Meeting Date: 4/14/2009

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☒ Public Hearing
☐ Other _____	☐ Other _____

Prepared By: Douglas Spondello, Assistant Planner Agenda Item No. L-1

Reviewed By: City Manager City Attorney Finance Other *(Specify)*

DATE: March 25, 2009

TO: City Council

FROM: Susan L. Martin, AICP
Planning Manager

SUBJECT: **Appeal of Planning and Zoning Permit No. 08-510-10 (Special Use Permit) to permit the sale of beer and wine for off site consumption at an existing convenience market (Five Star Market), located at 200 South Ventura Road, Suite 250. Filed by Salvador Magallon.**

RECOMMENDATION

That City Council adopt a resolution denying the appeal and upholding the Planning Commission's approval of Planning and Zoning Permit No. 08-510-10.

DISCUSSION

On March 5, 2009, the Planning Commission voted 5-1 to approve Special Use Permit (SUP) No. 08-510-10 (Resolution No. 2009-07), to allow for the sale of beer and wine for off-site consumption from an existing convenience market (Five Star Market). No physical expansion to the existing structures is proposed with this request.

On March 19, 2009, an appeal of the Planning Commission's decision was filed with the City requesting that the City Council review the compatibility of the use with the adjacent residential neighborhood.

The Oxnard Police Department provided a report with information required by City Council Resolution No. 11,896 for sale of alcoholic beverages (Attachment 1). This report provides information regarding the number of incidents of police response, whether there is a presumption of undue concentration of establishments selling alcoholic beverages, and whether approval of the special use permit is likely to significantly aggravate policing problems. There are currently no other alcohol outlets within 350 feet of the project site and consequentially, there is not an issue of undue concentration.

The crime rate in the applicant's report district is 15% lower than the citywide average and is generally not considered to be a policing problem. Furthermore, it is the Police Department's experience that

there should not be an increase in policing problems provided that this approval is adequately conditioned and that this outlet is operated responsibly.

The market is located within the Gold Coast Plaza and has been the site of two previous requests for alcohol sales. In 2003 the Planning Commission denied an application to allow the sale of beer, wine, and spirits for off site consumption at another tenant space within the center (Resolution No. 2003-63). Similarly, in 2005, the Planning Commission denied a request to sell beer and wine for off site consumption within the subject tenant space (Resolution No. 2005-01). The Fremont South neighborhood opposition to both of these proposals was cited as the primary factor in the Planning Commission's decision to deny the applications.

The Planning Division received correspondence from approximately nine individuals expressing their support of the proposed use and two individuals expressing their opposition. Additionally, the applicant submitted a petition supporting the proposal bearing the names, addresses, and telephone numbers of approximately 145 persons. This petition is on file with the Planning Division.

A Community Workshop meeting was conducted on January 26, 2009. At this meeting, approximately 25 individuals indicated their support of the proposal. One gentleman expressed his dissent to the request arising from the proximity of the project site to the Fremont South neighborhood and cited the Commission's previous denials of alcohol sales in this plaza.

FINANCIAL IMPACT

There is no estimated financial impact to the current FY budget (FY 2008-2009).

(DS)

Attachment #1 - Police Report
#2 - Planning Commission Staff Report without Attachments
#3 - Planning Commission Resolution No. 2009-07
#4 - Planning Commission PowerPoint Presentation
#5 - Notice of Appeal
#6 - City Council Resolution upholding the Planning Commission action

Police Department

John Crombach, Police Chief

Date: December 1, 2008

To: Douglas Spondello, Assistant Planner

From: Cliff Waer, Senior Alcohol Compliance Officer

Subject: 200 S Ventura Rd. #250 (Five Star Market) **Re: PZ 08-510-10**

Site Information:

This business is part of small commercial center at the corner of Second Street and Ventura Road (200 South Ventura Road Suite #250) and is currently operating as a convenience market without the sale of alcohol. There are several other businesses located at the same building complex including a Quizno's Subs, a Mexican food café, an optometrist and other commercial and retail stores. The front door is on the south side and opens to the parking lot and along the west wall there is an enclosed breezeway that bisects the building. Other nearby uses includes the Oxnard Adult Education Center and National Guard Armory to the east and the Police Activities League gym approximately 1000 feet to the south.

