

<p>CARNEGIE FORUM 305 WEST PINE STREET LODI, CALIFORNIA</p>	<p><b>AGENDA</b> <b>LODI</b> <b>PLANNING COMMISSION</b></p>	<p>REGULAR SESSION WEDNESDAY, JULY 13, 2011 @ 7:00 PM</p>
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For information regarding this agenda please contact:

**Kari Chadwick @ (209) 333-6711**  
**Community Development Secretary**

***NOTE:** All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the Community Development Department, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the Community Development Department as soon as possible and at least 24 hours prior to the meeting date.*

1. ROLL CALL
2. MINUTES – “May 11, 2011” & “June 8, 2011”
3. PUBLIC HEARINGS
  - a. Request for Planning Commission approval of a variance to reduce rear yard setback to less than one foot at 500 West Vine Street. (Applicants: Valerie McFee. File No. 11-A-02)
  - b. Request for Planning Commission approval of a Use Permit to allow a Type-41 On-Sale Beer and Wine Alcoholic Beverage Control License at Woodbridge Pizzeria located at 1110 W Kettleman Lane, Suite 2. (Applicant: Elizabeth Castillo. File Number: 11-U-14)
  - c. Request for Planning Commission approval of a Use Permit to allow a Type-41 On-Sale Beer and Wine Alcoholic Beverage Control License at located at 550 South Cherokee Lane Suite J. (Applicant: Ernesto Rodriguez. File Number: 11-U-15)
  - d. Request for Planning Commission approval of a Use Permit to allow outdoor seating and drinking area at Ollie’s Pub in conjunction with their existing Type-48 On-Sale General ABC license at 22 North School Street. (Applicant: Sean Guthrie, on behalf of Ollie’s Pub. File Number: 11-U-16)

**NOTE: The above item is a quasi-judicial hearing and requires disclosure of ex parte communications as set forth in Resolution No. 2006-31**

4. PLANNING MATTERS/FOLLOW-UP ITEMS
5. ANNOUNCEMENTS AND CORRESPONDENCE
6. ACTIONS OF THE CITY COUNCIL
  - a. Council Summary Memo
7. GENERAL PLAN UPDATE/DEVELOPMENT CODE UPDATE
8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE
9. ART IN PUBLIC PLACES

## 10. COMMENTS BY THE PUBLIC

## 11. COMMENTS BY THE PLANNING COMMISSIONERS & STAFF

## 12. REORGANIZATION

- a. Planning Commission Chair & Vice Chair
- b. Planning Commission Representatives to: SPARC, Greenbelt Taskforce, & Art In Public Places

## 13. ADJOURNMENT

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

*\*\*NOTICE: Pursuant to Government Code §54954.3(a), public comments may be directed to the legislative body concerning any item contained on the agenda for this meeting before (in the case of a Closed Session item) or during consideration of the item.*

### Right of Appeal:

If you disagree with the decision of the commission, you have a right of appeal. Only persons who participated in the review process by submitting written or oral testimony, or by attending the public hearing, may appeal.

Pursuant to Lodi Municipal Code Section 17.72.110, actions of the Planning Commission may be appealed to the City Council by filing, within ten (10) business days, a written appeal with the City Clerk and payment of \$300.00 appeal fee. The appeal shall be processed in accordance with Chapter 17.88, Appeals, of the Lodi Municipal Code. Contact: City Clerk, City Hall 2<sup>nd</sup> Floor, 221 West Pine Street, Lodi, California 95240 – Phone: (209) 333-6702.

**LODI PLANNING COMMISSION  
REGULAR COMMISSION MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, MAY 11, 2011**

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of May 11, 2011, was called to order by chair Hennecke at 7:00 p.m.

Present: Planning Commissioners – Cummins, Kirsten, Kiser and Chair Hennecke

Absent: Planning Commissioners – Jones, Heinitz, and Olson

Also Present: Community Development Director Konradt Bartlam, City Attorney Stephen Schwabauer, Associate Planner Immanuel Bereket, and Administrative Secretary Kari Chadwick

2. MINUTES

“January 12, 2011”

MOTION / VOTE:

No Motion made because there was not a quorum of Commissioners in attendance to make the motion. Item continued to the next meeting.

“April 13, 2011”

MOTION / VOTE:

No Motion made because there was not a quorum of Commissioners in attendance to make the motion. Item continued to the next meeting.

3. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Hennecke called for the public hearing to consider the request for a Use Permit to allow Type 21 off-Sale Alcoholic Beverage Control license at 2350 West Kettleman Lane. (Applicant: Miriam Montesinos, on behalf of Wal-Mart Stores, Inc. File Number: 11-U-09)

Associate Planner Bereket gave a brief PowerPoint presentation based on the staff report. Staff recommends approval of the project.

Hearing Opened to the Public

- Miriam Montesinos, applicant on behalf of Wal Mart, came forward to answer questions. Ms Montesinos stated that there have not been any protests filed with ABC to date.
- Chair Hennecke asked if this type of application was typical of other Wal Mart Stores. Ms. Montesinos stated that it is typical of other Wal Mart Stores.
- Troy Johnson, Store Manager in Lodi, came forward to answer questions. Mr. Johnson gave a brief statement regarding the ways that the Lodi Wal Mart Store has been a good neighbor to the City through various donations to local charity groups and fundraisers.

- Commissioner Kiser asked if local wines will be stocked. Mr. Johnson stated that they have already contacted Gallo and are also going to try to get more of the local area wines on the shelf.
- Pat Patrick, President of Lodi Chamber of Commerce, came forward to support this project.

Public Portion of Hearing Closed

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Cummins, Kiser second, approved the request of the Planning Commission for a Use Permit to allow Type 21 off-Sale Alcoholic Beverage Control license at 2350 West Kettleman Lane subject to the conditions in the resolution. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Kirsten, Kiser and Chair Hennecke  
 Noes: Commissioners – None  
 Absent: Commissioners – Jones, Heinitz, and Olson

- b) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Hennecke called for the public hearing to consider the request for a Use Permit to allow outdoor seating/standing and drinking area at California Street Pub (formerly Barking Dog bar) in conjunction with their existing Type-48 On-Sale General ABC license at 302 North California Street (Applicant: Christian Cole, ob behalf of Thirsty Inc., dba California Street Pub. File Number: 11-U-06.) – **Postponed to a future meeting.**
- c) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Hennecke called for the public hearing to consider the request for an amendment to an existing Use Permit to allow expansion of an existing restaurant that serves beer, wine and distilled spirits at 400 East Kettleman Lane, Suites 5-8. (Applicant: Petra Flores Pena. File Number: 10-U-14)

Associate Planner Bereket gave a brief PowerPoint presentation based on the staff report. Staff recommends approval of the project.

Hearing Opened to the Public

- Octavio Cruses, representative of the applicant, came forward to answer questions.
- Commissioner Kiser asked if the small bar that is already there is the bar that is proposed to stay. Mr. Cruses stated that is accurate.
- Barbara Flockhart, Elgin Avenue property owner, came forward to state that loud music has been a problem in the past from the stereo store that used to occupy a space in the building and would like to know if live music or any other type of noise producing issues will be occurring. Chair Hennecke stated that if the applicant wished to do live music they would be required to submit a separate application with the Planning Division, and deferred to Director Bartlam for further explanation. Director Bartlam stated that at this time there isn't an application in the process for live music, but there is the ability for the applicant to come back and apply for one. He added that if at any time there are any noise issues a complaint can be filed with both the Police Department and directly with the Planning Division, so that staff can follow-up on the complaint.

Public Portion of Hearing Closed

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, approved the request of the Planning Commission for an amendment to an existing Use Permit to allow expansion of an existing restaurant that serves beer, wine and distilled spirits at 400 East Kettleman Lane, Suites 5-8 subject to the conditions in the resolution. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Kirsten, Kiser, and Chair Hennecke  
Noes: Commissioners – None  
Absent: Commissioners – Jones, Heinitz, and Olson

- d) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Hennecke called for the public hearing to consider the request for a Use Permit to allow Type 42 Alcoholic Beverage Control license (on-sale beer and wine – public premises) at 1110 West Kettleman Lane, Suites 9-10. (Applicant: Sean Bocardo and Nichole Pendley. File Number: 11-U-10)

Associate Planner Bereket gave a brief PowerPoint presentation based on the staff report. Staff recommends approval of the project.

Commissioner Kiser asked if this project is within three-hundred feet of the residences behind this building. Mr. Bereket stated that it is within three-hundred feet of the residences, but the item being heard tonight is for the Use Permit for the ABC License and the Live Entertainment will come back at a later date. The residences will be notified as part of the procedure for that application.

Hearing Opened to the Public

- Nichole Pendley, co-applicant, came forward to answer questions. Ms. Pendley stated that they would like to be able to open up at 11:00 am or noon instead of 4:00 pm.
- Sean Bocardo, co-applicant, came forward to answer questions and stated that this will give local wineries that do not already have tasting rooms a place to highlight their wines.

Public Portion of Hearing Closed

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kiser, Cummins second, approved the request of the Planning Commission for a Use Permit to allow Type 42 Alcoholic Beverage Control license (on-sale beer and wine – public premises) at 1110 West Kettleman Lane, Suites 9-10 subject to the conditions in the resolution. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Kirsten, Kiser, and Chair Hennecke  
Noes: Commissioners – None  
Absent: Commissioners – Jones, Heinitz and Olson

- e) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Hennecke called for the public hearing to consider the request for a Use Permit to allow the establishment of a religious facility within an existing commercial building located at 651 North Cherokee Lane, Suite C. (Applicant: Pastor Willie McGill Sr., on behalf of Miracle Temple Church. File Number: 11-U-11)

Associate Planner Bereket gave a brief PowerPoint presentation based on the staff report. Staff recommends approval of the project.

Commissioner Kirsten asked if there are currently two other churches in that development. The property owner started to answer from the audience, but was asked to wait until the public hearing was opened up to the public.

Hearing Opened to the Public

- Christine Santana, representative for the applicant and owner of the property, came forward to answer questions. Ms. Santana stated that there is currently one church operating on the property. Commissioner Kirsten stated that that answered his question.

Public Portion of Hearing Closed

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Cummins, Kiser second, approved the request of the Planning Commission for a Use Permit to allow the establishment of a religious facility within an existing commercial building located at 651 North Cherokee Lane, Suite C subject to the conditions in the resolution. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Kirsten, Kiser, and Chair Hennecke  
 Noes: Commissioners – None  
 Absent: Commissioners – Jones, Heinitz and Olson

- f) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Hennecke called for the public hearing to consider the request for a Use Permit to allow storage and wholesale distribution of wine at 927 Industrial Way. (Applicant: Donald Parker; File Number: 11-U-13)

Associate Planner Bereket gave a brief PowerPoint presentation based on the staff report. Staff recommends approval of the project.

Hearing Opened to the Public

- Don Parker, applicant, came forward to answer questions.
- Chair Hennecke asked if a distribution company of this type is competitive, because the Commission has seen a few of these types of applications. Mr. Parker stated that it can be competitive, but not all of the distribution companies ship the same volumes or products.

Public Portion of Hearing Closed

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kiser, Cummins second, approved the request of the Planning Commission for a Use Permit to allow storage and wholesale distribution of wine at 927 Industrial Way subject to the conditions in the resolution. The motion carried by the following vote:

Ayes: Commissioners – Cummins, Kirsten, Kiser, and Chair Hennecke  
 Noes: Commissioners – None  
 Absent: Commissioners – Jones, Heinitz and Olson

4. PLANNING MATTERS/FOLLOW-UP ITEMS

None

5. ANNOUNCEMENTS AND CORRESPONDENCE

None

6. ACTIONS OF THE CITY COUNCIL

Director Bartlam stated that there is a memo in the packet and staff is available to answer any questions.

7. GENERAL PLAN UPDATE/DEVELOPMENT CODE UPDATE

None

8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

Commissioner Kiser gave a brief report regarding the item that was brought before the Committee earlier this evening.

9. ART IN PUBLIC PLACES

None

10. COMMENTS BY THE PUBLIC

None

11. COMMENTS BY STAFF AND COMMISSIONERS

Commissioner Kiser asked about the email that went out regarding the use of electronic devices. City Attorney Schwabauer stated that during a quasi hearing the applicant has due process rights to have the full attention of the board that is hearing the item. If an email, text, or phone call is received during a hearing the applicant could assume that it might be about their item and therefore are not getting their due process.

12. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:45 p.m.

ATTEST:

Konradt Bartlam  
Planning Commission Secretary

**LODI PLANNING COMMISSION  
REGULAR COMMISSION MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, JUNE 8, 2011**

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of June 8, 2011, was called to order by Chair Hennecke at 7:00 p.m.

Present: Planning Commissioners – Heinitz, Jones, Kirsten, Kiser, Olson and Chair Hennecke

Absent: Planning Commissioners – Cummins

Also Present: Community Development Director Konradt Bartlam, City Attorney Stephen Schwabauer, Associate Planner Immanuel Bereket, and Administrative Secretary Kari Chadwick

2. MINUTES

“January 12, 2011”

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kiser, Jones second, approved the Minutes of January 12, 2011 as written. (Commissioners Heinitz and Kirsten abstained because they were not in attendance of the subject meeting)

“April 13, 2011”

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Heinitz second, approved the Minutes of April 13, 2011 as written. (Commissioner Kiser abstained because he was not in attendance of the subject meeting)

“May 11, 2011”

MOTION / VOTE:

No Motion made because there was not a quorum of Commissioners in attendance to make the motion. Item continued to the next meeting

3. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Hennecke called for the public hearing to consider the request for a Use Permit to establish a warehousing and storage use for recycled materials, including California Redemption Value (CRV), cardboard, scrap metal and electronic waste at 1803 South Stockton Street (Applicant: Fawad Ebrahimi, on behalf of Go Green Recycling Center: File Number: 11-U-12)

Associate Planner Bereket gave a brief PowerPoint presentation based on the staff report. Staff recommends approval of the project.

Hearing Opened to the Public

- Fawad Ebrahimi, applicant, came forward to answer questions. Mr. Ebrahimi stated that the business is currently functioning at the site; they are just looking to expand the type of materials they can take in for recycling. He added that cleanliness is one of the main focuses for the area surrounding the business.

- Commissioner Jones asked what step will be taken to assure that the materials being recycled are not stolen. Mr. Ebrahimi stated that there are very strict rules to assure that centers do not accept stolen materials. Managers are trained to look at customer's identification, fingerprinting, and a picture is taken at the time that the materials are submitted as well as a contractor's license if it is a big load.
- Commissioner Kiser asked if the general staff, not just management, will be instructed on how to look for items that could possibly be stolen. Mr. Ebrahimi stated that anything over twenty dollars is considered a big load. He added that pictures, fingerprints and ID's are required for big loads and for suspicious loads headquarters is called to do further verification. Mr. Ebrahimi added that this center will not be taking in cardboard.
- Commissioner Heinritz stated that he heard certain words such as; trucks, big loads, and shipments, and asked if product will be accepted from the individuals that will be on their bikes or have shopping carts. Mr. Ebrahimi stated that everyone is welcome to redeem product so long as they have identification. Loitering is not allowed by any customer.

Public Portion of Hearing Closed

- Commissioner Heinritz stated his concerns and support for this type of project. He would like to see stricter standards placed on recycling centers to avoid the possibility of stolen property being submitted.
- Chair Hennecke asked staff if there is anything that can be done to place stricter standards on this project. Director Bartlam stated that the Commission can, so long as they do not conflict with the State Standards that are already in place.
- Commissioner Kirsten stated his support for this project. He also added that he to wished that there wasn't the concern of items being stolen and redeemed at any of the recycling centers, but he feels that Mr. Ebrahimi has answered all of the questions and concerns that he had.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Jones second, approved the request of the Planning Commission for a Use Permit to establish a warehousing and storage use for recycled materials, including California Redemption Value (CRV), cardboard, scrap metal and electronic waste at 1803 South Stockton Street subject to the conditions in the resolution.

Commissioner Kiser stated that Mr. Ebrahimi stated that his center was not going to be taking in cardboard and asked if the motion needed to reflect that. Commissioner Kirsten stated that he was going to take Mr. Ebrahimi at his word and leave the language in the motion.

The motion carried by the following vote:

Ayes:	Commissioners –	Heinritz, Jones, Kirsten, Kiser, Olson and Chair Hennecke
Noes:	Commissioners –	None
Absent:	Commissioners –	Cummins

- b) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Hennecke called for the public hearing to consider the request for a Use Permit to allow outdoor seating/standing and drinking area at California Street Pub (formerly Barking Dog) in conjunction with their existing Type-48 On-Sale General ABC license at 302 North California Street (Applicant: Christian Cole, on behalf of Thirsty Inc., dba California Street Pub. File Number: 11-U-06)

Associate Planner Bereket gave a brief PowerPoint presentation based on the staff report. Staff recommends denial of the project.

Director Bartlam added that staff and the Planning Commission receive Use Permit applications on a routine basis. Staff is given the opportunity to evaluate the request and determine the impact to the surrounding area. This is a good example of why we have the Use Permit process.

Chair Hennecke asked staff if there are any steps being taken to address the current license. Director Bartlam stated because the current ABC license is grandfathered-in and never went through the Use Permit process; it is up to ABC to enforce any issues with the current license.

Commissioner Kirsten asked for the aerial photo to be placed on the screen. He then asked for staff to point out the area in question. Director Bartlam pointed to the location.

Vice Chair Olson asked who is making the various calls for Police assistance. Director Bartlam stated that the calls are coming from various sources, most of whom are probably here tonight. Olson asked if most of the calls are for the noise issues. Bartlam stated that based on the discussion that he has had with the neighbors to the south noise is the main issue. Olson asked if most of the issues are coming in from twelve to two in the morning. Bartlam stated that from his discussions with the neighbors, the noise comes from patrons entering and exiting the premises.

Commissioner Kiser asked if the applicant is in violation of their license if they are serving food. Director Bartlam stated no.

Chair Hennecke stated that procedure for comments from the public

Commissioner Kiser asked if the Commission had any authority to revoke the current ABC license. Director Bartlam stated no.

Vice Chair Olson stated that the Barking Dog has been operated from this location for a long time. She then asked if the issues are related to a management problem. Director Bartlam stated that it is staff's opinion that it is related to a management problem. Olson asked if this was managed better would the neighbors not have as many issues. She would like to get a better feel for if this is a mismanaged establishment or if it is just cranky neighbors. Bartlam stated that if you compare the calls for the establishment for the previous management versus the management of today it is a night and day difference.

#### Hearing Opened to the Public

- Christian Cole, applicant, came forward to answer questions.
- Jeffrey Fitzer, applicant's attorney, also came forward to answer questions. Mr. Fitzer stated that the applicant would like to open up the patio area for patrons. It is not the intention of the applicant to increase the occupant load with this additional area. There are block walls to the east and west of the patio area which will help cut down on the noise. The patio area has been used for many years. When Mr. Cole took over he put down some concrete and built a fence. Apparently, the fence was built too high and that has been fixed. There are thirty parking spaces in the parking lot and with the current zoning requirements, one space for every four chairs, this accommodates the occupancy. Mr. Fitzer handed out a version of the zoning map that is found in the packet with the residential areas shaded. He stated that he and Mr. Cole walked the neighborhood and talked with the residences and found that not all of the residences share the few complaints that can be found in the packet.
- Chair Hennecke stated that the Use Permit is the only item that is before the Commission tonight, but there is an obviously lack of cooperation from the current owners to address the issues that have been presented. Mr. Hennecke stated that he can not support the project as it has been presented. Mr. Fitzer stated that early on there were some issues that the neighbors have not gotten over, but it has gotten

better in the recent past. He added that some of the information stated in the report is just not true.

- Commissioner Kirsten stated that it is a difficult business climate and owners are going to do anything to keep their business going. He added that he feels that the timing of this application is coming at a bad time with a full force of negative information backing it. He recommended that the applicant try to make amends with the neighbors and demonstrate the sincerity of his intent. Mr. Cole stated that he has tried to make it work, but what is presented isn't what is really happening. Most of the problems are not even coming from the bar, but happen to fall in front of the bar area. Mr. Cole gave other examples of false or inaccurate calls that have been blamed on the bar. He has taken noise meter readings from every corner during various times of the day and yes when the front door opens the noise level skyrockets. Using the patio entrance will cut down on this issue because the front door will be used as an emergency exit.
- Vice Chair Olson stated that she appreciates hearing Mr. Cole's side of this issue, but ultimately there is a problem and it doesn't instill much confidence. What is the goal for security? Mr. Cole stated that there will be security personnel posted at the back gate, one at the back door, and two inside the bar to eliminate under aged patrons. Olson stated that under age patrons are not your problem. Cole expressed his frustration that he doesn't understand how residences that are thirty feet apart can be having completely different experiences. He feels that these issues all stem back to when he bought the bar and some issues happened that he did not handle well, but he has tried to make amends. He then added that the purpose of the back area is to have the noise level moved to the back so that the front door will not have to be used. The security will be stationed: one at the gate to check ID's, two on the patio, one at the back door leading into the bar from the patio, two inside the bar, that will put four outside patrolling with two inside at closing.
- Commissioner Heinritz stated his issues with the way the problem has been handled from the very beginning. Mr. Cole stated that he was not the managing partner when the bar was opened with new management. Heinritz stated that he can not support this project tonight.
- Commissioner Kiser asked where the noise is going to go when the back patio is in use. He also recommended that he install a vestibule at the front door. Mr. Cole stated that the noise will have a buffer with the commercial property and the railroad tracks. Kiser stated that he will have to do what is best for the community.
- Chair Hennecke stated his objections over the fact that Mr. Cole is falling back on the grandfathered-in status and the only why he can support this is if the current license can be conditioned to current standards.
- Vice Chair Olson stated that she would like to see staff be the bridge to help make this a more positive business.
- Commissioner Heinritz stated that in the past when someone comes before the Commission with a plan from the very beginning it gives the neighbors a chance to weigh in on how they would like to see this business conducted, now it is too late.
- Mr. Cole stated that City Staff supported this project up until last month when there was an incident in the parking lot and he doesn't understand why on incident warrants the loss of support.
- Jeffrey Fitzer stated that based on the feed back from the Commission the California Street Pub would like to withdraw their application for the expansion of their existing ABC license.

Public Portion of Hearing Closed

*Continued*

4. PLANNING MATTERS/FOLLOW-UP ITEMS

None

5. ANNOUNCEMENTS AND CORRESPONDENCE

None

6. ACTIONS OF THE CITY COUNCIL

Director Bartlam stated that there is a memo in the packet and staff is available to answer any questions.

7. GENERAL PLAN UPDATE/DEVELOPMENT CODE UPDATE

Director Bartlam stated that Staff had a conference call with Housing and Community Development (HCD) regarding the Housing Element and he remains pessimistic.

8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

Commissioner Kiser gave a brief report regarding the item that was brought before the Committee earlier this evening.

9. ART IN PUBLIC PLACES

Commissioner Kirsten gave a brief report regarding the last meeting. The Taco Truck Cook-Off has been moved to June 18<sup>th</sup> at noon in the Smart & Final parking lot. The Mud Mill will be donating the trophies.

10. COMMENTS BY THE PUBLIC

None

11. COMMENTS BY STAFF AND COMMISSIONERS

Vice Chair Olson stated that she has enjoyed seeing people take pictures with the statues that have been placed downtown.

12. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 8:22 p.m.

ATTEST:

Konradt Bartlam  
Planning Commission Secretary

# Item 3a

**CITY OF LODI  
PLANNING COMMISSION  
Staff Report**

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**MEETING DATE:** July 13, 2011

**APPLICATION NO:** 11-A-02

**REQUEST:** Request for Planning Commission approval of a variance to reduce rear yard setback to less than one foot at 500 West Vine Street. (Applicants: Valerie McFee. File No. 11-A-02).

**LOCATION:** 500 West Vine Street  
(APN: 031-140-33)  
Lodi, CA 952420

**APPLICANT:** Valerie McFee  
500 West Vine Street  
Lodi, CA 95240

**PROPERTY OWNER:** The same as above.

**RECOMMENDATION**

Staff recommends that the Planning Commission approve the request of Ms. McFee for a variance to allow a reduced rear yard setback, subject to the condition outlined in the attached resolution.

