

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
BOARD ACTION SUMMARY

DEPT: Board of Supervisors

BOARD AGENDA #: \*A-5

AGENDA DATE: November 21, 2017

**SUBJECT:**

Approval to Set a Public Hearing on December 12, 2017 at 9:15 a.m., to Consider an Appeal of the Planning Commission's Denial of Variance Application No. PLN2017-0064 – Hickman Market

**BOARD ACTION AS FOLLOWS:**

No. 2017-651

On motion of Supervisor Olsen, Seconded by Supervisor DeMartini

and approved by the following vote,

Ayes: Supervisors: Olsen, Monteith, DeMartini, and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: Withrow

Abstaining: Supervisor: None

1)  Approved as recommended


2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST:

  
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
AGENDA ITEM**

DEPT: Board of Supervisors BOARD AGENDA #: \*A-5  
Urgent  Routine   AGENDA DATE: November 21, 2017  
CEO CONCURRENCE: 4/5 Vote Required: Yes  No

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**SUBJECT:**

Approval to Set a Public Hearing on December 12, 2017 at 9:15 a.m., to Consider an Appeal of the Planning Commission's Denial of Variance Application No. PLN2017-0064 – Hickman Market

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**STAFF RECOMMENDATIONS:**

1. Set a Public Hearing on December 12, 2017, at 9:15 a.m., to Consider an Appeal of the Planning Commission's Denial of Variance Application No. PLN2017-0064 – Hickman Market

**DISCUSSION:**

On October 19, 2017, the Planning Commission denied Variance Application No. PLN2017-0064 – Hickman Market on a 7-0 vote. This project is a request for a Variance from Stanislaus County Zoning Ordinance Section 21.52.040(E) Development Standards, which requires construction of an eight foot high masonry wall, as required for reconstruction of the existing neighborhood market, along property lines where the commercially zoned property abuts residential zoned properties to the north and east. The property is located at 13135 Lake Rd, east of Montpelier Rd, east of Hickman Road, in the Hickman area.

An appeal of the Planning Commission's denial was submitted on October 30, 2017 by Mr. John Price on behalf of his clients, Mr. and Mrs. Jarnail Singh Mahlli. Upon receiving an appeal, the Board of Supervisors places an item setting a public hearing date and time on their agenda for consideration. Once a public hearing date is approved, the Clerk of the Board is required to publish a Notice of Public Hearing in a newspaper of general circulation. The Planning and Community Development Department notifies surrounding property owners by mail, and prepares the public hearing agenda item.

At this time, this item simply sets the date and time for a hearing on the matter before the Board of Supervisors to consider the appeal.

**POLICY ISSUE:**

In accordance with Stanislaus County Code Section 21.112.040, all appeals of the Stanislaus County Planning Commission's Decision are filed with the Stanislaus County Board of Supervisors.

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**FISCAL IMPACT:**

There is a nominal fiscal impact associated with setting this public hearing for mandatory newspaper publishing and the notification of property owners by mail. These expenses are covered by a portion of the \$673.00 Planning Commission appeal fee paid by the Appellant.

**BOARD OF SUPERVISORS' PRIORITY:**

Setting a public hearing to consider an appeal of the Planning Commission's decision is consistent with the Board's priority of A Well-Planned Infrastructure System.

**STAFFING IMPACT:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Elizabeth King, Clerk of the Board of Supervisors (209) 525-4494

**ATTACHMENT(S):**

1. Letter from Applicant Hickman Market
2. Letter from Clerk of the Board Confirming receipt of appeal

# Attachment 1

**Stanislaus County Board of Supervisors:**

I am writing this document on behalf of Mr. and Mrs. Jarnail Singh Mahlli, owners and operators of the Hickman Market in Hickman. The applied to the Planning Commission for a variance to defer the construction of an eight-foot-tall masonry wall, which is a requirement in the project of replacing the current market with a new one. The appeal is to allow the project to be built while allowing the block wall to be deferred.

**Project History and Alternative Fencing Proposal:**

This project has been a long time in development. Allow me to elaborate on the circuitous route we have been on.

Originally Mr. Jarnail Mallhi had contracted with a civil engineer to draw some plans to update and remodel the existing Hickman Market. He did so and took them in to the county building department. He was then informed that the amount of work needed to be done would trigger Road Dedication and a property line adjustment. The amount of roadway space would then actually cross into the existing building.

Additionally, Mr. Mallhi was informed that a portion of the building, in the rear of the store, was constructed illegally by someone prior to Mr. and Mrs. Mallhis ownership, and that the structure would need to be removed. Removing the back of the store, and removing the front of the store to allow for roadway and setback, would eliminate the entire building!

