

**PLEASE PROVIDE AN ORIGINAL AND 2 COPIES
A \$525 FEE MUST ACCOMPANY THIS APPEAL**

TO: Oxnard City Clerk

NOTICE OF APPEAL
(from member of the public)

I, Jennifer Chavez on behalf of Walgreen Co., am aggrieved or directly affected by
(name of person filing appeal)

and appeal the April 7, 2011 decision from the Planning Commission regarding Project No.
(date of PC meeting)

10-510-6, more particularly described as follows:
(date of PC meeting)

denying Walgreens' special use permit application for beer and wine sales at the store it currently
operates at 2303 N. Vineyard Avenue

The grounds for appeal are:

The Planning Commission decision was arbitrary and capricious and not supported by substantial
evidence. Substantial evidence supported the proposed Resolution of approval prepared by City
Staff and attached to the Planning Commission Staff Report for this case, a copy of which is
attached hereto. Additional materials in support of this appeal will be submitted prior to the City
Council hearing.

I request the following relief:

Reverse the Planning Commission's April 7, 2011 decision and issue a special use permit
authorizing Walgreens to sell beer and wine at the store it operates at 2303 N. Vineyard Avenue.

Jennifer Chavez
(signature)

Date: 4/22/11

(address)

cc: City Attorney
Project Planner
Development Services Department
Applicant

RESOLUTION NO. 2011 -

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD APPROVING PLANNING AND ZONING PERMIT NO. 10-510-6 (SPECIAL USE PERMIT - ALCOHOL), TO ALLOW A TYPE 20 (OFF-SALE BEER & WINE) ALCOHOLIC BEVERAGE CONTROL LICENSE WITHIN AN EXISTING WALGREEN DRUGSTORE, LOCATED AT 2303 NORTH VINEYARD AVENUE (APN 142-0-021-240), SUBJECT TO CERTAIN FINDINGS AND CONDITIONS. FILED BY ATTORNEY JENNIFER CHAVEZ, LUCE FORWARD HAMILTON & SCRIPPS LLP, 600 W. BROADWAY, SUITE 2600, SAN DIEGO CA 92101, ON BEHALF OF WALGREEN CO.

WHEREAS, the Planning Commission of the City of Oxnard has considered an application for Planning and Zoning Permit No. 10-510-6, filed by attorney Jennifer Chavez on behalf of Walgreen Co. in accordance with Section 16-530 through 16-553 of the Oxnard City Code and City Council Resolution No. 11,896; and

WHEREAS, Section 15301 of Title 14 of the California Code of Regulations exempts the project from the requirement for the preparation of environmental documents imposed by the California Environmental Quality Act; and

WHEREAS, the Planning Commission finds, after due study, deliberation and public hearing, that the following circumstances exist:

1. The proposed use is in conformance with the General Plan and other adopted policies of the City of Oxnard.
2. The proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.
3. The site for the proposed use is adequate in size and shape to accommodate the setbacks, parking, landscaping, and other City standards except as may be specifically excepted by the special findings and conditions of this resolution.
4. The site for the proposed use will be served by streets and highways adequate in width and structure to carry the kind and quantity of traffic such use will generate.
5. The site for the proposed use will be provided with adequate sewerage, water, fire protection and storm drainage facilities.
6. The proposed use will not result in or add to an undue concentration of establishments selling alcoholic beverages off-site consumption within 1000 feet of the subject location. There are zero establishments with the same Type 20 ABC license that exist within 350 feet of the proposed location, and therefore, there is a presumption that an undue concentration will not result or be added to.

7. The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet of the location for which the special use permit is applied. The preponderance of the evidence indicates that the area is not considered to be a policing problem, statistical analysis shows the area's crime rate to be higher than the citywide average but is attributable to minor commercial or property crimes due to a bustling commercial area, the Type 20 ABC license does not normally aggravate policing issues as long as the establishment complies with regulations and conditions of approval, and the proposed retail of alcohol will be an ancillary use with the alcohol display area occupying no more than 5% of the floor area of the store.

WHEREAS, the Planning Commission finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work, visit or live in this development in particular.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby approves this permit subject to the following conditions. The decision of the Planning Commission is final unless appealed in accordance with the provisions of Section 16-545 of the Oxnard City Code.

**STANDARD CONDITIONS OF APPROVAL
FOR LAND USE PERMITS**

Note: The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. *G-1*) while some are taken from environmental documents (e.g. *MND-S2*).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning Division
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic Division
PD	Police Department	B	Building Plan Checker
SC	Source Control	FD	Fire Department
PK	Public Works, Landscape Design	CE	Code Compliance

GENERAL PROJECT CONDITIONS

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, *G-1*).

2. This permit is granted for the plans dated June 7, 2010 ("the plans") on file with the Planning Division. The project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning and Environmental Services Manager ("Planning Manager") or a major modification to the plans is approved by the Planning Commission. A minor modification may be granted for minimal changes or increases in the extent of alcohol use. A major modification shall be required for substantial changes in such use. (PL, G-2)
3. By commencing any activity related to the project or using any structure authorized by this permit, Developer accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
4. Developer agrees, as a condition of adoption of this resolution, at Developer's own expense, to indemnify, defend and hold harmless the City and its agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of the resolution or any condition attached thereto or any proceedings, acts or determinations taken, done or made prior to the approval of such resolution that were part of the approval process. Developer's commencement of construction or operations pursuant to the resolution shall be deemed to be an acceptance of all conditions thereof. (CA, G-6)
5. Developer shall complete the "Notice of Land Use Restrictions and Conditions" form, using the form provided by the City, for recording with the Ventura County Recorder. Before the City issues building permits, Developer shall submit the original completed, signed and notarized document, together with the required fees to the Planning Manager. (PL, G-8)
6. If Developer, owner or tenant fails to comply with any of the conditions of this permit, the Developer, owner or tenant shall be subject to a civil fine pursuant to the City Code. (CA, G-14)

PLANNING DIVISION SPECIAL CONDITIONS

7. This permit shall automatically be null and void 12 months from the date of issuance, unless Developer has received from the State Department of Alcoholic Beverage Control a license to sell alcoholic beverages on the project property. (PL)

POLICE STANDARD CONDITIONS

8. All managers or supervisors who are responsible for the daily coordination, supervision or managing of employees, shall complete a course in Responsible Beverage Sales and Service (RBSS) within sixty days of license granting and/or date of employment. (PL/PD)
9. There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
10. The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single

serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the Manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)

11. Any signs, advertisements or decorations placed upon the windows shall not exceed 20% of the overall window area. Additionally, there shall be no other obstructions placed near the windows that exceed 20% of the overall viewing area including display racks, stored products, shades or blinds. (PD)
12. Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined by Oxnard City Code, the Police Department may initiate Planning Commission review of the existing SUP and the Planning Commission may apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
13. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
14. Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. This includes the rear of the business. (PL/PD)
15. Any rear door of the premises shall be equipped on the inside with an automatic locking device, shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies or disposal of trash does not constitute a violation. (PD)
16. Employees involved in the sale or service of alcoholic beverages shall not be allowed to consume alcoholic beverages at any time during their shift. Employees shall not report to work with evidence of having consumed any intoxicants such as alcohol, illegal drugs or controlled substances. (PD)
17. The parking lot and adjacent areas of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. This includes the rear of the business. (PL/PD)
18. There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)
19. Permittee shall regularly police the area under Permittee's control (including the rear of the business) in an effort to prevent the loitering of persons about the premises. (PL/PD)
20. In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)