**PROJECT/AREA DESCRIPTION**

**General Plan Designation:** Low Density Residential.

**Zoning Designation:** MD, Medium Density Residence.

**Property Size:** 7,250 sq. ft.

The adjacent zoning and land use are as follows:

	<b>General Plan</b>	<b>Zone</b>	<b>Existing Conditions/Uses</b>
North	PUB,	PUB	American Legion Park
South	Low Density Residence	R-2, Single Family Residence	Single Family residences
East	Medium Density Residence	MDR, Medium Density Residence	Multi-family residences
West	Low Density Residence	R-2, Single Family Residence	Single Family residences

**SUMMARY**

The applicant, Ms. McFee, is requesting approval of a variance to allow a detached structure to encroach into the required 7.5-ft rear yard setback. The City of Lodi Municipal Code requires a minimum of 7.5-ft rear yard setback for corner for structures of 121 sq. ft floor area or more. The project site is a corner lot. The applicant built the structure in question in 2006 with less than 1-ft rear yard setback. The applicant requests a Variance approval to encroach into the required rear yard setback.

**BACKGROUND**

As part of Hutchins Street widening efforts, the previous property owners deeded 5-foot to the City in 1988, which reduced the Hutchins Street side of the property. The 5-ft dedication was needed in order to construct a left-turn lane. In addition, the property contains a public sewer line that runs parallel to the southern property line for the entire length of the property and a manhole. The presence of this utility line on the property causes limitations as no structure can be built on the top of this public utility line.

As a result of complaints received by the Police Department, it was found that an accessory structure existed too close to the side property line. Code Enforcement personnel issued a notice of violation. In her

application for a Variance, the applicant indicates the property suffers from severe limitations caused by the presence of a public sewer line. The boat cover structure has been in place since its construction in 2006 without any complaints from the neighbors until last year.

## **REGULATORY SETTINGS**

The applicable setback standards governing buildings and accessory structures are set forth in the Lodi Municipal Code § 17.09.080(c). The City originally adopted Ordinance No. 629 in December 3, 1958 to govern acquisition of future right-of-ways. In addition, Ordinance No. 629 established definitions of buildings and structures, set forth procedure for the establishment of setback lines in the future, and determined setback lines for buildings and accessory structures would be established at a later date. The City's Municipal Code § 17.09.080(c) requires that corner lots to maintain a minimum of seven and one-half feet rear yard setback.

## **ANALYSIS**

The applicant, Ms. McFee, is requesting a Variance to allow reduced rear yard setback for an accessory structure constructed in 2006. The structure in question is a detached boat cover constructed on the rear of the lot. It maintains less than a 1-foot rear yard and approximately 3-foot front yard setbacks (along Hutchins Street frontage). Available City records indicate the primary residence and detached garage were constructed in the 1940s. The property is zoned R-2, Single Family Residence, which allows construction of accessory and detached structures subject to applicable City Standards and California Building Code. The project is generally in conformance with development standards in the City's zoning code. However, the R-2 zoning district requires a 7.5-ft rear yard setback for principal buildings and accessory detached structures 121 sq. ft. or more. The R-2 zoning district further requires that in no case the maximum coverage of the main building and its accessory buildings exceed forty-five percent of the area of the building site. Since subject structure on the property violates setback standards specified in the R-2 zoning district, the project requires approval of a variance.

Chapter 17.72.030(A) of the City's Zoning Code establishes that Variances can only be granted by the Planning Commission based on specific findings. The first finding includes a demonstration that special circumstances affect the ability to develop the property. These physical constraints include the size, shape, topography, location or surrounding. The Commission must find that the site constraints deprive the property of privileges enjoyed by other property owners in the vicinity. Secondly, the Commission must further find that the approval of a variance will not grant a special privilege inconsistent with the limitations on other properties in the vicinity. Finally, variances cannot authorize a use or activity not otherwise authorized by the applicable zoning district. Based on the following discussion, staff believes the Commission can approve the variance.

1. **Granting this Variance request will prevent “unnecessary hardship and injustice.”**

The applicant's hardship, as evidenced, is peculiar to the property and not created by any act of the current owner. The property contains a public utility (sewer) line that runs parallel to the southern (rear) property line for the length of the property. In addition, the property contains a manhole and a utility pole. No structure could be built within 5-ft of this public sewer line. Since no construction of structure is permitted within 5-ft of the sewer line, the applicant has limited options. There are no other areas within the parcel to relocate the structure. The presence of public sewer line, manhole and utility pole imposes severe restrictions. The applicant has limited options. She must either remove the structure or maintain the status quo. Since no structure can be constructed within 5-ft of the public sewer line, the structure cannot maintain the required 7.5-ft rear yard set back. The other option is to remove the structure. Staff feels it would cause unjust and unnecessary hardship to prohibit the placement of a boat cover since the City has approved similar requests in the past. It is staff's position that there will be a limited impact, visual or otherwise, to neighboring properties as a result of allowing the structure. The applicant would be required to maintain a 10-ft side yard setback along Hutchins Street so that the structure would not create site visibility issue.

2. **Granting this Variance request is necessary for “perseveration of preservation and enjoyment of property rights possessed by other property in the vicinity.”**

The second condition requires the Planning Commission find that the requested Variance is necessary for the preservation and enjoyment of property rights possessed by other property in the

vicinity, and would not constitute a grant of special privilege. It is a common practice in the City of Lodi for residents to construct RV and boat covers on the setbacks. The applicant's request is consistent with this common practice. However, the presence of a public utility (sewer) line imposes physical limitations on the parcel. Where these types of limitations have occurred, the City has relaxed standards and zoning requirements to accommodate similar structures on case-by-case basis. The applicant's request meets past standards to approve a Variance request. Denial of the applicant's request for a Variance, in this context, would amount to denial of rights possessed by other properties in the vicinity.

**3. The "strict application of the regulation" would impose unnecessary hardships.**

Strict application of the regulations would impose unnecessary hardship and restrict the applicant's ability to construct a boat cover. Given that the property is severely restricted due to a public utility line, it would be unfair to impose an alternative solution, which is to relocate a public sewer line at the applicant's sole cost. This is essentially impractical since the applicant had no involvement in allowing a public utility line on her property, which has created these limitations.

**4. Granting of a variance would not be materially detrimental to the public health, moral, safety, or welfare and adversely affect adjacent properties.**

In staff's opinion, there will be a limited impact, visual or otherwise, to neighboring properties as a result of the reduced setbacks. The difference will be almost imperceptible. It is unlikely that the approval of a Variance would produce any view or privacy impacts on the surrounding properties, as the structure in question would simply continue as it currently constitutes. The structure has been in existence without a complaint from its neighbors since its construction in 2006. Staff is of the opinion that granting the requested variance would not substantially alter the character of the neighborhood and is consistent with existing conditions in this diverse neighborhood. Furthermore, staff feels approval of a Variance will not be materially detrimental to the public welfare or injurious to the adjacent properties, property owners or residences. The property meets all the City code requirements with the exception of the requested variance item. There are no other outstanding code violations related to the property. Staff believes approval of a Variance would not conflict with adjacent residential uses or adversely affect them as demonstrated by its existence for the last five (5) years. For reasons discussed above, positive findings can be made in support of the variance. Staff recommends approval of the variance application subject to the conditions outlined in the attached resolution.

Staff conducted a site visit of other properties in the area. Staff notes there are many properties in this area that have structures within the side and rear yard setbacks. Specifically, there are at least four properties within the same zoning district and either adjacent to, or within two lots of, this property which encroach into the setback areas. In staff's opinion, there is limited impact to neighboring properties as a result of the reduced rear yard setback. A consideration when reviewing a variance application is whether there are alternatives that would avoid the need for the variance. The viable alternatives in this case are to remove the subject detached structure or to relocate a public sewer line. The first alternative would deprive the applicant of privileges enjoyed by other properties within the neighborhood. The second alternative represents unreasonable financial hardship. The structure has existed for five (5) years without a single complaint from the neighbors. Considering the accessory structure has been in existence for several years without any complaints from the neighbors, it would have no impact to the neighboring properties. The Planning Commission has approved several similar variances to accommodate existing conditions created by previous owners and where these properties are sold without full disclosures by financial institutions. Therefore, the approval of the variance will allow the applicant to enjoy a privilege that other property owners have in the surrounding vicinity.

## **ENVIRONMENTAL ASSESSMENTS**

The project was found to be Categorically Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an "Enforcement action by regulatory agencies" because it is the "adoption of an administrative decision or order enforcing or revoking the lease,

permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.” No significant environmental impacts are anticipated and no mitigation measures have been required.

**PUBLIC HEARING NOTICE:**

Legal Notice for the Variance was published on July 2, 2011. Forty-five (45) public hearing notices were sent to all property owners of record within a 300-foot radius of the subject property as required by Government Code §65091 (a) 3.

**ALTERNATIVE PLANNING COMMISSION ACTIONS:**

- Approve the Request with Alternate Conditions
- Deny the Request
- Continue the Request

Respectfully Submitted,

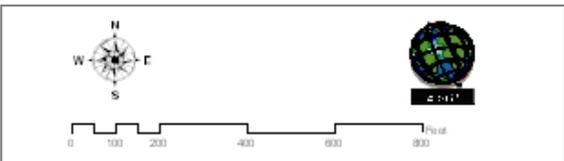
Concur,

Immanuel Bereket  
Associate Planner

Konradt Bartlam  
Community Development Director

**ATTACHMENTS:**

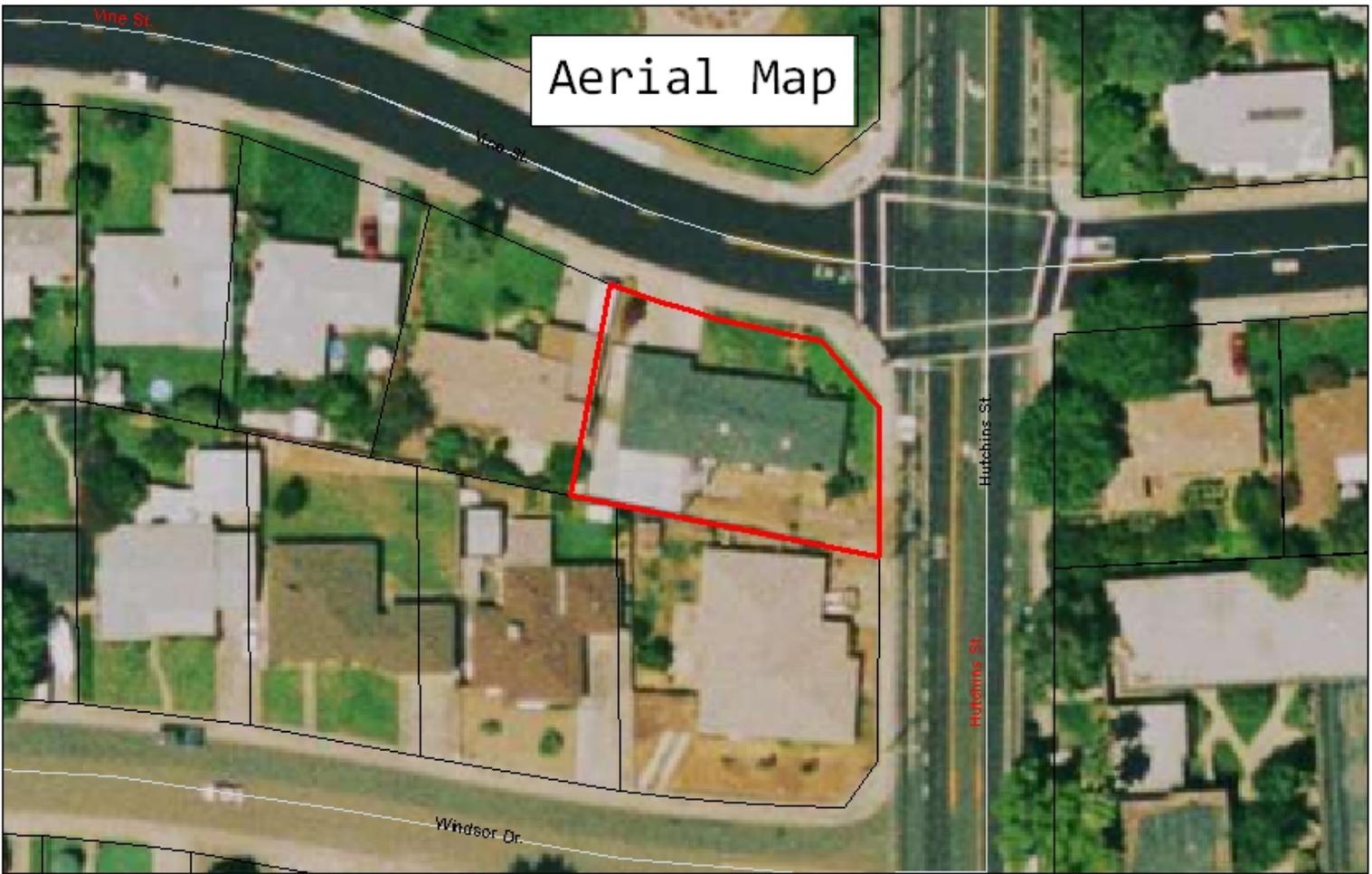
1. Vicinity Map
2. Aerial Photo
3. Plot Plan
4. Applicant's Justification for a Variance
5. Illustration of existing easements
6. Draft Resolution



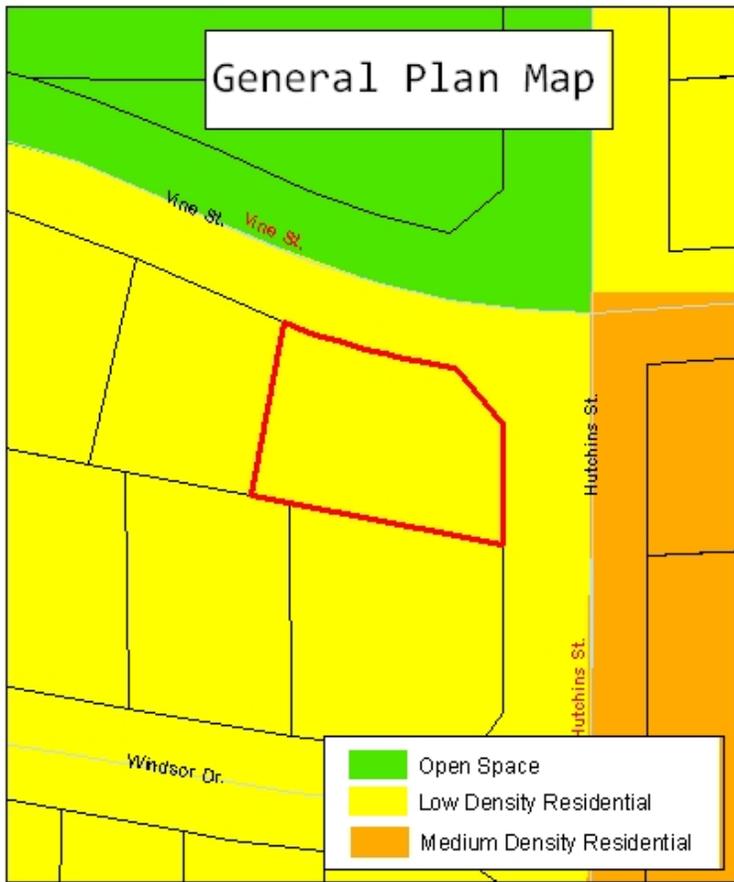
Vicinity Map  
500 West Vine Street  
(APN: 031-140-33)  
Lodi, CA 95240

 Project Area

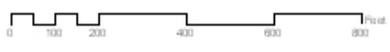
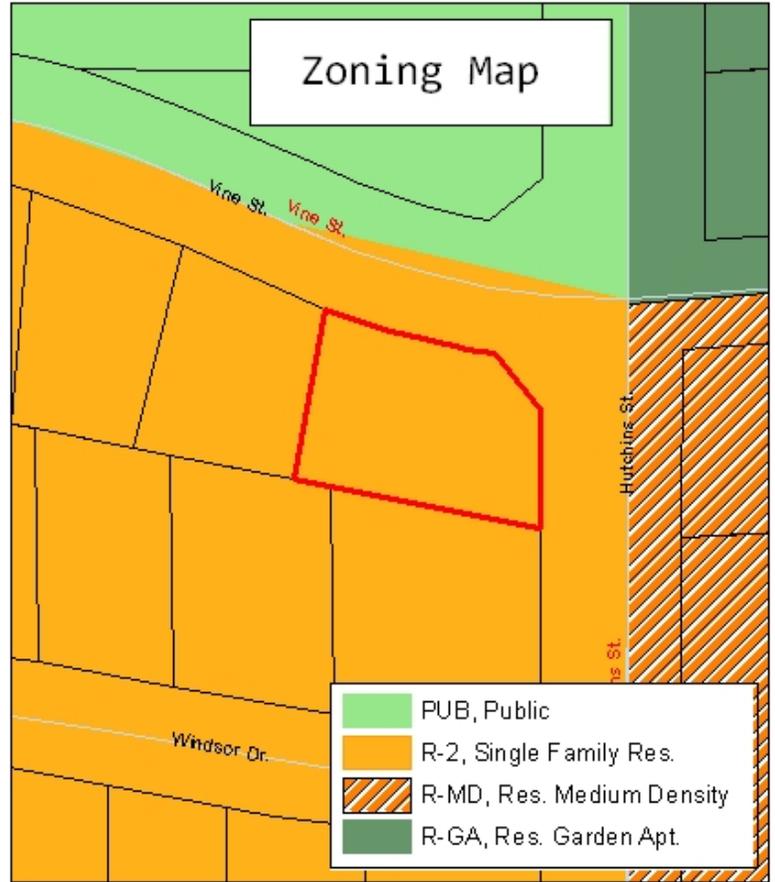
Aerial Map



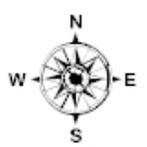
General Plan Map



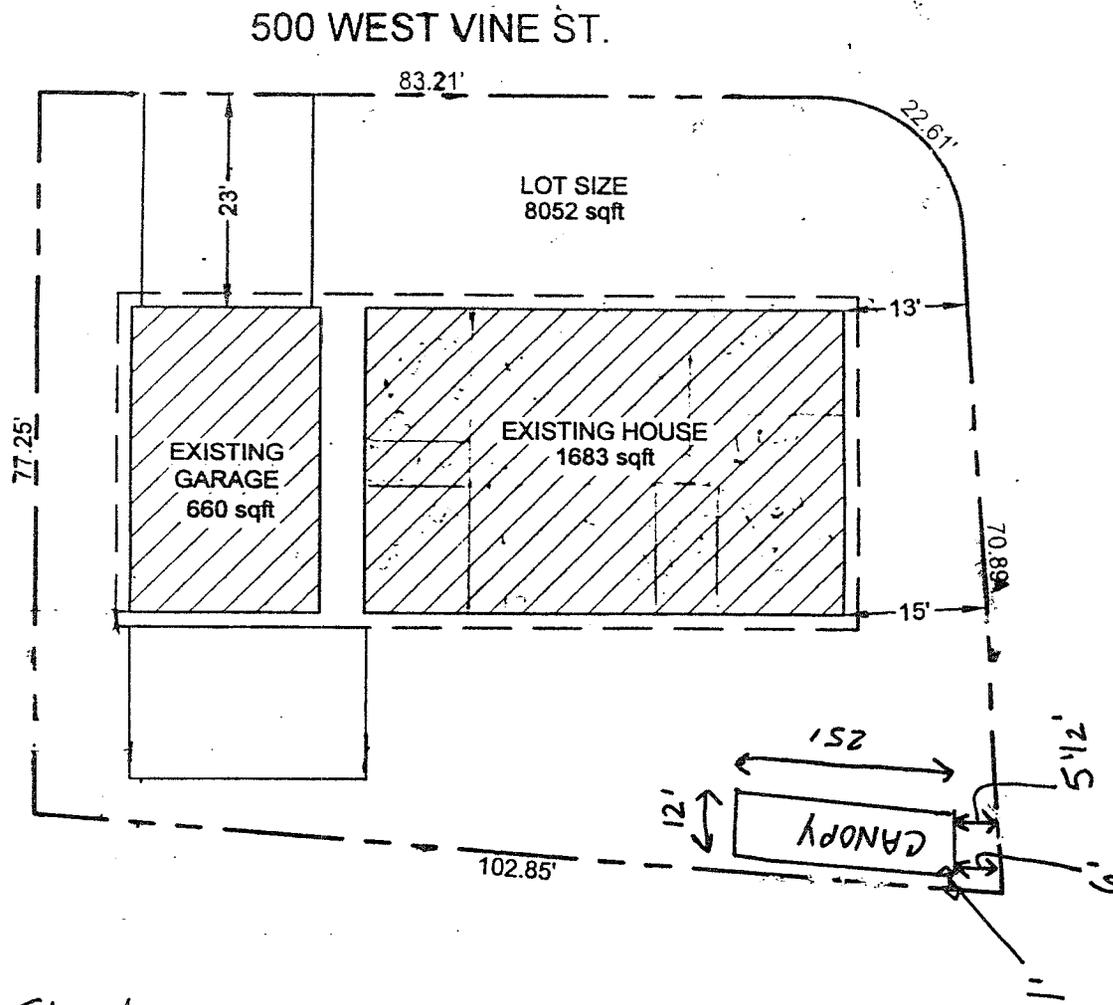
Zoning Map



500 West Vine Street  
(APN: 031-140-33)  
Lodi, CA 952420







South Hutchins Street

500 West Vine Street

Floor Plan - 12' x 25' x 9'11" Boat Canopy  
1" = 20'

Canopy Dimensions  
12' x 25' x 9'11"  
300 sq. feet

December 22, 2010

City of Lodi  
Planning Department

I am requesting your consideration to retain a steel framing structure and to add a permanent metal roof covering to the current boat cover structure located on the side yard (Hutchins Street) of our home located at 500 West Vine Street in Lodi.

**Our request for hardship consideration is based on the following history and information:**

- About 5 years ago we upgraded our backyard space. Items including new sewer lines, patio cover, outdoor cooking area, water meter fixture, spa, etc. were either upgraded or added as new. At that time, all upgrades/additions, including the spa, patio cover, electrical and natural gas additions were constructed and/or installed by licensed professionals and permitted as required by City of Lodi codes and regulations.
- During the remodeling, a side (Hutchins Street) driveway was added to the property. The cement company, Case Construction, asked and was granted permission from the City of Lodi to improve a section of the sidewalk, install a new cement driveway access, move the posted speed limit sign, etc.
- During the construction of this side driveway, it would have been optimal to pour a cement driveway for RV parking, but were unable to do so because of the main sewer line, which runs parallel to our property line and backyard fence. The sewer line is about 6' from the property line/fence line. Due to the physical limitations caused by the existing main sewer line we were only able to pour cement "strips" wide enough for the boat trailer tires to rest on. There is a strip of cement to the left and to the right side of the sewer line, thus making the manhole cover and sewer line accessible by the City of Lodi, when needed.
- The physical limitation of allowing for City of Lodi access to the sewer lines on our property does not allow the cement strips to be located elsewhere, as doing so would limit main sewer line and manhole access.
- In 2006, we added a removable boat cover to the RV parking area. The cover consists of steel legs which are bolted to the cement with lag bolts – this is a safety measure for stability during the windy season. A canvas top cover (no side walls) was affixed to the top of the structure; however, the last storm ripped the canvas top off. We would like to upgrade our property, protect our boat from sun and rain damage and make the cover more attractive by adding a permanent metal roof covering.

*Continued*

In summation, due to the hardship and physical limitations caused by the sewer line placement and the r/w acquisition of 565 square feet of area by the City of Lodi, we do not have much flexibility in the placement of our RV parking structure, we are asking to be allowed to maintain the current pole placement of our boat cover structure.

The subject structure has been in existence without any complaints from the neighbors since it was erected. It is our understanding that the complaint regarding this structure was from a disgruntled citizen who listed this structure along with many others in a bulk complaint to the City of Lodi.

1. **Why are you unable to comply with the requirements? What hardship or injustice are you claiming?**

I am unable to comply with the side yard set back requirement of five (5) feet and request a variance for the structure that is currently on the property and constructed one (1) foot from the side property line.