The nearest residences are approximately 150 feet to the north in the Fremont South neighborhood. The area is generally bordered by Second Street to the north, "K" Street to the east, farmland to the south and Ventura Road to the west. The applicant has proposed the business to be a mini-market and is requesting a "Type-20" or Off-Sale Beer and Wine ABC license which allows for the sale of beer, wine, brandy and other fermented or wine-based products. There are no similar uses within 350 feet of the site.

Alcohol outlets located within **1000 feet** of the proposed site include:

BUSINESS NAME	LOCATION	LICENSE TYPE	LICENSE TITLE	BUSINESS TYPE	ALCOHOL ALLOWED
1. Vons Grocery	450 S Ventura Road	Type 21	Off-Sale General	Grocery Store	Beer, Wine and Spirits

Crime Statistic Review:

For comparison purposes the Police Department calculates the average number of part I and II crimes that occur per reporting district (grid) during a selected 12-month period. The average city-wide, per grid base number of Part I and II crimes is currently 117.

The average number of Part I and II crimes in the *applicant's* reporting district and all other districts within 1000 feet of the applicant is 99 during the same 12-month time period. This is 15% lower than the average crime rate citywide and the area is generally not considered to be a policing problem. The number of disturbance-related incidents and those that list alcohol as a contributing factor are below the citywide average.

For reference, the category of part I crimes include: murder, rape, robbery, theft, burglary, auto theft, assault, and arson. Part II crimes include: vandalism, weapons possession, other sex offenses, drug abuse violations, driving under the influence, liquor laws, drunkenness, and disorderly conduct. Any reference to "police calls for service" may include any type of police response to the area.

Police Department Input:

The Beat Coordinator for the area was contacted and said the surrounding area is not generally considered a crime problem but that there have been some problems with persons loitering and drinking alcoholic beverages in the area south of the proposed site. Subjects occasionally gather in the hidden areas along the east edge of the farmland near the school administration buildings. This activity often escalates as the National Guard Armory opens during the colder months to act as a warming shelter and, consequently, pedestrian activity greatly increases. He speculated that alcohol is being purchased at the Vons grocery store and taken to the nearby hidden spaces that are difficult to monitor. Restricting the sale of single servings, certain malt liquors and fortified wines can often minimize the chances that customers will consume their alcohol purchases on or near the site.

The Police Department is also concerned about the proximity of the proposed business to the Oxnard Police Activities League, which acts as a safe haven for youth and provides services to young people from ages 7 to 18. Additionally, the business is located along the safe corridor for students attending nearby Freemont Junior High School and very near the Oxnard Adult Education School which also serves many underage students. Numerous studies have shown that youth exposure to alcohol significantly increase the likelihood for underage consumption. Increased access and exposure to alcoholic beverages are directly related to incidences of youth consumption and should be carefully considered when determining appropriate locations for new outlets.[1]-[2] The Police Department strongly recommends that if the Permit is approved, that the operating conditions include measures to help minimize youth access and exposure to alcohol.

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[1] G. Hastings, S. Anderson, E. Cooke, and R. Gordon,"Alcohol advertising and marketing and young people's drinking:a review of the research," *Journal of Public Health Policy* 26 (2005):296-311.

[2] L.B. Snyder, F.F.Milici, M. Slater, H. Sun, and Y. Strizhakova,"Effects of alcohol advertising exposure on drinking among youth," *Archives of Pediatrics and Adolescent Medicine* 160 (2006):18-24.

Community Input:
Members of the Responsible Alcohol Policy Action Coalition (RAPAC) were contacted and expressed similar concerns to those of the Police Department regarding the business' close proximity to youth serving organizations and schools. They supported the conditions recommended below should the proposal ultimately be approved.

The Freemont South Neighborhood Council Chairperson was contacted and shared some of the concerns of the PD and RAPAC. He pointed out that the business has twice before proposed to sell alcohol and the neighborhood has opposed the granting of the permit each time. Concerns that have been expressed in the past and that are still relevant include that the surrounding neighborhoods are already adequately served by existing alcohol outlets and that several can be easily reached by a short walk or drive. While there may be no similar uses within the city's definition of undue concentration, the neighborhood has previously argued that there is no convenience or necessity for this location to sell alcohol and that most of those choosing to purchase alcohol there would not likely be from the surrounding neighborhood. The chairperson said he would discuss the new proposal at the neighborhood council meeting and attend the community hearings as necessary.