21. Coolers or displays containing alcoholic beverages shall be maintained in such a way as to allow for them to be locked or inaccessible during hours of prohibited sale and shall, in fact, be secured during the hours from 12:00 Midnight to 6:00 AM. (PD)
22. Coolers or displays containing alcoholic beverages shall be separate from other coolers or displays and shall be positioned so as to allow maximum visibility to cashiers, clerks, associates, or employees. Alcohol displays shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy and unobstructed path to any entry or exit. It is recommended that the alcohol displays or coolers be positioned where the cashiers or clerks have a clear view from their normal work stations of the activity of persons in the alcohol aisle. (PD)
23. There shall be no amusement machines or video devices maintained on the premises at any time. (PD)
24. Beer, malt beverages and wine coolers, in containers of 40oz in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. (PD)
25. No wine shall be sold with an alcoholic content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more and maintained in corked bottles (Port, Sherry, Saki, Marsala, Madiera, Muscat and Vermouth are permitted). (PD)
26. Prominent signs shall be posted stating, in effect, "No persons under 21 will be sold alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". These signs shall, at a minimum, be posted at each point of sale and near any alcohol display or areas. (PD)
27. No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)
28. Alcoholic beverages shall not be sold between the hours 12:00 midnight and 6:00 AM. (PD)
29. There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco. (PD)
30. Security cameras shall be installed to monitor the premises and be positioned to monitor at minimum the entry/exit, all points of sale, alcohol coolers and the areas immediately surrounding the exterior of the business. The camera system shall comply with the following minimum standards: (PD)
 - a. The cameras shall be color cameras, made by a reputable manufacturer and maintained to current industry standards. They shall have low light capability and be capable of identifying persons conducting transactions at the stores' registers or entering/exiting the business.
 - b. The system shall utilize a Digital Video Recorder (DVR). The use of videocassette recorders (VHS and other formats) is prohibited. The DVR shall allow recording, live viewing and playback of recorded video for a period of least 30 days. DVR shall perform all recording, viewing (local and remote), playback (local and remote), queries and backup functions simultaneously, with no interruption of any other function.

31. Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
32. Permittee shall bolt down or otherwise secure all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. (PD)
33. Permittee shall have drop-safes installed or establish other responsible cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50). (PD)
34. Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)
35. Permittee shall install height gauges at all exit doors. (PD)
36. Permittee shall install an electronic intrusion detection system that detects portal openings, glass break, and interior motion. (PD)
37. Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601 or develop and implement critical incident protocols that provide an efficient method for alerting police and others to a potential threat without unnecessarily putting the employees at risk. (PD)
38. A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

POLICE SPECIAL CONDITIONS

39. Permittee shall install a video feedback monitor which displays the live feed from security cameras positioned nearby. The monitor shall, at a minimum, be displayed at each customer entrance. Permittee shall install an additional feedback monitor in the alcoholic beverage display area. (PD)
40. The sale and delivery of alcoholic beverages shall be made to persons who are within the licensed premises only and not through a pass-out window, drive-thru window or a slide-out tray to the exterior of the premises. (PD)

PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 17th day of March, 2011, by the following vote:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

Patrick Mullen, Chair

ATTEST: _____

Susan L. Martin, Secretary

11 MAY - 9 5:10:31

BRIAN C. FISH, PARTNER
DIRECT DIAL NUMBER 619.699.2424
DIRECT FAX NUMBER 619.645.5395
EMAIL ADDRESS bfish@luce.com

May 5, 2011

38415-5846

VIA E-MAIL & U.S. MAIL

Oxnard City Council
c/o City Clerk
City of Oxnard
305 West Third Street
First Floor - West Wing
Oxnard, CA 93030

Re: Walgreens Appeal of Planning & Zoning Permit No. 10-510-6 (2303 N. Vineyard Avenue)

Dear Mayor Holden and City Council:

This letter is submitted in support of Walgreens' appeal the April 7, 2011 Planning Commission decision to deny Special Use Permit 10-510-6 for beer and wine sales at 2303 N. Vineyard Avenue. A separate letter is being submitted in support of the appeal for the Walgreens store at 481 S. Ventura Road. The two letters are similar, as Walgreens offers the same high quality of operations at all its stores, but factual differences between the two stores are addressed in each letter.

In that regard, Walgreens wishes to bring its limited beer and wine sales program to its existing Walgreens store at 2303 N. Vineyard Avenue. That store is located in an area that does not have any off sale alcohol sales establishments, of any type, within the 350 foot guideline area established by City regulations. Nonetheless, and despite having the support of both the Planning Department and the Police Department, the Planning Commission denied Walgreens' application citing concerns about crime and an undue concentration of alcohol retailers. However, as set forth below, Walgreens will conduct its alcohol sales in a manner that does not adversely impact police or other community resources while at the same time providing the surrounding community with the convenience of "one stop shopping." Therefore, Walgreens is asking the City Council to reverse the Planning Commission's decision and approve the requested special use permit.

I. Introduction

Walgreens, the nation's largest drug store chain, has decades of experience as a responsible seller of regulated products such as pharmaceuticals, tobacco and alcohol. In an effort to meet the strong customer demand for the convenience of "one stop shopping," Walgreens recently started selling beer and wine (not hard alcohol) at stores throughout California. At its existing store at 2303 N. Vineyard Avenue, Walgreens plans to use only a very small percentage of its 14,889 square foot

Mayor Holden and City Council
May 5, 2011
Page 2

store for beer and wine sales. As such, and while beer and wine sales are expected to account for only a tiny fraction of overall sales, Walgreens expects a meaningful increase in sales of its core products as a result of the new offering.

Walgreens is also different from some other retailers in the City. By way of example, Walgreens is not requesting a license to sell liquor nor will it sell single bottles or cans of beer and malt liquor as its inventory will only target the casual consumer of beer and wine. Further, the public expects and demands Walgreens to provide the same types of products as other national retailers. Selling beer and wine will help Walgreens remain competitive with companies like CVS and Rite Aid (and Target and Wal-Mart) that are already selling alcohol in Oxnard. In these tough economic times, offering a diversified product line is essential to success and Walgreens' ability to maintain the store's 23 full time and 8 part time jobs.

II. The Planning Commission's Findings.

The Planning Commission failed to consider all the findings for a special use permit required by Section 16-531 of the Zoning Code. The findings that should have been considered by the Planning Commission are:

(A) The nature, condition and development of adjacent uses, buildings and structures shall be considered, and no proposed special use permit shall be granted if the approval body finds such use will adversely affect or be materially detrimental to such adjacent uses, buildings or structures or to the public health, safety or general welfare.

(B) The site that is subject to the special use permit shall be adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and items which may be required by section 16-532.

(C) The site that is subject to the special use permit shall be served by highways adequate in width and improved as necessary to carry the kind and quantity of traffic such use would generate.

(D) The site that is subject to the special use permit shall be provided with adequate sewerage, water, fire protection and storm drainage facilities.

As demonstrated by the draft resolution prepared by the City staff in connection with the Planning Commission hearing (attached hereto), substantial evidence supports the approval of Walgreens' request for a special use permit. The Planning Commission instead justified its denial of the special use permit based on the findings quoted below in bold. The following discusses each of those findings and describes why the City Council should reverse the Planning Commission decision and grant Special Use Permit 10-510-6.

Mayor Holden and City Council
May 5, 2011
Page 3

1. The denial of this special use permit will not affect the preservation and enjoyment of substantial property rights of the applicant.

Denying Walgreens the right to sell beer and wine will affect the enjoyment of substantial property rights. The Planning Commission decision denies Walgreens the ability to compete with other similarly situated retailers on an equal footing. Retailers like CVS, Rite Aid, Target and Wal-Mart are all permitted to sell alcohol. Walgreens should also have that same right.