A utility easement (main sewer line) runs parallel for the entire length of the property, approximately 6 feet from the property line and backyard fence. Due to the physical limitation caused by the existing main sewer line, we are unable to construct other amenities in our yard that other homeowners enjoy. About 5 years ago we added an RV parking space (facing Hutchins Street), improved the side walk and poured a cement driveway for access to said parking space. Due to the physical limitations imposed by the utility easement, we were not able to pour a solid cement pad for RV parking or to place the area farther North. To accommodate the utility easement, a strip of cement was poured to the left and to the right side of the sewer line, thus making the manhole cover accessible by the City of Lodi, when needed. We would like to maintain the intent of the upgrades to the property by being granted this variance request.

With the physical limitation of the utility easement (main sewer line) our property does not allow the canopy structure to be located farther North than where it is currently located, as the structure would then be too close to the house and the driveway and other property improvements would have to be moved at a significant cost to the homeowner.

The current structure (RV canopy) does not obstruct or obscure our neighbors' home or view. The neighbors whose property is adjacent to the RV parking structure have never complained about it. In fact, the structure provides additional privacy for their property. The fencing for the RV parking area is a combination of chain link (with white inserts) and a white vinyl fence, and is esthetically pleasing and a positive addition to the neighborhood.

Another hardship exists in the fact that in 1988, the property was part of an acquisition by the City of Lodi when widening Hutchins Street to accommodate the need for space to construct a turning lane. At that time 5.1 feet was shaved off of the front yard on the Hutchins side of the corner lot. In all, 565 square feet of space was eliminated from the property. This creates a hardship in that if the structure were to have to be 20 feet from the property edge, we are already missing the original 5.1 feet. *Structure is currently 5 1/2 feet from front property edge.*

Currently, there is framing for a RV canopy cover that is approximately 12'X 25' X 9'11" feet. If approved for this variance, we would like to apply for a permit to finish the structure with a metal roof.

2. **What is special about your property that would justify treating it differently than most other properties?**

What is special about this property is the **utility easement** (main sewer line) running parallel to our backyard property line, which limits what we can build and where we can place structures, cement, landscape features, property upgrades etc.

What is also special about this property is that in 1988, a significant portion (**loss of 565 square feet**) of the front yard (Hutchins side) was acquired by the City of Lodi for the purpose of widening Hutchins Street to allow for a turn lane. This reduction of our lot size further limits our ability to comply with front yard setback requirements. *(Exhibit A Hutchins St. R/W Acquisition - attached)*

The property also hosts a **utility pole in the backyard** that even further limits property upgrades that other homeowners can enjoy. The placement of this utility pole affects our side yard set back options and options for structures requiring significant front yard (Hutchins Street) setback requirements.

3. **Is your variance request the minimum change from the requirements that you need to overcome your hardship?**

Yes, I believe waiving the 5 foot side yard requirement to 1 foot and waiving the 20 foot front requirement is warranted due to the hardships, physical limitations of the property and the loss of property from the land acquisition of 1988. Basically, there is no place else to go – no other placement on the property works to accommodate this structure.

4. **Explain why approval of your variance would not likely result in harm to your neighbor's properties or to the general public.**

The covered RV canopy structure, where it is currently placed, does not obstruct or restrict the view, rights or property value of the neighbors. The materials and colors of the structure are pleasant to look at. We strive to maintain our property so as to keep the neighborhood looking nice. I think the existing canopy structure, especially with the addition of a metal roof, would be more esthetically pleasing than having the boat in the same area uncovered or parked on the driveway on the Vine Street side of the property. We live on an extremely busy street, the traffic is loud, there are many cars that park on the Hutchins side of our street from the apartment complex across the street, and we can not even park in front of our own house in the summer months, as the traffic from the Legion Park is overwhelming. The existence of this well-maintained RV parking structure does not harm the neighborhood. The canopy structure is a property upgrade enjoyed by the homeowner and the neighborhood at large.

RECEIVED

DEC 22 2010

COMMUNITY DEVELOPMENT DEPT  
CITY OF LODI

December 22, 2010  
Page Two

- The steel boat cover framework poles are located about 1 foot from the property/fence line due to the physical limitations of the sewer line. One side of the structure faces the driveway of our neighbor's home. It does not obstruct or obscure their home and we have never had a complaint from the homeowners.
- Due to the physical limitations of the placement of the sewer line that runs the entire length of our backyard, we are severely limited as to how we can maintain and enjoy our property. We are not allowed a swimming pool or additional cement in our yard. Additionally, when Hutchins Street was widened (late 1980s??) to add a turning lane, several feet of our side yard was relinquished for this purpose thus making our property smaller, less valuable and more noisy (windows are closer to busy street and intersection).

In summation, due to the hardship and physical limitations caused by the sewer line placement on our property, which does not allow us much flexibility in the placement of our RV parking structure, we are asking to be allowed to maintain the current pole placement of our boat cover structure, which is one foot from our property line and to upgrade to a metal roof.

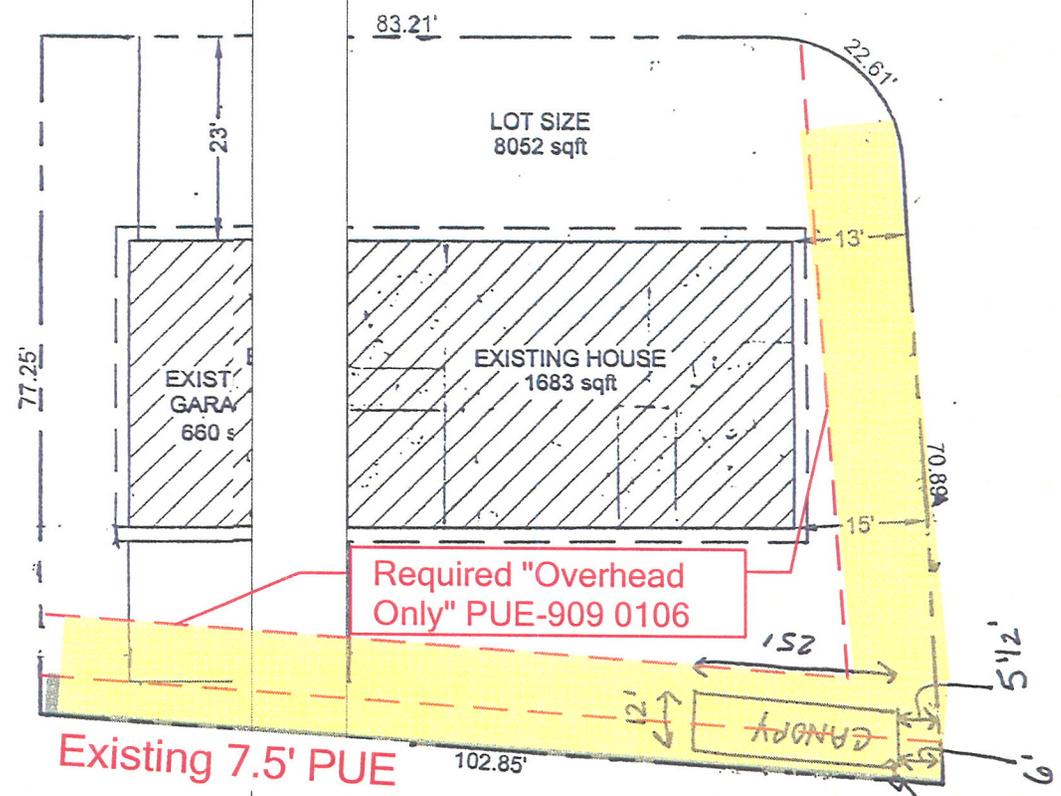
If you have any question, please contact me at 209-327-4387 or 209-334-3912.  
Thank you for your consideration to our hardship request.

Sincerely,

Valerie McFee  
500 West Vine Street  
Lodi, CA 95240



WEST VINE ST.



South Hutchins Street

500 West Vine Street

Floor Plan - 12' x 25' ... 11" Boat Canopy

1" = 20'

Canopy Dimensions  
12' x 25' x 9' 11"  
300 Sq. feet

400670

EUD

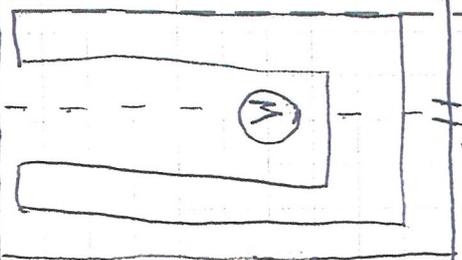
City pole  
400660

Neighbor's Driveway

3 1/2' Fence

6' Fence

South Hutchins Street



sewer line

Existing Primary Wires

Downguys & Anchor

EXISTING SERVICE CABLE

Existing Service Panel

6' Fence

1 1/2

1 1/2

1 1/2

1 1/2

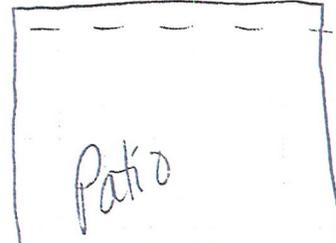
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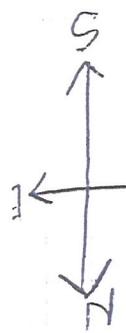
Utility Room

GARAGE

Driveway #1

House

West Vine Street



400660

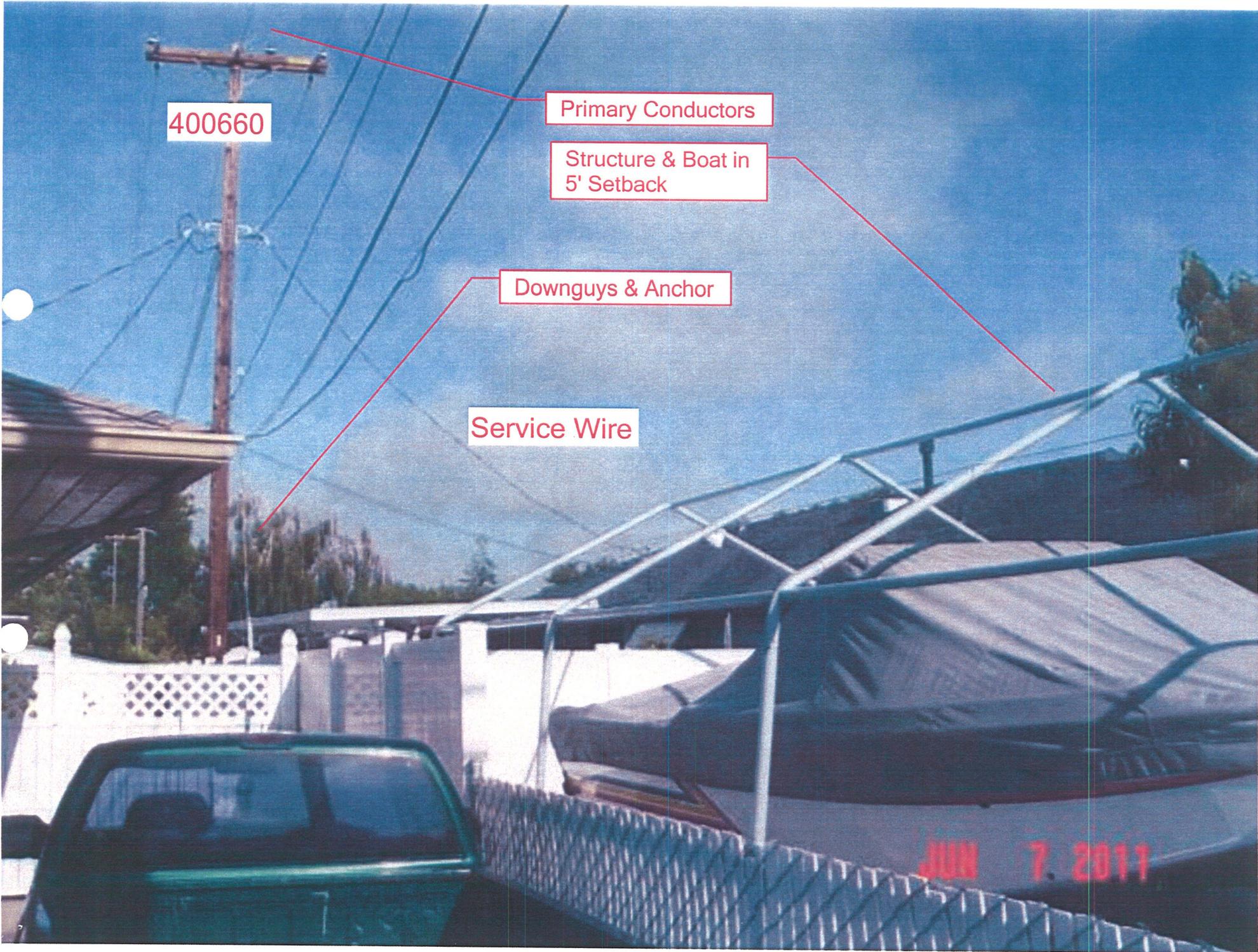
Primary Conductors

Structure & Boat in  
5' Setback

Downguys & Anchor

Service Wire

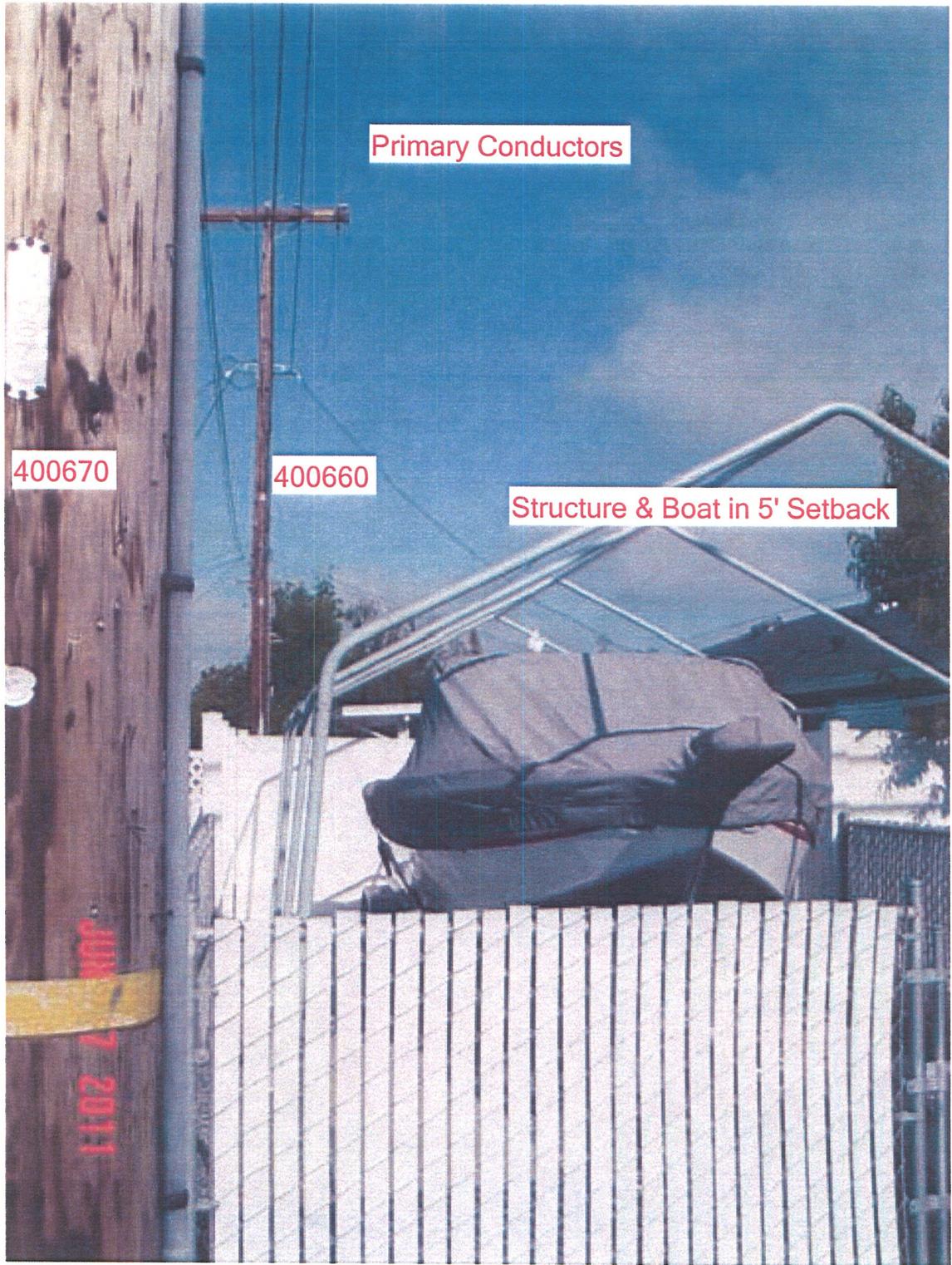
JUN 7 2011





Service Riser & Panel

JUN 7 2011



Primary Conductors

400670

400660

Structure & Boat in 5' Setback

**RESOLUTION NO. P.C. 11-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI FOR APPROVAL OF A VARIANCE TO REDUCE THE REQUIRED FIVE FEET SIDE YARD SETBACK TO LESS THAN ONE FOOT AT 500 WEST VINE STREET**

**WHEREAS**, the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit, in accordance with the Lodi Municipal Code, Section 17.72.070; and

**WHEREAS**, the project proponent is Valerie McFee, 500 West Vine Street, Lodi, CA 95240; and

**WHEREAS**, the property has a General Plan designation of Low Density Residence and is zoned R-2, Single Family Residence, and

**WHEREAS**, the project area is located at 500 West Vine Street, Lodi, CA 95240 (APN: 031-140-33); and

**WHEREAS**, the requested Use Permit to for a Variance approval variance to reduce the required five feet side yard setback to less than one foot at 500 West Vine Street; and

**WHEREAS**, the project was reviewed in conformance with the California Environmental Quality Act; and

**WHEREAS**, the Community Development Department studied and recommended approval of the request; and

**WHEREAS**, all legal prerequisites to the approval of this request have occurred; and

**NOW, THEREFORE, BE IT FOUND** that the Planning Commission of the City of Lodi incorporates the staff report and attachments, project file, testimony presented at the time of the hearing, and written comments, on this matter, and make the following findings:

1. The project was found to be Categorically Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an “Enforcement action by regulatory agencies” because it is the “adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.” No significant environmental impacts are anticipated and no mitigation measures have been required.
2. A variance may be granted if the City finds that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. The structure has been on the property for many years and is similar to many accessory structures located in the neighborhood. The applicant would like to keep the accessory structure as it stands. Granting the variance will not increase the size of the structure.
3. The variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.
4. Approval of the requested variance will not affect the existing land use pattern in the neighborhood where there are many residences with similar type of accessory structures.
5. The variance is not detrimental to the public welfare and will provide an affordable housing unit that will be built to current building standards;

**NOW, THEREFORE, BE IT DETERMINED AND RESOLVED** by the Planning Commission of the City of Lodi that Use Permit Application No. 11-U-14 is hereby approved, subject to the following conditions:

1. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall, at their sole expense, defend, indemnify and hold harmless the

City of Lodi, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this Use Permit approval. The obligation to defend, indemnify and hold harmless shall include, but is not limited to, any action to arbitrate, attack, review, set aside, void or annul this Use Permit approval on any grounds whatsoever. The City of Lodi shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

2. The applicant shall submit appropriate plans to the Community Development Department for plan check and building permit within 120 calendar days, commencing from the effective date of this Variance approval.
3. The detached boat cover/car port structure shall maintain a minimum of 10-foot side yard set back along Hutchins Street.
4. Permit is required for detached Canopy/Carport structure exceeding 120sqft. All plan submittals shall be based on the City of Lodi Building Regulations and currently adopted 2010 California Building code. Please review our policy handouts for specific submittal procedures.
5. The structure must be located 5' or more from property lines or be 1 hour fire rated, with no openings allowed. 2010 CRC, Section R302.1, Table R302.1 (1).
6. Requires lateral design calculations (wind and seismic) and plans prepared by an Architect or Professional Engineer, licensed in the State of California.
7. The applicant shall submit an application for a Structural Encroachment Permit through the Public Works Department prior to issuance of a building permit.
8. Property owner sign a "Hold Harmless Agreement" that will indemnify the City\_of Lodi, Electric Utility Department of any liability and have agreement recorded\_with the San Joaquin County Recorder's Office. The "Hold Harmless\_Agreement" document will be provided by the City following your return of the\_letters of agreement by all effected utilities.
9. Property owner agrees, at his sole expense, to give prompt access to the City\_of Lodi, Electric Utility Department for the purpose of performing work by the\_utility in the easement. Further, if required, owner will move at owner's cost\_and expense the necessary structures required to permit the Electric Utility\_Department to perform their work.
10. Property owner shall prepare legal description for "Overhead Only" Easement\_(909 0106) with copy to Electric Engineering.
11. Additional comments and requirements will be provided during building permitting process.

**Dated: July 13, 2011**

I certify that Resolution No. 11- was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on July 13, 2011 by the following vote:

**AYES:** Commissioners:  
**NOES:** Commissioners:  
**ABSENT:** Commissioners:

ATTEST: \_\_\_\_\_  
Secretary, Planning Commission

# Item 3b.

**CITY OF LODI  
PLANNING COMMISSION  
Staff Report**

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**MEETING DATE:** July 13, 2011

**APPLICATION NO:** Use Permit: 11-U-14

**REQUEST:** Request for Planning Commission approval of a Use Permit to allow a Type-41 On-Sale Beer and Wine Alcoholic Beverage Control License at Woodbridge Pizzeria located at 1110 W Kettleman Lane, Suite 2. (Applicant: Elizabeth Castillo. File Number: 11-U-14)

**LOCATION:** 1110 West Kettleman Lane, Suite 2  
APN: 060-380-01  
Lodi, CA 95240

**APPLICANT:** Elizabeth Castillo  
1110 West Kettleman Lane, Suite 2  
Lodi, CA 95240

**PROPERTY OWNER:** Lodi Ranch Center, LLC  
201 Wilshire Blvd, Suite A28  
Santa Monica, CA 90401

**RECOMMENDATION**

Staff recommends that the Planning Commission approve the request of Elizabeth Castillo for a Use Permit to allow a Type-41 on-sale beer and wine license at Woodbridge Pizzeria located at 1110 W Kettleman Lane, Suite 2, subject to the conditions outlined in the attached resolution.

**PROJECT/AREA DESCRIPTION**

**General Plan Designation:** MUC, Mixed Use Corridor  
**Zoning Designation:** PD -15, Planned Development 15.  
**Property Size:** 3.54 acres. (Woodbridge Pizzeria is approximately 2,800 square feet.)

The adjacent zoning and land use characteristics:

- North:** R-C-P, Residential, Commercial and Professional. The area to the north constitutes mostly offices and professional uses.
- South:** PD -15. Planned Development 15. The area to the south constitutes exclusively single family/low density residences
- East:** PD -15. Planned Development 15. The uses to the east are mostly commercial uses ranging from restaurants to banks to professional offices.
- West:** PD -15. Planned Development 15. The uses to the west comprise of low density residences and commercial uses along Kettleman Lane. The area as developed as part of the PD-15, which covers the area south of Kettleman Lane, north of Century Boulevard, east of the Woodbridge Irrigation District canal and west of Hutchins Street.

## **SUMMARY**

The applicant, Elizabeth Castillo, requests approval of a Use Permit to allow on-site sale of beer and wine in conjunction with operation of a restaurant. She currently operates the restaurant, but does not serve alcohol. She is applying for a license through the California Department of Alcoholic Beverage Control (ABC) to allow beer and wine to be served for on-site consumption. In addition, the applicant is requesting that the Planning Commission make a finding that the sale of alcohol at the restaurant is a public convenience or necessity, in accordance with the requirements of the State Department of Alcoholic Beverage Control (ABC). Since the proposed Woodbridge Pizzeria is a full service restaurant, staff does not anticipate any problems with issuing an additional alcoholic beverage license.

## **BACKGROUND**

Woodbridge Pizzeria is currently serving the City of Lodi. Woodbridge Pizzeria is located at Bella Terra Plaza, which contains a variety of commercial businesses such as offices, a gym, restaurants and various retail stores. The project area is zoned Planned Development (PD) 15, which allows the sale and consumption of alcohol. The surrounding land uses consist primarily of residential and professional uses to the north, commercial and professional uses to the east, residential uses to the south, and commercial and residential uses to the west. Available records indicate, there are no outstanding code violations regarding this restaurant.