All of the nearby businesses in the shopping center were contacted by the Police Department for their input and the comments ranged from tepid support to outright opposition. One business owner mentioned that the market has been the victim of a robbery at least twice and that adding alcohol would likely increase their risk of experiencing more problems. Others were concerned that the availability of alcohol may attract a "bad element" to the shopping center which will likely increase as the transient population migrates to and from the warming shelter nearby. Also, some were already concerned about the existing conditions at the store and that it is cluttered with excessive signage and poorly arranged, crowded displays. The Police Department has included several conditions of operation that directly addresses the concerns expressed by the neighboring businesses and by other community members.

Conclusion:
The statistical analysis shows the area to have a crime rate that is lower than the city-wide average and that disturbance-related calls are lower than average. Alcohol is listed infrequently as a factor in police calls and the area is generally not considered to be a policing problem.

There are no similar uses within 350 feet of the site and one similar use within 1000 feet. The area is not considered to have an undue concentration of alcohol outlets by local standards. Concerns from the Police Department and community members includes the proximity to youth serving facilities, the potential for increased problems related to loitering and drinking, the existing problem with persons drinking alcohol nearby and the potential for an increase of thefts or robberies. The recommended conditions of operation directly address many of these concerns and should help to mitigate the potential negative impact to the community. It is the experience of the Police Department that similar uses, when responsibly operated and adequately conditioned, do not typically increase policing problems.

Police Standard Conditions

1) Permittee and all sellers or servers shall complete a course in Responsible Beverage Sales and Service (RBSS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)

2) 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)

3) 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)

4) 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.

5) 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.

6) 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)

7) The 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)

8) 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)

9) Employees shall not be allowed to consume alcoholic beverages at any time during their shift or at any time within eight (8) hours prior to the beginning of their shift. (PD)

10) 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)

11) 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)

12) 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)

13) 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)

14) Coolers shall be maintained in such a way as to allow for them to be locked during hours of prohibited sale and shall, in fact, be secured during the hours from 9:00 PM to 6:00 AM. The sale of alcohol shall not occur between the hours of 9:00 PM to 6:00 AM. (PD)

15) 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 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 near the middle of the store or where the cashiers or clerks have a clear view from their normal work stations of the activity of persons in the alcohol isle. (PD)

16) There shall be no amusement machines or video devices maintained on the premises at any time. (PD)

17) No single containers, 12 oz, 16 oz, 20 oz., 24 oz., 32 oz., or 40 oz., of beer, wine or malt liquor shall be sold.

18) No fortified wine products shall be sold with an alcohol content greater than 14% by volume. This does not exclude Permittee from selling Port, Sherry, Marsala, Madiera, Muscat, Saki and Vermouth fortified products unless otherwise prohibited.

19) Prominent signs shall be posted stating, in effect, "No persons under 21 will be served 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 coolers. (PD)

20) No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)

21) There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco.

22) 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.

23) Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts.

24) Permittee shall bolt down all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery.

25) Permittee shall have drop-safes installed or develop other approved cash management procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically $50).

26) Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register.

27) Permittee shall install height gauges at all exit doors.

28) Permittee shall install an electronic intrusion detection system that detects portal openings, glass break, and interior motion.

29) Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601.

30) The subject Alcoholic Beverage License shall not be exchanged or upgraded for any other type Alcoholic Beverage License without Planning Commission or City Council approval.

31) 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

1) Any signage visible to the exterior of the business shall be of a tasteful, professional design that is consistent with industry standards. Hand-written advertisements are prohibited.

2) Gondola shelving and displays shall be maintained in such a way that it does not interfere with adequate coverage of the video surveillance system and allows for the proper sight lines for employees as to the activity of customers throughout the store.

Planning Division

PLANNING COMMISSION STAFF REPORT

TO: Planning Commission

FROM: Douglas Spondello, Assistant Planner

DATE: March 5, 2009

SUBJECT: Planning and Zoning Permit No. 08-510-10, (Special Use Permit for Alcohol Use) at Five Star Market, located at 200 South Ventura Road, Suite 250.