2. The granting of this special use permit would, under the circumstances of this particular case, adversely affect or be materially detrimental to adjacent uses, buildings or structures, to the health or safety of persons residing in or working in the neighborhood, or to the general welfare in that apartments are located within 800 feet of the subject location. The proposed use if approved would be incompatible within the vicinity of multiple-family housing. The subject location is within 1600 feet of freeway access, is open to the public 24 hours daily, and approval of the proposed license is incompatible with the general welfare of the public due to the existing high crime rate in the vicinity.

Granting Special Use Permit 10-510-6 to Walgreens will not adversely affect or be materially detrimental to adjacent uses, buildings, or structures, to the health or safety of persons residing or working in the neighborhood, or to the general welfare. Even if the Planning Commission's description of the adjacent land uses were accurate, which the analysis below demonstrates it is not, Walgreens will implement a number of safety and security measures that ensure that the beer and wine sales will not adversely impact the community. In fact, Walgreens has a national reputation to uphold and is therefore motivated to ensure that beer and wine sales are handled in a safe and responsible manner that does not adversely impact the community.

As an experienced and trusted retailer of regulated products (pharmaceuticals, tobacco and alcohol) with decades of experience successfully selling such products as part of its overall retail operations, Walgreens knows that people have many retail options and that a poorly run beer and wine program at any one of its stores will deter people from frequenting Walgreens stores elsewhere. As such, Walgreens' successful business model depends on its ability to implement best practices everywhere it operates, including policies and procedures such as:

- Employees at each store must undergo training prior to beer and wine being made available for sale at the store and annually thereafter;
- Each cash register clerk must submit a policy acknowledgement as part of the daily log-in and log-out process;

Mayor Holden and City Council
May 5, 2011
Page 4

- Each cash register clerk must request identification and proof of age for any customer attempting to purchase beer or wine who appears to be under the age of 40. Pre-programmed cash register “prompts” will remind the clerks to request this proof;
- Any under-aged employees will be required to involve the manager or assistant manager for the sale of beer or wine.
- Installing cameras and public view monitors in all Walgreens stores to deter criminal activity and promote security. The digital images captured from these devices are stored for a period of time on a Digital Video Recorder;
- Positioning beer and wine displays on the opposite side of the store from where the entrance is located;
- Not catering to those likely to abuse alcohol by not selling beer by the individual can or bottle. Walgreens will only sell beer in 6 packs, 12 packs, 18 packs and cases.

Training will be accomplished in part through a Walgreens internal alcohol sales training program, which is required for all cashiers and managers. The training program focuses on recognizing and preventing sales of alcohol that may be detrimental to the public welfare (i.e., the sale of alcohol to minors and intoxicated persons). Although this Walgreens store is open 24-hours per day, Walgreens has already agreed to a condition of approval prohibiting alcohol sales after midnight. Walgreens also agreed to secure alcohol so it cannot be accessed after midnight to ensure that it will not contribute to late-night alcohol related nuisances.

The Planning Commission did not fully consider the above. Instead, the Planning Commission justified its decision based on concerns about the impact beer and wine sales might have on nearby apartment residents, particularly in light of its 24-hour per day operations. The Planning Commission also raised concerns about the possibility that patrons of Walgreens might purchase alcohol and drink it while driving on the 101 freeway.

The actual separation distances (as opposed to those cited in the Planning Commission resolution), the existence of intervening land uses and other factors, also demonstrate that substantial evidence does not support the Planning Commission’s conclusions regarding the impact of Walgreens’ proposal. By way of reference, the City Council should note that ABC regulations provide for the consideration of (not even a prohibition against) the proximity of a residence if that residence is within 600-feet of a proposed alcohol sales establishment. Here, the Planning Commission resolution states that the Los Arbolitos apartments are located within 800-feet of the store. However, that measurement assumes a path of travel over the top of intervening buildings. By a realistic measure of a pedestrian or vehicular path, the apartment complex is approximately 900-feet away.

Mayor Holden and City Council
May 5, 2011
Page 5

Moreover, Walgreens is separated from Los Arbolitos by the rather large Vineyard Plaza shopping center and 8 lanes of North Oxnard Boulevard. Similarly, the Casitas Apartments Casa Real are located more than 1,500 feet away by a pedestrian or vehicular path of travel. This apartment complex is also separated from Walgreens by the Vineyard Plaza shopping center, 8 lanes of North Oxnard Boulevard and a flood control channel.

The Planning Commission resolution also relied on the proximity of the 101 Freeway, arguing that a separation distance of 1,600 feet makes is likely people who buy alcohol at Walgreens will drink and drive. By our measurement using Google Earth, it appears the freeway is more than 1,800 feet away "as the crow flies." By vehicle, the freeway entrance is actually almost 3,000 feet away, or more than a half a mile away. Further, the Planning Commission provided no credible support for their conclusion that that a direct relationship exists between a beer and wine sales program at the Walgreens at 2303 N. Vineyard Avenue and people breaking the law by drinking while driving on Highway 101.

3. The proposed use will result in or add to an undue concentration of establishments selling alcoholic beverages for off-site consumption within 1000 feet of the subject location. There are zero establishments with the same Type 20 ABC license that exists within 350 feet of the proposed location; however, there is one Type 48 (On-Sale General) ABC license within 350 feet of the location, there are three Off-Sale ABC licenses plus five On-Sale ABC licenses within 1000 feet of the location, and apartments exist in the vicinity of the location. The Planning Commission finds that an undue concentration of alcohol uses currently exists, and that the presumption of undue concentration was not rebutted by a preponderance of evidence in the record of proceedings.

A. No "Undue Concentration" Exists Pursuant to Resolution No. 11,896

The Planning Commission cited "undue concentration" as a basis for denying Walgreens' application because alcohol is already available at other nearby retail establishments. Notwithstanding this assertion, Walgreens does not contribute to "undue concentration," as that term is defined in City regulations. The "Resolution of the City Council of the City of Oxnard Adopting Standards For Determining Applications for Special Use Permits to Sell Alcoholic Beverages" (hereafter "Resolution 11,896") provides:

that there is a presumption that an undue concentration will result or be added to if the establishment for which the special use permit is applied will be located less than 350 feet from another establishment of the same type, and there is a presumption that an undue concentration will not result or be added to if the establishment for which the special use permit is applied will be located 350 feet or

Mayor Holden and City Council
May 5, 2011
Page 6

more from another establishment of the same type." [Emphasis added.]

Resolution No. 11,896 also states "as used in this resolution, 'the type' refers to the nature of the business (e.g., grocery store, liquor store, bar or restaurant), not to the type of State Alcoholic Beverage Control license issued to or sought for the business."

The Planning Commission correctly determined that there are "zero" businesses of the "same type" as Walgreens already selling alcohol within a 350-foot radius. The only other business within 350 feet selling alcohol is a bar, which even the Planning Commission recognized is not the "same type" of business as Walgreens. This bar is also separated from Walgreens by a fenced-in flood control channel. As such, the City's own presumption of no "undue concentration" applies.

Despite the above facts and contrary to the City's regulations, the Planning Commission nonetheless found that an "undue concentration" exists. The existence of a Circle K, Food 4 Less, Chevron and 5 restaurants in the area certainly does not support that conclusion. None of these businesses is within 350 feet of Walgreens or "of the same type" of business as Walgreens. Walgreens is a large, national drug store. These other retailers are gas stations and a grocery store that, among other things may sell single cans and bottles of beer, and target a very different customer than the one looking for a "one stop shopping" experience at Walgreens. In contrast, Walgreens operates in a 14,889 square foot building that offers a complete array of products. Further, Walgreens proposes to dedicate only a tiny percentage of the store to beer and wine sales and it will cater to the casual drinker by not even offering single cans or bottles of beer. The Oxnard Zoning Code recognizes that Walgreens and Circle K, Food 4 Less and Chevron are not the same "type" of store in that it separately describes "convenience markets," "grocery stores," and pharmacies. (See, e.g., Zoning Code, §§ 16.122, 16.124, 16.135, 16.136.) In short, both legally and practically, substantial evidence does not exist to support the Planning Commission's decision to disregard the presumption of no "undue concentration."

