disapprove CUP #6816.

During the Board of Zoning Appeals hearing, the applicant and their representative provided a brief presentation of the project and spoke in favor of the project. Ten public comments in support of the project were received prior to or at the Board of Zoning Appeals hearing. Also included was a petition submitted by the applicant with 85 signatures in support of the project (Attachment I). These comments and petition were provided to the Board of Zoning Appeals:

At the conclusion of the public hearing, after considering written and verbal public testimony, and with full knowledge of the property and vicinity, the Board of Zoning Appeals made a motion to uphold the Hearing Officer's decision and to disapprove the CUP #6816 (Attachment C). The motion resulted in a 5-0 vote by the five members present.

## **APPEAL OF BOARD OF ZONING APPEALS DECISION:**

On June 1, 2021, the applicant and owner of the market, Sukhraj Kau, submitted an appeal application (Attachment B) to the City Council. The hearing before the City Council is a *de novo* hearing where the City Council has no obligation to honor the prior decisions and has the authority to make an entirely different decision.

As part of their appeal, the appellant submitted a duplicate of the appeal document that was submitted for the appeal to the Board of Zoning Appeals, with the inclusion of an additional statement that the Public Convenience and Necessity finding made by the Board of Zoning Appeals was based on only crime and overconcentration of ABC licenses. As was discussed in the Board of Zoning Appeals Hearing section above, the appellant stated that each of the six required findings could be made and the hearing officer erred in his decision.

## **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 as a Food Sales land use (Linda Rosa Market) is allowed by-right in the CL zoning district. The market currently sells beer and wine and has had an 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 for the sale of full alcohol (beer, wine and spirits) for off-site consumption requires approval of a CUP 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 CUP for alcohol sales have no adverse impact on the community since they are not regulated under a Conditional Use Permit. Linda Rosa Market does not have a CUP 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 revoke the “deemed approve” status or impose conditions of approval and performance standards through the code compliance process.

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

The City’s review of a CUP 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 City Council 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) uses and districts, 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: 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, Love of Christ Church, Oak Villa Gospel Hall, Crossroads Christian Fellowship, Pasadena Orthodox Presbyterian Church and Central Japanese American Community SDA Church.

The City of Pasadena's Police Department has reported that from January 2020 to January 2021, 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, to the intersection of Villa Street and Allen Avenue and to the 400 block of Allen Avenue, which are in the immediate proximity to the store, for theft, public disturbances, loitering, vandalism, burglary and public drunkenness. These incidents have occurred without the sale of a full line of alcohol at this site. The Police Department provided additional data showing that there were 133 calls for service within 500 feet of the subject site/store from January 27, 2021 to October 19, 2021. The introduction of a full line of alcohol at this site would not help curtail these calls for service and would not result in a positive upgrade of the area. The proposed sale of full alcohol (beer, wine and distilled spirits) for off-site consumption has the potential to contribute to 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 CUP to allow a full line of alcohol sales for off-site consumption at this location.



*Concentration of Alcohol Sales: Alcohol Licenses Within 1,000 Feet*

The CUP 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	<b>Linda Rosa Market</b>	<b>1827 E. Villa Street</b>	Off-Sale Beer and Wine (20)

\* Located on adjacent parcel to the west.

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

*Concentration of Alcohol Sales: Alcohol Licenses Within Census Tract*

During the review process for a new off-site sale liquor license, it is also necessary to determine if there is an over-concentration of off-site sale liquor licenses 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) of the subject market. While no additional license is proposed as part of this application, there

**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	<b>Linda Rosa Market</b>	<b>1827 E. Villa Street</b>	Off-Sale Beer and Wine (20)

\* Located on adjacent parcel to the west.

is an existing over-concentration of off-site licenses in the census tract, and the current request to upgrade the existing Type 20 off-site license for beer and wine to the Type-21 off-site sale for a full line of alcohol would increase the 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.