## **ANALYSIS**

According to the applicant, Woodbridge Pizzeria offers lunch and dinner menu. The restaurant is open from the hours of 11:00 a.m. to 9:00 p.m. Tuesdays – Saturdays and from 11:00 a.m. to 8:00 p.m. on Sundays. The restaurant is closed on Mondays. The restaurant is approximately 2,800 square feet in size and provides seating for approximately 70 guests (indoor and outdoor). Parking is provided on site, which satisfies the parking requirement for eating establishment of this size. The applicants request a Use Permit approval to allow a Type 41 (Easting Place) ABC license, which authorizes the sale of beer and wine for consumption on or off the premise where sold. Type 41 prohibits the sale of distilled spirits and minors are allowed on the premise. In accordance with the State Department of Alcoholic Beverage Control (ABC) requirements, receipts from alcohol sale shall not be in excess of food sales receipts. ABC requires that restaurants with alcohol license must operate and maintain the premise as a bona fide eating establishment. No live entertainment, as defined by the Lodi Municipal Code, is proposed as part of this Use Permit request.

The Municipal Code of the City of Lodi requires the approval of a Use Permit by the Planning Commission for retail businesses and restaurants which sell alcoholic beverages (LMC § 17.72.040). The City established the Use Permit requirement to gain local control over whether or not a license is appropriate for a particular location. The Department of Alcoholic Beverage Control primarily controls issuance based on concentration of licenses within a particular Census Tract. Census Tract 43.06 covers the area south of Kettleman Lane, west of Sacramento Street, north of Harney Lane, and east of Ham Lane. According to ABC, Census Tract 43.06 contains ten (10) existing on-sale licenses with eight (8) On-sale licenses allowed based on the ABC criteria. Because the area is over concentration, the Planning Commission a make a finding of public necessity or convenience in order to approve additional alcohol license. In the past, the Planning Commission and the Planning staff have generally supported restaurants that wish to acquire an ABC on-sale license, because typically, restaurants that serve alcohol in conjunction with food sales do not create alcohol related problems.

Staff has contacted the Lodi Police Department for comment on the proposed on-sale beer and wine application and they do not anticipate alcohol related problems with the restaurant. Staff sent copies of the application to various City departments for comments and review. The Fire, Building, Public Works, Electric Utility Departments had no comments and had no objections to

the request for an alcohol license. Because the applicant's request is for a Use Permit to allow sale of alcohol in conjunction with a full service restaurant, staff does not anticipate the alcohol sales portion of the business to create any problems. The requested Use Permit application is similar to other restaurants with similar alcohol licenses the Planning Commission has approved in the past. The Planning Commission and the Planning staff have generally supported restaurants that wish to acquire an ABC on-sale beer and wine license because restaurants that serve beer and wine in conjunction with food sales have not created alcohol related problems. If problems or concerns related to the sale of alcoholic beverages occur in the future, staff and/or the Planning Commission may initiate a public hearing where the Commission would have the ability to amend conditions or revoke the Use Permit.

### **ENVIRONMENTAL ASSESSMENTS**

The project was found to be Categorical Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an "Enforcement action by regulatory agencies" because it is the "adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." No significant environmental impacts are anticipated and no mitigation measures have been required.

### **PUBLIC HEARING NOTICE:**

Legal Notice for the Use Permit was published on June 30, 2011. 26 public hearing notices were sent to all property owners of record within a 300-foot radius of the subject property as required by California State Law §65091 (a) 3. No protest letter has been received.

### **ALTERNATIVE PLANNING COMMISSION ACTIONS:**

- Approve the request with attached or alternate conditions
- Deny the request
- Continue the request

Respectfully Submitted,

Concur,

Immanuel Bereket  
Assistant Planner

Konradt Bartlam  
Community Development Director

### **ATTACHMENTS:**

1. Vicinity Map
2. Aerial Photo
3. Site Plan and Floor Plan
4. Menu
5. Police Department Approval
6. Draft Resolution



**Project Site**

### Vicinity Map

1110 West Kettleman Lane  
Lodi, CA 95240

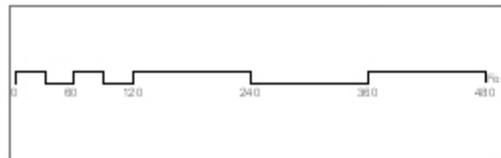
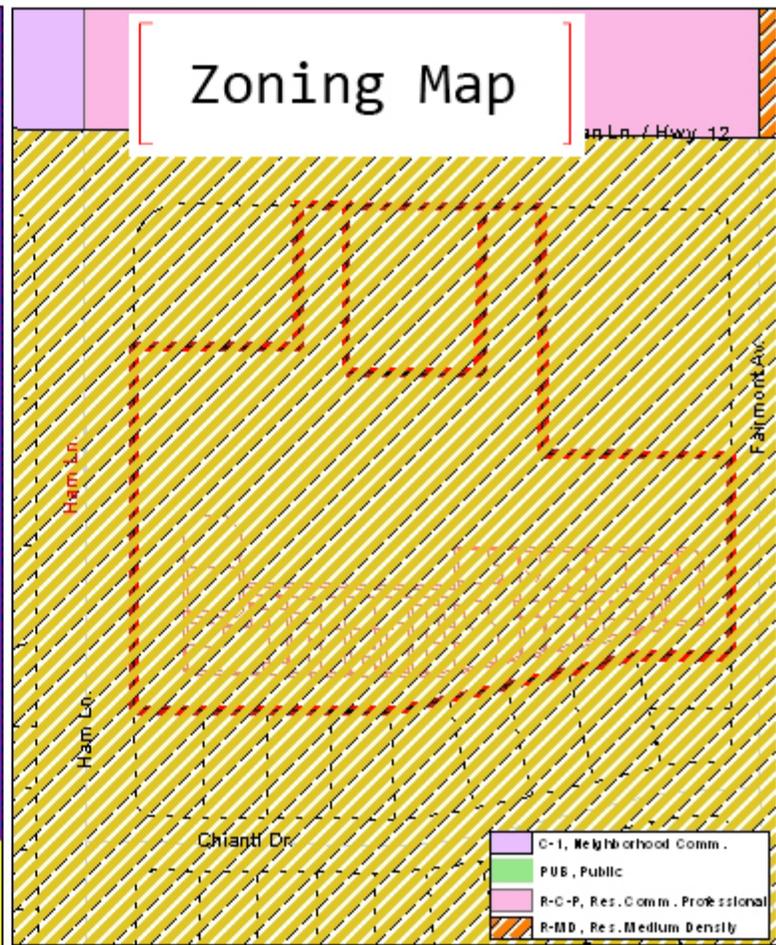
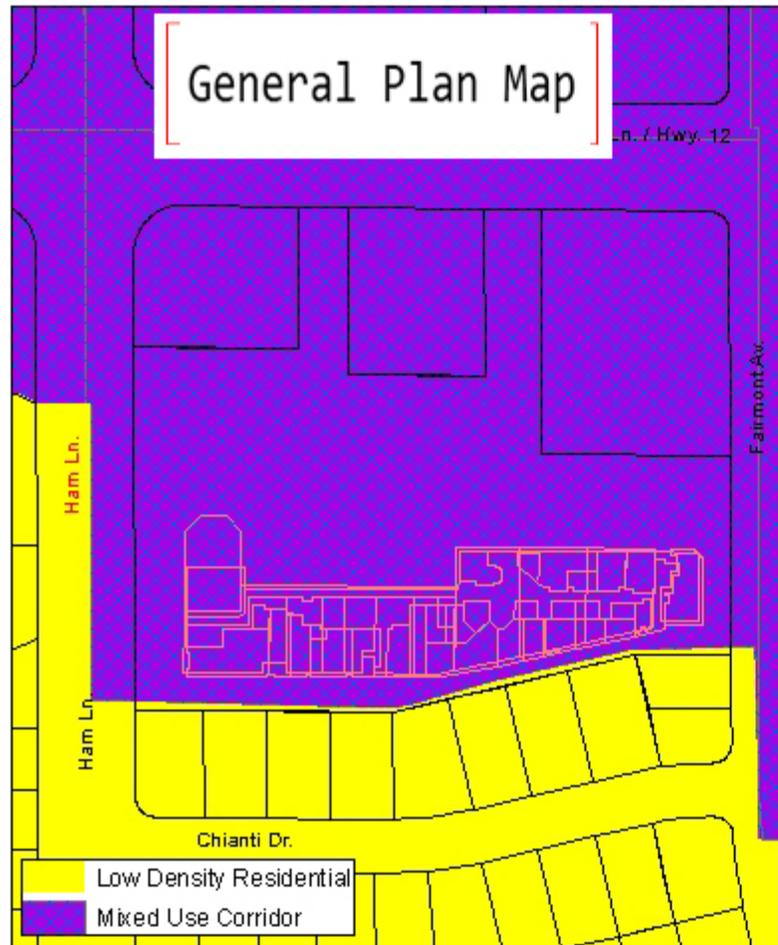
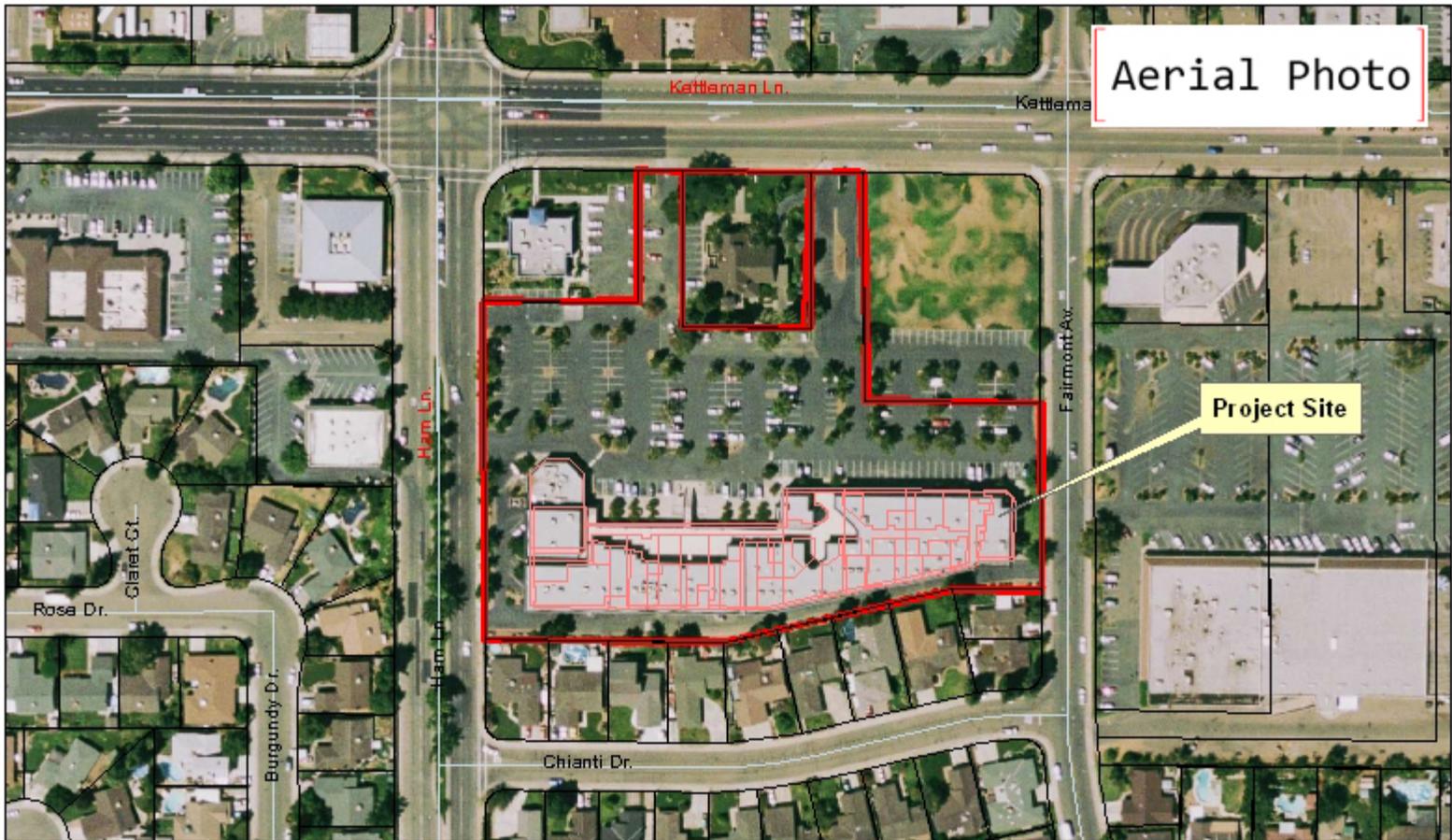
### Legend



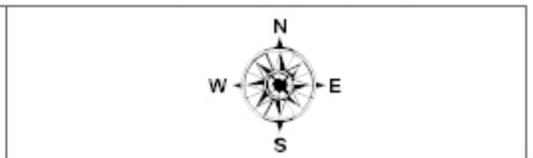
1110 West Kettleman Lane



0 0.02 0.04 0.08 0.12 0.16 Miles

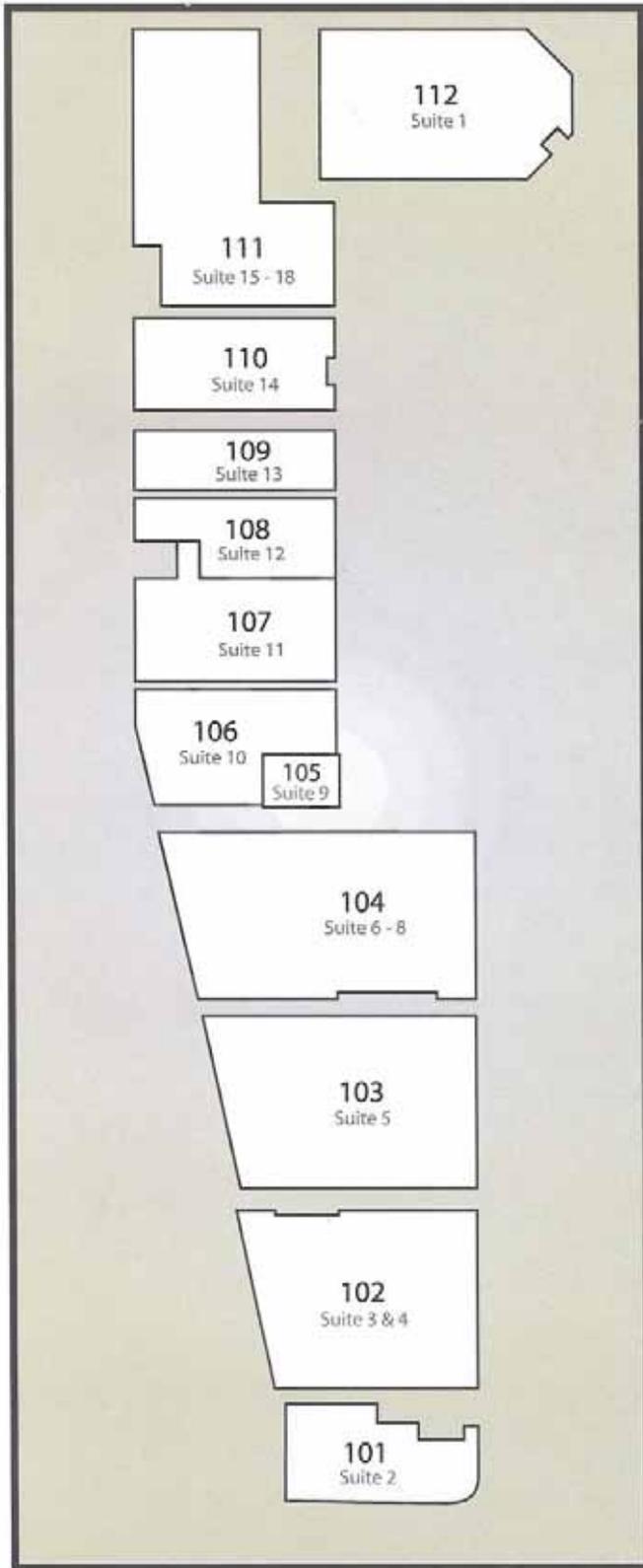


**Woodbridge Pizzeria**  
 1110 West Kettleman Lane, Suite 2  
 APN: 060-380-01  
 Lodi, CA 95240

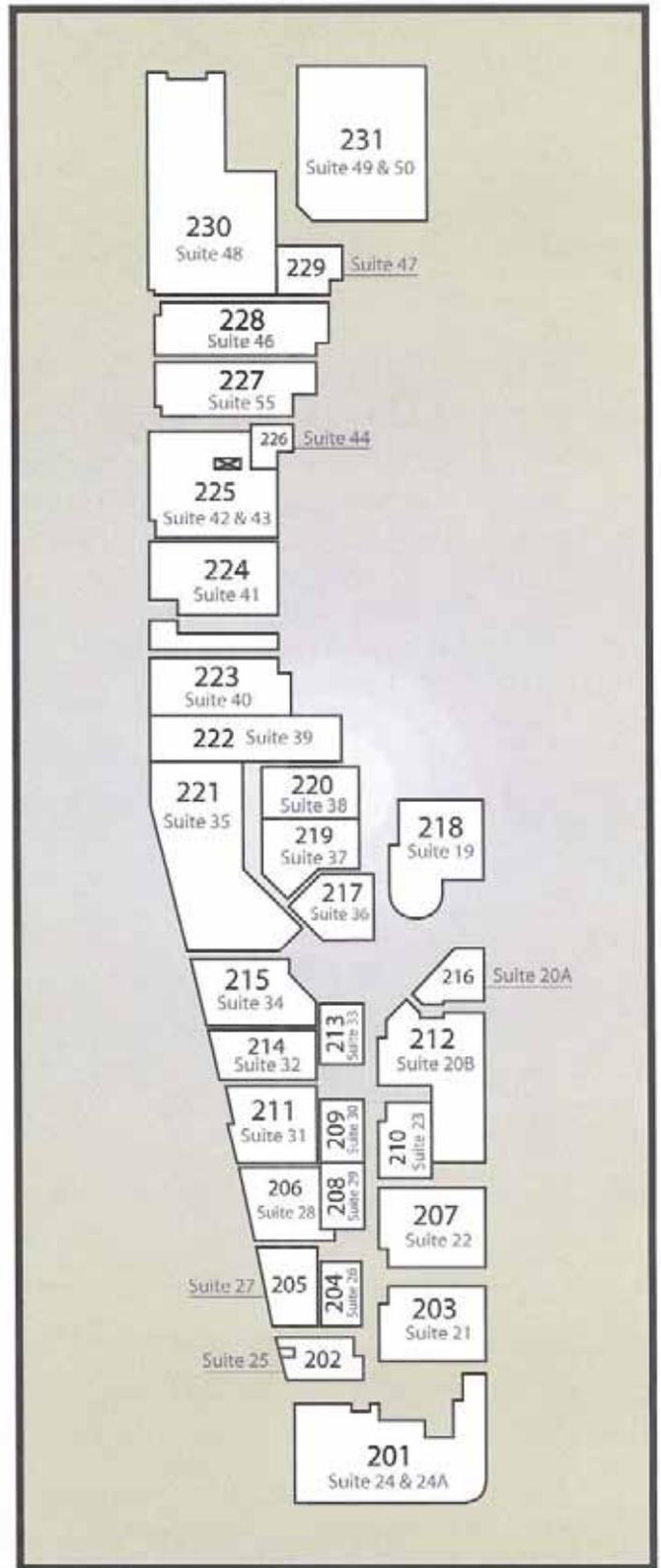




## First Floor



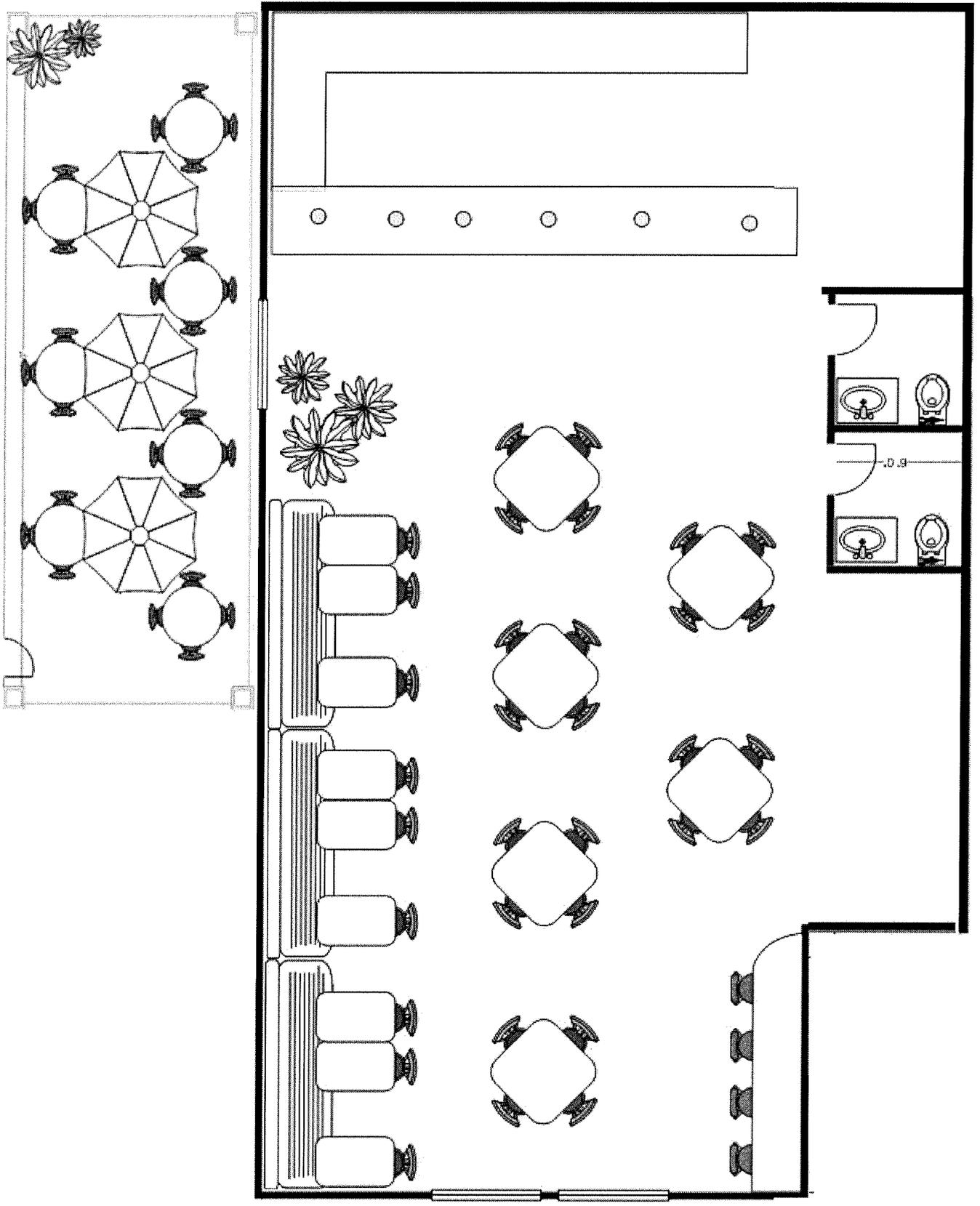
## Second Floor



# Bella Terra Plaza

## Site Plan

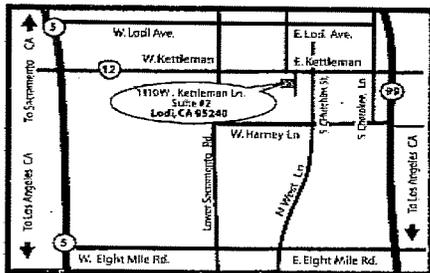
AZ



## Beverages

Wine Glass..	\$ 2.25
Mug	Coming soon
Imports Beer.....	\$ 3.25
Domestic Beer.....	\$ 2.50
Pitcher	
Imports Beer.....	\$10.00
Domestic Beer.....	\$9.25
Fountain / Sodas	
Medium.....	\$ 1.29
Pitcher.....	\$ 5.00
Large.....	\$ 1.39
2 Liter.....	\$ 2.49

Best priced pizza buffet  
All day everyday  
Includes 20oz drink  
\$6.99 Adults  
\$4.99 12 and under  
(without facial hair)  
5 & under free  
(with a paid adult)



1110 W. Kettleman Ln., Suite #2  
Lodi, CA 95240  
**(209) 334-1042**

## Specialty Pizza

S M L XL

<b># 1 Margarita</b>				
Red sauce, Cheese, Tomatoes, Fresh Basil.	11.99	13.99	15.99	17.99
<b># 2 Ali Pie</b>				
Special Sauce, Ham, Pepperoni, Salami, Sausage, Linguisa, Mushrooms.	19.99	21.99	23.99	25.99
<b># 3 Bizcuit Crippler</b>				
Creamy Garlic Sauce, Double Salami, Double Pepperoni, Chicken.	15.99	17.99	19.99	21.99
<b># 4 The Corporate</b>				
Creamy Garlic Sauce, BBQ Chicken, Olive, Onions and Mushrooms.	15.99	17.99	19.99	21.99

## Broaster Seafood

Premium Beer Battered Shrimp	
10 piece.....	\$ 5.99
20 piece.....	\$11.99

## Broaster Specialties

<b>Broaster Chicken Tender</b>	
3 piece.....	\$ 3.29
6 piece.....	\$ 6.59

<b>Broaster Potato Wedges</b>	
5 piece.....	\$ 1.49
10 piece.....	\$ 2.89

<b>Broaster Spicy Hot Wings</b>	
6 piece.....	\$ 4.99
12 piece.....	\$ 7.99
24 piece.....	\$ 14.99

## Broaster Frog Legs

<b>Broaster Frog Legs</b>	
5 Full piece.....	\$ 6.99



## Broaster Chicken Meals

2 pc 1 Leg & Thigh with Potato Wedges	\$ 3.99
2 pc 1 Breast & Wing with Potato Wedges	\$ 4.99
3 pc 2 Leg & Thigh with Potato Wedges.	\$ 4.99
3 pc Breast, Leg & Thigh w/ Potato Wedges	\$ 6.99
4 pc Breast, Leg, Thigh, Wing w/ Potato Wedges	\$ 7.99
• Wing 1.09 • Leg 1.29 • Thigh 1.79 • Breast 2.69	

## Broaster Family Packs

All Served with Potato Wedges

6 piece 2ea Breast, Leg, Thigh.....	\$ 13.99
8 piece 2ea Breast, Leg, Thigh, Wing.....	\$ 15.99
12 piece 3ea Breast, Leg, Thigh, Wing....	\$ 19.99
16 piece 4ea Breast, Leg, Thigh, Wing....	\$ 24.99

## Broaster Family Packs

8 and 8 Special.....	\$ 26.99
Medium Premium Pizza, 8 Pieces Broaster Chicken with 8 Broaster Potato Wedges.	
12 and 12 Special.....	\$ 34.99
Large Premium Pizza, 12 Pieces Broaster Chicken with 12 Broaster Potato Wedges	
16 and 16 Special.....	\$ 41.99
X-Large Premium Pizza, 16 Pieces Broaster Chicken with 16 Broaster Potato Wedges	

# Woodbridge



# Pizzeria



**Dine-In Take-Out Delivery**  
Call ahead and we'll have it ready for you

Mon-Tue-Wed 10:00 am to 8:30 pm  
Thu-Fri-Sat-Sun 10:00 am to 9:00 pm  
Open 7 Days A Week

## Lunch Special

served DAILY !!!