B. The Sale Of Beer And Wine Will Not Alter The Character Of the Surrounding Neighborhood

Regardless of the "type" of retailers in the area, it is also important to recognize that the area can support another alcohol license given the amount of commercial activity at the intersection of Oxnard Boulevard and Vineyard Street, and the significant amount of surrounding residential population. Further, allowing Walgreens to sell beer and wine will not change the character of the area at all. Walgreens is an existing, successful business and the inclusion of beer and wine sales will not adversely impact its operations or the way it benefits the community. Walgreens will also devote only a very small percentage of floor area for beer and wine sales, will not advertise the availability of beer and wine on the outside of the store, will not sell alcohol to minors or intoxicated

Mayor Holden and City Council
 May 5, 2011
 Page 7

persons, will not sell alcohol in singles or “minis”, and will implement a host of other measures (described above) to ensure that sales will be conducted in a safe and responsible manner that does not alter the character of the surrounding community.

C. The Community Will Benefit From Competition If Walgreens Is Allowed To Sell Beer And Wine

Allowing Walgreens to sell beer and wine is also necessary in order for the community to benefit from competition between Walgreens and the other nearby retailers. Currently, Walgreens is at a competitive disadvantage because others already sell alcohol pursuant to an existing ABC license. If others have to compete on a level playing field with Walgreens, each of these retailers will be encouraged to provide the same type of safe and customer oriented environment Walgreens will offer and that the surrounding community expects and deserves. If Walgreens is denied a special use permit, the benefits of true competition are lost and it is the surrounding community that suffers. In the end, authorizing alcohol sales at Walgreens does not create “undue concentration” – it enhances the community.

D. Contrary To Statements Made During The Planning Commission Hearing, The City Generally Does Not Suffer From An Undue Concentration Of Off-Sale Alcohol Licenses

A concern was raised during the Planning Commission hearing about the number of alcohol retailers in Oxnard generally. The City currently has 1 off-sale retail license for every 1,649 residents.¹ This is well below the threshold used by the State Department of Alcoholic Beverage Control (“ABC”) for finding the existence of “undue concentration.” The ABC identifies a census tract as having an “undue concentration” when there is more than 1 off-sale license for every 1,250 people residing in that census tract. (Cal. Bus. and Prof., § 23817.5(b).) Applying that metric to the City of Oxnard, “undue concentration” would not exist unless there were more than 158 active off-sale licenses within the City. Currently, there are 120 active licenses within the City.

For purposes of comparison, note that the nearby City of Ventura has a far higher concentration of off-sale alcohol licenses—one for every 1,103 residents. Ventura has 105 active off-sale licenses (and 2 surrendered licenses), whereas its 2010 population of 106,433 would dictate only 85 off-sale

¹ According to the 2010 Census, the City’s population is 197,899. (http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_PL_Q_TPL&prodType=table). According to the ABC, there are 120 active (and 5 surrendered) licenses permitting the sale of alcohol for offsite consumption. (<http://www.abc.ca.gov/datport/AHCityRep.asp>) $197,899/120 = 1,649$ people per ABC license.

Mayor Holden and City Council
May 5, 2011
Page 8

licenses before “undue concentration” exists.² In fact, the ABC has designated Ventura a “moratorium” city, meaning that new licenses cannot issue in that City absent special circumstances. In contrast, the ABC has not designated Oxnard a “moratorium” city. (www.abc.ca.gov/permits/Moratorium.pdf [Santa Paula, Fillmore and Ojai are also moratorium cities].)

E. It Is Not The Number Of Alcohol Sales Establishments That Create Problems For Cities, But Instead The Quality Of The Operators.

The existence of multiple retailers selling alcohol in a community does not, in and of itself, harm or blight the community. However, problems can arise when retailers fail to conduct their sales in a professional, responsible and conscientious manner. Walgreens will not be such a problem retailer. Walgreens prides itself on being a good corporate citizen and partner with both the surrounding community and the City. As demonstrated above, Walgreens has established policies and procedures in place to ensure that its alcohol sales program will not create problems in the community. For example, to avoid potential conflicts with its core operations and to respond to community concerns, Walgreens will dedicate only a small area of the 14,889 square foot store to beer and wine sales. Along the same lines, Walgreens is not proposing to sell individual cans or bottles of beer nor will it sell hard alcohol or high alcohol content malt beverages like 4 Loco. These two measures, in and of themselves, make Walgreens different from many existing retailers in the area. Walgreens has also agreed to comply with stringent conditions of approval that give the City, among other things, authority to immediately suspend alcohol sales if there is a single significant incident at the store. (Proposed Condition of Approval No. 6 from Planning Commission Staff Report.) When the City Council also considers all the security measures and training that Walgreens will implement (as outlined above), it should be easy for the City Council to approve Walgreens’ special use permit.

² For 2010 census data, see http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_PL_QT_PL&prodType=table. For ABC off sale license count, see <http://www.abc.ca.gov/datport/AHCityRep.asp>.

Mayor Holden and City Council
May 5, 2011
Page 9

4. The proposed use is likely to create or significantly aggravate police problems within 1000 feet of the location for which the special use permit is applied. The Planning Commission finds that the preponderance of the evidence indicates that area's crime rate is 95% higher than the citywide average, and the proposed Type 20 ABC license if approved may exacerbate the crime rate.

The sale of beer and wine by Walgreens is not likely to create or significantly aggravate police problems within 1,000 feet of the existing store. The Planning Commission denied Walgreens' application because of their perception about the existing crime rate. In fact, as one would expect given the amount of commercial and non-residential uses, the area has a crime rate that is higher than the citywide average. However, the crime rate alone is not sufficient to support the Planning Commission findings.

Oxnard Police Officer Waer testified during the Planning Commission hearing that the crime rate in a commercial district such as Walgreens' is almost always higher than the citywide average and is not cause for concern. Indeed, the Police Department report prepared in connection with Walgreens' application noted that "a higher-than-average crime rate in bustling commercial areas is not uncommon and the majority of police reports tend to be property crimes or relatively minor in nature. The Police Department does not consider this area to be a policing problem. . . . The Beat Coordinator who is responsible for monitoring and managing the day-to-day police activity near the location said that the area immediately surrounding the proposed site is not considered to be a policing problem. . . . The Police Department does not believe that the sale of alcohol at this site will significantly aggravate policing issues..." (See Report by Cliff Waer, Senior Alcohol Compliance Officer to Brian Foote, Associate Planner, dated February 10, 2011 regarding 2303 E. Vineyard Ave (Walgreens), pp. 2-3.) The Police Department's report concludes as follows: "The Police Department's experience is that the proposed license (Type 20 – Market), when properly regulated through conditions [of approval], does not normally aggravate policing issues, as long as the establishment complies with these regulations and operates responsibly." (Id. at p. 4.) Walgreens agreed to comply with all of the very comprehensive conditions of approval proposed as part of the Planning Commission approval and will operate responsibly.

It is also important to note that the applicable threshold set forth in Council Resolution 11,896 is that "the proposed use is not likely to create or significantly aggravate police problems within 1000 feet of the location for which the special use permit is applied." The above-referenced evidence from the Police Department, coupled with the materials submitted by Walgreens, provides more than substantial evidence demonstrating that Walgreens' sale of beer and wine will not create or aggravate police problems anywhere within the City.