1) **Recommendation:** That the Planning Commission approve Planning and Zoning Permit No. 08-510-10 for a special use permit, subject to certain findings and conditions.

2) **Project Description and Applicant:** A request to allow the sale of beer and wine at an existing convenience market (Five Star Market) located at 200 South Ventura Road, Suite 250. No physical expansion to existing structures is proposed with this request. Filed by Salvador Magallon, 200 Ventura Road, Suite 250, Oxnard, CA 93030.

3) **Existing & Surrounding Land Uses:** The 1,222 square foot convenience market is located in a multi-tenant neighborhood shopping center (Gold Coast Plaza) at the southeast corner of Ventura Road and Second Street. The following table describes the land uses immediately adjacent to the site.

LOCATION	ZONING	GENERAL PLAN	EXISTING LAND USE
Project Site	C-2-PD	Airport Compatible	Multi-Tenant Commercial Center
North	R-1	Low Density Residential	Single-Family Residential
South	C-2-PD	Airport Compatible and Open Space Buffer	Agriculture
East	R-1	Low Density Residential	Single-Family Residential/School
West	R-1	Airport Compatibles	Single-Family Residential

4) **Background Information:** The subject tenant space (Suite 250) has been occupied by a neighborhood service market since 2003. On August 21, 2003, the Planning Commission adopted Resolution No. 2003-63 to deny a special use for the sale of beer, wine, and distilled spirits for off-site consumption (ABC License Type 21) at another tenant space within the same shopping center. At that time, the Planning Commission determined that the proposed use would

be incompatible with the area and would adversely affect or be materially detrimental to the adjacent uses, buildings, or structures, or to the public general welfare.

On January 6, 2005, the Planning Commission adopted Resolution No. 2005-01 to deny a special use permit for the market at this location (Five Star Market) to sell beer and wine for off-site consumption (ABC License Type 20). This resolution noted the objections of several residents of the neighborhood concerning a presumption of an increase to the crime rate in the area if the request was approved.

Environmental Determination: This project is among the classes of projects listed in Section 15301 of the California Environmental Quality Act (CEQA) Guidelines, which categorically exempts existing facilities from environmental review where there is negligible or no significant expansion of an existing use. Since there is no substantial evidence that the proposed project may have a significant adverse effect on the environment, a notice of exemption will be filed (see Attachment "C").

5) Analysis:

a) ***General Discussion:*** In accordance with Section 16-534 (B) of the City Code, applications for which a special use permit (SUP) has been denied must wait twelve months before reapplying for the same request. It has been more then 45 months since the Planning Commission denied the latest request for alcohol use at this location.

The applicant requests approval of a special use permit to allow the sale of beer and wine for off-site consumption (ABC license type 20) in an existing 1,222 square foot convenience market (Five Star Market). The convenience market currently operates in two shifts with two employees, seven days a week between the hours of 8:00 AM and 9:00 PM. No changes to the current operation are proposed as part of this request.

b) ***Conformance with General Plan Land Use Designation and Zoning Development Standards:*** The 2020 General Plan land use designation is Airport Compatible. The zoning designation on the site is for General Commercial-Planned Development (C-2-PD). Airport compatible land uses include low intensity commercial and/or industrial uses which are compatible with airport operations and activities in that they do not pose unreasonable hazards to aircraft operations nor do they subject large numbers of persons to hazards from aircraft. The site's zoning designation of C-2-PD lists convenience stores selling alcoholic beverages as permitted if approved by a special use permit. In this regard, the proposed use is consistent with both the General Plan and zoning designations of the site.

The Safety Element of the 2020 General Plan lists policies consistent with the City's goal of the "Maintenance and enhancement of a safe community" (IX-16). Of these policies, number 35 states: "The City should require the Police Department to review all proposed development projects for potentially dangerous situations, and implement its

recommendations" (IX-20). Consistent with this, the Police Department has reviewed the proposed use for compliance to its safety and security requirements and has subsequently conditioned the project to include implementation measures which address their concerns.

c) ***Site Design:*** The 2.7 acre parcel is accessed from driveways on South Ventura Road and West Second Street. The Neighborhood Commercial center, Gold Coast Plaza, is comprised of a single building which houses a mix of multiple retail and office tenants.

