

TEAMSTERS JOINT COUNCIL No. 7



Affiliated with the International Brotherhood of Teamsters



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Planning Commission
City of San Leandro
835 E. 14th Street
San Leandro, California 94577

RE: 1788 Fairway Drive, Conditional Use Permit for Type 21 ABC License and Parking Variance

This letter is submitted on behalf of the Teamsters Joint Council 7, who represent residents and workers in San Leandro and the San Leandro region. In total, we represent more than 100,000 members in 23 Local Unions in 48 counties of Northern California, and the Central Valley and 14 Northern Nevada counties. Teamsters represent liquor salespeople, delivery drivers, and warehouse workers.

The applicant, Prime Now, LLC, styled as Amazon in their narrative for the permit applications, is applying for a conditional use permit to qualify for a Type 21 Alcoholic Beverage Control license, and therefore be permitted to deliver beer, wine and liquor to peoples' homes. Conveniently, this grocery store is being built inside of an approximately 53,000 square foot Amazon delivery station (itself part of an approximately 250,000 square foot facility). The applicant is therefore proposing building a "grocery store" of 395 square feet in the corner of their delivery station warehouse, in order to meet this qualification.

For reference, 395 square feet is less than 20 feet by 20 feet. This is slightly larger than a single-car garage, which are typically 15 by 20 feet. Those who attended a California State University and lived in a student residence hall would recognize this as the size of a double room. Given the COVID-19 guidance requiring people to stay six feet apart while stationary in line, this would mean, assuming a few feet is used for a counter and storage, this “grocery store” could hold about two people at a time.

The applicant has cascading problems: The Department of Alcoholic Beverage Control (ABC) requires Type 21 general licenses be issued only where there is a retail premises where there is dedicated space for sale of curated alcoholic beverages. The City of San Leandro, in turn, requires that in order for a retail establishment to sell beer, wine and liquor, it must be a grocery retail establishment. But the applicant runs a warehouse, not a retail facility. It is a warehouse in the middle of an industrial park with the parking ratios attendant to that use. So, the applicant wants to fabricate a faux grocery store in order to secure their license.

This “store” would have a single part-time employee who has to be beckoned from other duties by “walk-in” customers who press a buzzer. According to the applicant’s narrative, a single customer would walk up to the “store,” press a buzzer, and this harried single employee, who would also be busy working in the warehouse, would have to hustle over to the “store” to assist this lone customer with their purchase.

The proposal is absurd on its face. The applicant may as well have simply proposed painting pictures of groceries on the wall, putting up a cardboard standee of a smiling clerk, and hanging a sign that says, “Technically a Store.” It is surprising that the applicant did not include an image of a winking face along with its application materials.

The applicant's proposal is a bald attempt to circumvent the intent of the Type 21 license and allow them to deliver alcohol to peoples' homes. There is no true intent to operate a grocery store that serves the public in the middle of a massive, approximately 3 million square foot industrial park, but rather to build an ersatz store so that they can check a box on the ABC Type 21 license application.

Amazon Prime retail stores that have opened up throughout the country run around 10,000 square feet and up to 25,000. They have prominent signage and are located in commercial areas with ready access to residential households who may need household goods. This is because the applicant recognizes that a key feature of a grocery store is that it be an actual store. The applicant in this matter, on the other hand, is requesting to build the equivalent of a child's lemonade stand but with even less signage.

The applicant is limiting their faux-cery story to 395 square feet because having a retail use on site creates parking ratio problems, and so while they want to be able to deliver alcohol under a Type 21 license, they cannot afford to commit more square footage on the parcel to parking. This makes sense, because the site is a "last mile" delivery station that requires keeping vehicles circulating throughout the site throughout the day and committing more surface area to parking would interfere with that operation. That may be unfortunate, but the applicant has a clear remedy: open an actual store somewhere else, or do not deliver alcohol. Having one's cake and not being able to eat it as well is not a hardship that the City of San Leandro should salve by ignoring the clear intent and purpose of the law.

The purpose of Section 60.4 of Article 11 of the Alcoholic Beverage Control Act is to limit delivery of alcoholic beverages to retail facilities for which delivery is incidental to the retail purpose. The legislature clearly did not want people building liquor warehouses that just run booze

to peoples' homes. One could imagine somebody building a small corner store with groceries and sundries but which, particularly in times of lockdown, grows its alcohol delivery business through aggressive advertising to a local customer base and an efficient delivery system. That is a far cry from a megawarehousing package delivery consortium whose sole intention is to deliver alcohol, just fabricating a grocery store as a hollow justification for a valuable license allowing an expansive alcohol delivery business.

Third Party Delivery Partners and Employee Requirements

It is unclear how the use of “third-party delivery partners” qualify as employees authorized to complete delivery of alcohol sales under the general license. The statute states that employees effecting the delivery of alcohol under the license shall be under the “exclusive” employment and control of the licensee. Per the applicant’s narrative, and Amazon practice, delivery “partners” are actually contractors, directly employed not by Amazon itself but by “small business” contractors. The language of the statute and regulations are fairly unambiguous:

Such employees shall be in the exclusive employ of the holder of the off-sale general licensee and shall not be employees of the off-sale beer and wine licensee. *The holder of the off-sale general license shall possess and exercise the exclusive right to hire, supervise and discharge such employees.*

In brief, the applicant is seeking permission to have drivers it itself characterizes as non-employees make deliveries of alcohol from a non-existent store.