Mayor Holden and City Council
May 5, 2011
Page 10

III. Conclusion

For all of the reasons discussed above, the City Council should accept Walgreens' appeal and reverse the Planning Commission decision to deny the requested special use permit for beer and wine sales at 2303 N. Vineyard Avenue. The foregoing demonstrates that Walgreens' sale of beer and wine will serve the public convenience or necessity by providing customers with the convenience of "one stop shopping" and also create a more competitive retail environment. Walgreens has also demonstrated that the area is not "over concentrated" as defined by City regulations, that the crime rate is not a basis for denying Walgreens' request and, most important, beer and wine sales will be handled in a safe and responsible manner that will not have an adverse impact on police resources or the surrounding community in general. Finally, providing this additional product offering will help Walgreens thrive during tough economic times, which in turn will foster continued stability in the local community. As such, we respectfully request that the City Council approve Walgreens' request for a special use permit.

Sincerely,



Brian C. Fish
of

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

BCF/
Enclosure

cc: Michael Redstone, Esq.
Mr. Bud Heitman
Mr. Brian Foote

**PLEASE PROVIDE AN ORIGINAL AND 2 COPIES
A \$525 FEE MUST ACCOMPANY THIS APPEAL**

TO: Oxnard City Clerk

**NOTICE OF APPEAL
(from member of the public)**

I, Jennifer Chavez on behalf of Walgreen Co., am aggrieved or directly affected by
(name of person filing appeal)

and appeal the April 7, 2011 decision from the Planning Commission regarding Project No.
(date of PC meeting)

10-510-9, more particularly described as follows:
(date of PC meeting)

denying Walgreens' special use permit application for beer and wine sales at the store it currently
operates at 481 S. Ventura Boulevard

The grounds for appeal are:

The Planning Commission decision was arbitrary and capricious and not supported by substantial
evidence. Substantial evidence supported the proposed Resolution of approval prepared by City
Staff and attached to the Planning Commission Staff Report for this case, a copy of which is
attached hereto. Additional materials in support of this appeal will be submitted prior to the City
Council hearing.

I request the following relief:

Reverse the Planning Commission's April 7, 2011 decision and issue a special use permit
authorizing Walgreens to sell beer and wine at the store it operates at 481 S. Ventura Boulevard.

Jenny Chavez
(signature)

Date: 4/22/11

(address)

cc: City Attorney
Project Planner
Development Services Department
Applicant

101495482.1

ATTACHMENT 7
PAGE 18 OF 33

RESOLUTION NO. 2011 -

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD APPROVING PLANNING AND ZONING PERMIT NO. 10-510-9 (SPECIAL USE PERMIT - ALCOHOL), TO ALLOW A TYPE 20 (OFF-SALE BEER & WINE) ALCOHOLIC BEVERAGE CONTROL LICENSE WITHIN AN EXISTING WALGREEN DRUGSTORE, LOCATED AT 481 S. VENTURA ROAD (APN 183-0-130-305), SUBJECT TO CERTAIN FINDINGS AND CONDITIONS. FILED BY ATTORNEY JENNIFER CHAVEZ, LUCE FORWARD HAMILTON & SCRIPPS LLP, 600 W. BROADWAY, SUITE 2600, SAN DIEGO CA 92101, ON BEHALF OF WALGREEN CO.

WHEREAS, the Planning Commission of the City of Oxnard has considered an application for Planning and Zoning Permit No. 10-510-9 filed by attorney Jennifer Chavez on behalf of Walgreen Co. in accordance with Section 16-530 through 16-553 of the Oxnard City Code and City Council Resolution No. 11,896; and

WHEREAS, Section 15301 of Title 14 of the California Code of Regulations exempts the project from the requirement for the preparation of environmental documents imposed by the California Environmental Quality Act; and

WHEREAS, the Planning Commission finds, after due study, deliberation and public hearing, that the following circumstances exist:

1. The proposed use is in conformance with the General Plan and other adopted policies of the City of Oxnard.
2. The proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.
3. The site for the proposed use is adequate in size and shape to accommodate the setbacks, parking, landscaping, and other City standards except as may be specifically excepted by the special findings and conditions of this resolution.
4. The site for the proposed use will be served by streets and highways adequate in width and structure to carry the kind and quantity of traffic such use will generate.
5. The site for the proposed use will be provided with adequate sewerage, water, fire protection and storm drainage facilities.
6. The proposed use will not result in or add to an undue concentration of establishments selling alcoholic beverages off-site consumption within 1000 feet of the subject location. There is one establishment with the same Type 20 ABC license that exists within 350 feet of the proposed location, and therefore, there is a

presumption that an undue concentration will result or be added to. However, the preponderance of the evidence indicates that the area is not considered to be a policing problem, statistical analysis shows the area's crime rate to be consistent with the citywide average and is not considered to be significant, and the proposed retail of alcohol will be an ancillary use with the alcohol display area occupying no more than 5% of the floor area of the store.

7. The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet of the location for which the special use permit is applied. The preponderance of the evidence indicates that the area is not considered to be a policing problem, statistical analysis shows the area's crime rate to be consistent with the citywide average and is not considered to be significant, and the Type 20 ABC license does not normally aggravate policing issues as long as the establishment complies with regulations and conditions of approval.

WHEREAS, the Planning Commission finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work, visit or live in this development in particular.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby approves this permit subject to the following conditions. The decision of the Planning Commission is final unless appealed in accordance with the provisions of Section 16-545 of the Oxnard City Code.

STANDARD CONDITIONS OF APPROVAL FOR LAND USE PERMITS

Note: The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. *G-1*) while some are taken from environmental documents (e.g. *MND-S2*).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning Division
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic Division
PD	Police Department	B	Building Plan Checker
SC	Source Control	FD	Fire Department
PK	Public Works, Landscape Design	CE	Code Compliance

GENERAL PROJECT CONDITIONS

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, G-1).
2. This permit is granted for the plans dated June 28, 2010 ("the plans") on file with the Planning Division. The project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning and Environmental Services Manager ("Planning Manager") or a major modification to the plans is approved by the Planning Commission. A minor modification may be granted for minimal changes or increases in the extent of alcohol use. A major modification shall be required for substantial changes in such use. (PL, G-2)
3. By commencing any activity related to the project or using any structure authorized by this permit, Developer accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
4. Developer agrees, as a condition of adoption of this resolution, at Developer's own expense, to indemnify, defend and hold harmless the City and its agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of the resolution or any condition attached thereto or any proceedings, acts or determinations taken, done or made prior to the approval of such resolution that were part of the approval process. Developer's commencement of construction or operations pursuant to the resolution shall be deemed to be an acceptance of all conditions thereof. (CA, G-6)
5. Developer shall complete the "Notice of Land Use Restrictions and Conditions" form, using the form provided by the City, for recording with the Ventura County Recorder. Before the City issues building permits, Developer shall submit the original completed, signed and notarized document, together with the required fees to the Planning Manager. (PL, G-8)
6. If Developer, owner or tenant fails to comply with any of the conditions of this permit, the Developer, owner or tenant shall be subject to a civil fine pursuant to the City Code. (CA, G-14)

PLANNING DIVISION SPECIAL CONDITIONS

7. This permit shall automatically be null and void 12 months from the date of issuance, unless Developer has received from the State Department of Alcoholic Beverage Control a license to sell alcoholic beverages on the project property. (PL)

POLICE STANDARD CONDITIONS

8. All managers or supervisors who are responsible for the daily coordination, supervision or managing of employees, shall complete a course in Responsible Beverage Sales and Service (RBSS) within sixty days of license granting and/or date of employment. (PL/PD)