New "Woodbridge Weiner" (Polish dog on a Bun: stuffed or plain) and 12oz. soda..... \$ 3.50

Pizza by the Slice and 12oz. soda..... \$ 3.50

### Woodbridge Special

Personal Pizza or Calzone, Small Salad and 12oz. soda..... \$ 6.99

We also have our 10 piece

## Appetizer

Lunch Specials to choose from!!!

Mon. to Fri. 11:00 am. to 2:00 pm.

Bread Sticks and 12oz. soda..... \$ 4.99

Buffalo Wings ( spicy or BBQ) and 12oz. soda..... \$ 4.99

Jalapeño Poppers and 12oz. soda..... \$ 4.99

Mozzarella Sticks and 12oz. soda..... \$ 4.99

After 2:00 pm. Mon. to Fri. All Appetizer \$6.99

\*Personal Pizza 4 toppings and 12oz. soda..... \$ 9.99

\*Calzone 4 toppings and 12oz. soda..... \$ 4.99

Still serving from our full menu selection (Red Sauce, Creamy Garlic Blend, Pesto Sauce) extra topping \$ 1.00

Sizes May Vary \*

### CALZONE (Your choice of 4 toppings)

Personal..... \$ 4.99  
Small..... \$ 6.99  
Medium..... \$ 9.99  
Large..... \$ 12.99

### PASTA

Creamy Alfredo Pasta..... \$ 12.99

### "TAKE and BAKE"

One Topping..... \$ 8.99  
Two Topping..... \$ 10.99  
Specialty Pizza..... \$ 12.99

### FAT BOY SUB

Creamy Garlic Sauce, Cheese (Your choice of 4 toppings) toasted or Cold..... \$ 4.99

## Salads

Dressing \*Italian \*Ranch \*Blue Cheese \*Thousand Island (Salad made fresh daily and includes onion, bell pepper, mushrooms, black olives and cheese)

Single Size Salad..... \$ 3.00  
Family Size Salad..... \$ 5.00

## Dessert

Make You Moana Cheesecake (Slice)..... \$ 3.00

Sizes SM / 12" MD / 14" LG / 16" XL / 18"

## PIZZA RED SAUCE BLEND

	SM / 12"	MD / 14"	LG / 16"	XL / 18"
COMBINATION Salami, Pepperoni, Sausage, Mushrooms, Black Olive, Onion, Bell Pepper.	\$14.99	\$16.99	\$18.99	\$20.99
MOODY HEART ATTACK SPECIAL All Meat - Salami, Pepperoni, Ham, Linguisa, Sausage.	\$16.99	\$18.99	\$20.99	\$22.99
DEAN'S SPECIALS Salami, Pepperoni, Sausage, Mushrooms, Black and Green Olives, Wax Pepper.	\$14.99	\$16.99	\$18.99	\$20.99
HAWAIIAN Ham and Pineapple.	\$ 8.99	\$10.99	\$13.99	\$14.99
HOMEWRECKER Pepperoni and Olive.	\$ 8.99	\$ 10.99	\$12.99	\$14.99
VEGGIE LOVER'S Mushrooms, Black Olives, Bell Peppers, Tomatoes, Artichokes and Onion.	\$11.99	\$13.99	\$15.99	\$17.99
PEPPERONI	\$ 7.99	\$ 9.99	\$11.99	\$12.99
CHEESE	\$ 6.99	\$ 8.99	\$10.99	\$11.99

## CREAMY GARLIC BLEND

KISS THE DON Salami, Pepperoni, Sausage, Mushrooms, Tomatoes.	\$15.99	\$17.99	\$19.99	\$21.99
GARLIC LOVER Salami, Pepperoni, Sausage, Mushrooms, Black Olive and Onion.	\$15.99	\$17.99	\$19.99	\$21.99
GARDEN CLASSIC Mushrooms, Black Olives, Bell Peppers, Tomatoes, Artichokes and Onion.	\$12.99	\$14.99	\$16.99	\$18.99
CHICKEN CLASSIC Chicken, Tomatoes, Mushrooms, Black Olive and Onion.	\$15.99	\$17.99	\$19.99	\$21.99
WOODBIDGE PIZZA Chicken, Linguisa, Artichoke, Mushrooms and Jalapeños.	\$15.99	\$17.99	\$19.99	\$21.99
SLICK DICK Ham, Sausage, Pineapple, Chicken.	\$14.99	\$16.99	\$18.99	\$20.99

ADDITIONAL TOPPINGS: Salami, Pepperoni, Bell Pepper, Onion, Pineapple, Chicken, Ham, Sausage, Linguisa, Artichoke, Jalapeños, Black Olive, Green Olive, Tomatoes, Wax Pepper, Beef topping, Mushroom, Garlic, Red Sauce, Creamy Garlic Sauce, Pesto Sauce. Add \$1.00 each. Anchovies \$2.00 Each



## Immanuel Bereket

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**From:** JP Badel  
**Sent:** Wednesday, May 25, 2011 3:22 PM  
**To:** Immanuel Bereket  
**Subject:** 11-U-14 Woodbridge Pizza

Manny

No concerns.

JP

*Captain J.P. Badel*  
**Operations & Support Services Commander**  
**Lodi Police Department**  
215 W. Elm St.  
Lodi, California 95240  
Office: 209-333-5501  
[www.lodi.gov/police](http://www.lodi.gov/police)

**RESOLUTION NO. P.C. 11-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI FOR THE APPROVAL OF THE REQUEST OF ELIZABETH CASTILLO FOR A USE PERMIT TO ALLOW FOR AN ON-SALE BEER AND WINE ALCOHOLIC BEVERAGE CONTROL LICENSE AT 1110 WEST KETTLEMAN LANE, SUITE 2**

- WHEREAS,** the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit, in accordance with the Lodi Municipal Code, Section 17.72.070; and
- WHEREAS,** the project proponent is Elizabeth Castillo, 1110 West Kettleman Lane, Suite 2 Lodi, CA 95240; and
- WHEREAS,** the property has a General Plan designation of Mixed Use Corridor and is zoned PD-15, Planned Development 15; and
- WHEREAS,** the project area is located at 1110 West Kettleman Lane Suite 2, Lodi, CA 95240 (APN 060-370-01); and
- WHEREAS,** the requested Use Permit to allow the selling of beer and wine for on-site consumption within a restaurant is an enforcement action in accordance with the City of Lodi Zoning Ordinance; and
- WHEREAS,** Census Tract 43.06 in which the restaurant is located currently has an over concentration of licenses allowing on premise consumption of alcoholic beverages; and
- WHEREAS,** because Census Tract 43.06 has an over concentration of On-sale beer and wine alcohol licenses, the Planning Commission must make a finding of necessity and/or public convenience in order to permit the issuance of an additional Alcohol Beverage Control license in this tract; and
- WHEREAS,** the State Department of Alcoholic Beverage Control has training available that clearly communicates State law concerning the sale of alcoholic beverages.
- WHEREAS,** all legal prerequisites to the adoption of this Resolution have occurred; and

**NOW, THEREFORE, BE IT FOUND** that the Planning Commission of the City of Lodi incorporates the staff report and attachments, project file, testimony presented at the time of the hearing, and written comments, on this matter, and make the following findings:

1. The project was found to be Categorical Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an “Enforcement action by regulatory agencies” because it is the “adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.” No significant environmental impacts are anticipated and no mitigation measures have been required.
2. The sale of alcoholic beverages for on-premise consumption as part of a restaurant is a permitted use in the Planned Development 15 (PD -15) zoning District. The site is suitable and adequate for the proposed use because establishment of a restaurant on this site would not create negative impacts on businesses in the vicinity, and the applicant proposes to perform a tenant improvement in order to meet building code requirements.
3. The proposed use is consistent with the General Plan because commercial uses such as the one proposed are permitted in accordance with Land Use Policy subject to a discretionary review.

4. The proposed use would not have a substantial adverse economic effect on nearby uses because operation of a restaurant in accordance with applicable laws and under the conditions of this Use Permit is anticipated to be an economic benefit to the community.
5. The sale of alcoholic beverages for on-premise consumption is a normal part of business operations and provides a convenience for customers of the business.
6. The sale and consumption of alcohol can sometimes result in customer behavior problems that can require police intervention.
7. Steps can be taken by the Applicant/Operator to reduce the number of incidents resulting from the over-consumption of alcohol including the proper training and monitoring of employees serving alcohol; the careful screening of IDs of customers to avoid sales to under-aged individuals; limiting the number of drinks sold to individual customers to avoid over-consumption; providing properly trained on-site security to monitor customer behavior both in and outside of the establishment; and working with the Lodi Police Department to resolve any problems that may arise.
8. The proposed use can be compatible with the surrounding use and neighborhood if the business is conducted properly and if the Applicant/Operator works with neighboring businesses and residents to resolve any problems that may occur.
9. The proposed use would not be detrimental to the general welfare of persons residing and working in the immediate vicinity, the neighborhood or the community at large because the sale of alcohol with a restaurant operation is not associated with detrimental impacts to the community.
10. Approval of this Use Permit shall be subject to revocation procedures contained in Section 17.72 LMC in the event any of the terms of this approval are violated or if the sale of beer and wine is conducted or carried out in a manner so as to adversely affect the health, welfare or safety of persons residing or working in the neighborhood.
11. The sale of alcoholic beverages at this location can meet the intent of the General Commercial zoning district and can provide a public convenience or necessity for customers of the business.

**NOW, THEREFORE, BE IT DETERMINED AND RESOLVED** by the Planning Commission of the City of Lodi that Use Permit Application No. 11-U-14 is hereby approved, subject to the following conditions:

1. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall, at their sole expense, defend, indemnify and hold harmless the City of Lodi, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this Use Permit approval. The obligation to defend, indemnify and hold harmless shall include, but is not limited to, any action to arbitrate, attack, review, set aside, void or annul this Use Permit approval on any grounds whatsoever. The City of Lodi shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.
2. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall insure that the serving of alcohol does not cause any condition that will cause or result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public intoxication, drinking in public, harassment of people passing by, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises, traffic violations or traffic safety based upon last drink statistics, curfew violations, lewd conduct, or police detention and arrests.

3. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
4. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall operate and abide by the requirements and conditions of the State of California Department of Alcoholic Beverage Control License Type 41. The Type 41 License shall be limited to on-site sale and consumption of beer and wine during the hours that the restaurant is open for business or as otherwise modified by the Community Development Director.
5. The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct result from the proposed land use, the Use Permit may be subject to review and revocation by the City of Lodi after a public hearing and following the procedures outlined in the City of Lodi Municipal Code. Additional reviews may be prescribed by the Community Development Director, the Police Department and/or Planning Commission as needed during and after the first two years of probationary period. Further, starting from the effective date the business commences the sale of beer and wine, this Use Permit shall be subject to a one year, and two year review by Community Development Director. If the Director determines it necessary, the Director shall forward the review to the Planning Commission to review the business's operation for compliance with the conditions of the Use Permit, and in response to any complaints thereafter.
6. The Lodi Police Department may, at any time, request that the Planning Commission conduct a hearing on the Use Permit for the purpose of amending or adding new conditions to the Use Permit or to consider revocation of the Use Permit if the Use Permit becomes a serious policing problem.
7. The Use Permit shall require the Applicant/Operator to secure an ABC Type 41 license, On Sale Beer and Wine – Eating Place.
8. Prior to the issuance of a Type 41 ABC license, the Applicant/Operator shall complete Licensee Education on Alcohol and Drugs as provided by the State Department of Alcoholic Beverage Control.
9. Any changes to the interior layout of the business operation shall be subject to review and approval by the Planning Department and will require appropriate City permits.
10. No person who is in a state of intoxication shall be permitted within the restaurant nor shall an intoxicated patron already in the bar be served additional alcoholic beverages. It is the responsibility of the business owner/operator to ensure no patron in state of intoxication is allowed into the building.
11. The operator of the restaurant shall police the area surrounding the business to prevent patrons from congregating/loitering outside the premises and to prevent excessive noise or other objectionable behavior. Noise levels shall be monitored to insure that noise shall not violate the City's Noise Ordinance Section 9.24.020 and Section 9.24.030.
12. Noise emanating from the property shall be within the limitations prescribed by the City's Noise Ordinance and shall not create a nuisance to surrounding residential neighborhoods, and/or commercial establishments.
13. Exterior of the restaurant shall be maintained in a neat and clean manner, and maintained free of graffiti at all times. In the event of graffiti or other extraneous markings occurring, the

permittee shall remove or cover said markings, drawings, or signage within 24 hours of such occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of the adjacent surfaces.

14. The applicant shall obtain Operational Permits from the Lodi Fire Department, Fire Prevention Bureau, 25 East Pine Street, Lodi, CA 95240-2127. Phone Number (209) 333-6739.
15. The operation of the business shall comply with all applicable requirements of the Municipal Code.
16. Any fees due the City of Lodi for processing this Project shall be paid to the City within thirty (30) calendar days of final action by the approval authority. Failure to pay such outstanding fees within the time specified shall invalidate any approval or conditional approval granted. No permits, site work, or other actions authorized by this action shall be processed by the City, nor permitted, authorized or commenced until all outstanding fees are paid to the City.
17. No variance from any City of Lodi adopted code, policy or specification is granted or implied by this approval.

**Dated: July 13, 2011**

I certify that Resolution No. 11- was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on July 13, 2011 by the following vote:

**AYES:**           Commissioners:  
**NOES:**           Commissioners:  
**ABSENT:**       Commissioners:

ATTEST: \_\_\_\_\_  
Secretary, Planning Commission

# Item 3c.

**CITY OF LODI  
PLANNING COMMISSION  
Staff Report**

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**MEETING DATE:** July 13, 2011

**APPLICATION NO:** Use Permit: 11-U-15

**REQUEST:** Request for Planning Commission approval of a Use Permit to allow a Type-41 On-Sale Beer and Wine Alcoholic Beverage Control License located at 550 South Cherokee Lane Suite J. (Applicant: Ernesto Rodriguez. File Number: 11-U-15)

**LOCATION:** 550 South Cherokee Lane, Suite J  
APN: 047-450-18  
Lodi, CA 95240

**APPLICANT:** Ernesto Rodriguez  
3857 Snelling Lane  
Sacramento, CA 95835-2013

**PROPERTY OWNER:** Midwestern Investors Group  
3941 Park Drive, Bldg 20, Suite 313  
El Dorado Hills, CA 95762

**RECOMMENDATION**

Staff recommends the Planning Commission to approve the Use Permit request based on the Findings, and subject to the conditions of approval listed in the attached resolution.

**PROJECT/AREA DESCRIPTION**

**General Plan Designation:** MUC, Mixed Use Corridor  
**Zoning Designation:** C-2, General Commercial.  
**Property Size:** 3.18 acres. (Restaurant is approximately 2,120 sq. ft.)

The adjacent zoning and land use characteristics:

	<b>General Plan</b>	<b>Zone</b>	<b>Land Use</b>
<b>North</b>	MUC, Mixed Use Corridor	C-2, General Commercial	Retail and commercial uses
<b>South</b>	MUC, Mixed Use Corridor	C-2, General Commercial	Retail and commercial uses
<b>East</b>	MUC, Mixed Use Corridor	C-2, General Commercial	Retail and commercial uses
<b>West</b>	MUC, Mixed Use Corridor	C-2, General Commercial	Retail and commercial uses

**SUMMARY**

The applicant, Ernesto Rodriguez, is requesting approval of a Use Permit to allow on-site consumption of beer and wine in conjunction with food service at a proposed restaurant called Las Islitas Restaurant. In addition, the applicant is requesting that the Planning Commission make a finding that the sale of alcohol at the restaurant is a public convenience or necessity, in accordance with the requirements of the State Department of Alcoholic Beverage Control (ABC). The restaurant is to be located at 550 South Cherokee Lane, Suite J (Attachment A , Site Vicinity Map). The tenant space was previously occupied by another restaurant but has been vacant since November of last year.

## **BACKGROUND**

The project is located within the K-Mart Shopping Center. The Center contains a variety of uses and is within the C-2 (General Commercial) zoning district. The C-2 zoning district allows sale of alcohol for on- or off-site consumption, subject to a Use Permit. The project site was previously occupied by another restaurant but closed last year. Available City records indicate there are no outstanding code violations.

## **ANALYSIS**

According to the applicant, Las Islitas restaurant offers lunch and dinner menu. The restaurant will open from the hours of 10:00 a.m. to 8:00 p.m. Mondays – Saturdays and from 11:00 a.m. to 8:00 p.m. on Sundays. The restaurant is approximately 2,200-square-foot in size and provides seating for approximately 45-50 guests. Parking is provided on site, which satisfies the parking requirement for eating establishment of this size. The applicant requests a Use Permit approval to allow a Type 41 (Eating Place) ABC license, which authorizes the sale of beer and wine for consumption on or off the premise where sold. Type 41 prohibits the sale of distilled spirits and minors are allowed on the premise. In accordance with the State Department of Alcoholic Beverage Control (ABC) requirements, receipts from alcohol sale cannot be in excess of food sales receipts. ABC requires that restaurants with an alcohol license must operate and maintain the premise as a bona fide eating establishment.

The Municipal Code of the City of Lodi requires the approval of a Use Permit by the Planning Commission for retail businesses and restaurants which sell alcoholic beverages (LMC § 17.72.040). The City established the Use Permit requirement to gain local control over whether or not a license is appropriate for a particular location. The Department of Alcoholic Beverage Control primarily controls issuance based on concentration of licenses within a particular Census Tract. The project site belongs to Census Tract 44.01. Census Tract 44.01 covers the area south of Lodi Avenue, west of Central California Traction Company (C.C.T) Line, north of Kettleman Lane, and east of Union Pacific Rail Road Company (U.P.R.R). According to ABC, Census Tract 44.01 contains nine (9) existing on-sale licenses with eight (8) on-sale licenses allowed based on the ABC criteria. The Planning Commission must make a finding of public necessity and/or convenience in order to approve an additional on-sale license. In the past, the Planning Commission and the Planning staff have generally supported restaurants that wish to acquire an ABC on-sale license, because typically, restaurants that serve alcohol in conjunction with food sales do not create alcohol related problems.

Staff has contacted the Lodi Police Department for comment on the proposed on-sale beer and wine application and they do not anticipate alcohol related problems with the restaurant. Staff sent copies of the application to various City departments for comments and review. The Fire, Building, Public Works, and Electric Utility Departments had no comments and had no objections to the request for an alcohol license. Because the applicant's request is for a Use Permit to allow sale of alcohol in conjunction with a full service restaurant, staff does not anticipate the alcohol sales portion of the business to create any problems. This operation would be similar to other restaurants within Lodi. The Planning Commission and the Planning staff have generally supported restaurants that wish to acquire an ABC on-sale beer and wine license because restaurants that serve beer and wine in conjunction with food sales have not created alcohol related problems. If problems or concerns related to the sale of alcoholic beverages occur in the future, staff and/or the Planning Commission may initiate a public hearing where the Commission would have the ability to amend conditions or revoke the Use Permit.

## **ENVIRONMENTAL ASSESSMENTS**

The project was found to be Categorically Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an "Enforcement

action by regulatory agencies” because it is the “adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.” No significant environmental impacts are anticipated and no mitigation measures have been required.

**PUBLIC HEARING NOTICE:**

Legal Notice for the Use Permit was published on June 29, 2011. Twenty-one (21) public hearing notices were sent to all property owners of record within a 300-foot radius of the subject property as required by California State Law §65091 (a) 3.