The subject 1,222 square foot tenant space is located at the center of the Plaza. The interior features a large gondola shelving unit at the center, ice cream station, and coolers. The market is accessed by the public through a door at the southern end of the suite. There is also a door at the north façade; however this is used exclusively by employees.

6) ***Request for Sale of Alcoholic Beverages for On-Site Consumption:*** The Oxnard Police Department prepared a report on December 1, 2008, which analyzed the site and surrounding area for any potential policing problems which might be intensified as a result of the approval of this request (See Attachment "D"). As the report cites no other alcohol outlets within 350 feet of the subject parcel, there is no concern for an oversaturation of alcohol outlets in this area.

As part of their review, the Police Department consulted with the Responsible Alcohol Policy Action Coalition (RAPAC). They expressed concerns regarding the business' proximity to youth-serving organizations and the Oxnard Adult Education Center, which is approximately 750 feet east of the market. However, they support the recommended conditions of approval, should the proposal ultimately be approved.

The overall finding of the Police report was that, when properly regulated through conditions imposed by the Planning Commission, the proposed use does not normally aggravate policing issues.

a) ***Public Comment:*** The Planning Division received correspondence from approximately nine individuals expressing their support of the proposed use (for public comment documents, see Attachment "E"). Additionally, the applicant submitted a petition bearing the names, addresses, and telephone numbers of approximately 145 persons. This petition is on file with the Planning Division.

7) **Community Workshop:** On January 14, 2009, the applicant mailed notices of the Community Workshop meeting to all property owners within the Fremont South Neighborhood. The applicant also posted such notice on the project site with a brief description of the project and contact information. The Community Workshop was conducted on January 26, 2009. At this meeting, approximately 25 individuals indicated their support of the proposal. One gentleman expressed his dissent arising from the proximity of the project site to the adjacent residential neighborhood and the Commission's previous denials of the same request.

8) **Appeal Procedure:** In accordance with Section 16-545 of the City Code, the Planning Commission's action may be appealed to the City Council within 18 days after the decision date. Appeal forms may be obtained from the City Clerk and must be submitted with the appropriate fees before the end of the appeal period.

Attachments:

A. Maps (Vicinity, General Plan, Zoning)
B. Reduced Site and Floor Plans
C. Notice of Exemption
D. Police Report
E. Public Comments Received by Staff
F. Resolution

Prepared by: DS

Approved by: SM

Items "A", "B", "C", "E" and "F" are not included

Item "D": Police Report is not included

Please see Attachment # 1 of the City Council staff report.

RESOLUTION NO. 2009 – 07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD APPROVING PLANNING AND ZONING PERMIT NO. 08-510-10 (SPECIAL USE PERMIT), TO ALLOW THE SALE OF BEER AND WINE FOR OFF-SITE CONSUMPTION FROM AN EXISTING CONVENIENCE MARKET (FIVE STAR MARKET) LOCATED AT 200 SOUTH VENTURA ROAD, SUITE 250, SUBJECT TO CERTAIN FINDINGS AND CONDITIONS. FILED BY SALVADOR MAGALLON, 200 SOUTH VENTURA ROAD, SUITE 250, OXNARD, CA, 93030.

WHEREAS, the Planning Commission of the City of Oxnard has considered an application for Planning and Zoning Permit No. 08-510-10, filed by Salvador Magallon 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 the California Code of Regulations exempts the project from the requirements for the preparation of 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. That the proposed use is in conformance with the General Plan and other adopted policies of the City of Oxnard.

2. That 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. That the site for the proposed project 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. That 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. That the site for the proposed use will be provided with adequate sewerage, water, fire protection and storm drainage facilities.

6. That there exists no presumption of undue concentration.

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.

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 and Environmental Services Division ("Planning Division"), and may not be transferred from one property to another. (PL, *G-1*).