9. There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
10. The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the Manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)
11. Any signs, advertisements or decorations placed upon the windows shall not exceed 20% of the overall window area. Additionally, there shall be no other obstructions placed near the windows that exceed 20% of the overall viewing area including display racks, stored products, shades or blinds. (PD)
12. Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined by Oxnard City Code, the Police Department may initiate Planning Commission review of the existing SUP and the Planning Commission may apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
13. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
14. Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. This includes the rear of the business. (PL/PD)
15. Any rear door of the premises shall be equipped on the inside with an automatic locking device, shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies or disposal of trash does not constitute a violation. (PD)
16. Employees involved in the sale or service of alcoholic beverages shall not be allowed to consume alcoholic beverages at any time during their shift. Employees shall not report to work with evidence of having consumed any intoxicants such as alcohol, illegal drugs or controlled substances. (PD)
17. The parking lot and adjacent areas of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. This includes the rear of the business. (PL/PD)

18. There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)
19. Permittee shall regularly police the area under Permittee's control (including the rear of the business) in an effort to prevent the loitering of persons about the premises. (PL/PD)
20. In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
21. There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)
22. Permittee shall regularly police the area under Permittee's reasonable control (including the rear of the business) and shall not permit the loitering of persons about the premises. (PL/PD)
23. In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
24. Coolers or displays containing alcoholic beverages shall be separate from other coolers or displays and shall be positioned so as to allow maximum visibility to cashiers, clerks, associates, or employees. Alcohol displays shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy and unobstructed path to any entry or exit. It is recommended that the alcohol displays or coolers be positioned where the cashiers or clerks have a clear view from their normal work stations of the activity of persons in the alcohol aisle. (PD)
25. There shall be no amusement machines or video devices maintained on the premises at any time. (PD)
26. Beer, malt beverages and wine coolers, in containers of 40oz in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. (PD)
27. No wine shall be sold with an alcoholic content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more and maintained in corked bottles (Port, Sherry, Saki, Marsala, Madiera, Muscat and Vermouth are permitted). (PD)
28. Prominent signs shall be posted stating, in effect, "No persons under 21 will be sold alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". These signs shall, at a minimum, be posted at each point of sale and near any alcohol display or areas. (PD)
29. No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)

30. Alcoholic beverages shall not be sold between the hours from 12:00 midnight and 6:00 AM. (PD)
31. There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco. (PD)
32. Security cameras shall be installed to monitor the premises and be positioned to monitor at minimum the entry/exit, all points of sale, alcohol coolers and the areas immediately surrounding the exterior of the business. The camera system shall comply with the following minimum standards: (PD)
 - a. The cameras shall be color cameras, made by a reputable manufacturer and maintained to current industry standards. They shall have low light capability and be capable of identifying persons conducting transactions at the stores' registers or entering/exiting the business.
 - b. The system shall utilize a Digital Video Recorder (DVR). The use of videocassette recorders (VHS and other formats) is prohibited. The DVR shall allow recording, live viewing and playback of recorded video for a period of least 30 days. DVR shall perform all recording, viewing (local and remote), playback (local and remote), queries and backup functions simultaneously, with no interruption of any other function.
33. Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
34. Permittee shall bolt down or otherwise secure all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. (PD)
35. Permittee shall have drop-safes installed or establish other responsible cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50). (PD)
36. Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)
37. Permittee shall install height gauges at all exit doors. (PD)
38. Permittee shall install an electronic intrusion detection system that detects portal openings, glass break, and interior motion. (PD)
39. Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601 or develop and implement critical incident protocols that provide an efficient method for alerting police and others to a potential threat without unnecessarily putting the employees at risk. (PD)
40. A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

11 MAY -9 AM 10:31

BRIAN C. FISH, PARTNER
DIRECT DIAL NUMBER 619.699.2424
DIRECT FAX NUMBER 619.645.5395
EMAIL ADDRESS bfish@luce.com

May 5, 2011

38415-07449

VIA E-MAIL & U.S. MAIL

Oxnard City Council
c/o City Clerk
City of Oxnard
305 West Third Street
First Floor - West Wing
Oxnard, CA 93030

Re: Walgreens Appeal of Planning and Zoning Permit No. 10-510-9 (481 S. Ventura Road)

Dear Mayor Holden and City Council:

This letter is submitted in support of Walgreens' appeal of the April 7, 2011 Planning Commission decision to deny Special Use Permit 10-510-9 for beer and wine sales at 481 S. Ventura Road. A separate letter is being submitted in support of the appeal for the Walgreens store at 2303 N. Vineyard Avenue. The two letters are similar, as Walgreens offers the same high quality of operations at all its stores, but factual differences between the two stores are addressed in each letter.

With respect to the existing store at 481 S. Ventura Boulevard, Walgreens requests that the City Council reverse the Planning Commission's decision and approve the special use permit. Disregarding the fact that the request is consistent with City Codes and has the support of both the Planning Department and the Police Department, the Planning Commission denied Walgreens' application citing concerns about crime and the availability of alcohol at other retailers. To the contrary, as set forth below, Walgreens will conduct its alcohol sales in a manner that does not adversely impact police or other community resources, while at the same time providing the surrounding community with the convenience of "one stop shopping."

I. Introduction

Walgreens, the nation's largest drug store chain, has decades of experience as a responsible seller of regulated products such as pharmaceuticals, tobacco and alcohol. In an effort to meet the strong customer demand for the convenience of "one stop shopping," Walgreens recently started selling beer and wine (not hard alcohol) at stores throughout California. At its existing store at 481 S. Ventura Road, Walgreens plans to use only a very small percentage of its 14,490 square foot store for beer and wine sales. As such, and while beer and wine sales are expected to account for only a

Mayor Holden and City Council
May 5, 2011
Page 2

tiny fraction of overall sales, Walgreens expects a meaningful increase in sales of its core products as a result of the new offering.

Walgreens is also different from some other nearby retailers. By way of example, Walgreens is not requesting a license to sell liquor nor will it sell single bottles or cans of beer and malt liquor as its inventory will only target the casual consumer of beer and wine. Further, the public expects and demands Walgreens to provide the same types of products as other national retailers. Selling beer and wine will help Walgreens remain competitive with companies like CVS and Rite Aid (and Target and Wal-Mart) that are already selling alcohol in Oxnard. In these tough economic times, offering a diversified product line is essential to success and Walgreens' ability to maintain the store's 19 full time and 5 part time jobs.

II. The Planning Commission's Findings

The Planning Commission failed to consider all the findings for a special use permit required by Section 16-531 of the Zoning Code. The findings that should have been considered by the Planning Commission are:

(A) The nature, condition and development of adjacent uses, buildings and structures shall be considered, and no proposed special use permit shall be granted if the approval body finds such use will adversely affect or be materially detrimental to such adjacent uses, buildings or structures or to the public health, safety or general welfare.

(B) The site that is subject to the special use permit shall be adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and items which may be required by section 16-532.

(C) The site that is subject to the special use permit shall be served by highways adequate in width and improved as necessary to carry the kind and quantity of traffic such use would generate.

(D) The site that is subject to the special use permit shall be provided with adequate sewerage, water, fire protection and storm drainage facilities.

As demonstrated by the draft resolution prepared by the City staff in connection with the Planning Commission hearing (attached hereto), substantial evidence supports the approval of Walgreens' request for a special use permit. The Planning Commission instead justified its denial of the special use permit based on the findings quoted below in bold. The following discusses each of those findings and describes why the City Council should reverse the Planning Commission decision and grant Special Use Permit 10-510-9.

Mayor Holden and City Council
May 5, 2011
Page 3

1. The denial of this special use permit will not affect the preservation and enjoyment of substantial property rights of the applicant.

