

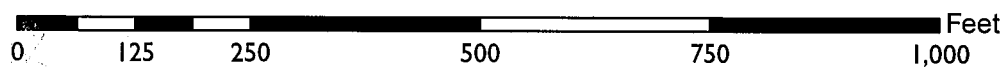
Location:	2935-2941 Coolidge Avenue
Assessor's Parcel Number:	027-0853-001-00
Proposal:	Appeal of the Zoning Manager's Determination Letter dated November 21, 2014 that indicated lapse of the Deemed Approved (legal non-conforming) status for an Alcoholic Beverage Sales Commercial Activity location ("Gazzali's Express" or former "Midtown Market") due to discontinuation of active operation for more than 90 days, pursuant to Section 17.114.050(B) of the Oakland Planning Code.
Appellant:	Gazzali's Express Corp.
Phone Number:	(510) 377-1207
Owner:	Gazzali's Express Corp.
General Plan:	Mixed Housing Type Residential
Zoning:	RM-2 Mixed Housing Type Residential Zone
Environmental Determination:	Exempt, Section 15270 of the State CEQA Guidelines: Projects Which Are Disapproved; Exempt, Section 15321 of the State CEQA Guidelines: Enforcement Actions by Regulatory Agencies
Historic Status:	Non-Historic Property
Service Delivery District:	4
City Council District:	5
Date Filed:	December 1, 2014
Action to be Taken:	Deny the Appeal and Uphold the Zoning Manager's Administrative Determination
Finality of Decision:	<i>Final (Not Appealable pursuant to OMC Sec. 17.132.030)</i>
For Further Information:	Contact case planner Aubrey Rose, AICP at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

On November 21, 2014, the Zoning Manager issued a Determination Letter (Attachment A) concluding that the active operation of Alcoholic Beverage Sales Commercial Activity (i.e., the sale of alcoholic beverages) at 2935-2941 Coolidge Avenue discontinued for a continuous period of more than 90 days, and as a result, the deemed approved/legal nonconforming status for alcoholic beverage sales lapsed. On December 1, 2014, the Appellant Gazzali's Express Corp. filed an appeal of the Zoning Manager's determination (Attachment B).

Staff recommends the Planning Commission deny the appeal and uphold the Zoning Manager's determination that the deemed approved/legal nonconforming status for alcoholic beverages sales has lapsed. Any resumption of alcoholic beverage sales will require submittal and approval of both a Major Conditional Use Permit (CUP) and Major Variance, as described in this report.

CITY OF OAKLAND PLANNING COMMISSION



Case File: APL14015
Appellant: Gazzali's Express Corp
Address: 2941 Coolidge Avenue
Zone: RM-2

BACKGROUND

Since 1977, the City has required all new Alcoholic Beverage Sales Commercial Activities (i.e., bars, liquor stores, grocery stores, and restaurants in some areas) to acquire a CUP. Establishments that were in existence before the 1977 zoning ordinance became legal nonconforming activities. The legal nonconforming status has since become known as "deemed approved." Deemed approved Alcoholic Beverage Sales Commercial Activities are subject to both the Deemed Approved Alcoholic Beverage Sale Regulations (Chapter 17.156 of the Oakland Planning Code) and the Nonconforming Uses Regulations (Chapter 17.114 of the Oakland Planning Code).

The general purpose of the Deemed Approved Alcoholic Beverage Sale Regulations is to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare by requiring that Alcoholic Beverage Sales Commercial Activities that were Legal Nonconforming Activities immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale Regulations comply with the Deemed Approved performance standards, and to achieve objectives that include the following:

- A. To protect residential, commercial, industrial, and civic areas and minimize the adverse impacts of nonconforming and incompatible uses;
- B. To provide opportunities for Alcoholic Beverage Sale Activities to operate in a mutually beneficial relationship to each other and to other commercial and civic services;
- C. To provide mechanisms to address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels;
- D. To provide that Alcoholic Beverage Sale Commercial Activities are not the source of undue public nuisances in the community;
- E. To provide for properly maintained Alcoholic Beverage Sale establishments so that negative impacts generated by these activities are not harmful to the surrounding environment in any way; and
- F. To monitor that Deemed Approved Activities do not substantially change in mode or character of operation.

The purpose of these performance standards is to control the dangerous or objectionable environmental effects of Alcoholic Beverage Sales Commercial Activities. The regulations also set forth procedures for consideration of violations to performance standards and conditions of approval, as well as procedures relating to revocation of Deemed Approved status.

The intent of the Nonconforming Uses Regulations is to control, ameliorate, or terminate uses which do not conform to the zoning regulations. These regulations clearly state that whenever a nonconforming Alcoholic Beverage Sales Commercial Activity discontinues active operation for more than ninety (90) days or ceases to be licensed by the State Department of Alcoholic Beverage Control ("ABC"), that activity may only be resumed upon the granting of a CUP pursuant to Chapter 17.134 of the Planning Code.

2935-2941 Coolidge Avenue

The sale of alcoholic beverages at the small food market to be "Gazzali's Express" (formerly the "Midtown Market" convenience market), located at 2935-2941 Coolidge Avenue, is a deemed approved/legal nonconforming activity because it existed before the City enacted the CUP requirement for Alcoholic Beverage Sales Commercial Activities. Midtown Market possessed a Type 20 ABC license for 2935-2941 Coolidge Avenue, which authorizes the sale of beer and wine for consumption off the premises where sold. A timeline relating to this appeal is set forth below.

May/June 2014 – Store Closes. There are varying dates of store closure. Zoning staff received information from neighbors that the store closed for business as early as May 6, 2014. Zoning staff also received a digital photograph (Attachment D) from a neighbor with a computer encrypted date of May 20, 2014, demonstrating that the store was vacant. On June 17, 2014, Oakland Police Department and Zoning staff observed that Midtown Market was closed for business (staff confirmed that closure was not mandated by a government agency and that the owner/operator had not contacted the City about the closure). Gazzali's representatives presented information to Zoning staff indicating a closure date of June 30, 2014.

July 17, 2014 – Zoning staff signs ABC Zoning Affidavit in error. On July 17, Zoning staff signed an ABC zoning affidavit, mistakenly indicating that the City permitted alcohol sales at the site pursuant to a 1989 CUP, which was actually an unapproved application to upgrade the establishment's beer and wine sales privileges to include liquor. (The sign-off was proper at that time, but instead of indicating that the use was authorized by a CUP, staff should have referred to the location's Deemed Approved status.)

August 5, 2014 – Zoning staff signs off on Zoning Clearance (food sales only, no alcohol). On August 5, Zoning staff signed off on a Zoning Clearance (Attachment C) to Gazzali's for food sales commercial activity (food market with meat and produce); the applicant did not request alcohol or tobacco sales at that time. Zoning clearances are obtained by new operators for business tax purposes and do not in any way authorize the sale of alcoholic beverage sales.

August 8, 2014 – Midtown Market surrenders license to ABC. On August 8, Midtown Market surrendered its Type 20 license to ABC.

August 14, 2014 – Gazzali's applies for transfer license. On August 14, Gazzali's submitted an application to ABC for a transfer of the Type 20 license.

August 15, 2014 – Zoning staff attends neighborhood meeting. On August 15, Zoning staff attended a Neighborhood Crime Prevention Council meeting attended by neighbors, OPD, nuisance abatement, and a Council aide, and explained the nonconforming use regulations in detail, including lapse of the nonconforming use status if alcoholic beverage sales activity is discontinued for more than 90 days.

August 27, 2014 – ABC invalidates Zoning Affidavit. On August 27, Zoning staff discovered that the Zoning Affidavit referred to the 1989 CUP in error and informed ABC. ABC invalidated the affidavit and directed the appellant to return to the City.

August 28, 2014 – Gazzali's returns to Zoning. On August 28, Gazzali's representative returned to the City to obtain a new Zoning Affidavit and to request an amendment to the Zoning Clearance to include resumption of alcoholic beverage sales, tobacco sales, and expansion of the sales floor area by approximately 500 square feet. Zoning staff requested that the applicant provide proof that the store had not been closed for more than 90 days.

Early to mid-September – Gazzali's submits information indicating a June 30 closing date. In early to mid-September, Gazzali's representatives provided Zoning staff with the following information to document a June 30 closure date: (a) a written statement signed by neighbors (including an on-site tenant) indicating a June 30 closure date; (b) a statement (by telephone) from the previous property owner that the store closed on June 30; and (c) copies of distributor packing lists for delivery of non-alcohol products to Midtown Market dated June 2 and June 5. On September 11 and 17, representatives informed Zoning staff that they did not know the actual closing date and that June 30 was an estimate. Zoning staff informed the representatives that the June 30 date was inconsistent with and not supported by evidence indicating an earlier closure date.

