

RESOLUTION NO. 125-08

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA
DENYING THE APPEAL AND AFFIRMING THE DECISION OF THE PLANNING
COMMISSION TO GRANT A CONDITIONAL USE PERMIT FOR RETAIL ALCOHOLIC
BEVERAGE SALES AT 1099 ESSEX DRIVE (PLN08-035)**

WHEREAS Eric Seder on behalf of Givens & Halpern Inc. (“Applicant”) applied for a Conditional Use Permit to allow the sale of wine and beer as part of specialty gift baskets distributed from 1099 Essex Drive, an existing industrial warehouse (the “Project”); and

WHEREAS City of Richmond Planning staff reviewed all plans and other submittals required for Project approval; analyzed the Project’s conformance with the requirements of the Richmond Municipal Code and of California Business and Professions Code Sections 23815 *et seq.* (regarding limits on the number of alcoholic beverage retail licenses); and recommended that the City of Richmond Planning Commission find the Project exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guideline 15301(a) (minor interior or exterior alterations, tenant improvements), find that the public convenience or necessity would be served by the issuance of a Type 20 alcoholic retail beverage sales license to the Applicant, and approve the Project subject to certain conditions; and

WHEREAS following a duly noticed public hearing on September 4, 2008, and based upon the written and oral evidence presented at or before the hearing, the Planning Commission voted unanimously 5-0-0 (1) to find the Project exempt from CEQA pursuant to CEQA Guideline 15301(a); (2) to find that the public convenience or necessity would be served by the issuance of a Type 20 alcoholic retail beverage sales license to the Applicant; and (3) to approve the Project subject to certain conditions and

WHEREAS on September 15, 2008 Anthony Allen filed an appeal of the Planning Commission’s decision with the City Clerk in accordance with Richmond Municipal Code Section ; and

WHEREAS on October 21, 2008 the City Council of the City of Richmond, California the City Council of the City of Richmond, California held a duly noticed public hearing to hear and consider testimony and other evidence presented for and against the Project; and

WHEREAS at the public hearing on October 21, 2008, the City presented the expert testimony of the Director of Planning and Building Services and of the Planning staff in support of the Design Review Board’s decision; and

WHEREAS the Appellant presented no expert testimony in support of his position; and

WHEREAS, after considering all documents and oral and written comments presented at or before the public hearing, the Council made the following findings:

1. The location of the proposed use is in accordance with the General Plan of the City of Richmond.

Statement of Fact: **Criterion Satisfied.** *The Richmond General Plan land use designation of the subject site is 919, Light Industry. The General Plan’s 919, Light Industry, land use designation permits uses such as, warehousing and distribution centers. The proposed use is consistent with General Plan Land use goal LU-O which states “Provide areas for light and heavy industrial/office flex uses that are attractive, well maintained and have convenient access”. The applicant will also provide retail distribution of alcoholic beverages to customers via a Type 20 ABC license. The proposed use is consistent with General Plan Land use goal LU-O.3 which states “Provide convenient access for the shipment of goods and the daily commute trips of employees for all industrial firms”. Approval of the CUP will ensure the projects compliance with the General Plan.*

2. The location, size, design, and operating characteristics of the proposed use will be compatible with and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the proposed conditional use and the surrounding neighborhood.

Statement of Fact: **Criterion Conditionally Satisfied.** As conditioned, the purpose for the Conditional Use Permit is to allow the retail distribution of beer and wine and in an existing warehouse building space. The distribution of beer and wine beverages is a permitted use and the combined uses use will not be detrimental to the public health, safety or welfare of persons residing or working in the area of the business. The proposed use conforms to the standard criteria for alcoholic beverage sales as listed in Section 15.04.910.080(H) of the City of Richmond Zoning Ordinance.

3. The proposed use is compatible with all applicable portions of the City of Richmond Zoning Ordinance.

Statement of Fact: **Criterion Conditionally Satisfied.** The subject site is zoned M-2, Light Industrial. The M-2, Light Industrial, Zoning District permits warehousing and wholesale trade of nondurable goods. Land uses, involving alcoholic beverage retail sales are conditionally allowed. The Richmond Zoning Ordinance allows the retail sale of alcoholic beverages if the Planning Commission grants a Conditional Use Permit and finds that the proposed use will conform to the criteria listed in Section 15.04.910.080(H). Upon evaluating the proposed request, the proposed use was found to conform to the specific criteria.

4. The site of the proposed use is adequately served by highways, streets, and other public service facilities.

Statement of Fact: **Criterion Satisfied.** The subject property is located in an industrial area, the Hensley Industrial District off the Richmond Parkway. This location has adequate street and highway access with fully improved public service facilities.

5. The proposed use will not aggravate existing problems in the neighborhood created by the sale of alcohol and will not contribute to undue concentration of alcoholic beverage establishments in an area where such additional establishments would be undesirable as determined by the area's function and character, and problems of crime, loitering, and traffic.

Statement of Fact: **Criterion Satisfied.** The proposed use is to be located in the Richmond Police Department's Northern District Beat 8, which is not a designated high-crime area. The vast majority of alcoholic beverages distributed from the Project site would be shipped out of the area. All alcoholic beverages will be sold as part of gift baskets including food. The building will be adequately secured against burglary.

