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Jennifer K. Clark, AICP, HDFP
Director

May 21, 2020

Please reply to:

Phillip Siegrist
(559) 621-8061

Davinder Singh
Tower Beer Wine mini mart
Singhdavinder6@yahoo.com
(Sent via email only)

SUBJECT: CONDITIONAL USE PERMIT APPLICATION NO. P20-00808 FOR PROPERTY LOCATED AT 441 WEST OLIVE AVENUE (APN: 450-183-23)

On May 21, 2020, the Planning & Development Department Director denied Conditional Use Permit Application No. P20-00808, requesting authorization to upgrade from an existing State of California Alcoholic Beverage Control Type 20 alcoholic license (Package Store – sale of beer and wine for consumption on off the premises where sold) to a Type 21 alcohol license (Package Store – sale of beer, wine, and distilled spirits for consumption off the premises where sold) for the existing Tower Beer & Wine convenience store at the above location. The property is zoned CMS (Commercial - Main Street).

This denial action was based on the projects compliance with the requirements of Fresno Municipal Code (FMC) Section 15-2706-E (Location Restrictions). The subject establishment is located within a documented high crime area. In addition, it is located within an area of high concentration of off-sale alcohol licenses and would result in an increase in the number of existing ABC off-sale licenses within the Census Tract.

According to FMC Section 15-2706-E-5, a new establishment may be excepted from the location restrictions if the Review Authority determines any one of the following:

- a. The proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use a) would be detrimental to the public health, safety, or welfare of persons located in the area, or b) would increase the severity of existing law enforcement or public nuisance problems in the area.
- b. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.
- c. The proposed outlet for the off-premises sale of alcoholic beverages would act as a public convenience or necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety.

The Director was unable to make any of the aforementioned findings.

Therefore, in accordance with required findings specified for Conditional Use Permits under Chapter 15, Article 53, §15-5306 of the FMC, the proposed use; to upgrade your requested off-sale alcohol license from a Type 20 to a Type 21, is denied based on the following:

Findings per Fresno Municipal Code Chapter 15, Article 53, Section 15-5306

A Conditional Use Permit shall only be granted if the decision-maker determines that the project as submitted or as modified conforms to all of the following criteria. If the decision-maker determines that it is not possible to make all of the required findings, the application shall be denied.

Finding a:	<i>The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code;</i>
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This Finding (a) cannot be made. The existing Tower Beer & Wine convenience store with an alcohol sales permit (Type 20 license), as approved under Conditional Use Permit No. C-14-002 (ABCUP), and the proposed upgrade (Type 21 license) does not comply with FMC Section 15-2706-E (Location Restrictions). The establishment is located within an area of high concentration of off-sale licenses and within an area of documented high crime.

Finding b:	<i>The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;</i>
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This Finding (b) cannot be made. The existing Tower Beer and Wine convenience store with alcohol sales is consistent with the current General Plan, Fresno High-Roeding Community Plan, and Tower District Specific Plan land use designation of Commercial – Main Street; however, the requested change (proposed alcohol license upgrade) will not reduce current adverse impacts on adjacent properties and/or on the general public and will be inconsistent with general plan goals to promote healthy communities and improve quality of life in established neighborhoods, and to protect and improve public health and safety.

Finding c:	<i>The proposed use will be substantially adverse to the public health, safety, or general welfare of the community, and will be detrimental to surrounding properties or improvements in that;</i>
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This Finding (c) cannot be made. The proposed use will be substantially adverse to the public health, safety, or general welfare of the community in that its location within an area of high crime and high concentration will be detrimental to surrounding properties or improvements. Areas of high concentration of off-sale licenses can contribute to a variety of health and safety problems including higher rates of alcohol-related hospitalizations, drunken driving accidents, and pedestrian injuries. As noted within the Public Utilities and Services section of the Fresno General Plan, the location and prevalence of off-sale alcohol sales can have a negative effect on neighborhood health. Alcohol sales establishments possess certain characteristics that have the potential to cause deleterious effects and nuisances on surrounding neighborhoods and businesses, especially when such establishments are in areas of high crime and concentration.

Finding d:	<i>The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and,</i>
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This Finding (d) cannot be made. The existing Tower Beer and Wine convenience store with alcohol sales is within close proximity to existing single family and multi-family residences. The location and operating characteristics of the existing Tower Beer and Wine convenience store with alcohol sales, as well as the requested upgrade, are incompatible with the surrounding vicinity and land uses given the project is located in an area of high crime and high concentration. Furthermore, the proposed project conflicts with the Fresno General Plan goals to promote healthy communities and improve quality of life in established neighborhoods, and to protect and improve public health and safety.

Finding e:	<i>The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.</i>
This Finding (e) cannot be made. While the type and intensity of the use proposed may be suitable with respect to access, the proposed upgrade within an area of high crime and high concentration is not suitable based on the services required to address public safety concerns.	

APPEALS

The Directors decision may be appealed to the Planning Commission by filing a written appeal with the Director within 15 days of the date the action was taken. Appeals may be filed by any person aggrieved by the decision. The appeal shall include the appellant's interest in or relationship to the subject property, the decision or action appealed and specific reasons why the applicant believes the decision or action appealed should not be upheld. The appeal shall be signed by the person making the appeal and accompanied by the required fee.

In the event you wish to appeal the Director's decision, you may do so by filing a written appeal with the planner identified in this letter. The written request must be received at the Planning & Development Department by the close of business on Friday, June 5, 2020. The written request should be addressed to Jennifer K. Clark, AICP, Director, and include the application number referenced above.

If you have any questions regarding this letter, feel free to contact me at (559) 621-8061.

Sincerely,

Phillip Siegrist

Phillip Siegrist, Planner
Development Services Division

CC: Jagir Kang, Property Owner
jagirkang59@gmail.com