October 17, 2014 – Zoning staff signs ABC Zoning Affidavit and updates Zoning Clearance in error. On October 17, Zoning staff signed a second ABC Zoning Affidavit in error (although staff indicated that the sale of alcoholic beverages at that location was authorized as a deemed approved use, the deemed approved use had

been extinguished because the property ceased alcoholic beverage sales for a period in excess of 90 days; staff mistakenly believed that the City's August 5th Zoning Clearance signoff stopped the clock on the 90 day period). Zoning staff also updated the August 5th Zoning Clearance for resumption of alcohol sales and expansion of floor area in error.

Late October/Early November 2014 – Gazzali's begins Tenant Improvements Without Building Permit. Neighbors informed City staff that Gazzali's may be performing work on the building's façade and interior without a permit. Zoning staff contacted Gazzali's.

November 12, 2014 – Gazzali's returns to City to apply for Building Permit and Design Review approval. On November 12, a Gazzali's representative came to the City to apply for a Building Permit and Design Review approval.

November 13, 2014 – Zoning staff attends neighborhood meeting. On November 13, Zoning staff attended a second Neighborhood Crime Prevention Council meeting.

November 21, 2014 – Zoning Manager issues Determination Letter. On November 21, the Zoning Manager issued a Determination Letter partially rescinding the Zoning Clearance (with regard to resumption of alcohol sales and floor area expansion) and making a determination of lapse of nonconforming alcoholic beverage sales for the property because active operation of Alcoholic Beverage Sales Commercial Activity discontinued for more than 90 days, based on a May 6 closure date.

December 1, 2014 – Appeal filed. On December 1, Gazzali's Express Corp. filed a timely appeal of the Zoning Manager's determination.

PROPERTY DESCRIPTION

The property is a corner lot along Coolidge Avenue at the corner of Brookdale Avenue. The site is located between Interstate 580 and Foothill Boulevard east of Fruitvale Avenue. The legal address is 2935 Coolidge Avenue. The lot contains two adjoining buildings, a house at the left-hand interior (#2935) and the two-unit corner commercial building (#2941). The market historically occupied the larger right-hand commercial space at the corner. To the rear is a driveway off Brookdale Avenue. The property is surrounded by a residential neighborhood consisting of homes, duplexes, and small apartment buildings. Parks, churches, day care centers and schools are located throughout the neighborhood.

GENERAL PLAN ANALYSIS

The property is located in the Mixed Housing Type Residential area of the General Plan's Land Use and Transportation Element (LUTE). The intent of the LUTE is: "to create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate."

ZONING ANALYSIS

The property is located in the RM-2 Mixed Housing Type Residential Zone. The intent of the RM-2 Zone is: "to create, maintain, and enhance residential areas characterized by a mix of single family homes, duplexes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate." The RM-2 Zone conditionally permits General Food Sales Commercial Activity (markets with meat and/or produce) and prohibits Alcoholic Beverages Sales and Convenience Markets.

As stated in the November 21, 2014 Determination Letter, the Deemed Approved/legal non-conforming status was permanently extinguished because active operation of Alcoholic Beverage Sales Commercial Activity was

discontinued for more than 90 days. Thus, any resumption of alcoholic beverage sales now requires submittal and approval of applications for both a Major CUP and a Major Variance, both of which are independent discretionary actions within the purview of the Planning Commission.

STAFF'S RESPONSE TO APPEAL

Chapter 17.132 of the Planning Code sets forth the administrative appeal procedure, and specifies that an appeal must state specifically wherein it is claimed that there was an *error or abuse of discretion* by the Zoning Manager, or wherein the Zoning Manager's *decision is not supported by the evidence in the record*. In its review of an administrative appeal, the Planning Commission must consider the purpose and intent, as well as the letter, of the pertinent provisions of the Zoning Ordinance and shall affirm, modify, or reverse the Zoning Manager's determination. The decision of the Planning Commission is final immediately.

The following is a restatement of the stated bases of the appeal (**shown in bold**), followed by staff's responses (*shown in italics*). Staff's responses demonstrate that there was neither an error nor abuse of discretion by the Zoning Manager and that the decision was supported by the evidence in the record.

(1) The ABC license was surrendered by the prior operator on August 8, 2014, and the transfer application was filed on August 14, 2014, as a direct result of Zoning staff's signoff of the Zoning Affidavit on July 17th.

STAFF'S RESPONSE

The appellant's claim that Midtown Market surrendered its license as a direct result of the July 17th Zoning Affidavit does not make sense. Based on ABC records, Midtown Market surrendered its license to ABC on August 8, when an ABC representative visited the premises and confirmed the business was not in operation. Under Rule 65 [Surrender of License on Closing of Business], the ABC requires a licensee to surrender his/her license if he/she is closing a licensed business for over 15 calendar days and intends to transfer or reactivate the license at a later date.

Transferring a liquor license from one person to another can be complicated, and it is unfortunate that the previous operator (Midtown Market) closed the business before Gazzali's secured the transfer of the license (and other approvals). Simply filing the license transfer application with ABC does not accomplish the transfer. ABC has the discretion to deny the license transfer application, and protests or accusations may be filed which may result in delay or denial of the transfer. For this reason, the ABC's Frequently Asked Questions (License Transfers) (FAQs) caution applicants against making extensive financial commitments before final approval and issuance of a license. Similarly, submittal of a Zoning Affidavit is only one step in the ABC's investigation, and it would be imprudent to cease active operation of alcoholic beverage sales based solely on a Zoning Affidavit.

However, even though Midtown Market surrendered its license, there were still two avenues of relief that Gazzali's could have pursued. First, Midtown Market could have requested return of its license after surrender (it did not), and second, Gazzali's could have requested an Interim Retail Permit from ABC to operate during the transfer period. The Alcoholic Beverage Control Act authorizes an intended transferee of an ABC license (here, Gazzali's), pending transfer of the license, to operate the licensed business during the transfer period if the transferee obtains an Interim Retail Permit (for a period not to exceed 120 days). According to a review of ABC records, no such permit was requested.

Although Zoning staff made a number of errors while handling this matter, under the Nonconforming Use Regulations, the critical piece of information is whether the nonconforming activity discontinued active operation for more than 90 days. The appellant does not dispute that the business closed or that active operation of alcoholic beverage sales commercial activity discontinued for more than 90 days, and does not cite

any authority that would prevent the City from applying its Nonconforming Use Regulations. As described below, by any measure, active operation of the alcoholic beverage sales discontinued for more than 90 days, which constitutes a substantial change in mode and/or character of operation. The Deemed Approved/legal nonconforming status for alcoholic beverage sales is thus extinguished and such sales can no longer be resumed unless the appellant obtains a Major CUP and Major Variance, as required by the Oakland Planning Code.

- The earliest reported date of closure was May 6, 2014 (90 days from this date was August 4, 2014). Measuring from this date, the nonconforming use lapsed before Zoning staff signed off on the Zoning Clearance (food sales only) on August 5.
- Zoning staff also received a photograph with a digitally encrypted date of May 20, 2014 depicting store closure (90 days from this date was August 18). Measuring from this date, the nonconforming use lapsed four days after Gazzali's submitted its license transfer application to ABC on August 14. The ABC's FAQs state that by law, licenses cannot be issued for a minimum of 30 days, and most investigations take approximately 55-65 days. Therefore even if the Zoning Affidavit was entirely accurate, it is not legally possible for ABC to have issued a license to Gazzali's before the 90 days lapsed.
- On June 17, 2014, OPD and Zoning staff observed that Midtown Market was closed for business (90 days from this date was September 15). When the appellant returned to Zoning on August 28 and requested an amendment to the August 5 Zoning Clearance and signoff on the Zoning Affidavit, Zoning staff requested the applicant to provide proof that the nonconforming use had not lapsed. Based on a lapse date of September 15 (which is over one month before the Zoning Clearance was updated on October 17 to include the sale of alcohol), the applicant had 18 days from August 28 to provide such evidence to Zoning staff before the lapse date. Although the applicant and his representatives came in repeatedly in early to mid-September and provided Zoning staff with evidence of a June 30 closure date, Zoning staff informed the representatives that this date was inconsistent with and not supported by evidence indicating an earlier closure date.

(2) Zoning staff's October 17, 2014 update to the zoning clearance led the appellant to purchase the property and the ABC license at considerable expense.

STAFF'S RESPONSE

The appellant claims that he justifiably relied upon the City's prior approval to its detriment and that the City is now estopped from partially rescinding the zoning clearance and/or making a determination of lapse of nonconforming alcoholic beverage sales. Specifically, he claims that City staff knew about the pending loan and the investments being made, that in reliance on staff's explicit emails and statements and upon receiving the updated zoning clearance, he spent a significant amount of money to purchase the property (\$590,000) and ABC license (\$60,000), as well as additional money to bring the property into compliance for building permit related issues, and that he was "tricked" into taking certain actions and spending a tremendous amount of money.

To estop the City from applying its Nonconforming Use Regulations, the appellant must demonstrate each of the following elements: (1) the City was apprised of the facts; (2) the City intended that the appellant rely on its conduct, or acted so the appellant had a right to believe so; (3) the appellant was ignorant of the true state of facts; (4) the appellant must have reasonably relied on the City's conduct to his injury; and (5) the injustice is so great as to justify any effect upon public interest or policy which would result from the raising of estoppel. Estoppel is not applied against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy; moreover, estoppel is not invoked except in rare circumstances.

