

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESOLUTION NO. R-60-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF AN APPLICATION FOR A CONDITIONAL USE PERMIT FOR THE SALE OF BEER & WINE FOR OFF-SITE CONSUMPTION (TYPE 20 ABC LICENSE-OFF-SALE BEER & WINE) AND A PUBLIC CONVENIENCE AND NECESSITY DETERMINATION IN CONJUNCTION WITH A CONVENIENCE RETAIL STORE IN A NEWLY PROPOSED BUILDING LOCATED AT 1089 N. RANCHO AVENUE ON A +/- 0.37-ACRE SITE AND ZONED C-1 (NEIGHBORHOOD COMMERCIAL) (FILE INDEX NO: DAP-001-002).

WHEREAS, Matt Waken for 7 Eleven ("Applicant") filed an application (File Index No. DAP-001-002) requesting approval of a Conditional Use Permit (hereinafter "Project") for the operation of a 2,522-square foot convenience retail store with the sale of alcohol (Type 20 ABC License-Off-Sale beer & Wine) for off-site consumption and a Determination of Public Convenience and Necessity located at 1089 N. Rancho Avenue on a 0.37-acre site (hereinafter "Subject Property") and zoned C-1, Neighborhood Commercial; and

WHEREAS, the staff report accompanying this Resolution is found to be true, adopted as findings and incorporated in this Resolution; and

WHEREAS, the General Plan designation of the subject property is designated on the General Plan Land Use Map as LC – Limited Commercial and zoned C-1, Neighborhood Commercial; and

WHEREAS, on June 12, 2012, the Planning Commission conducted a duly noticed public hearing on the Project at which time all persons wishing to testify in connection with the proposed Project were heard, and the Project was comprehensively reviewed and concerns were raised by the public and adjacent property owners. After receiving public testimony and discussion, the Planning Commission continued the item to the June 26, 2012, meeting to allow time for the additional information to be submitted by the Applicant to make a determination; and

WHEREAS, on June 26, 2012, the Planning Commission of the City of Colton held a duly noticed public hearing at which time all persons wishing to testify in connection with the application were heard and the Project was fully examined. Following considerable discussion and public testimony regarding the Project, the Planning Commission voted 6 to 0 with 1 abstention to deny the Project and direct staff to return with a Resolution of denial at the July 10, 2012 meeting for consideration; and

WHEREAS, on July 10, 2012, the Planning Commission voted 6 to 0 with 1 absence to deny the Project and adopt Planning Commission Resolution Number R-18-12.

1 **WHEREAS**, on July 19, 2012, a timely appeal of the Planning Commission's denial
2 was received by the City Clerk ("Appeal"); and

3 **WHEREAS**, on August 21, 2012, the City Council of the City ("City Council")
4 conducted a duly noticed public hearing on the Appeal at which time all persons wishing to
5 testify in connection with the Appeal were heard, and the Appeal was comprehensively
6 reviewed and considered; and

7 **WHEREAS**, all other legal prerequisites to the adoption of this Resolution have
8 occurred.

9 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE**
10 **CITY OF COLTON:**

11 **SECTION 1.** The Recitals set forth above are true and correct and are incorporated
12 herein by reference.

13 **SECTION 2.** Based on the entire record before the City Council, all written and oral
14 evidence presented, and the findings made in this Resolution, the City Council hereby denies
15 the **Appeal** and **upholds** the decision of the Planning Commission denying the Project.

16 **SECTION 3.** Based on the entire record before the City Council and all written and
17 oral evidence presented, including the staff report, the City Council cannot make the following
18 required findings in accordance with Colton Municipal Code Section 18.58.060(H) as follows:

19 A. *The proposed use is not in accord with the objectives of the Zoning Ordinance,*
20 *and the purposes of the zone in which the site is located.*

- 21 1. The Zoning Ordinance allows for alcohol sales for off-sale consumption
22 through Conditional Use Permit (CUP) approval.
- 23 2. CUP's are required for land use classifications typically having unusual
24 site development features or operating characteristics requiring special
25 consideration so that the use is designed, located and operated
26 compatibly with uses on adjoining properties and in the surrounding
27 area.
- 28 3. The proposed use for alcohol sales is located in the C-1 Neighborhood
Commercial Zone. The C-1 Neighborhood Commercial Zone is
intended to serve the neighborhood needs for convenience goods only.
Stores within this designation are intended to fit into the residential
pattern of development and not create either architectural or traffic
conflicts.
4. During public testimony, many members of the public testified that the
proposed alcohol use would result in increased traffic, noise and
vagrancy and would negatively impact adjacent residential uses.
5. Based on the evidence in the record, including evidence from the
Planning Commission meeting and evidence concerning the operating

1 characteristics of the site when compared to nearby alcohol
2 establishments, the City Council has determined that the proposed
3 alcohol use will result in increased traffic, noise and vagrancy in the area
4 without any physical buffers. Thus, the proposed use does not fit within
5 the residential pattern of development and as a result is not in accord
6 with the objectives of the Zoning Ordinance and the purposes of the zone
7 in which the site is located.