Denying Walgreens the right to sell beer and wine will affect the enjoyment of substantial property rights. The Planning Commission decision denies Walgreens the ability to compete with other similarly situated retailers on an equal footing. Retailers like CVS, Rite Aid, Target and Wal-Mart are all permitted to sell alcohol. Walgreens should also have that same right.

2. The granting of this special use permit would, under the circumstances of this particular case, adversely affect or be materially detrimental to adjacent uses, buildings or structures, to the health or safety of persons residing in or working in the neighborhood, or to the general welfare in that oversaturation of alcohol licenses currently exists in the vicinity of the subject location.

The granting of Special Use Permit 10-510-9 to Walgreens would not adversely affect or be materially detrimental to adjacent uses, buildings or structures, to the health or safety of persons residing in or working in the neighborhood, or to the general welfare. As described herein and in other materials submitted to the City, Walgreens will implement a number of safety and security measures to ensure that its beer and wine sales will not adversely impact the community. Also, as discussed below, there is no oversaturation of alcohol licenses in the vicinity of Walgreens.

The City Council should note that Walgreens has a national reputation to uphold and is therefore motivated to ensure that beer and wine sales are handled in a safe and responsible manner that does not adversely impact the community. As an experienced and trusted retailer of regulated products (pharmaceuticals, tobacco and alcohol) with decades of experience successfully selling such products as part of its overall retail operations, Walgreens knows that people have many retail options and that a poorly run beer and wine program at any one of its stores will deter people from frequenting Walgreens stores elsewhere. As such, Walgreens' successful business model depends on its ability to implement best practices everywhere it operates, including policies and procedures such as:

- Employees at each store must undergo training prior to beer and wine being made available for sale at the store and annually thereafter;
- Each cash register clerk must submit a policy acknowledgement as part of the daily log-in and log-out process;
- Each cash register clerk must request identification and proof of age for any customer attempting to purchase beer or wine who appears to be under the age of 40. Pre-programmed cash register "prompts" will remind the clerks to request this proof;

Mayor Holden and City Council
May 5, 2011
Page 4

- Any under-aged employees will be required to involve the manager or assistant manager for the sale of beer or wine.
- Installing cameras and public view monitors in all Walgreens stores to deter criminal activity and promote security. The digital images captured from these devices are stored for a period of time on a Digital Video Recorder;
- Positioning beer and wine displays on the opposite side of the store from where the entrance is located;
- Not catering to those likely to abuse alcohol by not selling beer by the individual can or bottle. Walgreens will only sell beer in 6 packs, 12 packs, 18 packs and cases.

Training will be accomplished in part through a Walgreens internal alcohol sales training program, which is required for all cashiers and managers. The training program focuses on recognizing and preventing sales of alcohol that may be detrimental to the public welfare (i.e., the sale of alcohol to minors and intoxicated persons).

3. The proposed use will result in or add to an undue concentration of establishments selling alcoholic beverages for off-site consumption within 1000 feet of the subject location. There is one establishment with the same Type 20 ABC license that exists within 350 feet of the proposed location, and therefore, there is a presumption that an undue concentration will result or be added to. In addition, there are three Off-Sale ABC licenses and two On-Sale ABC licenses within 1000 feet of the location. The Planning Commission finds that an undue concentration of alcohol uses currently exists, and that the presumption of undue concentration was not rebutted by a preponderance of evidence in the record of proceedings.

A. No "Undue Concentration" Exists Pursuant to City Resolution No. 11,896

The Planning Commission cited "undue concentration" as a basis for denying Walgreens' application because alcohol is already available at other nearby retail establishments. The cited businesses include a 7-Eleven within 350-feet of Walgreens and the following establishments within 1,000-feet of Walgreens: CVS, Vons, Oxnard Car Wash, Chinaland restaurant and Taqueria Tapatio restaurant. According to the Police Department, "none of the[se] nearby outlets are considered problematic." (See Report by Cliff Waer, Senior Alcohol Compliance Officer to Brian Foote, Associate Planner, dated February 10, 2011 regarding 481 S. Ventura Road (Walgreens), p. 1.)

Notwithstanding the existence of other retailers and contrary to the Planning Commission's findings, Walgreens does not contribute to "undue concentration," as that term is defined in City regulations. The "Resolution of the City Council of the City of Oxnard Adopting Standards For Determining

Mayor Holden and City Council
May 5, 2011
Page 5

Applications for Special Use Permits to Sell Alcoholic Beverages” (hereafter “Resolution 11,896”) provides:

that there is a presumption that an undue concentration will result or be added to if the establishment for which the special use permit is applied will be located less than 350 feet from another establishment of the same type, and there is a presumption that an undue concentration will not result or be added to if the establishment for which the special use permit is applied will be located 350 feet or more from another establishment of the same type.” [Emphasis added.]

Resolution No. 11,896 also states “as used in this resolution, ‘the type’ refers to the nature of the business (e.g., grocery store, liquor store, bar or restaurant), not to the type of State Alcoholic Beverage Control license issued to or sought for the business.”

The Planning Commission found that Walgreens is the same “type” of store as the 7-Eleven located within 350 feet. However, 7-Eleven is not the same type of store as Walgreens. 7-Eleven is a small convenience store that, among other things sells single cans and bottles of beer, and targets a very different customer than the one looking for a “one stop shopping” experience at Walgreens. Walgreens is a large national drug store in a 14,490 square foot building that offers a complete array of products. Further, Walgreens proposes to dedicate only a tiny percentage of the store to beer and wine sales and it will cater to the casual drinker by not even offering single cans or bottles of beer. The Oxnard Zoning Code also recognizes that Walgreens and 7-Eleven are not the same “type” of store in that it separately describes “convenience markets”, “mini-markets” and “pharmacies.” (See, e.g., Zoning Code, §§ 16.122, 16.124, 16.135, 16.136.) In short, both legally and practically, 7-Eleven is not the “same type” of store as a Walgreens. Therefore, the Planning Commission erred when it found that approval of Walgreens’ application would result in “undue concentration.”

The Planning Commission also relied on the proximity of the Oxnard Car Wash, Vons grocery store, CVS and two restaurants as evidence of “undue concentration.” None of these businesses is both within 350 feet of Walgreens and also of the same type of business as Walgreens (pharmacy). As such, Resolution No. 11,896 presumes that an undue concentration does not exist.

That presumption is correct and supported by substantial evidence because none of those other businesses offer residents a retail experience even remotely similar to the “one stop” shopping Walgreens can offer if it is allowed to sell beer and wine. Even CVS and Walgreens do not serve the same clientele. The fact that Walgreens and CVS coexist in the same shopping area, a business strategy that Walgreens regularly employs throughout the country, demonstrates that each company serves a different clientele and each offers a unique operation, character and merchandise not offered

Mayor Holden and City Council
May 5, 2011
Page 6

by the other. For example, CVS stocks a large selection of distilled spirits and it often sells single cans of beer; Walgreens will not carry any spirits or singles of beer as its inventory will focus solely on the casual beer and wine drinker. In short, Walgreens customers would not find it convenient to travel to a grocery store, convenience store or even CVS to make the purchases they make at Walgreens. Therefore, permitting Walgreens to sell beer and wine at 481 S. Ventura will not result in or contribute to any "undue concentration."

B. The Sale Of Beer And Wine Will Not Alter The Character Of the Surrounding Neighborhood

Regardless of the "type" of retailers in the area, it is also important to recognize that the area can support another alcohol license given the amount of commercial activity at the intersection of S. Ventura Road and Fifth Street, and the significant amount of surrounding residential population. Further, allowing Walgreens to sell beer and wine will not change the character of the area at all. Walgreens is an existing, successful business and the inclusion of beer and wine sales will not adversely impact its operations or the way it benefits the community. Walgreens will also devote only a very small percentage of floor area for beer and wine sales, will not advertise the availability of beer and wine on the outside of the store, will not sell alcohol to minors or intoxicated persons, will not sell alcohol in singles or "minis", and will implement a host of other measures (described above) to ensure that sales will be conducted in a safe and responsible manner that does not alter the character of the surrounding community.