**ALTERNATIVE PLANNING COMMISSION ACTIONS:**

- Approve the request with attached or alternate conditions
- Deny the request
- Continue the request

Respectfully Submitted,

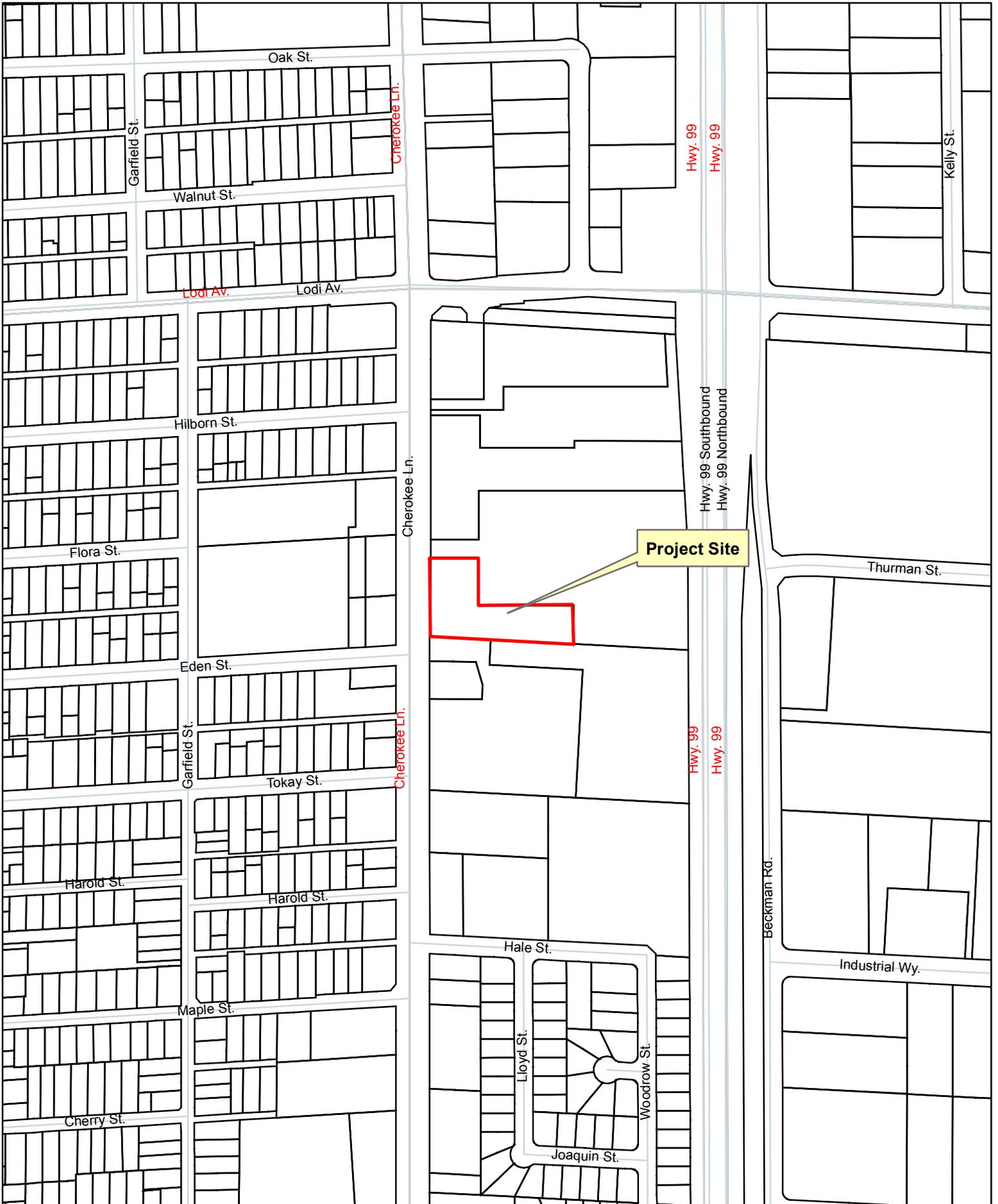
Concur,

Immanuel Bereket  
Assistant Planner

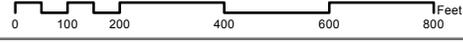
Konradt Bartlam  
Community Development Director

**ATTACHMENTS:**

- A. Site Vicinity Map
- B. Site Aerial Map
- C. Site Plan and Floor Plan
- D. Menu
- E. Draft Resolution



**Project Site**

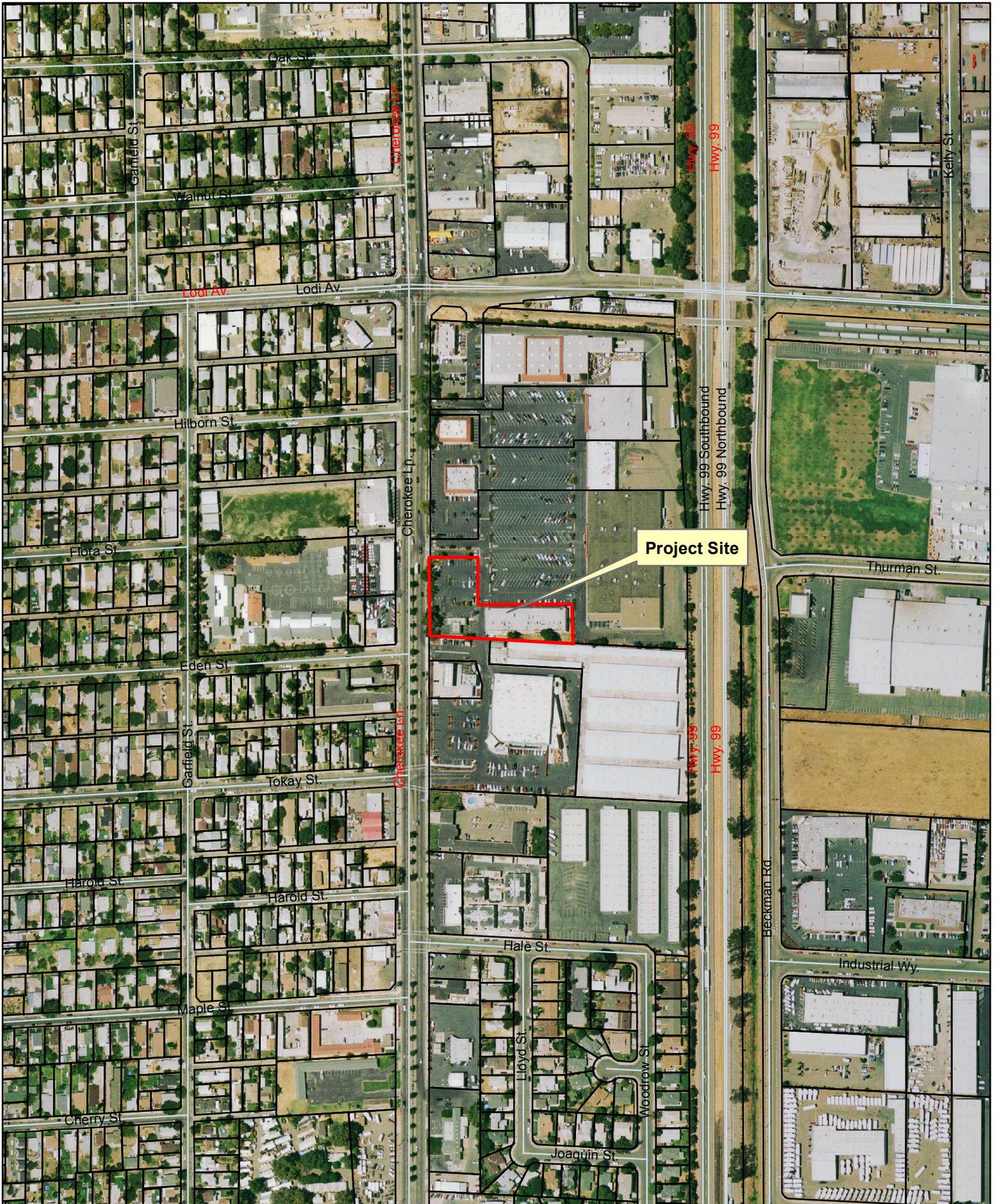


### Site Vicinity Map

550 South Cherokee Lane, Suite J  
 APN: 047-450-18  
 Lodi, CA 95240



Project Site



0 100 200 400 600 800 Feet

## Aerial Map

550 South Cherokee Lane, Suite J  
APN: 047-450-18  
Lodi, CA 95240



Project Site

LODI AVE

450 S CHEROKEE LN, STE J

APN: 047-450-18

Subdivision: Lot No:

CITY OF LODI, CALIFORNIA

\*\*\*

Orchard  
Supply  
Hardware

320  
WESTERN  
DENTAL

380

B16 Lots

430  
KROGER

CHEROKEE PLAZA

450 A  
LOS  
PORTALES

B  
DOLLAR  
GENERAL  
C  
PAY LESS  
SHOES

CHEROKEE LANE

480	B	C
A		
D	E	F

520

K-mart

580  
BANK

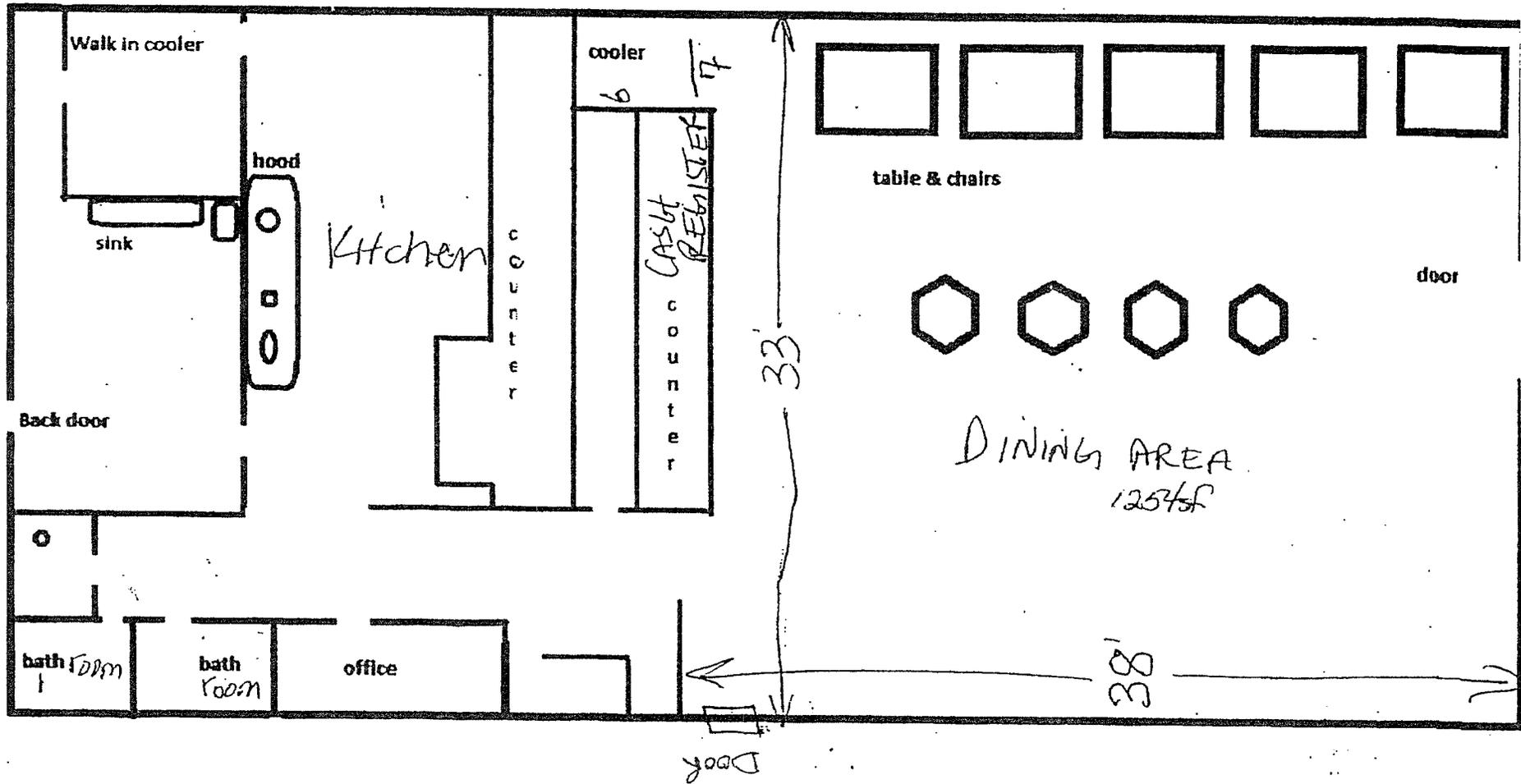


A	B	C	550	E	G	H	I
			D				

PERMIT NO AC10-0069

C.F.C RESTAURANT  
550 S. CHERKEE LN. Lodi

2,200 SF.



**Empanadas**

ORDEN DE 3.....	\$5.50
ORDEN DE 6.....	\$10.00
ORDEN DE 12.....	\$18.00

**Niños Menu - Kids Menu**

CHICKEN NUGGETS.....	\$5.00
QUESADILLAS.....	\$6.00

**Bebidas – Drinks**

**Refrescos - Fountain Drinks**

Sangria	Agua mineral	Sidral Mundet	Jarritos
		\$1.75	

Diet 7up	Diet coke	Squirt
	\$1.25	

Coca Cola
\$2.25

**Aguas Frescas**

Jamaica	Tamarindo	Horchata
Chica \$1.50	Grande \$2.50	



Para llevar :  
 For take-out call : **421-6271**  
 7240 24Th St.  
 Sacramento Ca  
 Abierto los 7 días de la semana

**Botanas/Appetizers**

VERDE.....	\$14.50
Shrimp marinated in green hot sauce topped with onios, cucumber & tomate.	
ROJA.....	\$14.50
Shrimp marinated in red hot sauce topped with onios, cucumber & tomate.	
AL VAPOR.....	\$14.50
Steamed shrimp with onions, cucumber & tomate	
AL GUSTO/YOUR CHOICE.....	\$14.50
Price may vary on your choice of seafood	
EN COPA.....	\$14.50
BOTANA MIXTA.....	\$14.50
Ceviche de camaron, pulpo, camaron rojo, abulon y aimejita	
LEVANTA MUERTOS.....	\$14.50
Ostion, mejillon, abulon, almejita, camaron, pulpo y jaiva.	
GREEN MUSSELL-MEJILLON.....	\$12.00
CAMARONES A LA KORA.....	\$14.50

**Ostiones - Oyster**

1 DOZ.....	\$13.50	1/2 DOZ.....	\$7.00
1 DOZ PREP.....	\$16.00	1/2 DOZ PREP.....	\$9.00

**Cazuelas**

CEVICHE DE CAMARON.....	\$9.00
Shrimp ceviche	
CEVICHE DE PESCADO.....	\$9.00
Fish ceviche	
CEVICHE DE CAMARON Y PULPO.....	\$9.00
Shrimp ceviche & octopus	

## Especialidad de la Casa - House Special

MOLCAJETE.....	\$28.00
PARRILLADA.....	\$60.00
Family meal : cora, camarones a la cucaracha, camarones al vapor, langostinos & ensalada verde or your choice	

## Tostadas

CEVICHE DE PESCADO.....	\$3.00
Fish marinated in juice lime.	
CEVICHE DE CAMARON.....	\$3.25
Shrimp marinated in juice lime.	
JAIVA.....	\$3.25
Imitation crab meat	
CAMARON ROJO.....	\$5.25
Red shrimp	
CAMARON ROJO Y PULPO.....	\$5.25
Red shrimp & octopus	
MIXTA/MIXED.....	\$5.25
Fish marinated, Imitation crab, octopus & shrimp	
PULPO.....	\$5.25
Octopus	

## Cocteles - Cocktails

CAMARON.....	\$9.99	\$13.25
shrimp		
CAMARON Y PULPO.....	\$9.99	\$13.25
shrimp & octopus		
CAMPECHANA.....	\$9.99	\$13.25
shrimp, imitation crab, baby clams, abalone & octopus		
VUELVE A LA VIDA.....	\$10.99	\$13.99
shrimp		

## Platillos - Dinner

CAMARONES AL MOJO DE AJO.....	\$11.99
Shrimp sauted in garlic sauce.	
CAMARONES RANCHEROS.....	\$11.99
Shrimp sauted with onions, peppers, tomatoes & cilantro.	
CAMARONES A LA CUCARACHA.....	\$11.99
Shrimp sauted in chipotle sauce	
CAMARONES A LA DIABLA.....	\$11.99
Delived shrimp	
CAMARONES EMPANIZADOS.....	\$11.99
Breaded shrimp	
CAMARONES A LA CREMA.....	\$11.99
Shrimp sauted with our special house sauce	
MOJARRA FRITA.....	\$11.99
Fried fish (tilapia)	
FILETE EMPANIZADO.....	\$12.99
Breaded fish(bassa)	
LANGOSTINOS A LA PLANCHA.....	\$12.99
Grilled prawns	
CARNE AZADA.....	\$11.99
Steak beef	
FILETE AL AJO.....	\$12.99
Garlic fillet (bassa)	
CARNE Y CAMARON FUNDIDO.....	\$11.99
steak & shirmp fondue	
FAJITAS.....	\$11.99
Shrimp or beef	

## Caldos - Stews

CAMARON.....	\$9.99	\$12.99
Shrimp		
7 MARES.....		\$13.99
7 seas-crab legs, clams, fillet, scallops, octopus & shrimp		
LANGOSTINOS.....		\$13.99
prawns		
MOJARRA.....		\$11.99
Fish (tilapia)		
FILETE.....		\$12.99
FILLETS (BASSA)		
CALDO MENDIGO.....		\$2.50

**RESOLUTION NO. P.C. 11-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI FOR THE APPROVAL OF THE REQUEST OF ERNESTO RODRIGUEZ FOR A USE PERMIT TO ALLOW FOR AN ON-SALE BEER AND WINE ALCOHOLIC BEVERAGE CONTROL LICENSE AT 550 SOUTH CHEROKEE LANE, SUITE J**

- WHEREAS,** the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit, in accordance with the Lodi Municipal Code, Section 17.72.070; and
- WHEREAS,** the project proponent is Ernesto Rodriguez, 3857 Snelling Lane, Sacramento, CA 95835-2013; and
- WHEREAS,** the project area is located at 550 South Cherokee Lane, Suite J, Lodi, CA 95240 (APN 047-450-18); and
- WHEREAS,** the property has a General Plan designation of MUC, Mixed Use Corridor and is zoned C-2, General Commercial; and
- WHEREAS,** the requested Use Permit to allow the selling of beer and wine for on-site consumption within a restaurant is an enforcement action in accordance with the City of Lodi Zoning Ordinance; and
- WHEREAS,** Census Tract 44.01 in which the restaurant is located currently has an over concentration of licenses allowing on premise consumption of alcoholic beverages; and
- WHEREAS,** because Census Tract 44.01 has an over concentration of On-sale beer and wine alcohol licenses, the Planning Commission must make a finding of necessity and/or public convenience in order to permit the issuance of an additional Alcohol Beverage Control license in this tract; and
- WHEREAS,** the State Department of Alcoholic Beverage Control has training available that clearly communicates State law concerning the sale of alcoholic beverages.
- WHEREAS,** all legal prerequisites to the adoption of this Resolution have occurred; and

**NOW, THEREFORE, BE IT FOUND** that the Planning Commission of the City of Lodi incorporates the staff report and attachments, project file, testimony presented at the time of the hearing, and written comments, on this matter, and make the following findings:

1. The project was found to be Categorical Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an “Enforcement action by regulatory agencies” because it is the “adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.” No significant environmental impacts are anticipated and no mitigation measures have been required.
2. The sale of alcoholic beverages for on-premise consumption as part of a restaurant is a permitted use in the C-2 zoning District. The site is suitable and adequate for the proposed use because establishment of a restaurant on this site would not create negative impacts on businesses in the vicinity, and the applicant proposes to perform a tenant improvement in order to meet building code requirements.
3. The on-sale of beer and wine, in accordance with a Type 41 Alcoholic Beverage Control License and with the conditions attached herein, would be consistent and in harmony with the Mixed Use Corridor General Plan Land Use Designation and C-2 zoning District.
4. The proposed use is consistent with the General Plan because commercial uses such as the one proposed are permitted in accordance with Land Use Policy subject to a discretionary review.

5. The proposed use would not have a substantial adverse economic effect on nearby uses because operation of a restaurant in accordance with applicable laws and under the conditions of this Use Permit is anticipated to be an economic benefit to the community.
6. The sale of alcoholic beverages for on-premise consumption is a normal part of business operations and provides a convenience for customers of the business.
7. The sale and consumption of alcohol can sometimes result in customer behavior problems that can require police intervention.
8. Steps can be taken by the Applicant/Operator to reduce the number of incidents resulting from the over-consumption of alcohol including the proper training and monitoring of employees serving alcohol; the careful screening of IDs of customers to avoid sales to under-aged individuals; limiting the number of drinks sold to individual customers to avoid over-consumption; providing properly trained on-site security to monitor customer behavior both in and outside of the establishment; and working with the Lodi Police Dept. to resolve any problems that may arise.
9. The proposed use can be compatible with the surrounding use and neighborhood if the business is conducted properly and if the Applicant/Operator works with neighboring businesses and residents to resolve any problems that may occur.
10. The proposed use would not be detrimental to the general welfare of persons residing and working in the immediate vicinity, the neighborhood or the community at large because the sale of alcohol with a restaurant operation is not associated with detrimental impacts to the community.
11. The sale of alcoholic beverages at this location can meet the intent of the C-2 zoning district and can provide a public convenience or necessity for customers of the business.

**NOW, THEREFORE, BE IT DETERMINED AND RESOLVED** by the Planning Commission of the City of Lodi that Use Permit Application No. 11-U-15 is hereby approved, subject to the following conditions:

1. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall, at their sole expense, defend, indemnify and hold harmless the City of Lodi, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this Use Permit approval. The obligation to defend, indemnify and hold harmless shall include, but is not limited to, any action to arbitrate, attack, review, set aside, void or annul this Use Permit approval on any grounds whatsoever. The City of Lodi shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.
2. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall insure that the sale of alcohol does not cause any condition that will cause or result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public intoxication, drinking in public, harassment of people passing by, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises, traffic violations or traffic safety based upon last drink statistics, curfew violations, lewd conduct, or police detention and arrests.
3. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
4. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall operate and abide by the requirements and conditions of the

State of California Department of Alcoholic Beverage Control License Type 41. The Type 41 License shall be limited to on-site sale and consumption of beer and wine during the hours that the restaurant is open for business or as otherwise modified by the Community Development Director.

5. The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct result from the proposed land use, the Use Permit may be subject to review and revocation by the City of Lodi after a public hearing and following the procedures outlined in the City of Lodi Municipal Code. Additional reviews may be prescribed by the Community Development Director, the Police Department and/or Planning Commission as needed during and after the first two years of probationary period. Further, starting from the effective date the business commences the sale of beer and wine, this Use Permit shall be subject to a one year, and two year review by Community Development Director. If the Director determines it necessary, the Director shall forward the review to the Planning Commission to review the business's operation for compliance with the conditions of the Use Permit, and in response to any complaints thereafter.
6. The Lodi Police Department may, at any time, request that the Planning Commission conduct a hearing on the Use Permit for the purpose of amending or adding new conditions to the Use Permit or to consider revocation of the Use Permit if the Use Permit becomes a serious policing problem.
7. The Use Permit shall require the applicant/project proponent and/or property owner and/or developer and/or successors in interest and management to secure an ABC Type 41 license, On Sale Beer and Wine – Eating Place.
8. Prior to the issuance of a Type 41 ABC license, the applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall complete Licensee Education on Alcohol and Drugs as provided by the State Department of Alcoholic Beverage Control.
9. The sale of alcohol shall occur only at tables when served with meals. Any changes to the interior layout of the business operation shall be subject to review and approval by the Planning Department and will require appropriate City permits.
10. No person who is in a state of intoxication shall be permitted within the restaurant nor shall an intoxicated patron already in the bar be served additional alcoholic beverages. It is the responsibility of the business owner/operator to ensure no patron in state of intoxication is allowed into the building.
11. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management of the restaurant shall police the area surrounding the business to prevent patrons from congregating/loitering outside the premises and to prevent excessive noise or other objectionable behavior. Noise levels shall be monitored to insure that noise shall not violate the City's Noise Ordinance Section 9.24.020 and Section 9.24.030.
12. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall comply with all the Municipal Codes relating to loitering, open container laws and other nuisance-related issues.
13. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall ensure noise emanating from the property shall be within the limitations prescribed by the City's Noise Ordinance and shall not create a nuisance to surrounding residential neighborhoods, and/or commercial establishments.
14. Exterior of the restaurant shall be maintained in a neat and clean manner, and maintained free of graffiti at all times. In the event of graffiti or other extraneous markings occurring, the permittee shall remove or cover said markings, drawings, or signage within 24 hours of such

occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of the adjacent surfaces.