2. This permit is granted for the plans dated May 23, 2008 ("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 use or size of structures or of the design, materials or colors of structures or masonry walls. A major modification shall be required for substantial changes or increases in such items. (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 STANDARD CONDITIONS

7. Any application for a minor modification to the project shall be accompanied by four copies of plans reflecting the requested modification, together with applicable processing fees. (PL, *PL-2*)

8. If the project property is already occupied or use has already been initiated, Developer shall comply with all conditions of this permit within 30 days of approval thereof. (PL/B, *PL-6*)

9. Developer may not modify any use approved by this permit unless the Planning Division Manager determines that Developer has provided the parking required by the City Code for the modified use. (PL, *PL-7*)

POLICE DEPARTMENT STANDARD CONDITIONS

10. Permittee and all sellers or servers shall complete a course in Responsible Beverage Sales and Service (RBSS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)

11. 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)

12. 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)

13. 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.

14. 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.

15. 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)

16. The 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)

17. 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)

18. Employees shall not be allowed to consume alcoholic beverages at any time during their shift or at any time within eight (8) hours prior to the beginning of their shift. (PD)

19. 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)

20. 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)

21. 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)

22. 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)

23. Coolers shall be maintained in such a way as to allow for them to be locked during hours of prohibited sale and shall, in fact, be secured during the hours from 9:00 PM to 6:00 AM. The sale of alcohol shall not occur between the hours of 9:00 PM to 6:00 AM. (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 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 near the middle of the store or where the cashiers or clerks have a clear view from their normal work stations of the activity of persons in the alcohol isle. (PD)

25. There shall be no amusement machines or video devices maintained on the premises at any time. (PD)

26. No single containers, 12 oz, 16 oz, 20 oz., 24 oz., 32 oz., or 40 oz., of beer, wine or malt liquor shall be sold.

27. No fortified wine products shall be sold with an alcohol content greater than 14% by volume. This does not exclude Permittee from selling Port, Sherry, Marsala, Madiera, Muscat, Saki and Vermouth fortified products unless otherwise prohibited.

28. Prominent signs shall be posted stating, in effect, "No persons under 21 will be served 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 coolers. (PD)

29. No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)

30. There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco.

31. 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.

32. Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts.

33. Permittee shall bolt down all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery.

34. Permittee shall have drop-safes installed or develop other approved cash management procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically $50).

35. Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register.

36. Permittee shall install height gauges at all exit doors.

37. Permittee shall install an electronic intrusion detection system that detects portal openings, glass break, and interior motion.

38. Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601.

39. The subject Alcoholic Beverage License shall not be exchanged or upgraded for any other type Alcoholic Beverage License without Planning Commission or City Council approval.

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)

POLICE DEPARTMENT SPECIAL CONDITIONS

41. Any signage visible to the exterior of the business shall be of a tasteful, professional design that is consistent with industry standards. Hand-written advertisements are prohibited.

42. Gondola shelving and displays shall be maintained in such a way that it does not interfere with adequate coverage of the video surveillance system and allows for the proper sight lines for employees as to the activity of customers throughout the store.

PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 5th day of March, 2009, by the following vote:

AYES: Commissioners: Medina, Sanchez, Okada, Mullin, and Frank

NOES: Commissioner: Dean

ABSENT: Commissioner: Elliott

Deirdre Frank, Chair

ATTEST:

Susan L. Martin, Secretary

Five Star Market
200 Ventura Road, Suite 250

PZ No. 08-510-10
Special Use Permit for Alcohol Use

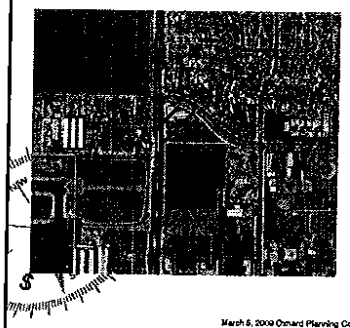
Applicant: Salvador Magallon

Project Request

- A request to allow the sale of beer and wine for off site consumption (ABC License Type 20) at an existing convenience market (Five Star Market), located at 200 South Ventura Road, Suite 250

Project Location

N

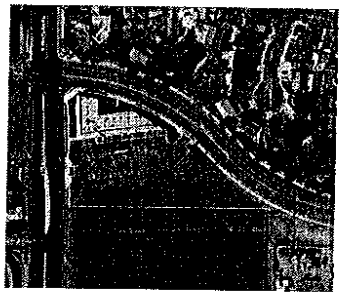


- Gold Coast Plaza
- Southeast Corner of West Second St. and South Ventura Rd.

