



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

DATE: December 1, 2005

APPLICANT: Ashraf Yousseff for the Liquor Chest
5298 Kanan Road
Agoura Hills, CA 91301

TO: Planning Commission

CASE NO.: 05-INT-002

REQUEST: Zoning Ordinance Interpretation regarding the expansion of an existing, non-conforming liquor retail store in the Freeway Corridor Overlay District.

I. DESCRIPTION

The request is for an interpretation of the Zoning Ordinance regarding expansion of non-conforming uses. The case is being presented to the Planning Commission for an interpretation on whether the applicant should be allowed to expand into an adjacent space. The use is a liquor store located at 5298 Kanan Road in the Kanan Plaza. The Shopping Center is zoned CS-FC (Commercial Services – Freeway Corridor). The store is a 1,200 square-foot end unit in a one-story building located east of Kanan Road and south of the new Canwood extension. The adjacent 1,200 square-foot tenant space has become available and the applicant has requested authorization from the management company to expand his business in the new space. The applicant is seeking to supplement the sale of alcohol with packaged food, gifts, house-ware and other non-alcoholic beverages. The shopping center is approximately 31,000 square feet, a third of the space is occupied by retail merchants in a one-story building and the remaining is split between a one-story retail floor and a second story office floor. The center was built prior to the City’s incorporation and the parking provided is non-conforming.

II. BACKGROUND

The Zoning Ordinance expressly prohibits the “off-sale” of liquor in the Freeway Corridor Overlay Zone. Liquor stores, as well as other establishments that sell alcoholic beverages to be consumed off-site, are not allowed. Furthermore, Section 9706.5. states that existing non-conforming off-sale liquor establishments in the Freeway Corridor Overlay District may continue to operate but the use shall not be expanded. The intent of

the Non-Conforming Use Ordinance is to recognize that certain uses have existed over time and to allow them to continue in their current state provided that no expansion or improvements are made to further perpetuate the non-conformity. Instead of imposing an amortization period to force closure of the business, it is through time and attrition that non-conforming uses are eventually abated and redeveloped into uses that conform to the current Ordinance.

Currently, the Liquor Chest occupies a 1,200 square-foot tenant space that consists of a merchandise display area, coolers for alcoholic and non-alcoholic beverages, a humidor, a restroom and a counter for the sale activity and merchandise display. Based on the information provided by the applicant, the business operates with an inventory and the volume of sale at a ratio of 80%, alcoholic product sales and 20% for the sale of other merchandise. The floor plan layout is detailed below and an exhibit is attached to this report. The expansion to the adjacent tenant space adds an additional 1,200 square-foot of space for a total of 2,400 square feet.

	Existing Tenant Space	Proposed Expansion
Retail area	1,080	1,640
Humidor	80	80
Restroom	40	80
Storage	n/a	600
Total	1,200	2,400

The proposed expansion will entail removing the demising wall that separates the existing Liquor Chest tenant space from the adjacent vacant tenant space which will allow for one clerk to manage the entire business. The new net square footage dedicated to the retail area will increase to 1,640 square feet from 1,080. This expansion represents an increase of 560 square feet of retail area. Both entry points into the business will remain.

When accounting for the newly expanded area, the ratio of the inventory and volume of sales of alcoholic beverages versus other merchandises is expected to be 60:40, as stated by the applicant. The actual space allocated for the display of merchandise is currently close to 90% of the tenant space whereas the expansion would result in 68% of the total being used toward the display of merchandise.

III. ANALYSIS

The interpretation before the Planning Commission deals with the issue of what constitutes an “expansion” of a non-conforming use. Clearly, Liquor Chest is expanding into another tenant space. However, as stated by the applicant, the purpose of the expansion is primarily to sell convenience foods and products and to increase the storage area. While the actual leased tenant space is proposed to double, the increase in the sales area would be 560 square feet.

There are a number of other issues to consider in reviewing this interpretation of the zoning ordinance. First, this interpretation of the zoning ordinance is applicable not only to the Liquor Chest, but would also be applicable from hereon to all other non-conforming liquor stores in the FC overlay zone. Staff is aware of four (4) existing, non-conforming liquor stores in the Freeway Corridor Overlay zone. Thus there are precedent setting effects to consider. Second, the City cannot regulate the volume and type of alcohol sales nor can it regulate where specifically, within the tenant space, where liquor can be displayed and sold. Moreover, the City does not have regulatory authority regarding who is issued a liquor license. These are all regulated by the State Department of Alcoholic Beverage Control (ABC). Therefore, if the interpretation is made to allow this expansion, there is the potential for unlimited increase in area within the expanded tenant space for alcohol sales. While this particular applicant's intent, at this time, may be to expand his store by incorporating the adjacent tenant space for the purpose of carrying convenience items, it is possible that this may change over time or a future owner may have different intentions.

For the reasons stated above, and to be consistent with the intent of the Non-Conforming Section of the Zoning Ordinance, staff feels it is appropriate that the Planning Commission finds that the proposed expansion into the adjacent tenant space constitutes an expansion of a non-conforming use and thus would not be allowed. It is possible, however, for the applicant to open a separate convenience store in the adjacent tenant space (with no alcohol sales) provided that there is no internal access between the two tenant spaces. The applicant has indicated that he would not be in favor of this option as it would require having at least another employee on duty.

Alternatively, if the Planning Commission can find that the proposed expansion of a non-conforming liquor stores in the FC overlay zone is not inconsistent with the intent of the zoning ordinance, the Commission should consider including the following restrictions:

1. Accept the plan as submitted, but have the applicant agree to record a covenant or other instrument of restriction to limit the retail display/sales area to 1,640 sq. ft. as proposed by the applicant. The document would be subject to review and approval by the City Attorney. It would also be important to note that any covenant recorded on the property or any other restriction would impose additional burden to staff to periodically monitor the site and potential code enforcement action to ensure perpetual compliance.

OR,

2. As an alternative to the above, have the applicant revise the proposed floor plan to show permanent walls to be constructed to delineate a certain retail sales/display area such as 1,640 sq. ft. as requested by the applicant or 1,080 sq. ft. which is the size of the current retail sales/display area. There should also be a covenant recorded on the property or other instrument of restriction, acceptable to the City Attorney, regarding the maximum allowable retail/sales display area.

AND IN ADDITION,

3. Have the applicant record a covenant on this property or other instrument of restriction acceptable to the City Attorney that this interpretation is only applicable to this applicant. This will preclude continuation of this interpretation beyond the current business owner.

IV. RECOMMENDATION

It is recommended that the Planning Commission adopt a minute motion regarding a Zoning Ordinance Interpretation (Case No. 05-INT-002) pertaining to the expansion of non-conforming liquor stores in the FC overlay zone.

V. ATTACHMENTS

- Vicinity/Zoning Map
- Site Plan
- Proposed Floor Plan

CASE PLANNER: Valerie Darbouze, Associate Planner