15. Approval of this Use Permit shall be subject to revocation procedures contained in Section 17.72 LMC in the event any of the terms of this approval are violated or if the sale of beer and wine is conducted or carried out in a manner so as to adversely affect the health, welfare or safety of persons residing or working in the neighborhood.
16. The exterior of all the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.
17. The applicant shall obtain Operational Permits from the Lodi Fire Department, Fire Prevention Bureau, 25 East Pine Street, Lodi, CA 95240-2127. Phone Number (209) 333-6739.
18. Any fees due the City of Lodi for processing this Project shall be paid to the City within thirty (30) calendar days of final action by the approval authority. Failure to pay such outstanding fees within the time specified shall invalidate any approval or conditional approval granted. No permits, site work, or other actions authorized by this action shall be processed by the City, nor permitted, authorized or commenced until all outstanding fees are paid to the City.
19. No variance from any City of Lodi adopted code, policy or specification is granted or implied by this approval.

**Dated: July 13, 2011**

I certify that Resolution No. 11- was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on July 13, 2011 by the following vote:

**AYES:** Commissioners:

**NOES:** Commissioners:

**ABSENT:** Commissioners:

**ATTEST** \_\_\_\_\_  
Secretary, Planning Commission

# Item 3d.

**CITY OF LODI  
PLANNING COMMISSION  
Staff Report**

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**MEETING DATE:** July 13, 2011

**APPLICATION NOS:** Use Permit: 11-U-16

**REQUEST:** Request for Planning Commission approval of a Use Permit to allow outdoor seating and drinking area at Ollie's Pub in conjunction with their existing Type-48 On-Sale General ABC license at 22 North School Street. (Applicant: Sean Guthrie, on behalf of Ollie's Pub. File Number: 11-U-16.)

**LOCATION:** 22 North School Street  
(APN: 043-035-03)  
Lodi, CA 95240

**APPLICANT:** Sean Guthrie, on behalf of Ollie's Pub  
22 North School Street  
Lodi, CA 95240

**PROPERTY OWNER:** Sean and Ashlee Guthrie  
10613 Cornerstone Circle  
Stockton, CA 95209-4205

**RECOMMENDATION**

Staff recommends that the Planning Commission approve Mr. Guthrie's request for a Use Permit to allow outdoor seating for consumption of beer, wine and distilled spirits at Ollie's Pub, subject to the conditions outlined in the attached resolution.

**PROJECT/AREA DESCRIPTION**

**General Plan Designation:** DMU, Downtown Mixed Use

**Zoning Designation:** C-2, General Commercial (Downtown Business District)

**Property Size:** The existing bar measures approximately 1,500- square-foot in area. The proposed outdoor seating measures approximately 180-square-feet in area.

The adjacent zoning and land use are as follows:

	<b>General Plan</b>	<b>Zone</b>	<b>Land Use</b>
<b>North</b>	Downtown Mixed use	C-2, General Commercial	Mixture of retail/commercial
<b>South</b>	Downtown Mixed use	C-2, General Commercial	A Wine tasting Room
<b>East</b>	Downtown Mixed use	C-M, , Commercial-Light Industrial	Mixture of retail/commercial
<b>West</b>	Downtown Mixed use	C-2, General Commercial	Mixture of retail/commercial

**SUMMARY**

The applicant is proposing to expand an existing bar/pub to include outdoor seating and serving area with sales of alcoholic beverages for on-site consumption. The bar, Ollie's Pub, currently holds a Type-48 On-Sale General ABC license that predates the City's Use Permit requirement. As such, their serving area is limited to the building envelope. However, the applicants would like to utilize the patio for serving and consumption of alcohol. As proposed, the outdoor area would accommodate four tables (or 16 chairs).

The proposed hours of operation are from 10:00 a.m. to 2:00 a.m., daily. The applicant is requesting approval of expansion of the current Type 48 (beer, wine, distilled spirits) Alcoholic Beverage Control (ABC) License to include the front patio area. Under the Lodi Municipal Code, bars, nightclubs, and restaurants that wish to sell alcohol are subject to the approval of a discretionary permit by the Planning Commission as a conditional use. Staff recommends approval of the Use Permit request subject to the conditions outlined in the attached draft resolution.

## **BACKGROUND**

Available City records indicate the existing bar was originally established circa 1966, prior to the requirement of a use permit for eating and drinking establishments. It has been owned by several individuals throughout the years. The most recent change of ownership occurred last year. The interior configuration of the bar and hours of operation has remained generally the same since its inception. The bar has not been a source of concern to the Police Department or City staff.

At its meeting of April 13, 2011, the Planning Commission was requested to review and approve façade improvements as part of a Use Permit to approve a wine tasting room at an adjacent facility. The improvements reviewed and approved by the Commission, and installed by the applicants, include plans to reface existing fascia of the building by repainting the exterior walls, replacing doors and windows, and install outdoor patio/seating area for the wine tasting room. Now, the owners of the bar would like to use the patio area for seating and serving of alcohol on a daily basis, from 10:00 a.m. to midnight. The project area is in the downtown commercial center district, which features mixture of commercial and retail businesses.

## **ANALYSIS**

The applicant requests approval of a Use Permit to allow outdoor sale and consumption of beer, wine and distilled spirits at Ollie's Pub located at 22 North School Street. The project site is zoned General Commercial (C-2). Under the C-2 zoning district, the applicant may sell alcohol for on consumption with the granting of a Use Permit by the Planning Commission. Ollie's Pub currently holds a Type 48 On-Sale General (Bars, Taverns, nightclubs) ABC license and a Type 77 Events ABC license. Type 48 On-Sale General ABC license authorizes the sale of beer, wine and distilled spirits for onsite consumption. Type 77 ABC license authorizes the licensee to hold four special events per calendar year in conjunction with other ABC licenses. These special events may occur outside of the premise where a Type 48 license is granted.

Site Layout: The site contains a single structure with two tenant spaces. The subject tenant space occupies northern portion of the building. A wine tasting room occupies the southern portion of the building. There is a backyard/patio used by their patrons for smoking purposes. No sale or consumption of alcohol in this area is permitted. The project site is within the Downtown Business District as well as Parking District. Businesses within the Downtown Business District do not have to provide onsite parking. As part of previous SPARC application approval by the Planning Commission, a patio area has been constructed and most of the façade improvements approved have been installed.

Floor Plan: The existing floor plan consists of bar area, bathrooms, storage, office, and other accessory rooms. According to approved maximum room occupancy per the Building Official, the bar (interior) maximum occupancy of 86 persons. The patio (in the rear) is improved but there are no tables and chairs. The proposal requires no changes to the exterior of the building or the site.

Commercial Entertainment: The establishment did not offer live entertainment in the past and has not requested a Live Entertainment approval. If the applicants wish to obtain a live entertainment permit, it has been explained to them that they would need to submit a separate application.

Outdoor Seating: As illustrated, the applicants propose an approximately 180-square-foot outdoor seating area that would be located in front of the building facing School Street, adjacent to the sidewalk. The patio area has been constructed as part of the wine tasting room renovation and exterior façade improvements. As proposed, the seating area would contain 4 tables, with seating for 16 people. However, staff proposes a maximum occupancy of twelve (12) persons (conditions No. 21).

### Project Review and Comments:

The key issues related to approval of a billiard/pool halls, bars, taverns, and nightclubs involve the appropriateness of the location and whether or not such establishments can operate without detriment to nearby residential uses and general welfare of the surrounding area. As stated above, the site is located within a C-2 (General Commercial) zoning district and is also within the Downtown Business District. The Business District is designated for a variety of general commercial uses, including retail, food and drinking services, etc. The proposed expansion of the bar is consistent with the types of uses one would expect to find in a General Commercial zoning district. The proposal is consistent with the General Plan in that eating and drinking establishments and private party/banquet facilities which provide opportunities for cultural and celebrations such as wedding receptions, wakes, and corporate parties are permitted on land designated Downtown Mixed Use in the Land Use Element of the General Plan.

The applicant's project was referred to the Police, Fire and Building Departments for review and recommendation. The Police Department has reviewed the application and recommends approval with the conditions outlined in the attached resolution. The Police Department feels the conditions outlined in the attached resolution, specifically conditions related to security personnel and security cameras, address issues related to unruly patrons and possible disruption of the peace. The Building and Safety Division have noted that the change in use would necessitate tenant improvements to allow the proposed use at this site. The Building and Safety Division's comments have been incorporated in to the attached draft resolution.

Although staff is supportive of the project, staff recommends operational conditions to eliminate or mitigate adverse impacts the use may have on adjacent properties. Staff proposes that the use of the patio area for sale and consumption of alcohol should be limited from 1:00 p.m. to midnight daily, except in recognized holidays and special functions, such as Street Faire, Farmer's Market, etc, exempt from this restriction. Staff also has placed a condition requiring the applicants to submit a program or plan for controlling litter, spills, and stains resulting from the use on the site. The program must include and specify a detailed time frame for the policing and cleanup of the public sidewalk and right-of-way in front of the subject property as well as the adjacent public right-of-way (25 feet north and south of the subject property) not just in front of the subject tenant space. Other conditions include installation of security cameras, presence of an employee in the patio at all times that alcoholic beverages are being served or consumed, and noise and live entertainment related restrictions.

Section 17.72.040 of the Lodi Municipal Code requires a Use Permit for new Off-Sale and On-Sale alcohol licenses as well as changes in license type. The City established the Use Permit requirement to gain local control over whether or not a license is appropriate for a particular location. The State Department of Alcoholic Beverage Control primarily controls issuance based on concentration of licenses within a particular Census Tract. Census Tract 42.04 covers the area south of Holly Drive, west of Sacramento Street, north of Lodi Avenue, and east of Ham Lane. Because this is an existing license, and the request is for an expansion of the said license, the Planning Commission does not need to make a finding of public necessity or need to approve this Use Permit request.

When reviewing an application to allow an eating or drinking establishment to sell or serve alcohol, the Zoning Code requires the Planning Commission to evaluate the potential impacts upon adjacent uses and to consider the proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption. The adjacent uses are food service, retail sales, wine tasting room and general commercial uses, which are compatible with the bar. The proposed outdoor seating would be consistent with other establishments within the downtown area that serve beer, wine and distilled spirits, such as Rosewood. The Police Department indicates it has no objections to the applicant's request. The ABC License will be conditioned appropriately to protect the health, safety, and welfare of the community. To ensure the proposed use does not create a detrimental impact during late hours, the applicant (and any future operators of the bar) will be required to adhere to the restrictions outlined in the attached resolution.

There are no current objectionable conditions at the subject property. The bar, under the previous or current ownership, has never had serious enforcement issues in the past, mostly due to the fact that the

clientele of the bar consists of older crowd and the fact that the bar closes at midnight. The bar currently does not offer live entertainment and no live entertainment is being requested. Additionally, the applicant will be required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance, should they occur, to areas surrounding the bar and adjacent properties. Staff recommends the Planning Commission approve the Use Permit request subject to the conditions outlined in the attached resolution. Conditions have been added to mitigate typical concerns related to bars and other similar establishments. Approval of this Use Permit is essentially probationary. The Use Permit is subject to a six month, one year, and two year review by Community Development Director and/or the Police Department. If the Director/Police Department determines it necessary, the Use Permit is subject to review by the Planning Commission to consider the business's operation for compliance with the conditions of the Use Permit, and in response to any complaints thereafter. The City further reserves the right to periodically review the area for potential problems. If the operator is unable to abide by the conditions of approval, or prevent objectionable conditions from occurring, the Police Department or the Planning Commission will have the authority to modify, suspend, or revoke the operator's ability to use the patio area, or require other corrective measures.

### **ENVIRONMENTAL ASSESSMENTS**

The project was found to be Categorically Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an "Enforcement action by regulatory agencies" because it is the "adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." No significant environmental impacts are anticipated and no mitigation measures have been required.

### **PUBLIC HEARING NOTICE:**

Legal Notice for the Use Permit was published on July 1, 2011. Forty-five (45) public hearing notices were sent to all property owners of record within a 300-foot radius of the project site as required by California State Law §65091 (a) 3. Public notice also was mailed to interested parties who had expressed their interest of the project.

### **ALTERNATIVE PLANNING COMMISSION ACTIONS:**

- Approve with additional/different conditions
- Deny the Use Permit request
- Continue the request

Respectfully Submitted,

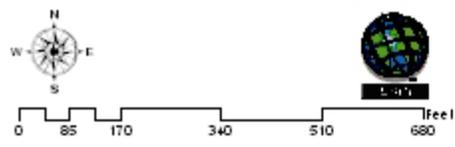
Concur,

Immanuel Bereket  
Associate Planner

Konradt Bartlam  
Community Development Director

### **ATTACHMENTS:**

- A. Vicinity Map
- B. Aerial Photo
- C. Site Plan
- D. Floor Plan
- E. Correspondence with State Dept. of Alcohol Beverage Control
- F. Police Department Comments
- G. Resolution