The City should not be estopped from applying its Nonconforming Use Regulations based on Zoning staff's October 17 update to the previous zoning clearance. The appellant cannot establish elements (3) through (5), above: the appellant cannot show that he was ignorant of the true state of facts; the appellant's reliance on the City's zoning clearance update was unreasonable; and the appellant cannot demonstrate that the injustice of applying for a Major CUP and Major Variance outweighs the City's policy preference against nonconforming uses such as Alcoholic Beverage Sales Commercial Activities.

First, the appellant cannot show that he was ignorant of the true state of facts. The appellant holds multiple ABC licenses in Oakland through which he had direct experience with the transfer and rules of such licenses, including the 90 day clock under the Nonconforming Use Regulations. The appellant presented evidence to Zoning staff supporting a June 30 store closure date and knew that Midtown Market surrendered its ABC license on August 8, yet did not make an effort to apply for a Building Permit until November 12, which is far more than 90 days after the business closed (even using the appellant's store closure date). The appellant also knew or reasonably should have known that the store's physical condition would have made the commencement of alcoholic beverage sales within the ensuing 90-day period practically impossible without obtaining a Building Permit. A photograph from May 20 depicts a space with no shelving, barren walls and a cracked floor, conditions that required substantial improvements before the appellant could begin alcoholic beverage sales. The appellant also planned to transform the property from a convenience market to a supermarket and began unpermitted façade and interior work in late October.

Second, the appellant's reliance on the City's updated Zoning Clearance to his detriment was unreasonable. The appellant claims to rely on an updated Zoning Clearance that purportedly led him to believe that he had secured all necessary City approvals to resume alcoholic beverage sales at this location. There is no question that the appellant needed to secure additional permits before he could resume operation of alcoholic beverage sales at this property. On October 17, the date of the updated Zoning Clearance, he had yet to obtain a Building Permit and Design Review approval from the City and a license from ABC. The speedy and smooth processing of all these permits is far from certain. Absent a Building Permit, Design Review approval, and an ABC license, the updated Zoning Clearance alone would not have authorized the appellant to begin alcoholic beverage sales.

The issuance of a Building Permit and the Design Review process involve significant amounts of lead time, and the appellant did not attempt to submit either application until November 12. Although the appellant submitted a floor plan on October 17, the updated Zoning Clearance in no way constituted City approval of the floor plan. Even though the appellant filed an application for a transfer license with ABC on August 14, the filing of the application itself is not equivalent to the actual transfer of the license, which, according to the ABC's FAQs, by law cannot be issued for a minimum of 30 days, and can take approximately 55-65 days (although circumstances can result in longer waiting periods). For this reason, the FAQs caution applicants regarding extensive financial commitments and clearly state that "neither the transferor nor the transferee should assume that the license will be transferred on a particular date, or at all, merely because the application has been filed." The FAQs also provide, "If new construction or considerable remodeling is necessary, the applicant should seek prior approval under Section 24044 [Licenses for premises under construction] before beginning any actual work." Without a valid Building Permit, Design Review approval, or ABC license in hand, it is unlikely that a reasonable person would have taken steps to close on a property worth upwards of \$700,000. The appellant took a calculated risk in purchasing the property without having obtained all required approvals, and the uncertainty of his plans makes his singular reliance on the October 17 updated Zoning Clearance unreasonable.

Finally, the appellant cannot reasonably claim that he was misled by staff because the appellant is an experienced alcohol retailer in Oakland and has knowledge of the City and ABC licensing requirements. The appellant owns a building at 7838 International Boulevard that he operates as a "Supermarket" (Zoning Clearances issued in 2005; ABC License #21 issued in 2006), and he operates (but does not own) a

"Supermarket" at 7000 Bancroft Avenue (CUP issued in 2003; ABC License #21 issued in 2004) and an "Express" market at 5908 San Pablo Avenue (Zoning Clearance issued 2014; ABC License #20 issued in 2015). Equipped with this knowledge and experience, particularly his operation of the San Pablo "Express" market, the appellant should have been well aware of both the ABC process and City regulations and required permits.

Finally, the appellant's harm does not outweigh the strong policy preference the City has adopted against nonconforming uses like Alcoholic Beverage Sales Commercial Activities. The City has adopted a strong policy preference against Alcoholic Beverage Sales Commercial Activities; to estop the City from applying its Nonconforming Use Regulations would defeat this policy. The appellant does not dispute that the business closed and active operation of alcoholic beverage sales commercial activity discontinued for more than 90 days, and does not cite any authority that would prevent the City from applying its Nonconforming Use Regulations.

The City's Nonconforming Use Regulations are clear, unambiguous and legitimate. The City's ordinance was duly enacted decades ago and has been consistently enforced. Staff has issued numerous Deemed Approved lapsing letters over the years and the Planning Commission has consistently denied the appeals and upheld the staff decisions, even against claims that the appellants were unable to resume operations within the 90-day period due to illnesses, closure for business or other "involuntary" reasons. For example, (1) 8607 Bancroft Avenue was sent a Deemed Approved Lapse letter that was upheld by the Planning Commission even though the appellant property owner maintained that the tenant had surrendered the ABC license and ceased sale of alcoholic beverages without the appellant property owner's knowledge; (2) a bar at 4768 International Boulevard appealed a lapse wherein the owner had been in an automobile accident, and the Commission upheld the lapse letter; (3) a bar at 5919 Foothill Boulevard appealed a lapse because the owner had died, and the Commission upheld the lapse letter; (4) a market selling beer and wine at 799 17th Street appealed a lapse because the owner was ill, and the Commission upheld the lapse letter; (5) a bar at 3000 MacArthur Blvd appealed the lapse determination because the operator did not have their lease renewed and vacated the premises, and the Commission upheld the lapse letter; and (6) a convenience market at 1854 Church Street appealed a lapse due to an insurance dispute over an automobile collision that resulted in closure, and the Commission upheld the lapse letter. The strict enforcement of the 90-day lapsing rule is consistent with the City's long-standing policy of reducing the number of alcohol outlets; indeed, it is one of the more effective tools in this regard.

Moreover, the harm that the appellant would suffer does not outweigh the City's policy. The City's application of the Nonconforming Use Regulations does not prohibit the appellant from operating an "Express" market at this location. The appellant may still operate an "Express" market without a Major CUP (Note, however, that the appellant would be required to obtain a Minor CUP for any floor area expansion of the food market). To resume alcohol sales, the appellant would be required to obtain a Major CUP and Major Variance. As stated above, the City has consistently applied strict interpretation of its Nonconforming Use Regulations. In this case, estoppel would effectively nullify the City's policy preference relating to nonconforming uses, and would not advance the principles of equity.

(3) The City reversed its decision based on pressures from outside influences and neighborhood opposition including that of a nearby school which was interested in purchasing the property.

STAFF'S RESPONSE

The City did not issue the Determination Letter based on pressure from the community or neighborhood opposition. Neighbors have expressed opposition to the sale of alcohol at this particular location since at least 2005 and to the continued sale of alcohol by Gazzali's since early July, well before issuance of the Determination Letter, when Zoning staff corrected its previous mistakes. The public has the right to submit both verbal and written comments on any application, and Zoning staff invariably receives comments both

support and opposition from various stakeholders. The duty of Zoning staff is to apply the City's regulations to the specific facts of each case and to consider the totality of the evidence in the record when making a decision.

(4) The City has an agenda to eliminate existing liquor stores/markets and to generate fees requiring applicants to proceed through various administrative and/or other actions to preserve their rights.

STAFF'S RESPONSE

It is true that the City has adopted a strong policy preference against Alcoholic Beverage Sales Commercial Activities. As discussed in detail above, the purpose of the Nonconforming Use Regulations and the performance standards is to control dangerous or objectionable environmental effects of Alcoholic Beverage Sales Commercial Activities. These regulations were duly enacted by the City Council decades ago and strict enforcement of the 90-day lapsing rule is consistent with the City's long-standing policy of reducing the number of alcohol outlets in Oakland.

The City is authorized to collect fees as set forth in the Master Fee Schedule. The fees are cost recovery fees that reimburse the City for its costs related to issuing permits and administering the permitting process.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines statutorily and categorically exempt specific types of projects from environmental review. Section 15321 categorically exempts enforcement actions by regulatory agencies; Section 15270 statutorily exempts projects that are disapproved (that is, which a public agency rejects). The determination letter indicating a legal nonconforming land use had lapsed pursuant to the City's Planning Code conforms to Section 15321. Staff's recommendation to disapprove this appeal conforms to Section 15270. Hence, these actions are exempt from Environmental Review.