This is a matter that Teamsters members take seriously. We represent delivery drivers and workers who handle, transport and delivery alcoholic beverages and there are quality control and training requirements unique to this work. That is why the state legislature took the step of requiring that those workers who deal in alcoholic beverages be directly employed and supervised by licensees, that is, by the party with accountability to the public and the state for how that license

is used. There needs to be a clear explication of why this provision of the state code does not or should not apply here.

Conclusion

The required findings for a conditional use permit are not met because the site exacerbates the parking problem on the site, and the proposal does not comply with the city's code, because it does not meet the parking requirement. That the applicant justifies requesting this exception based on "demand present" is not adequate because the code does not contain any textual or implicit exception, to its provisions based on "demand present." (See below).

The conditional use permit is a discretionary permit. Type 21 licenses are issued based on density or prevalence of licenses, and therefore they are a finite entitlement. If the City wants legitimate and good-faith applications from small- and homegrown-business to meet resident demand for off-site alcohol sales, issuing a conditional use permit for a Potemkin grocery interferes with that vision. The City has the plenary authority to deny this application and it should do so if not based on its plain absurdity, then on the fact that it fails to meet both the spirit and letter of the law.

Parking Variance/Exception

The City of San Leandro's code, Section 4.08.108, requires one parking space for every 200 square feet of grocery retail (supermarket) use. The facility is already significantly "under-parked," providing 83 fewer spaces than the on-site land uses would otherwise require. The applicant is proposing to assign one parking space, rather than the two the Code requires, for their ersatz supermarket.

The applicant is therefore asking to exacerbate an existing noncompliance, and justifies the request by using a bespoke methodology: first, because the Institute for Transportation Engineers (ITE) Parking Generation Manual does not have land use categories that fit the applicant's peculiar proposal, they have chosen "similar" uses; second, the applicant has included conclusory assumptions and anecdotes; and lastly, the applicant has repeatedly suggests, albeit through ambiguous language, that their supermarket will not actually be used as a supermarket and so the City needn't concern itself with strictly enforcing its own laws.

This final point is important and worthy of address first: throughout the applicant's application materials, it repeats that "similar facilities" in other locations have barely any walk-in customers at all, as few as one customer per month and rarely more than four per month. This information is self-supplied and we could find no objective data to support it, but even accepting it as true, it speaks to the basic problem with this application: the applicant knows very well they are not building a supermarket, they are simply cordoning off a space with some shelves and a PC tablet and calling it a supermarket so that they can make alcohol deliveries. Of course, they cannot outright say, "Don't worry, this is not a real supermarket and so will not generate the customer demand of a real supermarket," and so instead are repeatedly assuring the City that other ersatz supermarkets in warehouses elsewhere in California perform as intended: they simply exist to underpin an off-site license.

The findings resolution passed by the Board of Zoning Adjustments is inadequate. Paragraph one of the resolution states that the zoning code creates a hardship because the applicant would have to satisfy the zoning code. The crux of the code's requirement that the City identify a particular difficulty or undue hardship resulting from strict application of the code are the terms *particular* and *undue*: in other words, that the difficulty is *particular* to the property at issue and

the desired use, and that the hardship is *undue*, meaning one property owner is being made to carry an intense burden not generally felt by other properties in the same category of use. Neither of these apply to this situation, and the finding itself has not explicated how they possibly could.

The applicant already operates a thriving last-mile delivery station and warehouse on the property, and the property is already under-parked. There is no suggestion that the shape of the property (quadrilateral) or some anachronism in the code is causing a hardship. To the contrary, the applicant is seeking a privilege not afforded to other supermarkets simply because their supermarket is not truly a supermarket, but does allow them access to a limited class of license that will allow them to make a lot more profit.

The second finding states, in brief, that the availability of off-site parking and the low demand on the site given the existence of shared spaces between uses means that the site is actually as near to compliance as is possible. The finding is ambiguous in any case: it refers to the Parking Analysis and states that *where* the “parking demand” is actually for 222 spaces, there is a total surplus of 43 spaces. But this is not the relevant standard: that actual parking demand lags below what the code requires does not prove that the proposal comes as close to meeting the legal requirement as possible. It is merely a means of showing that the existing tenants of the site do not actually generate sufficient parking for the lot to be full at all times. This is not how parking ratio requirements work; if it were, there would be no use for binding requirements, but only suggestions, subject to actual demand. The applicant’s own application materials state that the site is under-parked by 83 spaces. The applicant is proposing expanding this problem by adding a use.

The adopted findings are circular: in essence they say that because the applicant wants a Type 21 license that requires a retail space, they should be allowed to build a retail space so long as it is not a *real* retail space that actually generates traffic, and that not being allowed to do this

without violating the City's laws would be a hardship on them. These findings are inadequate, and the exception should be denied.

For the foregoing reasons, we request that the City deny the conditional use permit and parking exception.