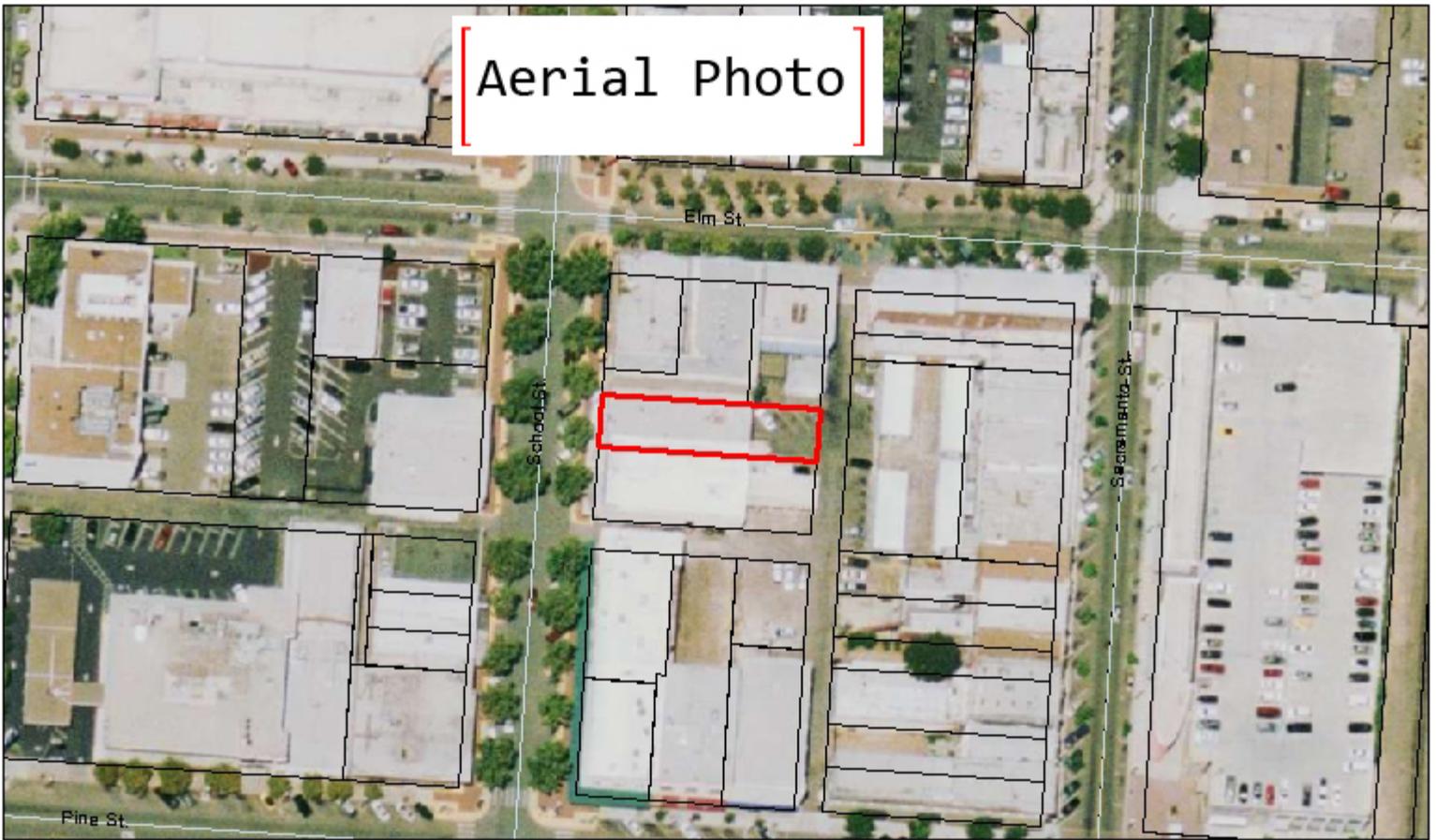


**Vicinity Map**  
 Fields Family Vineyards and Winery  
 20 North School Street  
 Lodi, CA 95240

**Legend**

 Project Site

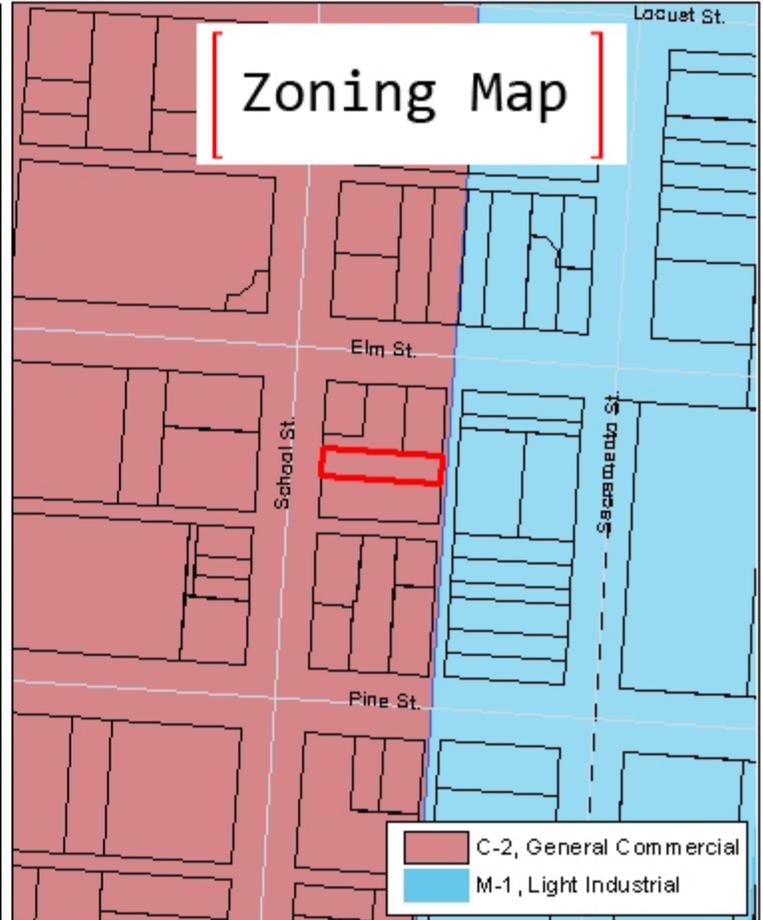
# Aerial Photo



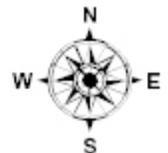
# General Plan Map

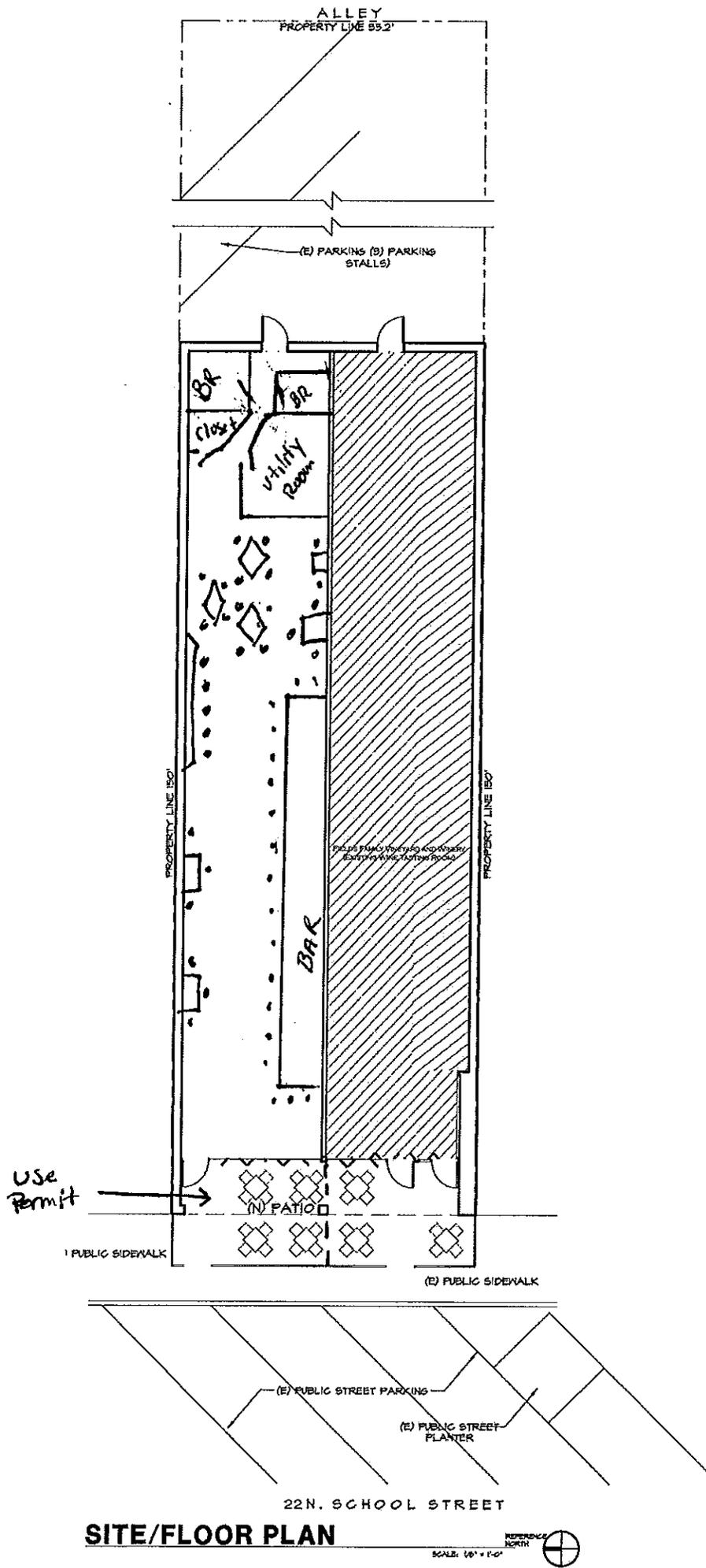


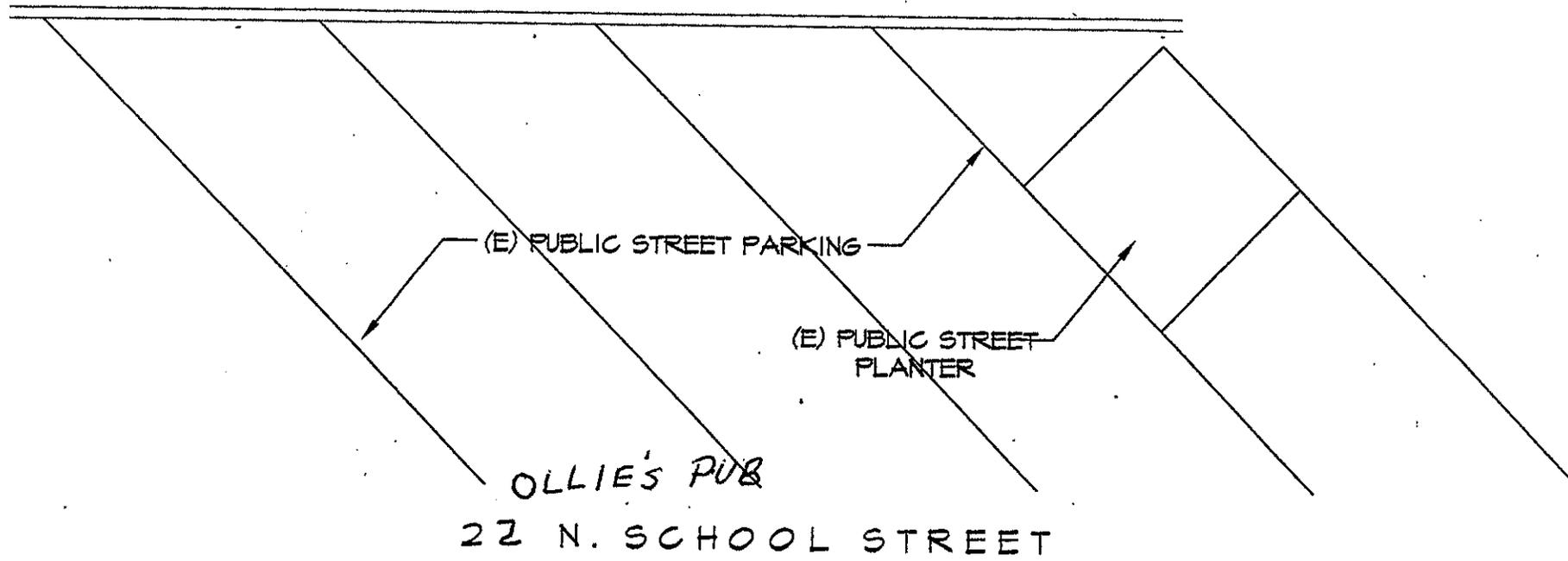
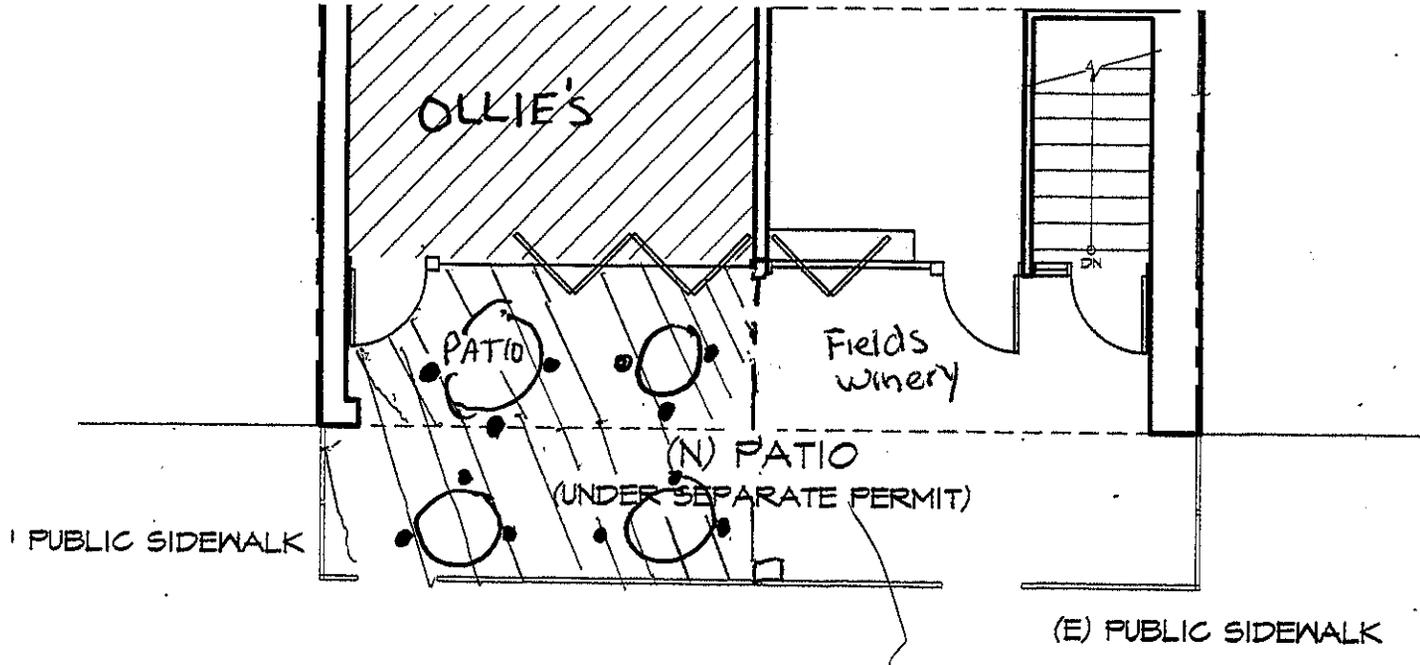
# Zoning Map



**Ollie's Pub**  
22 North School Street  
(APN: 043-035-03)  
Lodi, CA 95240







# SITE/FLOOR PLAN

SCALE: 1/8" = 1'-0"





# COLOR FRONT EXTERIOR ELEVATION

SCALE: 1/4" = 1'-0"

**Immanuel Bereket**

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**From:** Prado, Maritess@ABC [Maritess.Prado@abc.ca.gov]  
**Sent:** Tuesday, June 14, 2011 8:47 AM  
**To:** Immanuel Bereket  
**Subject:** RE: 22 North School Street  
**Attachments:** PATIO ACK BLANK.doc

Patio must be fully enclosed (no specific height required) and adjacent to the licensed premises. Approved expansion area(s) or patio will have the same privilege as the licensed premises. If the current license is conditional, the patio must also abide by the same conditions.

I have attached a copy of "Patio Acknowledgment" for your record.

Thank you,

**Tess Prado**

Dept. of Alcoholic Bev. Control  
LR II -Stockton Office  
31 E Channel St, #168  
Stockton CA 95202  
209-948-7425  
Fax 209-546-7853  
[maritess.prado@abc.ca.gov](mailto:maritess.prado@abc.ca.gov)

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**From:** Immanuel Bereket [mailto:ibereket@lodi.gov]  
**Sent:** Monday, June 13, 2011 4:16 PM  
**To:** Prado, Maritess@ABC  
**Subject:** 22 North School Street

Department of Alcoholic Beverage Control  
Attn: Tess Prado  
31 E Channel St, #168  
Stockton CA 95202

RE: Ollie's Pub Patio Expansion

Dear Ms. Prado,

The City of Lodi has reviewed your referral of an ABC application for Ollie's Pub located at 22 North

06/27/2011

School Street, Lodi, CA. Please be advised that a bar under different ownerships has existed at this location at least prior to 1990 when bars became subject to conditional Use Permit review and approval process. This bar does not have an approved Use Permit and is, therefore, a legal-nonconforming use. As such, any material expansion or alteration of the business and/or premises is subject to a Use Permit. The proposed outdoor seating for purposes of sale and consumption of beer, wine and distilled spirits constitutes substantial material expansion of the bar. Therefore, the City requests that an ABC license not be issued for the proposed outdoor seating until a Use Permit is approved by the City.

However, it is our understanding that they can only use the patio area 4 times a year and they have to install a permanent physical barrier to ensure no one from outside the bar goes into this area. what kind of barrier does ABC require?

Immanuel Bereket  
Associate Planner

**BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA**

**PATIO ACKNOWLEDGEMENT**

I, \_\_\_\_\_ wish to exercise license privileges on an exterior patio area(s) and hereby acknowledge receipt of patio operating standards, which states that:

- The licensee(s) or an employee of the licensee(s) will be present in the patio at all times that alcoholic beverages are being served or consumed, to ensure that Alcoholic Beverage Control Act, State statute, County, or City Ordinances are not violated upon this portion of the licensed premises.
- The boundaries of the patio will be clearly defined and designated by physical barriers to separate it from the adjacent unlicensed portion of licensee(s) surrounding property. These barriers and boundaries, as approved and designated on ABC-257, Diagram of Licensed Premises, shall not be changed without prior approval of the Department of Alcoholic Beverage Control.
- At each public entrance of the patio which leads from the unlicensed adjacent property, there shall be signs stating, "**No Alcoholic Beverages Allowed Beyond This Point.**" There will be at least one (1) sign prominently posted at each boundary of the patio. The signs shall be posted prominently and be visible to patrons within the licensed area.

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**Signature**

**Date**

**Immanuel Bereket**

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**From:** JP Badel  
**Sent:** Wednesday, June 29, 2011 12:36 PM  
**To:** Immanuel Bereket  
**Subject:** RE: Ollie's Pub

I am sorry for the delay. I gave your request to Lt Patterson when I received it and have been on vacation. He sent me his input last week while I was gone. He, nor I have any concerns with the consumption in a patio area, but I do have reservations about the sale in a patio outside of the establishment.

***Captain J.P. Badel***

*Operations/Support Services Division Commander  
Lodi Police Department  
215 W. Elm Street  
Lodi, CA 95240  
209-333-5501*

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**From:** Immanuel Bereket  
**Sent:** Wednesday, June 29, 2011 10:55 AM  
**To:** JP Badel  
**Subject:** Ollie's Pub  
**Importance:** High

JP,

Ollie's Pub has submitted a request to ABC to allow them to sell alcohol (including hard liquor) in the patio area, adjacent to the sidewalk/School Street. I had sent a transmittal to your attention on the 10<sup>th</sup> and I have not received any comments yet. I'd like to get PD's take on their application so that I can take their request to the Planning Commission. I have drawn up some conditions such as installation of a security camera, presence of one employee and one security personal at the patio area during all the times they sell alcohol on the patio area and etc. However, the fact they propose to sell distilled spirits so close to the public right the way worries me. Please respond as soon as time permits.

Manny

**RESOLUTION NO. P.C. 11-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI APPROVING THE REQUEST OF SEAN GUTHRIE, ON BEHALF OF OLLIE'S PUB, FOR A USE PERMIT TO ALLOW SALE OF BEER, WINE AND DISTILLED SPIRITS IN AN OUTDOOR THE PATIO AREA AT 22 NORTH SCHOOL STREET**

**WHEREAS**, the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit, in accordance with the Lodi Municipal Code, Section 17.72.070; and

**WHEREAS**, the project proponent is Sean Guthrie, on behalf of Ollie's Pub, 10613 Cornerstone Court, Stockton, CA 95209; and

**WHEREAS**, the project parcel is owned by Sean and Ashlee Guthrie, 10613 Cornerstone Circle, Stockton, CA 95209-4205; and

**WHEREAS**, the project is located at 20 North School Street, Lodi, CA 95240 (APN: 043-082-03); and

**WHEREAS**, the requested Use Permit to allow on-site consumption of beer, wine and distilled spirits is an enforcement action in accordance with the City of Lodi Zoning Ordinance; and

**WHEREAS**, the State Department of Alcoholic Beverage Control has training available that clearly communicates State law concerning the sale of alcoholic beverages; and

**WHEREAS**, based upon the facts and analysis presented in the staff report, and public testimony received and subject to the conditions of approval listed below, the Planning Commission finds that the establishment, maintenance or operation for the requested use or building applied for, will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood of such proposed use, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the City; and

**WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred; and

**NOW, THEREFORE, BE IT FOUND** that the Planning Commission of the City of Lodi incorporates the staff report and attachments, project file, testimony presented at the time of the hearing, and written comments, on this matter, and make the following findings:

1. The project was found to be categorically exempt according to the California Environmental Quality Act, Article 19 15321 Class 21 (a) (2). The project is classified as an "Enforcement Action by Regulatory Agencies" because it is the "adoption of an administrative decision or order enforcing...the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." The project was also found to be categorically exempt according to the California Environmental Quality Act, Article 19 15332 Class 32 (a) (b) (c) (d) and (e). The project is classified as in-fill development meeting the conditions described therein. No significant impacts are anticipated and no mitigation measures have been required. No significant impacts are anticipated and no mitigation measures have been required.
2. The proposed use complies with all requirements as set forth for in the issuance of this Use Permit, in that the site is adequate in size, shape and topography for the proposed use, consisting of an existing building. Second, the site has sufficient access to streets,

adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use, which is not expected to significantly increase because the requested Use Permit relates to an outdoor patio area in an existing bar. Third, the proposed use is deemed to be part of the General Plan and the Zoning Ordinance, as on-sales alcoholic beverage sales are permitted in the C-2 (General Commercial) Zone with Use Permit approval. Fourth, the proposed use, as conditioned, will not have an adverse effect upon the use, enjoyment or valuation of property in the neighborhood in that a similar on-sales uses existing nearby. Lastly, the proposed use will not have an adverse effect on the public health, safety, and general welfare in that security measures and the limited size of the use will limit any potential adverse effects to neighboring properties.

3. The on-sale of beer, wine and distilled spirits, in accordance with a Type 48 Alcoholic Beverage Control License and with the conditions attached herein, would be consistent and in harmony with the Mixed Use Corridor General Plan Land Use Designation and C-2 zoning district.
4. The proposed use is consistent with the General Plan because commercial uses such as the one proposed are permitted in accordance with Land Use Policy subject to a discretionary review.
5. The sale of alcoholic beverages for on-premise consumption is a normal part of business operations and provides a convenience for customers of the business.
6. The sale and consumption of alcohol can sometimes result in customer behavior problems that can require police intervention.
7. Steps can be taken by the Applicant/Operator and/or successors in interest and management to reduce the number of incidents resulting from the over-consumption of alcohol including the proper training and monitoring of employees serving alcohol; the careful screening of IDs of customers to avoid sales to under-aged individuals; limiting the number of drinks sold to individual customers to avoid over-consumption; providing properly trained on-site security to monitor customer behavior both in and outside of the establishment; and working with the Lodi Police Dept. to resolve any problems that may arise.
8. The proposed use can be compatible with the surrounding use and neighborhood if the business is conducted properly and if the Applicant/Operator and/or successors in interest and management work with neighboring businesses and residents to resolve any problems that may occur.
9. The sale of alcoholic beverages at this location can meet the intent of the General Commercial zoning district and can provide a public convenience or necessity for customers of the business.

**NOW, THEREFORE, BE IT DETERMINED, AND RESOLVED**, that the Lodi Planning Commission hereby approves Use Permit Application No. 11-U-16, subject to the following conditions:

Community Development Department, Planning Division:

1. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall, at their sole expense, defend, indemnify and hold harmless the City of Lodi, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this Use Permit approval. The obligation to defend, indemnify and hold harmless shall include, but is not limited to, any action to

arbitrate, attack, review, set aside, void or annul this Use Permit approval on any grounds whatsoever. The City of Lodi shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

2. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
3. Starting from the effective date the business commences the sale of beer, wine and distilled spirits, this Use Permit shall be subject to a six-month, one-year, and two-year review by Community Development Director and/or the Police Department. If the Director/Police Department determines it necessary, the Use Permit shall be subject to review by the Planning Commission to consider the business's operation for compliance with the conditions of the Use Permit, and in response to any complaints thereafter. Further, the City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct result from the proposed land use, the Use Permit may be subject to review and revocation by the City of Lodi after a public hearing and following the procedures outlined in the City of Lodi Municipal Code. Additional reviews may be prescribed by the Community Development Director, the Police Department and/or Planning Commission as needed during and after the first two years of probationary period.
4. The City Council, Lodi Police Department, the Planning Commission and City staff may, at any time, request that the Planning Commission conduct a hearing on this Use Permit for the purpose of amending or adding new conditions to the Use Permit or to consider revocation of the Use Permit if the Use Permit becomes a serious policing problem.
5. The Applicant/Operator and/or successors in interest and management shall insure that the sale of alcohol does not cause any condition that will cause or result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public intoxication, drinking in public, harassment of people passing by, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises, traffic violations or traffic safety based upon last drink statistics, curfew violations, lewd conduct, or police detention and arrests.
6. The business shall have interior security video cameras operating during all hours that the business is open. The videotapes of the security video cameras shall be maintained for a minimum period of 30 days, and the videotapes must be made immediately available for any law enforcement officer who is making the request as a result of official law enforcement business. The video cameras must be positioned in a way to capture the facial features of anyone entering the business and include cameras that capture all money handling areas. If the Chief of Police determines that there is a necessity to have additional security cameras installed, the owner of the business must comply with the request within 7 calendar days. The Chief of Police can also require that the business change the position of the video cameras if it is determined that the position of the cameras do not meet security needs. The owner

of the business must comply with the request within 7 calendar days. The said security video camera shall be installed and approved prior to business opening.

7. Prior to the effective date of this Use Permit, a security plan which includes a management training plan, employee and security resource placement, crowd control and security measures, and provisions for overflow customers shall be submitted to the Community Development Department for review, and shall be approved by the Community Development Director and the Police Chief, or a designee thereof.
8. No person under the age of twenty-one (21) years shall be allowed on the premise at any time.
9. No person who is in a state of intoxication shall be permitted within the business nor shall an intoxicated patron be sold additional alcoholic beverages. It is the responsibility of the business owner/operator to ensure no patron in state of intoxication is allowed into the premise.
10. Consumption of alcohol in the proposed patio area shall be restricted to from 1:00 p.m. to midnight daily, except recognized holidays and special functions, such as Street Faire, Farmer's Market, etc, shall be exempt from this restriction.
11. Installation of sign(s) shall require a building permit from the Community Development Department. Said sign(s) shall be in full compliance with the City of Lodi Sign Ordinance and any applicable master sign program for the subject site.
12. Window signage shall not exceed twenty-five percent (25%) of the glass area, or separate window pane, upon which the sign is located. All new signage is subject to review and approval by the Planning Division prior to installation.
13. Approval of this Use Permit shall not authorize Live Entertainment as specifically defined in Lodi Municipal Code 17.63. The project proponent/applicant and successors in interest and management shall obtain for Live Entertainment. The requirements of L.M.C. Chapter 17.63 shall be complied with.
14. No consumption of alcoholic beverages shall be permitted in the rear outdoor smoking area at any time.
15. The subject property and its immediate surrounding shall be maintained neat and clean at all times. The subject property and its immediate surrounding shall be maintained free from debris and graffiti at all times. The property owner shall remove any debris or graffiti within 24-hours upon notification by the City. Litter on the site and any litter scattered nearby property, streets, and sidewalks shall be removed daily.
16. The applicant/operator and/or successors in interest and management shall keep the subject property and its immediate surrounding neat and clean at all times, maintain the site and its immediate adjacent premises in a sanitary condition, and keep the site and its surrounding premises free of noxious odors. If necessary, the applicant shall steam clean the project site and its immediate surrounding premises as often as needed.
17. In the event of graffiti or other extraneous markings occurring, the applicant/operator and/or successors in interest and management shall remove or cover said markings, drawings, or signage within 24 hours of such occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of the adjacent surfaces.
18. The applicant shall prepare and submit a practical program for controlling litter, spills, and stains resulting from the use on the site to the Planning Department for review

and approval within 30 days of approval of this Use Permit. The program shall include a detailed time frame for the policing and cleanup of the public sidewalk and right-of-way in front of the subject property as well as the adjacent public right-of-way (25 feet north and south of the subject property) not just in front of the subject tenant space. Failure to comply with that program shall be considered a violation of the Use Permit and shall be subject to administrative remedy in accordance with Chapter 17.72 and Chapter 17.88 of the City of Lodi Municipal Code.

19. The licensee(s) or an employee of the licensee(s) shall be present at the patio area at all times that alcoholic beverages are being served or consumed, to ensure that Alcoholic Beverage Control Act, State statute, County, or City Ordinances are not violated upon this portion of the licensed premises. In addition, a security staff shall be stationed at the entry to the patio area at all times that the patio whenever alcohol beverages are being served or consumed in the patio area. Security staff and their training program shall be subject to the review and approval of the Chief of Police or designee(s) thereof.
20. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
21. The outdoor patio shall be limited to 182-square-foot in area and provide seating for no more than twelve persons maximum.
22. The material and color of any awning or umbrella located on the outdoor patio areas shall be subject to review and approval by the Planning Department. No form of advertisement shall be placed on an awning, umbrella or elsewhere in the outdoor patio dining areas. The outdoor patio dining areas, including any awning or umbrella, shall be maintained in a clean orderly condition at all times.
23. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
24. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 30 calendar days of effective date of this Use Permit. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Lodi. The business owner shall be responsible for on-going training to accommodate changes in personnel.
25. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of ABC license issued to Ollie's Pub, ABC License No. 503428.
26. There shall be no on-site radio television, video, film, or other electronic or media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Lodi.
27. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any

percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge shall be prohibited.

28. Strict adherence to maximum occupancy limits shall be required at all times.
29. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of onsite media broadcast, or any other similar activities.
30. The applicant/project proponent and/or property owner and/or developer and/or successors in interest and management shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons and employees. All noise generated by the proposed use shall comply with the provisions of Chapter 9.24 and other applicable noise control requirements.
31. Prior to the installation of any exterior lighting, lighting plans shall be submitted for review and approval by the Planning Department. Any new and existing exterior lighting shall be fully shielded and there shall be no spillover to adjacent premises.
32. The applicant shall obtain Operational Permits from the Lodi Fire Department, Fire Prevention Bureau. The Operational Permits shall be obtained prior to commencement of sale of alcohol in the proposed outdoor/patio area. The Fire Department may be contacted at 25 East Pine Street, Lodi, CA 95240-2127. Phone Number (209) 333-6739.
33. The applicant shall obtain an encroachment permit from Public Works Department for the proposed outdoor seating and serving area. Encroachment permit shall be obtained prior to commencement of sale of alcohol in the proposed outdoor/patio area. The Public Works Department may be contacted at 221 West Pine Street, Lodi, CA 95240-2127. Phone number (209)333-6711.
34. Any fees due the City of Lodi for processing this Project shall be paid to the City within thirty (30) calendar days of final action by the approval authority. Failure to pay such outstanding fees within the time specified shall invalidate any approval or conditional approval granted. No permits, site work, or other actions authorized by this action shall be processed by the City, nor permitted, authorized or commenced until all outstanding fees are paid to the City.
35. No variance from any City of Lodi adopted code, policy or specification is granted or implied by this approval.

Community Development Department, Building Division:

36. Permit is required for alteration to the accessible path of travel from the front entrance to the sidewalk. Occupant loads, accessible path of travel and exiting widths are required to be verified. All plan submittals shall be based on the City of Lodi Building Regulations and currently adopted 2007 California Building code. Please review our policy handouts for specific submittal procedures.
37. Minimum 36" wide exiting width shall be maintained from the building front entrance door to the public way (sidewalk).
38. Tables and chairs shall not encroach into the 24" strike side clearance X 60" landing area, at the pull side that is the required maneuvering clearance to the front entrance to the building. 2010 CBC, Section 1133B.2.4.2, Figures 11B-26A, 11B-26B, and 11B-33(a)

39. If the new fence is equipped with a gate, the gate must meet all applicable specifications for doors as per 2010 CBC, Section 1133B.1.1.1.4. Amend plans to specify the bottom 10" of all gates shall have a smooth, uninterrupted surface to allow the gate to be opened by a wheelchair footrest without creating a trap or hazardous condition or provide a 10" high kick plate at the bottom of the gate. 2010 CBC, Section 1133B.2.6. Also, amend plans to specify and show the gates to have a maximum door opening effort of 5 lbs. and are equipped with single-effort, non-grasping type hardware (i.e., lever) centered between 30" and 44" above the deck surface. 2010 CBC, Sections 1133B.2.5.2, 1133B.2.5. Further, amend plans to specify and show a minimum 24" strike side clearance and a minimum 60" deep level landing at the pull side of the gates to comply with 2010 CBC, Sections 1133B.2.4.2, 1133B.2.4.3 and Figure 11B-26a. In addition, amend plans to specify and show a minimum 12" strike side clearance and a minimum 48" deep level landing at the push side of the gates, if equipped with a latch and a closer. 2007 CBC, Section 1133B.2.4.2 and Figure 11B-26a

**Dated: July 13, 2011**

I certify that Resolution No. 11- was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on July 13, 2011 by the following vote:

**AYES:** Commissioners:

**NOES:** Commissioners:

**ABSENT:** Commissioners:

**ATTEST** \_\_\_\_\_

Secretary, Planning Commission

# Item 6a.



**MEMORANDUM, City of Lodi, Community Development Department**

**To:** City of Lodi Planning Commissioners  
**From:** Rad Bartlam, Community Development Director  
**Date:** Planning Commission Meeting of 07/13/2011  
**Subject:** Past meetings of the City Council and other meetings pertinent to the Planning Commission

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In an effort to inform the Planning Commissioners of past meetings of the Council and other pertinent items staff has prepared the following list of titles.

If you have any questions, please feel free to contact the Planning Department or visit the City of Lodi website at: <http://www.lodi.gov/city-council/AgendaPage.html> to view Staff Reports and Minutes from the corresponding meeting date.

Date	Meeting	Title
July 6, 2011	Regular – Closed Session Item	Actual Litigation: Government Code §54956.9(a); One Case; <i>Mary C. Kaehler v. City of Lodi et al.</i> , San Joaquin County Superior Court, Case No. 39-2011-00263683-CU-WM-STK