C. The Community Will Benefit From Competition If Walgreens Is Allowed To Sell Beer And Wine

Allowing Walgreens to sell beer and wine is also necessary in order for the community to benefit from competition between Walgreens, the nearby CVS and other retailers. Currently, Walgreens is at a competitive disadvantage because CVS and others already sell alcohol pursuant to an existing ABC license. If CVS and others have to compete on a level playing field with Walgreens, each of these retailers will be encouraged to provide the same type of safe and customer oriented environment Walgreens will offer and that the surrounding community expects and deserves. If Walgreens is denied a special use permit, the benefits of true competition are lost and it is the surrounding community that suffers. In the end, authorizing alcohol sales at Walgreens does not create "undue concentration" – it enhances the community.

Mayor Holden and City Council
May 5, 2011
Page 7

D. Contrary To Statements Made During The Planning Commission Hearing, The City Generally Does Not Suffer From An Undue Concentration Of Off-Sale Alcohol Licenses

A concern was raised during the Planning Commission hearing about the number of alcohol retailers in Oxnard generally. The City currently has 1 off-sale retail license for every 1,649 residents.¹ This is well below the threshold used by the State Department of Alcoholic Beverage Control (“ABC”) for finding the existence of “undue concentration.” The ABC identifies a census tract as having an “undue concentration” when there is more than 1 off-sale license for every 1,250 people residing in that census tract. (Cal. Bus. and Prof., § 23817.5(b).) Applying that metric to the City of Oxnard, “undue concentration” would not exist unless there were more than 158 active off-sale licenses within the City. Currently, there are 120 active licenses within the City.

For purposes of comparison, note that the nearby City of Ventura has a far higher concentration of off-sale alcohol licenses—one for every 1,103 residents. Ventura has 105 active off-sale licenses (and 2 surrendered licenses), whereas its 2010 population of 106,433 would dictate only 85 off-sale licenses before “undue concentration” exists.² In fact, the ABC has designated Ventura a “moratorium” city, meaning that new licenses cannot issue in that City absent special circumstances because too many exist already. In contrast, the ABC has not designated Oxnard a “moratorium” city. (www.abc.ca.gov/permits/Moratorium.pdf [Santa Paula, Fillmore and Ojai are also moratorium cities].)

E. It Is Not The Number Of Alcohol Sales Establishments That Create Problems For Cities, But Instead The Quality Of The Operators.

The existence of multiple retailers selling alcohol in a community does not, in and of itself, harm or blight the community. However, problems can arise when retailers fail to conduct their sales in a professional, responsible and conscientious manner. Walgreens will not be such a problem retailer.

Walgreens prides itself on being a good corporate citizen and partner with both the surrounding community and the City. As demonstrated above, Walgreens has established policies and

¹ According to the 2010 Census, the City’s population is 197,899. (http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_PL_QTPL&prodType=table). According to the ABC, there are 120 active (and 5 surrendered) licenses permitting the sale of alcohol for offsite consumption. (<http://www.abc.ca.gov/datport/AHCityRep.asp>)
 $197,899/120 = 1,649$ people per ABC license.

² For 2010 census data, see http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_PL_QTPL&prodType=table. For ABC off sale license count, see <http://www.abc.ca.gov/datport/AHCityRep.asp>.

Mayor Holden and City Council
May 5, 2011
Page 8

procedures in place to ensure that its alcohol sales program will not create problems in the community. For example, to avoid potential conflicts with its core operations and to respond to community concerns, Walgreens will dedicate only a small area of the 14,490 square foot store to beer and wine sales. Along the same lines, Walgreens is not proposing to sell individual cans or bottles of beer nor will it sell hard alcohol or high alcohol content malt beverages like 4 Loco. These two measures, in and of themselves, make Walgreens different from many existing retailers in the area. Walgreens has also agreed to comply with stringent conditions of approval that give the City, among other things, authority to immediately suspend alcohol sales if there is a single significant incident at the store. (Proposed Condition of Approval No. 6 from Planning Commission Staff Report.) When the City Council also considers all the security measures and training that Walgreens will implement (as outlined above), it should be easy for the City Council to approve Walgreens' special use permit.

4. The proposed use is likely to create or significantly aggravate police problems within 1000 feet of the location for which the special use permit is applied. The Planning Commission finds that the preponderance of the evidence indicates that area's crime rate is 15% higher than the citywide average, and the proposed Type 20 ABC license if approved may exacerbate the crime rate.

The sale of beer and wine by Walgreens is not likely to create or significantly aggravate police problems within 1,000 feet of the existing store. The Planning Commission denied Walgreens' application because of their perception of the area as having "high crime." In fact, as one would expect given the amount of commercial and non-residential uses, the area has a crime rate that is higher than the citywide average. However, the crime rate is only 15% above the citywide average and state law does not consider an area to be "high crime" for purposes of making licensing determinations unless the crime rate is at least 20% above the citywide average.

Oxnard Police Officer Waer testified during the Planning Commission hearing that the crime rate in a commercial district such as Walgreens' is almost always higher than the citywide average and is not cause for concern. Indeed, the Police Department report prepared in connection with Walgreens' application noted that the area's crime rate "is not considered to be significant," that the "Police Department does not consider the immediate area to be a policing problem" and that "the Beat Coordinator who is responsible for monitoring and managing the day-to-day police activity near the location said that the area immediately surrounding the proposed site is not considered to be a policing problem." (See Report by Cliff Waer, Senior Alcohol Compliance Officer to Brian Foote, Associate Planner, dated February 10, 2011 regarding 481 S. Ventura Road (Walgreens), p. 2.) The Police Department's report concludes as follows: "The Police Department's experience is that the proposed license (Type 20 – Market), when properly regulated through conditions [of approval], does not normally aggravate policing issues, as long as the establishment complies with these

Mayor Holden and City Council
May 5, 2011
Page 9

regulations and operates responsibly.” (Id. at p. 3.) Walgreens agreed to comply with all of the very comprehensive conditions of approval proposed as part of the Planning Commission approval and will operate responsibly.

It is also important to note that the applicable threshold set forth in Council Resolution 11,896 is that “the proposed use is not likely to create or significantly aggravate police problems within 1000 feet of the location for which the special use permit is applied.” The above-referenced evidence from the Police Department, coupled with the materials submitted by Walgreens, provides more than substantial evidence demonstrating that Walgreens’ sale of beer and wine will not create or aggravate police problems anywhere within the City.

III. Conclusion

For all of the reasons discussed above, the City Council should accept Walgreens’ appeal and reverse the Planning Commission decision to deny the requested special use permit for alcohol sales at 481 S. Ventura Road. The foregoing demonstrates that Walgreens’ sale of beer and wine will serve the public convenience or necessity by providing customers with the convenience of “one stop shopping” and also create a more competitive retail environment. Walgreens has also demonstrated that the area is not “over concentrated” as defined by City regulations, that the crime rate is not “high” as defined under applicable law and, most important, that beer and wine sales will be handled in a safe and responsible manner that will not have an adverse impact on police resources or the surrounding community in general. Finally, providing this additional product offering will help Walgreens thrive during tough economic times, which in turn will foster continued stability in the local community. As such, we respectfully request that the City Council approve Walgreens’ request for a special use permit.

Sincerely,



Brian C. Fish

of

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

BCF/

Enclosure

cc: Michael Redstone, Esq.
Mr. Bud Heitman
Mr. Brian Foote

)

)

)