As such, a finding of ‘public convenience or necessity’ is required to be made by the City Council in order for the applicant 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 City Council 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 economic development goals of the area; 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. M&S Liquor is located immediately to the west, on an adjacent parcel, and currently sells beer, wine and spirits. 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 from January 2020 to January 2021, 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, to the intersection of Villa Street and Allen Avenue and to the 400 block of 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. In addition, the Police Department provided additional data showing that there were 133 calls for service within 500 feet of the subject site/store from January 27, 2021 to October 19, 2021. 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 CUP or make a finding of 'public convenience or necessity'.

Responses to the Appeal:

As discussed in the Analysis section above, the ABC requires the City of Pasadena to make findings of 'public convenience or necessity' prior to the issuance of the requested Type-21 license (off-site sales of beer, wine and distilled spirits) to the applicant. While the appellant is correct that there is no overall netgain of licenses in the census tract if the project is approved, the finding of 'public convenience or necessity' is required by the ABC because the existing census tract currently exceeds the number of off-site licenses allowed and the applicant is requesting a new Type-21 license. The new license increases the availability of alcohol. The findings to be made are as follows:

- 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 economic development goals of the area; and,
- e) The project will result in a positive upgrading of the area.

Staff is unable to make all the necessary 'public convenience or necessity' 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 at this location. The addition of distilled spirits would not provide 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 one liquor store, with off-site full alcohol sales, located on the adjacent parcel to the west at 490 N. Allen Avenue (Type 21). Offering a "convenient" option for the purchase of alcohol does not create a unique business addition or result in a positive upgrade to the area. No information was provided to indicate that the project would result in a substantial net employment gain on the site or a substantial increase in business taxes. The project would not create a unique business addition and will further exacerbate this existing over-concentration by intensifying the availability of distilled spirits.

**GENERAL PLAN CONSISTENCY:**

The existing food sales land use (Linda Rosa Market) is consistent with the General Plan land use designation of Low Commercial. However, 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 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, one located immediately west of the subject site, the project is not in compliance with the main provision of Policy 3.7 of the General Plan. Further, based on the information provided by the Pasadena Police Department, from January 2020 to January 2021, there have been 192 calls for service 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. The Police Department provided additional data showing that there were 133 calls for service within 500 feet of the subject site/store from January 27, 2021 to October 19, 2021. 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 City Council decides to approve CUP #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 is 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.

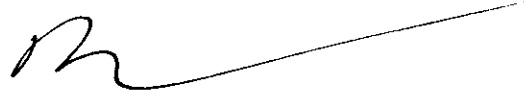
## **CONCLUSION:**

It is staff's assessment that the findings necessary for approving a CUP 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. In addition, the finding of 'public convenience and necessity' cannot be made. Therefore, staff is recommending disapproval of the proposed application based on the findings in Attachment A.

**FISCAL IMPACT:**


There is no fiscal impact as a result of this action and will not have any indirect or support cost requirements.

Respectfully submitted,

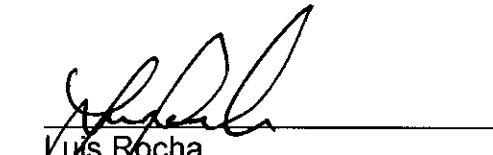


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**Attachments (10):**

- Attachment A – Specific Findings of Disapproval
- Attachment B – Appeal Application of Board of Zoning Appeals' decision (dated June 1, 2021)
- Attachment C – Board of Zoning Appeals Decision Letter (dated May 25, 2021)
- Attachment D – Board of Zoning Appeals Staff Report (dated May 20, 2021)
- Attachment E – Hearing Officer Addendum (dated April 26, 2021)
- Attachment F – Appeal Application of Hearing Officer's decision (dated March 1, 2021)
- Attachment G – Hearing Officer Decision Letter (dated February 19, 2021)
- Attachment H – Hearing Officer Staff Report (dated February 19, 2021)
- Attachment I – Applicant Submitted Petition (submitted to Hearing Officer and BZA)
- Attachment J – Project Plans