CONCLUSION

The appellant has not cited any authority that would prevent the City from applying its Nonconforming Use Regulations. The appellant has similarly presented no evidence that the City has erred in applying the law to him. Given the absence of relevant legal authority or evidence of error to call into question the Zoning Manager's determination, the Planning Commission should find that Appellant's legal nonconforming use has lapsed because the active operation of Alcoholic Beverage Sales Commercial Activity (i.e. the sale of alcoholic beverages) at 2935-2941 discontinued for a continuous period of more than 90 days.

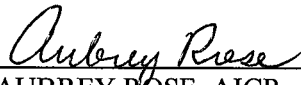
Staff finds that the lapse of use constitutes a substantial change in mode or character of the operation that is clearly addressed by and subject to the language and intent of the Planning Code. Staff points out that the legal nonconforming small food market with tobacco sales can be re-opened in the former market space without sale of alcoholic beverages within twelve months of the May 6 closure date. The sale of alcohol with or without an expansion will require a Major Cup and a Major Variance, and an expansion of the food market only without alcohol will require a Minor CUP.

In conclusion, staff finds that the appellant has not shown that the Zoning Manager's determination was made in error, that there was an abuse of discretion by the Zoning Manager, or that his decision was not supported by evidence in the record. The Zoning Manager correctly applied the City's Nonconforming Use Regulations to the facts of this case in making his administrative determination. Staff, therefore, recommends that the Planning Commission deny the appeal and uphold the Zoning Manager's determination that the Deemed Approved/legal non-conforming status of the establishment at 2935-2941 Coolidge Avenue was permanently extinguished because active operation of Alcoholic Beverage Sales Commercial Activity was discontinued for more than ninety (90) days.


RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Deny the appeal and uphold the Zoning Manager's determination because active operation of alcoholic beverage sales commercial activity was discontinued for more than 90 days, including the specific finding that the lapse of use constitutes a substantial change in mode or character of the operation.


Prepared by:


AUBREY ROSE, AICP
Planner III

Approved by:


SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:


DARIN RANELLETTI, Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Zoning Manager's determination (lapse) letter dated November 21, 2014
- B. Appeal letter submitted December 1, 2014 with Exhibits
- C. Zoning Clearance worksheet dated August 5, 2014
- D. Neighbor's photographs with computer-encrypted dating of May 20, 2014
- E. ABC license query system summary

LEGAL NOTICE: This action of the Planning Commission is final and is not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of this decision, unless a different date applies.



CITY OF OAKLAND
BUREAU OF PLANNING / ZONING DIVISION
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Phone: 510-238-3911 Fax: 510-238-4730

DETERMINATION LETTER

VIA CERTIFIED MAIL

November 21, 2014

Mr. Mike Al-Gazzali/Gazzali's Supermarket
1210 Estudillo Avenue
San Leandro, CA 94577

Re: (1) Partial Rescission of 2014 Zoning Clearance;
(2) Determination of Lapse of Nonconforming Alcoholic Beverage Sales
at 2935-2941 Coolidge Avenue (APN: 027-0853-001), formerly "Midtown Market"

Dear Mr. Al-Gazzali:

The City of Oakland issued a Zoning Clearance for the Subject property on August 5, 2014 for resumption of "General Food Sales Commercial Activity" (food market with meat and produce) and updated the Zoning Clearance for resumption of nonconforming alcoholic beverage sales (beer and wine) and tobacco sales, and, sales floor area expansion for a nonconforming alcoholic beverage sales business.

This Determination Letter is to inform you that the alcoholic beverage sales and store expansion components of the August 5, 2014 Zoning Clearance must be rescinded due to lack of active operation of alcoholic beverage sales for a period of more than ninety days pursuant to Section 17.114.050(B) of the Oakland Planning Code.

Although the Zoning Clearance was issued within the required ninety day timeframe, the issuance does not stop the clock and the subject property has now ceased alcoholic beverage sales for a period in excess of 90 days. All City and State reviews and your efforts notwithstanding, City regulations are not met and the Zoning Clearance must be partially rescinded (alcoholic beverage sales and expansion).

Floor-area expansion is allowed by the Planning Code for nonconforming alcoholic beverage sales but not for other nonconforming uses. Because the floor-area expansion is tied to nonconforming alcoholic beverage sales and such sales are disallowed, the floor-area expansion component of the Zoning Clearance is also rescinded.

Background: Previously, the sale of alcoholic beverages at this location was considered to be a legal non-conforming activity because it existed before 1977 when the City of Oakland enacted the Conditional Use Permit process for Alcoholic Beverage Sales Commercial Activities (i.e. liquor stores, bars, grocery stores, and restaurants in some areas). The legal non-conforming status has since become known as Deemed Approved upon the enactment of Oakland Planning Code (OPC) Chapter 17.156 Deemed Approved Alcoholic Beverage Sale Regulations in 1993. The Deemed Approved/legal non-conforming status is permanently extinguished if the active operation of Alcoholic Beverage Sales Commercial Activity is discontinued for more than ninety (90) days (OPC section 17.114.050(B)).

ATTACHMENT A

The Zoning Manager has determined that the active operation of Alcoholic Beverage Sales Commercial Activity (i.e., the sale of alcoholic beverages) at 2935-2941 Coolidge Avenue discontinued on or around **May 6, 2014**, for a **continuous period of more than 90 days**. This constitutes a substantial change in mode and/or character of operation. The Deemed Approved/legal non-conforming status for alcoholic beverage sales is thus extinguished and such sales can no longer be resumed unless you obtain a Conditional Use Permit and any other applicable Zoning Approvals pursuant to the Planning Code, or, are granted an appeal of this decision as described below.

This decision is appealable to the Oakland City Planning Commission and such appeals **must** be filed by no later than ten (10) days from the date of this letter (**December 1, 2014**). An appeal shall be on a form provided by the Bureau of Planning / Zoning Division, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Aubrey Rose AICP, Planner II**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Administrator or wherein his/her decision is not supported by substantial evidence and must include payment of **\$1,352.91** in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court.

If you have any questions or concerns, please contact **Aubrey Rose AICP, Planner II** at **(510) 238-2071** or arose@oaklandnet.com; however, such communication is not a substitute for filing an appeal in accordance with the above procedures.

Sincerely,



Scott Miller
Zoning Manager

CC:
Members of the Community including NCPC
City Attorney's Office
City Administrator's Office
Oakland Police Department / Alcoholic Beverages Action Team
State of California / Department of Alcoholic Beverage Control



RECEIVED
DEC 1 2014
City of Oakland
Planning & Zoning Division

CITY OF OAKLAND
APPEAL FORM
FOR DECISION TO PLANNING COMMISSION, CITY
COUNCIL OR HEARING OFFICER

PROJECT INFORMATION

Case No. of Appealed Project: _____
Project Address of Appealed Project: 2935-2941 Coolidge Avenue Oakland, California
Assigned Case Planner/City Staff: Aubrey Rose

APPELLANT INFORMATION:

Printed Name: Gazzalis Express Corp. Phone Number: 510-377-1207
Mailing Address: 1210 Estudillo Avenue Alternate Contact Number: 510-569-8159
City/Zip Code San Leandro Representing: _____
Email: mikegazzali@yahoo.com

An appeal is hereby submitted on:

☒ **AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

YOU MUST INDICATE ALL THAT APPLY:

- ☐ Approving an application on an Administrative Decision
☒ Denying an application for an Administrative Decision
☒ Administrative Determination or Interpretation by the Zoning Administrator
☒ Other (please specify) Rescission of 2014 Zoning Clearance and Determination of Lapse of Nonconforming Alcoholic Beverages Sales

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☒ Administrative Determination or Interpretation (OPC Sec. 17.132.020)
☐ Determination of General Plan Conformity (OPC Sec. 17.01.080)
☐ Design Review (OPC Sec. 17.136.080)
☐ Small Project Design Review (OPC Sec. 17.136.130)
☐ Minor Conditional Use Permit (OPC Sec. 17.134.060)
☐ Minor Variance (OPC Sec. 17.148.060)
☐ Tentative Parcel Map (OMC Section 16.304.100)
☐ Certain Environmental Determinations (OPC Sec. 17.158.220)
☐ Creek Protection Permit (OMC Sec. 13.16.450)
☐ Creek Determination (OMC Sec. 13.16.460)
☐ City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
☐ Hearing Officer's revocation/impose or amend conditions (OPC Secs. 17.152.150 &/or 17.156.160)
☒ Other (please specify) Partial Rescission of 2014 Zoning Clearance

(continued on reverse)

(Continued)

- ☐ **A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** ☐ Granting an application to: OR ☐ Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☐ Major Conditional Use Permit (OPC Sec. 17.134.070)
- ☐ Major Variance (OPC Sec. 17.148.070)
- ☐ Design Review (OPC Sec. 17.136.090)
- ☐ Tentative Map (OMC Sec. 16.32.090)
- ☐ Planned Unit Development (OPC Sec. 17.140.070)
- ☐ Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- ☐ Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- ☐ Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- ☐ Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- ☐ Other (please specify) _____

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed.)*

The city's planning and zoning codes as it relates are unconstitutional.