6. The proposed use will not adversely affect adjacent or nearby uses, including churches, schools, hospitals, parks, recreation centers, and residences.

Statement of Fact: **Criterion Satisfied.** The proposed use will be located on a Light Industrial zoned parcel in a 37,715 SF tenant space on Essex Avenue in the Hensley Industrial area near the Richmond Parkway, and located away from residential uses. Shipping and receiving of goods is a normal activity in the area.

7. The proposed use will not interfere with vehicular or pedestrian circulation along a public street or sidewalk.

Statement of Fact: **Criterion Satisfied.** The proposed use will be a shipping & receiving distribution warehouse for gift baskets, some containing bottles of wine and beer. The business will be served by a UPS delivery truck on a daily basis which will transport sealed gift baskets, some of which will include sealed bottles of wine and beer, and will not interfere with vehicular or pedestrian circulation on site or in the vicinity.

8. The proposed use provides adequate litter receptacles.

Statement of Fact: **Criterion Satisfied.** The proposed use will be within a self-contained warehouse space with adequate trash receptacles to serve the assembly and shipping use.

9. The public convenience would be served by the issuance of a Type 20 alcoholic beverage license to the Applicant.

Statement of Fact: **Criterion Satisfied.** Based on the facts in support of the above findings, the Council concludes that the public convenience would be served by the issuance of a Type 20 alcoholic beverage license to the applicant for the distribution of wine and beer from 1099 Essex Drive.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Richmond, California hereby denies the appeal and upholds the Planning Commission's approval of Conditional Use Permit (PLN08-035) for the distribution of gift baskets at 1099 Essex Drive subject to the following conditions:

1. This Conditional Use Permit is granted to the applicant for the exercise of a Type 20, Off Sale Beer and Wine from the California Department of Alcoholic Beverage Control (ABC) for the sale of beer and wine for consumption off the premises where sold and retail sales. The proprietor/owner shall at all times comply with this Conditional Use Permit.
2. This Conditional Use Permit is granted for the exercise of the off-sale privileges at 1099 Essex Avenue, Richmond, CA. 94801 only, and as illustrated in Exhibit A, the Project Plans.
3. A copy of these Conditions of Approval and the California Department of Alcoholic Beverage Control license are required to be kept on the premises and presented to any law enforcement officer or authorized City official upon request.
4. Hours of Service: The ABC mandated retail outlet for the distribution of beer and wine shall be limited to Monday through Friday from 10:00 am – 5:00 pm. It is understood that during the holiday season the warehouse operation may extend beyond the retail hours of 10:00 am – 5:00 pm to accommodate internet and catalog sales.
5. No beer or wine shall be sold in individual bottles, and shall only be sold in pre-arranged gift baskets.
6. No less than two-thirds of the value of the items in a gift basket to be sold to walk-up customers shall be food.
7. The applicant shall obtain an evaluation from the Chief of the Richmond Police Department on a yearly basis.
8. Any future occupants of the project site at 1099 Essex Avenue may utilize or modify the Conditional use Permit without returning to the City Council for approval.
9. Parking: The parking layout is to be located as shown in accordance to Exhibit A (Site Plan), with this permit, and that two (2) spaces shall be clearly designated for retail sales customer parking on. The applicant shall also provide one (1) ADA van accessible space which is clearly marked and is closest to the accessible entrance and be located on level ground.
10. Graffiti Removal: The proprietor/owner is responsible for the removal of all graffiti from the walls, fences, pavement, or buildings within 72 hours of its appearance on the property.
11. Litter Control: The proprietor/owner shall be responsible for maintaining free of litter at all times the parking lot and the area adjacent to the premises over which they have control.
12. Prohibited Activities: There shall be no electronic or coin-operated amusement devices at the subject site.
13. Illumination: The exterior of the premises, including adjacent public sidewalks and the parking lot area, shall be illuminated during all hours of darkness when the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel.
14. Validity of CUP: Authorization of a Conditional Use Permit granted pursuant to the provisions of Section 15.04.900 of the Richmond Zoning Ordinance shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application, provided all provisions

of the ordinance, the Zoning Ordinance, and all conditions placed on approval of the Conditional Use Permit are continually met.

- 15. Revocation of CUP: Pursuant to Section 15.04.990 of the Richmond Zoning Ordinance, this Conditional Use Permit will be revoked if the exercise of rights granted by the Conditional Use Permit are discontinued for six (6) consecutive months. The use may not be resumed if the Conditional Use Permit is revoked unless a new application is submitted and approved by the Planning Commission.

I certify that the foregoing resolution was adopted by the City Council of the City of Richmond, California at a duly noticed meeting held on October 21, 2008:

Ayes: Councilmembers Bates, Marquez, Rogers, Sandhu, and Viramontes

Noes: Councilmember Thurmond and Mayor McLaughlin

Abstentions: Councilmember Butt

Absent: Councilmember Lopez

DIANE HOLMES
Clerk of the City of Richmond

[SEAL]

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to Form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Resolution No. 125-08, finally passed and adopted by the Council of the City of Richmond at a meeting held on October 21, 2008.