8 6. The distinguishing characteristics noted in the record of this proposed
9 use to a recently approved use with alcohol sales evidence why the
10 inclusion of alcohol sales in this application is materially different and
11 why it makes this application not in accord with the objectives of the
12 Zoning Ordinance and the purposes of the zone in which it is located.

13 B. *The proposed use, together with the conditions applicable thereto will be
14 detrimental to the public health, safety or welfare, or materially injurious to
15 properties or improvements in the vicinity.*

16 1. Many members of the public testified that the proposed alcohol use
17 would result in increased traffic, noise and vagrancy, and would
18 negatively impact adjacent residential uses. Based on the evidence in the
19 record, including evidence from the Planning Commission meeting and
20 evidence concerning the operating characteristics of the site when
21 compared to nearby alcohol establishments, the City Council has
22 determined that the proposed alcohol use will result in increased traffic,
23 noise and vagrancy in the area without any physical buffers. Thus, the
24 proposed will be detrimental to the public health, safety and welfare.

25 2. The distinguishing characteristics noted in the record of this proposed
26 use to a recently approved use with alcohol sales evidence why the
27 inclusion of alcohol sales in this application is materially different and
28 why it makes this application detrimental to the public health, safety and
welfare.

SECTION 4. Based on the entire record before the City Council and all written and
oral evidence presented, including the staff report, the City Council finds that the public
convenience is not served by, and there is no necessity for, issuance of an off-sale alcohol
license to operate the proposed 2,522-sf single-story retail building located at 1089 N. Rancho
Avenue for the following reasons:

*The proposed Project is located in an area where there is an undue concentration of
active "off-sale" alcohol licenses (Type 21).*

An undue concentration exists for off-sale alcohol licenses when the ratio of off-
sale alcohol licenses to population in the census tract or census division in which
an applicant's premises are located exceed the ratio of off-sale retail licenses to
population in the County.

The proposed Project is located in Census Tract 66.01. There are three (3)
active off-sale alcohol licenses (Type 21) within Census Tract 66.01 according
to the State of California Department of Alcoholic Beverage Control (ABC).
Census Tract 66.01 has a current population of 4,564 based on the most recent

1 United States decennial census (2010). Therefore, the ratio of off-sale alcohol
licenses to population in Census Tract 66.01 is 0.07%.

2 The County of San Bernardino has seven hundred and thirty-nine (739) active
3 off-sale alcohol licenses (Type 21) according to ABC (State of California
4 Alcoholic Beverage Control Report dated June 30, 2012). The County of San
5 Bernardino has a current population of 2,063,919 based on the most recent
6 annual population estimate for California counties published by the Population
7 Research Unit of the Department of Finance. Therefore, the ratio of off-sale
8 alcohol licenses to population in the County of San Bernardino is 0.04%.

9 Since the ratio of off-sale alcohol licenses (Type 21) in Census Tract 66.01 to
10 population in Census Tract 66.01 exceeds the ratio of off-sale retail licenses
11 (Type 21) in the County of San Bernardino to population in the County, there is
12 an undue concentration.

13 *The proposed Project does not encourage public convenience.*

- 14 1. The Project consists of a newly constructed 2,522 sf single story retail
15 building on a parcel zoned C-1 (Neighborhood Commercial) with no
16 other commercial uses on the parcel containing the proposed Project.
17 Unlike other projects that the City has recently approved in a multi-
18 tenant setting, the proposed Project is limited to the sale of food and
19 sundry items in a single-story retail building. As the Project is currently
20 proposed, City residents cannot avail themselves of the breadth of
21 readily available products (other than food and sundry items) and
22 services in one location and will have to travel to other locations to
23 purchase these products or services.
- 24 2. As a result of the reasons stated in "1" above and elsewhere in the
25 record, the public convenience is not served by the issuance of an off-
26 sale alcohol license.

27 *The proposed Project is not necessary.*

- 28 1. There are ample venues within Census Tract 66.01 from which alcoholic
beverages may be purchased.
 - a. A liquor store with a Type 21 license currently operates at 871 N.
Rancho Avenue (License No. 257649).
 - b. A liquor store with a Type 21 license currently operates at 457
West Valley Boulevard (License No. 297000).
 - c. A convenience store with a Type 21 license currently operates at
1091 West Valley Boulevard (License No. 394864).
2. As a result of the reasons stated in "1" above and elsewhere in the
record, it is not necessary to permit the issuance of an additional off-sale
alcohol license.

1 **SECTION 5.** The City Clerk shall certify to the adoption of this Resolution.

2
3 **SECTION 6.** This Resolution shall become effective immediately upon its adoption.

4 **PASSED, APPROVED AND ADOPTED** this 18th day of September, 2012.

5
6 
7 FRANK A. GONZALES
8 Mayor Pro Tempore

9 ATTEST:

10 
11 EILEEN C. GOMEZ, CMC
12 City Clerk

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