The City has acted in excess of its jurisdiction; The city has acted without jurisdiction; The city has failed to proceed in the manner required by law; The city has made a decision without substantial

evidence to rescind its prior approval, which the applicant justifiably relied upon; the city is estopped from taking the present action based on its own acts upon which applicant justifiably relied upon

to applicant's detriment; The city's ordinance (and its application in this matter) is unreasonable and cannot be supported as it unreasonably deprives an operator's of a right without exceptions for

circumstances and/or intervening acts, to include, but not be limited to, acts by city staff. Applicant acquired the property in question upon which an off-sale alcoholic beverage licenses was issued/located.

The liquor license at the location was active up until August 8, 2014. The applicant thereafter filed an ABC transfer application 8 days later, on August 14, 2014. The surrendering of the license and the submitted

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.*

(Continued on reverse)

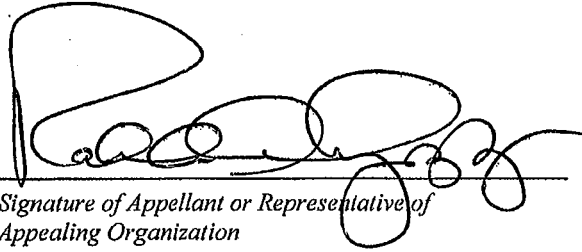
of the transfer application were made as a direct result of the ABC 255 Zoning Affidavit being signed off by city staff on or about July 17, 2014. Thereafter, the applicant, in furtherance of purchasing the property and ABC liquor license, applied for a business license with the city. On or about August 5, 2014 the applicant filed for an Oakland city business licenses and was directed to zoning to obtain zoning clearance. After nearly two months of back and forth the applicant had not received any determination. It was only upon the applicant's urgent pleas to the city, based on that the loan for the purchase of the property which was set to expire, did applicant receive an email from Aubrey Rose, a copy of which is attached hereto, giving the applicant the "OK" on the continued sales of alcoholbeverages and the expansion so proposed. Despite filing on August 5, 2014, the City did not issue the zoning clearance until October 17, 2014 (contrary to the November 21, 2014 city letter which erroneously implies that the applicant sat idle since August 5, 2014 as a basis to rescind the approval). Based on the explicit email provided by Mr. Rose and reliance thereon, the applicant proceeded with the purchase of the property for \$590,000.00 and the alcoholic beverage license for an additional \$60,000.00. Mr. Rose knew of the pending loan and the investments being or to be made by the applicant at the time he prepared and sent the October 17, 2014 email. In addition thereto, in the month's proceeding the issuance of the zoning clearance by Mr. Rose and the city imposed requirements on the applicant to obtain certain permits before it could open, requiring a hearing in connection therewith. Applicant fully complied and processed the required permits through the city which never raised any issue as it relates to the alleged grounds for which it now relies to rescind the approval. The applicant purchased the property with the sole intent on operating the same or similar use which had been upon the property for over 20 years. The applicant only purchased the property upon receiving the zoning clearance by Mr. Rose, a fact which is clearly evident by the email exchanges between the applicant and Mr. Rose (in which the applicant advises Mr. Rose of the impending cancellation of the loan, etc.) After spending tens of thousands of dollars brining the property into compliance per the city's request/demand, nearly \$700,000.00 in acquiring the property and liquor license and most importantly, relying on the city's zoning clearance dated October 17, 2014, the city has now pulled the rug out from under the applicant and sent a letter dated November 21, 2014 (which was also copied to the Department of Alcoholic Beverage Control) in which they reverse their position and rescind the previous approval for the continued sale of alcohol beverages and the expansion requested. The city had months and months from when the applicant first approached the city for the appropriate clearances to research and make an adequate determination. We are informed and believe that that decision was correctly made by Mr. Rose on October 17, 2014. We are further informed and believe that the city is acting in contravention to their previous approval based on pressures from outside influences to include the nearby school which was interested in purchasing the property.

The applicant has spent significant money in reliance of the representations made by the city to purchase the real property and liquor license at issue. In addition, the city mandated that the applicant spend additional money brining the property into compliance for building permit related issues. Applicant is informed and believes that it was tricked into taking certain actions and spending a tremendous amount of money and that the city has an agenda to eliminate existing liquor stores/markets, to include this location, generate fees requiring applicants to proceed through various administrative and/or other actions to preserve their rights. The applicant is informed and believes that the city of Oakland has promulgated a plan to eliminate these types of existing uses through their zoning, planning code provisions and through negligent, nefarious and/or intention acts by city staff. Applicant is further informed and believes that the nearby school, which was seeking the purchase the

property at issue, also as poisoned the well so to speak and city staff has acted in contravention to the regulations, codes and ordinances of the city of Oakland, the state of California and its constitution.

Since we are not fully informed as to what inter office actions may have taken place or communications received by the city from "third parties" we reserve the right to provide additional arguments and/or evidence which may be uncovered during the appeal process.

(Continued)


Signature of Appellant or Representative of
Appealing Organization

12/1/14
Date

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

Mike Gazzali
Gazzalis Supermarket
7000 Bancroft ave
Oakland CA 94605
510 569-8159 PH
510 569-8162 Fax
510 377-1207 Cell

Begin forwarded message:

From: Mike <mikegazzali@yahoo.com>
Date: October 20, 2014 at 11:03:35 AM PDT
To: "anneata.williams@abc.ca" <anneata.williams@abc.ca>
Subject: Fwd: 2935-2941 Coolidge Avenue

Mike Gazzali
Gazzalis Supermarket
7000 Bancroft ave
Oakland CA 94605
510 569-8159 PH
510 569-8162 Fax
510 377-1207 Cell

Begin forwarded message:

From: "Rose, Aubrey" <ARose@oaklandnet.com>
Date: October 16, 2014 at 11:16:32 AM PDT
To: <mikegazzali@yahoo.com>
Cc: "Miller, Scott" <SMiller@oaklandnet.com>, "Martinez, Ana" <AMartinez@oaklandnet.com>
Subject: 2935-2941 Coolidge Avenue

Mike,

The zoning division has completed researching the evidence and determined your 8/5/14 zoning clearance for change of ownership at the Subject property is OK to include continued sale of beer and wine - it has been sufficiently determined that this deemed approved establishment did not shut

down more than 90 days prior to that date

Please contact me for an appt to update your zoning clearance and sign an ABC zoning affidavit - be sure to provide a revised floor plan to include the added left-side space if you have not already done so - I'm in today until 4pm, back tomorrow at 8am - we can address any other issues at that time

I recommend continuing to coordinate with the Neighborhood Services Coordinator, to introduce the new market at the next NCPC meeting - I can attend that meeting - thanks again for your patience

Sincerely,
Aubrey

Aubrey Rose AICP, Planner II | City of Oakland | Bureau of Planning / Zoning Division | Dalziel Building / 250 Frank H. Ogawa Plaza, 2nd Floor | Oakland CA 94612 | phone: (510) 238-2071 | fax: (510) 238-4730 | email: arose@oaklandnet.com | website: www.oaklandnet.com/planning

PAGE 1 OF 13
NO. PAGES 14

September 19, 2014

Scott Miller
250 Frank H. Ogawa Plaza
Oakland, CA 94612
Fax: (510) 238-4730 & Ely Serran @ (510) 238-3600

RE: 2941 Coolidge Avenue -- continuance permit (an agenda by Aubrey Rose)

Dear Scott:

From the lengthy discussions, and the constant appearance in front of Aubrey Rose at the zoning counter, as it seems that Aubrey has a totally different agenda. This we have concluded yesterday per our constant communications with him. We had heated discussions in regards to our application.

And, as we have been continuously told, the continuance of the use permit for the liquor license for the above mentioned site will never be approved. Per his own words, even as we are in the 90 day period, he would still request demonstration of evidence in compliance to the 90 day period. Evidences provided per his opinion were never satisfied. This He clearly stated.

We always rely on the personnel over the counter for these applications and compliances. Aubrey has intended to miss inform or miss lead us of this proceedings and throwing our application off track. There is another form that as he mentioned, was not necessary for us to know, per his discussions with David Valeska per application.

Per discussions with Ely Serran from the City attorney's office, I have learned that the closing date as stated per Aubrey's determination, using the photos submitted by email on June 15, 2014, shows May 20, 2014. He has always stated that he received the pictures June 15, 2014.

Questions that need to be answered.

1. Digital pictures with dates can be changed, not as original though or disclosed by camera manufacturers when it first hit the market.
2. Was the pictures taken legally or given permissions that is admissible to court for evidence purposes. If the pictures where taken with out permission, it can not be used!
3. The police report of closure was on June 17, 2014.
4. The statement signatures by 3 neighbors with a June 30, 2014 claims of closure is an error on our part, estimating the closure date to be June 30, 2014, however neighbors still signed the presented document.
5. The approval of July 17, 2014 by David Valeska as initialed OK was considered compliance to the continuance of the use permit so subsequently, it was not applied for per

GL+A Civil Engineers
C/o JYK Investments
39812 Mission Blvd., Fremont, CA 94539

PAGE 2 OF 13

August 5, 2014 application with no statements or references to liquor sales. Per Aubrey's statements, if it included liquor, it would have been approved.