Mr. Mallhi then was placed in contact with me, (John Price) and Artisan Construction & Design. As we discussed the options, it was decided that the best course of action was to build a new Store towards the rear of the lot, and then remove the old store to make way for the required parking lot and encroachment improvements. This seemed the best course of action and plans were set in motion.

I had a draft concept done and asked for a pre-development meeting with County Staff to make sure we would be following each department's requirements. Mr. Mallhi and I were surprised that a masonry wall was required to replace the old store building, since this is not a new use for the property or a new business, but merely a replacement, and the actual replacement is due to no fault of the Mahillis. The store is closer to the northern property line but its better construction and location will work better than a masonry wall to block the pasture and orchard behind the store from noise and car lights. There are no homes directly behind the store just pasture and orchard. After a good meeting, a plan and direction was decided.

I secured the services of Benchmark Engineering in Modesto to begin the Civil Engineering and Plot Plan. When they began their initial work, they learned that there were lot line issues with the property due to language differences in the property descriptions. This required going back in the records all the way to the original Hickman Property in 1893. Each transaction was studied and new surveying from section points. This process took one whole year. At the end of that work, it was learned that the property line on the north side of the property was five feet to far to the north. When it is adjusted on the maps, the existing house on the property now sits over the new property line.

The issue there really doesn't impact the project that much, because the new store will be setback 17'6" from the newly legally established northern property line. There is a challenge with any fence that would

be built because of just where the property line is. It runs into the home on Mr. and Mrs. Mallhi's Property. The map, in its existing form, dates to the 1920's and the house been there since the 1950's or early 1960's. At a minimum, a discussion on the principle of Adverse Possession will be necessary to adequately address the house on the newly discovered property line, and only gives additional importance to our request for a deferral of the block wall.

Mr. Mallhi did contact the property owners to the north and offer to buy a strip of the property to adequately allow for a definitive property line and a setback for the existing house. Even though not required to do so, he did make the gesture to have them give him a price at which they would sell a few feet. Mr. Mallhi was willing to pay a reasonable sum for property, given that in its current state, it is worth less than the market for Agricultural Residential property. The property will never be rezoned to Commercial by Mr. and Mrs. Mallhi because of the cost to rezone and the fact that the additional property is not necessary to construct the store. The two parties were not able to agree on the value. The property owners were trying to sell the land at Commercial property market rates, not Agricultural Residential rates and it made the prospective deal infeasible. However, to preserve a positive relationship with the Kings, Mr. Mallhi offered to purchase the property and to install a chain link fence per their request. After speaking with the Planning department, we learned that we could not just purchase five feet to utilize. Instead we would have to rezone it and the site to a Planned Development and complete a lot line adjustment. This would cost more than purchasing the property and installing the chain link fence. Consequently, since Mr. and Mrs. Mallhi will not be purchasing the property, as a show of good faith they are offering to install the eight-foot masonry wall along the northern property line between the single-family dwelling and the northeastern corner of the store property.

Additional expenses were discovered during the design of the civil plans. We learned that Storm water runoff from the property, which historically drained onto the northern pasture and Lake Road right of way, would need to be stored onsite and not run off the property. The process for that is to dig a giant trench and fill it with rocks, with drains and valley gutter in the parking lot. This is a very expensive and unanticipated surprise to say the least. This requirement was unexpected since Hickman has no existing drainage system to contaminate. This will be a very expensive additional cost.

Mr. and Mrs. Mallhi own the lots on either side of the store property. They own the property to the west, which is commercial property and the east, which is residential. They have an existing wooden fence, in good repair, between the project site and their residential property on the east and are asking for a variance to allow them to continue to utilize the wood fence instead of constructing a very expensive masonry wall to separate their commercial property from their residential property. The current estimate for the masonry wall is 35 to 40 thousand dollars, and when compared to the fact that a perfectly good wooden fence is existing this request seems reasonable. Consequently, we are proposing a variance to defer construction of the 8' high masonry wall along the eastern property line. Mr. and Mrs. Mallhi have offered to record, on their deed, a requirement to build the 8' high masonry wall should they ever sell the property to the east side of the store. Once again, the appeal is not to exempt them from building the masonry wall on the east property line, but to defer it, and if the property is ever sold, the block wall will need to be built.