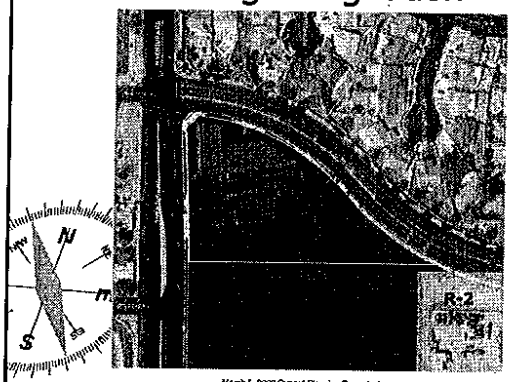
Land Use & Aerial View

N

- North: Residential
- East: Residential
- West: Residential
- South: Agriculture



Zoning Designation



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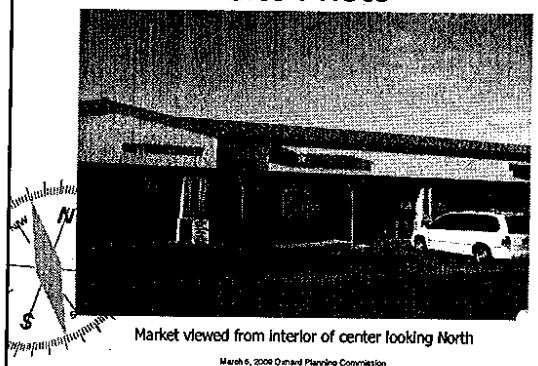
Site Photo



Market viewed from interior of center looking North

March 5, 2009 Oxnard Planning Commission

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Site Photo

Market viewed from Second Street looking South

March 5, 2009 Oxnard Planning Commission

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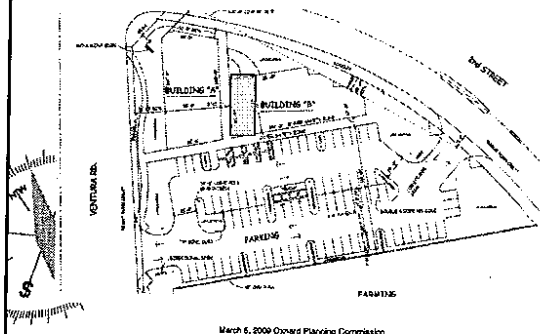
Site Plan



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ATTACHMENT 4

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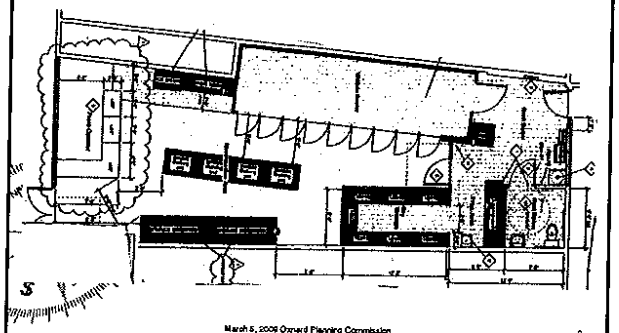
Floor Plan

N→



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Compliance

- ▶CC Resolution No. 11896, which adopted review standards for establishments selling alcohol
- ▶Area not considered to be policing problem, though sensitive uses noted
- ▶Approval would not result in over-saturation
- ▶Project conditioned to mitigate any potential problems

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Public Input

- ▶Nine letters of support received
- ▶One letter of opposition received
- ▶Applicant provided petition in support of use signed by approximately 145 persons
- ▶Community Workshop:
  - Approximately 25 in support
  - One opposed

March 5, 2009 Oxnard Planning Commission 11

Staff Recommendation

- ▶That the Planning Commission adopt a resolution approving Special Use Permit PZ No. 08-510-10 to allow the sale of beer and wine for off-site consumption, subject to certain findings and conditions