6. Per your database information in regards to this address, dates back to 1989 +/- with no record of use permit, however per google pictures show a sign that the zoning department heavily and strictly regulate the presence of liquor and grocery sale.

He also clearly stated his position of denial and the 10 day period for an appeal to the planning commission and we responded out of frustration, that the appeal will have his name all over it.

It has come to light that the City of Oakland has an agenda and not publicly disclosed the suspension of liquor licenses in these neighborhoods. It would be appropriate to have a public program to notify the current liquor licensed owners of this intension and not mislead renewal applications.

In addition, Aubrey questioned and argued the following:

1. The store was still closed per his drive by assessment.
2. We don't have a liquor license.
3. The word "you guys" don't have the authority to address issues for the owners for reasons that we don't know the closing date.

Please see attached copy of the liquor license and email from the bank for the purchase loan extension and closure of escrow as we are trying to satisfy.

This is the 3rd letter of response and he seems not to make any sense in these meetings. I feel like that my Miranda rights was not read prior to making any answer to Aubrey's questions.

As it seems, quoting 17.114.050 B and subsequent sub articles 17.103.030.B. and 17.134, 17.114.050 A and section 17.114.060 has produced no intelligent responses.

I need you to make that decision to continue the use permit and complete a real application if necessary for the reason that our efforts was well within the 90 day period as stated by 17.111.050 B today, as the "more than 90 day period" may also apply to the zoning department as you are part of this community to deliver fair and UN prejudiced oversight.

Scott, I am hoping for consideration, thank you for your efforts and have a wonderful day.

Sincerely;



Ralph M. Masloff

TEL 510-386-5477

CC: Eli Serran - City attorney's office, Gazzallis Express Corporation, John Kim Broker

GL+A Civil Engineers
C/o JYK Investments
39812 Mission Blvd., Fremont, CA 94539

Record ID: ZC141854

Menu

Reports

Help

File Date: 08/05/2014Application Status: ApprovedApplication Detail: DetailApplication Type: Zone ClearanceAddress: 2840 COOLIDGE AVE, Oakland, CA 94602Owner Name: CHO YOUNG S & JENNY LOwner Address: 21725 MEENLAND AVE, HAYWARD, CA 945413885Application Name: Change of Ownership for an existing MarketParcel No: 027 05500101Description of Work: Zone Clearance for change of ownership for an existing Produce/Meat market. Previously approved under:

Contact Info: Name	Organization Name	Contact Type	Relationship
<u>Gazzals Express Corp.</u>	<u>Gazzals Express</u>	Applicant	
<u>Gazzals Express</u>	<u>Gazzals Express</u>	Proprietor	

Job Value: \$0.00Total Fee Assessed: \$40.15Total Fee Invoiced: \$40.15Balance: \$0.00

Workflow Status: Task	Assigned To	Status	Status Date
<u>Application Intake</u>		Ready for Pa	08/05/2014
<u>Closure</u>		Paid and App.	08/05/2014

Condition Status: Name	Short Comments	Status	Apply Date
<u>PARCEL COMMENT</u>	Previous owner's address	Completed	01/19/2014

Application Specific Info:	APPLICATION QUESTIONS	Number of Employees
Proposed Hours		2
Sign Sign		New or Modified Sign
Include Manufacturing		No
No		

ADDITIONAL QUESTIONS

Year of Construction	Floor Level
Square Footage	

PROPERTY INFORMATION

General Plan Designation	Service District
<u>Mixed-Use Type (Residential)</u>	5
Council District	
<u>COUNCIL DISTRICT 5</u>	

USE INFORMATION

Use Classification	Use Type	Use Section

Initiated by Product: AV360

Record ID: ZC141854

Cancel

Reports

Help

Comment

Zoning OK to amend 10-17-14 ZC to allow continuation of sale of beer and wine, expand market into smaller left-side space. No changes will require design review. AER w/ SM 10-17-14

Apply to Inspections

DISPLAY CONSPICUOUSLY AT PLACE OF BUSINESS FOR WHICH ISSUED

CALIFORNIA STATE BOARD OF EQUALIZATION

SELLER'S PERMIT



09/01/2014 SR CH 102-611435

GAZZALIS

GAZZALIS EXPRESS CORP.

2941 FORD RD

OAKLAND, CA 94602-2717

NOTICE TO PERMITTEE
This permit is issued to you by the State Board of Equalization. It is your responsibility to comply with all applicable laws and regulations. The permit is valid for the period of time indicated on the permit.

THIS PERMIT IS ISSUED PURSUANT TO SALES AND USE TAX LAW TO PERMIT THE PERMITTEE TO SELL MERCHANDISE IN THE STATE OF CALIFORNIA. THE PERMITTEE IS REQUIRED TO COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS.

THE PERMITTEE IS REQUIRED TO MAINTAIN PROPER RECORDS AND TO FILE SALES AND USE TAX RETURNS ON TIME. THE PERMITTEE IS ALSO REQUIRED TO COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS.

For more information, please contact the Taxpayers' Rights Advocate Office at 888-324-2798 or 916-324-2798.

For general tax questions, please call our Information Center at 800-400-7115.

For information on your rights, contact the Taxpayers' Rights Advocate Office at 888-324-2798 or 916-324-2798.

CLP-102-611435-001

A MESSAGE TO OUR NEW PERMIT HOLDER

As a seller, you have rights and responsibilities under the Sales and Use Tax Law. In order to assist you in your endeavor and to better understand the law, we offer the following sources of help:

- Visiting our website at www.sde.ca.gov
- Visiting a district office
- Attending a Basic Sales and Use Tax Law class offered at one of our district offices
- Submitting your questions in writing to any one of our offices
- Calling our toll-free Information Center at 800-400-7115

As a seller, you have the right to issue resale certificates for merchandise that you intend to resell. Conversely, you have the responsibility of not misusing resale certificates. While the sales tax is imposed upon the retailer,

- You have the right to seek reimbursement of the tax from your customer
- You are responsible for filing and paying your sales and use tax returns timely
- You have the right to be treated in a fair and equitable manner by the employees of the Board
- You are responsible for following the regulations set forth by the Board

As a seller, you are expected to maintain the normal books and records of a prudent businessperson. You are required to maintain these books and records for no less than four years, and make them available for inspection by a Board representative when requested. You are also expected to notify us if you are buying, selling, adding a location, or discontinuing your business, adding or dropping a partner, officer, or member, or when you are moving any or all of your business locations. If it becomes necessary to surrender this permit, you should only do so by mailing it to a Board office, or giving it to a Board representative.

If you would like to know more about your rights as a taxpayer, or if you are unable to resolve an issue with the Board, please contact the Taxpayers' Rights Advocate Office for help by calling toll-free, 888-324-2798 or 916-324-2798. Then fax number is 916-324-3319.

Please post this permit at the address for which it was issued and at a location visible to your customers.

STATE BOARD OF EQUALIZATION

Sales and Use Tax Department

**CITY OF OAKLAND
BUSINESS TAX CERTIFICATE**

**ACCOUNT
NUMBER**
28045944

The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 85.08.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

GAZZALI'S EXPRESS CORP.

EXPIRATION DATE
12/31/2014

BUSINESS LOCATION 2941 COOLIDGE AVE
OAKLAND, CA 94602-2717

BUSINESS TYPE B Grocers



NAME RAHBAN ALGAZZALI
MAILING ADDRESS 1210 ESTUDILLO AVE
SAN LEANDRO, CA, 94577-3959



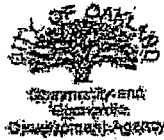
A BUSINESS TAX
CERTIFICATE IS REQUIRED
FOR EACH BUSINESS
LOCATION AND IS NOT
VALID FOR ANY OTHER
ADDRESS.

YOU MAY BE REQUIRED
TO OBTAIN A VALID
ZONING CLEARANCE TO
OPERATE YOUR BUSINESS
LEGALLY. RENTAL OF
REAL PROPERTY IS
EXCLUDED FROM ZONING.

PUBLIC INFORMATION
ABOVE THIS LINE TO BE
CONSPICUOUSLY POSTED.

Page 8 of 13

August 5, 2014 Application - did not include liquor



CITY OF OAKLAND

ZONING CLEARANCE FOR

BUSINESS TAX LICENSE

A Zoning Clearance is required for all new or relocated businesses in order to verify that the type of business you are proposing is permitted by the City's Zoning Regulations at that location.

BUSINESS ADDRESS: 2941 Coolidge Ave

APPLICANT INFO: NAME: Gazzalis Express Corp.