Because of the unforeseen additional requirements and costs to Mr. and Mrs. Mallhi and this project, it is possible that the cost of the wall might make replacement of the building infeasible. This causes great concern since it has become obvious to us that the current structure and present location of the store, in the Lake Road right of way, is possibly a hazard for employees and customers of the store. We ask that construction of the eastern block wall be deferred. That Mr. and Mrs. Mallhi could continue to use the

existing wooden fence between his commercial and residential properties on Lake Road until the fence needs to be replaced or the property is sold.

**RECEIVED**

OCT 30 2017

Stanislaus County - Planning &  
Community Development Dept.

# Attachment 2





**BOARD OF SUPERVISORS**

**Kristin Olsen, 1<sup>st</sup> District**  
**Vito Chiesa, 2<sup>nd</sup> District**  
**Terry Withrow, 3<sup>rd</sup> District**  
**Dick Monteith, 4<sup>th</sup> District**  
**Jim DeMartini, 5<sup>th</sup> District**

1010 10th Street, Suite 6500  
Modesto, CA 95354  
Phone: 209.525.6560 Fax: 209.525.4410

November 2, 2017

John E. Price  
2949 Sunnyfield Drive  
Merced, CA 95340

RE: Appeal of Planning Commission's Denial of Variance Application No. PLN2017-0064 – Hickman Market

Dear Mr. Price:

We received your Letter of Appeal on behalf of your clients Mr. and Mrs. Jarnail Singh Mahlli, regarding the Denial of Planning Commission's Variance Application No. PLN2017-0064. An item requesting that the Board of Supervisors schedule a public hearing for December 12, 2017, at 9:15 a.m. to consider this appeal, will be on the Board of Supervisors' November 21, 2017, agenda.

For further information, please call the Planning and Community Development Department at 525-6330 or the Board of Supervisors at 525-6415.

Sincerely,

Pam Villarreal  
Assistant Clerk of the  
Board of Supervisors

cc: Supervisor Vito Chiesa, District Two  
Planning & Community Development Department

Jarnail Singh  
13135 Lake Road  
Hickman, CA 95323

Eric Pacciano  
1282 Carolina Drive  
Merced, CA 95340



The Modesto Bee

modbee.com



# AFFIDAVIT OF PUBLICATION

Account #	Ad Number	Identification	PO	Cols	Lines
341787	0003404448	HEARING PLN2017-0064 PAM VILLARREAL	ING PLN2017-0064 PAM VILLAR	1	45

**Attention:**

CO STAN BOARD OF SUPERVISORS  
 1010 10TH ST STE 6700  
 MODESTO, CA 95354

**Declaration of Publication  
 C.C.P. S2015.5**

STATE OF CALIFORNIA )  
 ) ss.  
 County of Stanislaus )

STANISLAUS COUNTY  
 NOTICE OF PUBLIC HEARING  
 APPEAL OF THE PLANNING COMMISSION'S VARIANCE APPLICATION NO. PLN2017-0064 HICKMAN MARKET.  
 NOTICE IS HEREBY GIVEN that on December 12, 2017 at the hour of 9:15 a.m., the Stanislaus County Board of Supervisors will meet in the Chambers, Basement Level, Tenth Street Place, 1010 10th St., Modesto, CA, to consider an Appeal of the Planning Commission's Denial of Variance Application No. PLN2017-0064 - Hickman Market, which requires construction of an 8-foot high masonry wall, as required for reconstruction of the existing neighborhood market, along property lines where the commercially zoned property abuts residential zoned properties to the north and east. The property is located at 13135 Lake Road, east of Montpelier Road, east of Hickman Road, in the Hickman area. This project is considered EX-EMPT from the California Environmental Quality Act (CEQA). APN: 080-046-010.  
 NOTICE IS FURTHER GIVEN that at the said time and place, interested persons will be given the opportunity to be heard. Material submitted to the Board for consideration (i.e. photos, petitions, etc.) will be retained by the County. If a challenge to the above application is made in court, persons may be limited to raising only those issues they or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board. For further information call (209) 525-6330.  
 BY ORDER OF THE BOARD OF SUPERVISORS. DATED: November 21, 2017. ATTEST: Elizabeth A. King, Clerk of the Board of Supervisors of the County of Stanislaus, State of California. BY: Pam Villarreal, Assistant Clerk.  
 MOD- 340448 12/1

I am a citizen of the United States; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am a printer and principal clerk of the publisher of the The Modesto Bee, which has been adjudged a newspaper of general circulation by the Superior Court of the County of Stanislaus, State of California, under the date of February 25, 1951 Action No. 46453. The notice of which the annexed is a printed copy has been published in each issue thereof on the following dates, to wit:

December 01, 2017

I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Modesto, California on:

Date: 1st, day of December, 2017

*Cynthia A. Mohammed*

Signature