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ATTACHMENT 4
PAGE 3 OF 3

CITY OF OXNARD
CITY CLERK

09 MAR 19 AM 8:31

PLEASE PROVIDE AN ORIGINAL AND 2 COPIES
A $500 FEE MUST ACCOMPANY THIS APPEAL

TO: Oxnard City Clerk

NOTICE OF APPEAL
(from member of the public)

I, AL VELASQUEZ (CHAIR FREMONT SOUTH N/C, am aggrieved or directly affected by
(name of person filing appeal)

and appeal the 3-5-09 decision from the Planning Commission regarding Project No.
(date of PC meeting)

PZ NO. 08-510-10, more particularly described as follows:
(SPECIAL USE PERMIT FOR ALCOHOL USE) AT FIVE STAR MARKET LOCATED AT 200 So. VTA. Rd. Suite 2

The grounds for appeal are: TWICE BEFORE THE PLANNING COMMISSION HAS FOUND A MARKET SELLING ALCOHOLIC BEVERAGES (BEER & WINE) FOR OFF SITE COMSUMPTION AT THE PROPOSED LOCATION WOULD BE INCOMPATABLE WITH THE AREA AND WOULD ADVERSELY EFFECT OR BE MATERIALLY DETRIMENTAL TO THE ADJACENT USES, BUILDINGS OR STRUTURES OR TO THE PUBLIC GENERAL WELFARE, WITHIN THE MEANING OF SUBSECTION (A) OF SECTION 34-147 OF THE CITY CODE.

I request the following relief:
WE REQUEST THE CITY COUNCIL, PLEASE HONOR THE PREVIOUS 2003-2004 PLANNING COMMISSION DECISION AND PLEASE DENY SPECIAL USE PERMIT NO. PZ 08-510-10 THANK YOU.

(signature) Date: MARCH 18, 2009

133 BOTTLEBRUSH COURT
OXNARD, CA. 93030-5202
(address)

cc: City Attorney
Project Planner
Development Services Department
Applicant

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9/2007

ATTACHMENT 5
PAGE 1 OF 1

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD UPHOLDING THE DECISION OF THE PLANNING COMMISSION AND APPROVING PLANNING AND ZONING PERMIT NO. 08-510-10 (SPECIAL USE PERMIT), TO ALLOW THE SALE OF BEER AND WINE FOR OFF-SITE CONSUMPTION FROM AN EXISTING CONVENIENCE MARKET (FIVE STAR MARKET) LOCATED AT 200 SOUTH VENTURA ROAD, SUITE 250, SUBJECT TO CERTAIN FINDINGS AND CONDITIONS. FILED BY SALVADOR MAGALLON, 200 SOUTH VENTURA ROAD, SUITE 250, OXNARD, CA, 93030.

WHEREAS, Planning Commission Resolution No. 2009-07 approved an application for Special Use Permit No. 08-510-10 filed by Salvador Magallon; and

WHEREAS, the Planning Commission's decision was appealed to the City Council; and

WHEREAS, the City Council has carefully reviewed the Planning Commission decision approving the application, the staff report, and minutes of testimony at the Planning Commission public hearing; and

WHEREAS, on April 14, 2009, the City Council conducted a public hearing and received evidence in favor of and opposed to the application for an SUP to sell beer and wine for off-site consumption at the property located at the southeast corner of Second Street and South Ventura Road; and

WHEREAS, Section 15301 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.

NOW, THEREFORE, the City Council of the City of Oxnard makes the following findings of fact:

1. The crime rate in the subject reporting district is 15% lower than the average crime rate citywide.

2. That there exists no presumption of undue concentration and that the proposed use will not result in or add to an undue concentration of establishments selling alcoholic beverages at retail within 1000 feet of the location.

3. The conditions attached to the permit will significantly reduce any negative consequences of allowing an off-site alcohol outlet on the site.

4. As conditioned, the permit will serve the public's convenience and necessity.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oxnard that the Planning Commission's approval of Special Use Permit No. 08-510-10 is hereby upheld subject to the conditions set forth in Planning Commission Resolution No. 2009-07 on file in the Planning Division of the Development Services Department,

PASSED AND ADOPTED this 14th day of April 2009, by the following vote:

AYES:

NOES:

ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Alan Holmberg, City Attorney