HOME ADDRESS: 1210 Estudillo Ave

CITY, STATE, ZIP: San Leandro CA 94577

PHONE NUMBER: 510 377-1207

BUSINESS NAME: Gazzalis Express

TYPE OF BUSINESS, DESCRIPTION OF BUSINESS ACTIVITIES: Retail Food
Market meat / produce / Deli (ZOD52484) ←
Tobacco

PROPOSED HOURS OF OPERATION: 8 Am - 8 PM NUMBER OF EMPLOYEES: 2-3

WILL THE BUSINESS BE LOCATED WITHIN YOUR HOME OR APARTMENT? ☐ YES ☒ NO

WILL THE BUSINESS INVOLVE ANY MANUFACTURING ON THE PROPERTY? ☐ YES ☒ NO

WILL THE BUSINESS REQUIRE ANY NEW OR MODIFIED SIGNS? ☐ YES ☒ NO

WILL THE BUSINESS REQUIRE ANY CHANGES TO THE BUILDING? ☐ YES ☒ NO
(Please note that certain building uses may require a change in building occupancy prior to establishing new use.)

Please take this worksheet to the 2nd floor and go to the "INFORMATIONAL SIGNET BOARD" counter.
 When your number is called a glazer will assist you at the Zoning Counter.
 Please fill out this form while you wait.

PLEASE NOTE: THIS CLEARANCE COVERS ZONING PERMITS ONLY.
 OTHER PERMITS SUCH AS BUILDING, FIRE, CITY ADMINISTRATION OR OTHER
 COUNTY/STATE PERMITS MAY BE REQUIRED PRIOR TO COMMENCING YOUR
 BUSINESS. PLEASE CONTACT THE APPROPRIATE AGENCY
 TO DETERMINE IF FURTHER PERMITS ARE NECESSARY.

Signature of applicant and date: [Signature] Date: 8/5/14

Version 2.0

APP# 027-0853-001-00

CON 14/1854

Per Aubrey's comment - it would have been approved if only stated

Record View Detail Portlet

Page 1 of 1

Record ID: ZC141854

Menu Save Reset Update View Log Reports Help

Page 9 of 13

Record #
ZC141854Opened Date
08/05/2014

Status

Approved

Type

Planning Application/Conditional Zoning Clearance

Application Name

Change of Ownership for an existing Market

Assigned to Department Current Department Assigned to Staff Current User

Zoning Review

Michael Bradley

Description

Zoning Clearance for change of ownership for an existing Produce/Meat market
Previously approved under ZC032484.

Check app fee

Total Invoiced
40.15Total Paid
40.15Balance
0.00System ID
14CAP-00000-10672

continuance & change of ownership

Department of Alcoholic Beverage Control
ZONING AFFIDAVIT

State of California
EDWARD G. BOGGS, Jr., Governor

Page 10 of 13

Instructions to the Applicant: Complete Items 1 - 14. Sign and date the form and submit it to ABC.

1. APPLICANT'S NAME (Last, first, middle)

Gazzari's Express Corp.

2. PREMISES ADDRESS (street number and name, city, state, zip code)

2935 91 COOLIDGE AVE OAKLAND CA 94607

3. PARCEL NUMBER OF PROPERTY (county assessor's office)

027 085300100

4. TYPE OF LICENSE APPLIED FOR

20

5. LICENSE OF LICENSED PROVIDER

Yes

No

6. CURRENT LICENSE TYPE AT THIS LOCATION, IF ANY

20

7. TYPE OF BUSINESS (e.g., restaurant, tavern, etc.)

GROCERY STORE

8. ARE THE PREMISES INSIDE THE CITY LIMITS?

Yes

No

For answers to Questions 9 - 14, contact your local city OR county planning department (if inside the city limits, contact city planning; if outside, contact county planning).

9. HOW ARE APPLICANT'S PREMISES ZONED? STATE TYPE (e.g., "C" commercial, "R" residential, etc.)

10. DOES EXISTING PERMIT PREVENT USE?

Yes

No

11. IS A CONDITIONAL USE PERMIT (CUP) NEEDED?

Yes

No

12. IF YES, DATE YOU FILED APPLICATION FOR CUP

HAS CUP OK'd

13. NAME OF PLANNER CONTACTED AT PLANNING DEPARTMENT

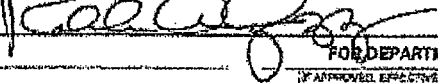
DAVID VALASKA - STEWARD

14. PLANNER'S PHONE NUMBER

510 238 2075

Under the penalty of perjury, I declare the information in this affidavit is true to the best of my knowledge.

15. APPLICANT'S SIGNATURE (and date)



16. DATE SIGNED

8/6/14

FOR DEPARTMENT USE ONLY

C.U.P. Approved

APPROVED, EFFECTIVE DATE

FILE NUMBER

C.U.P. Denied

DATE DENIED

GENERAL INFORMATION

Section 23790 of the Business and Professions Code says that ABC may not issue a retail license contrary to a valid zoning ordinance. This form will help us determine whether your proposed business is properly zoned for alcoholic beverage sales.

A conditional use permit (CUP) (Item 11) is a special zoning permit granted after an individual review of proposed land use has been made. CUPs are used in situations where the proposed use may create hardships or hazards to neighbors and other community members who are likely to be affected by the proposed use. The ABC division office will not make a final recommendation on your license application until after the local CUP review process has been completed. If the local government denies the CUP, ABC must deny your license application.

23790. Zoning ordinances. No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city.

Premises which had been used in the exercise of those rights and privileges as a time prior to the effective date of the zoning ordinance may continue operation under the following conditions:

(a) The premises retain the same type of retail liquor license within a license classification.

(b) The licensed premises are operated continuously without substantial change in mode or character of operation. For purposes of this subdivision, a break in continuous operation does not include:

- (1) A closure for not more than 30 days for purposes of repair, if that repair does not change the nature of the licensed premises and does not increase the square footage of the business used for the sale of alcoholic beverages.
- (2) The closure for restoration of premises rendered totally or partially inaccessibility by an act of God or a toxic accident, if the restoration does not increase the square footage of the business used for the sale of alcoholic beverages.

Aubrey Rose
510 238 2071

May 20, 2014 falls within the 90 day
period per July 17, 2014 compliance intent
and submittal

He signed
July 17th

Re: incident
- DV
2-14

12/1/2014

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RE: 2935-2941 Coolidge Avenue

People ★

Rose, Aubrey

Oct 16

To me

Yes, see you then

From: Mike [mailto:mikegazzali@yahoo.com]

Sent: Thursday, October 16, 2014 5:34 PM

To: Rose, Aubrey

Subject: Re: 2935-2941 Coolidge Avenue

Aubrey,

Thank you very much. I will be down there tomorrow morning between 9-10 am. For the floor plan, is a drawing like the one I made for the other store acceptable.
Please let me know.

Thank much

Mike Gazzali
Gazzali's Supermarket
7000 Bancroft ave
Oakland CA 94605
510 569-8159 PH
510 569-8162 Fax
510 377-1207 Cell

On Oct 16, 2014, at 11:16 AM, "Rose, Aubrey" <ARose@oaklandnet.com> wrote:

Mike,

The zoning division has completed researching the evidence and determined your 8/5/14 zoning clearance for change of ownership at the Subject property is OK to include continued sale of beer and wine – it has been sufficiently determined that this deemed approved establishment did not shut down more than 90 days prior to that date

Please contact me for an appt to update your zoning clearance and sign an ABC zoning affidavit - be sure to provide a revised floor plan to include the added left-side space if you have not already done so – I'm in today until 4pm, back tomorrow at 8am – we can address any other issues at that time

I recommend continuing to coordinate with the Neighborhood Services Coordinator, to introduce the new market at the next NCPC meeting – I can attend that meeting – thanks again for your patience

Sincerely,
Aubrey

Aubrey Rose AICP, Planner II | City of Oakland | Bureau of Planning / Zoning
Division | Dalziel Building / 250 Frank H. Ogawa Plaza, 2nd Floor | Oakland CA
94612 | phone: (510) 238-2071 | fax: (510) 238-4730 | email:
arose@oaklandnet.com | website: www.oaklandnet.com/planning

12/1/2014

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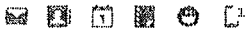
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* Gazzali's

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*

me

smiller@oaklandnet.com

Aubrey Zoning

Oct. 15

Hello Scott,

I have been trying to reach you but been unsuccessful. Like I mentioned in the voice mails I been leaving you, we are concerned about the loan and loan docs expiring this Friday and we don't feel comfortable singing off with out getting the zoning clearance.

Please get back to me ASAP.

Thanks

Mike Gazzali

Gazzali's Supermarket

7000 Bancroft ave

Oakland CA 94605

510 569-8159 PH

510 569-8162 Fax

510 377-1207 Cell

Gazzali's.com



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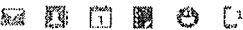
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* Fwd: Addendum #4 for 2935 Coolidge A.

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Yi Soo J. Kim

Oct 10

To me

FYI,

-----Original Message-----

From: Yi Soo J. Kim <consultjyk@aol.com>

To: michael.farias <michael.farias@bankofthewest.com>; evelarde

<evelarde@placertitle.com>

Sent: Fri, Oct 10, 2014 8:32 pm

Subject: Addendum #4 for 2935 Coolidge Ave.

Dear Mike and Elena,

As advised, we have solved the issue with the Department, City of Oakland.

The buyer advised me that our escrow will be closed in coming week.

Therefore,

please find Add. #4 the extension of this escrow until October 17, 2014.

Thank you for your patient and hope to have successful transaction for all of us.

John Kim

Add.#4_for_2935_Co.pdf

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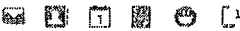
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RE: Coolidge Project

People

☆

Farias, Michael

Sep 25

To: Yi Soo J. Kim

CC: me

John,

Thanks for the update. Interest rates come down 10bps, so hopefully yc resolved asap.

Mike

Michael Farias, Business Banking Officer

2527 Camino Ramon, San Ramon, CA 94583 | T (925) 843-2652 | M (510) 501-99-

michael.farias@bankofthewest.com

BANK OF THE WEST | BNP PARIBAS GROUP

From: Yi Soo J. Kim [<mailto:consultjyk@aol.com>]

Sent: Wednesday, September 24, 2014 6:37 AM

To: Farias, Michael

Cc: mikegazzali@yahoo.com

Subject: Re: Coolidge Project

We are still waiting for the answer from the department but we discussed several

made

The Buyer is considering taking one of it. We shall have the news from the zoning

John Kim

-----Original Message-----

From: Farias, Michael <michael.farias@bankofthewest.com>

To: Yi soo Kim <consultjyk@aol.com>

Sent: Wed, Sep 24, 2014 5:38 am

Subject: Coolidge Project

Hi John,

Do you have any good news for me? When will you know if the zoning dept. will license....?

Mike

Michael Farias, Business Banking Officer

2527 Camino Ramon, San Ramon, CA 94583 | T (925) 843-2652 | M (510) 501-99-

michael.farias@bankofthewest.com

BANK OF THE WEST | BNP PARIBAS GROUP

From: Yi soo Kim [<mailto:consultjyk@aol.com>]

Sent: Tuesday, August 12, 2014 8:56 AM

To: Farias, Michael

Subject: Re: Loan Approval Ltr

Hi Mike,

Everything is ok ?

Shall we close on Aug 22?

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2 Piece Set - Swarovski
Elements Bracelets
 Price \$10
 Save 87%
Samsung Galaxy Gear
Android Smart Watch
 Price \$88
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SAVE UP TO 90% Limited Quantities

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* RE: 811-7869 Closing Funds Receipt-2935.

People

★



(From: Mike [mailto:mikegazzali@yahoo.com])

Sent: Thursday, August 28, 2014 5:11 PM

To: Elena Velarde

Cc: Yi Soo J. Kim; LB Gazzalis

Subject: Re: 811-7869 Closing Funds Receipt-2935 Coolidge Ave., Oakla

Elena

Following our conversation please DO NOT fund the loan and postpone
until further notice of zoning approval for ABC license.

Also please advise receipt of this email.

Thanks

Mike Gazzali
Gazzalis Supermarket
7000 Bancroft ave
Oakland CA 94605
510 569-8159 PH
510 569-8162 Fax
510 377-1207 Cell

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Capital One
Black Friday Sale
\$100 with 360 Savings
4 days, Nov. 28-Dec. 1
Check out the Sale

On Aug 28, 2014, at 4:48 PM, Elena Velarde <evelarde@placertitle.com>

Good afternoon, attached is a copy of the deposit receipt for your record.

Thank you.

<image002.jpg>

From: Elena Velarde
Sent: Thursday, August 28, 2014 2:36 PM
To: 'Yi Soo J. Kim'; mikegazzali@yahoo.com
Subject: RE: Wire Instructions for 811-7869

Hi John, please have Mike obtain a cashiers check. It is too late
he wires the funds we will not receive them in enough time to c

<image003.jpg>

From: Yi Soo J. Kim [mailto:consuliyk@aol.com]
Sent: Thursday, August 28, 2014 2:27 PM
To: Elena Velarde; mikegazzali@yahoo.com
Subject: Wire Instructions for 811-7869

Dear Elena,

Would you please advise wire instruction for the above
Rahban AlGazzali
Immediately. He is at the Bank

John Kim.



CITY OF OAKLAND ZONING CLEARANCE FOR BUSINESS TAX LICENSE

A Zoning Clearance is required for all new or relocated businesses in order to verify that the type of business you are proposing is permitted by the City's Zoning Regulations at that location.

BUSINESS ADDRESS: 2941 Coolidge Ave

APPLICANT INFO: NAME: Gazzali's Express Corp.

HOME ADDRESS: 1210 Estrada Ave

CITY, STATE, ZIP: Oakland San Leandro CA 94577

PHONE NUMBER: 510 377-1207

BUSINESS NAME: Gazzali's Express

TYPE OF BUSINESS / DESCRIPTION OF BUSINESS ACTIVITIES: Retail Food
market meat / produce / deli (ZC052484)

PROPOSED HOURS OF OPERATION: 8 Am - 8pm NUMBER OF EMPLOYEES: 2-3

WILL THE BUSINESS BE LOCATED WITHIN YOUR HOME OR APARTMENT? ☐ YES ☒ NO

WILL THE BUSINESS INVOLVE ANY MANUFACTURING ON THE PROPERTY? ☐ YES ☒ NO

WILL THE BUSINESS REQUIRE ANY NEW OR MODIFIED SIGNS? ☐ YES ☒ NO

WILL THE BUSINESS REQUIRE ANY CHANGES TO THE BUILDING? ☐ YES ☒ NO

(Please note that certain buildings may need a change in building occupancy prior to establishing new uses)

Please take this worksheet to the 2nd floor and go to the "INFORMATION START HERE" counter.

When your number is called a planner will assist you at the Zoning

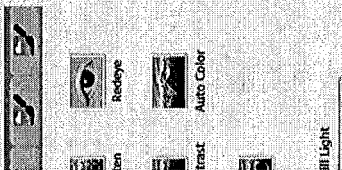
Please fill out this form while you wait.

PLEASE NOTE: THIS CLEARANCE COVERS ZONING PERMIT
OTHER PERMITS SUCH AS BUILDING, FIRE, CITY ADMINISTRATIVE
COUNTY/STATE PERMITS MAY BE REQUIRED PRIOR TO COMMENCEMENT
BUSINESS. PLEASE CONTACT THE APPROPRIATE AGENCY
TO DETERMINE IF FURTHER PERMITS ARE NECESSARY.

I have read and understand the above.

Date: 8/5/14

ATTACHMENT C



2014:05:20 08:02:07

2014:05:20 - IMG_20140520_080207.jpg 520x2814 802x07 AM 3264x2448 pixels 1.8MB (2 of 24)



Properties of IMG_20	
Location	My Pictures\2014-0
File Size	1.8MB
Dimensions	3264 x 2448 pixels
Camera Make	SAMSUNG
Camera Model	SCH-I635
Camera Date	2014:05:20 08:02:0
Digitized Date	2014:05:20 08:02:0
Modified Date	2014:05:20 08:02:0
File Date	5/20/2014 8:02:07 P
Orientation	Normal
Flash	Not Used
Focal Length	3.7mm
Exposure Time	0.0167s (1/60)
Aperture	2.75
F Number	f/2.6
ISO	64
White Balance	Auto
Metering Mode	Center Weight
Exposure Program	Aperture Priority
Color Space	sRGB
Thumbnail	(160 x 120 p
JPEG Quality	96 (422)
GPS Latitude	37.47302° N

ATTACHMENT D



**California Department of Alcoholic
Beverage Control**
*License Query System Summary
as of 2/25/2015*

License Information
License Number: 548196
Primary Owner: GAZZALI'S EXPRESS CORPORATION
ABC Office of Application: 22 - OAKLAND
Business Name
Doing Business As: GAZZALI'S EXPRESS CORPORATION
Business Address
Address: 2941 COOLIDGE AVE Census Tract: 4065.00
City: OAKLAND County: ALAMEDA
State: CA Zip Code: 94602
Licensee Information
Licensee: GAZZALI'S EXPRESS CORPORATION
Company Information
Officer: ALGAZZALI, RAHBAN (PRESIDENT)
Officer: ALGAZZALI, BADYA ABDO (SECRETARY/ASST SEC)
Stock Holder: ALGAZZALI, BADYA ABDO
Stock Holder: ALGAZZALI, RAHBAN
License Types
1) License Type: 20 - OFF-SALE BEER AND WINE
License Type Status: PENDING
Status Date: 14-AUG-2014 Term: 12 Month(s)
Original Issue Date: Expiration Date:
Master: Y Duplicate: 0 Fee Code: P40
License Type was Transferred On: FROM: 20-425156
Current Disciplinary Action
... No Active Disciplinary Action found ...
Disciplinary History
... No Disciplinary History found ...
Hold Information
Hold Date: 14-AUG-2014 Type: FORM 220
Escrow
Escrow: BAY AREA ESCROW COMPANY, 2817 CROW CANYON RD STE 102 SAN RAMON, CALIFORNIA 94583

ATTACHMENT E