COUNCIL AGENDA: 03-20-07
ITEM: 11.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: February 28, 2007

Approved Deanna Santana Date 3/5/07

COUNCIL DISTRICT: 3
SNI AREA: None

SUPPLEMENTAL MEMO

SUBJECT: PD06-015 / ABC06-014. APPEAL OF THE PLANNING COMMISSION'S ACTION TO DENY A PLANNED DEVLOPMENT PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOLIC BEVERAGES IN A NEW RETAIL ESTABLISHMENT LOCATED AT 360 E. TAYLOR STREET ON THE SOUTH SIDE OF E. TAYLOR STREET BETWEEN 7TH AND 9TH STREETS.

REASON FOR SUPPLEMENTAL

On December 5, 2006, the City Council deferred the subject project to allow for the applicant to conduct public outreach. The original memo is attached for reference. The applicant held a community meeting on February 8, 2007.

RECOMMENDATION

Adoption of a resolution to uphold the Planning Commission's action to deny the Planned Development Permit and Determination of Public Convenience or Necessity.

OUTCOME

The City Council decision to uphold the Planning Commission's action to deny the Planned Development Permit and Determination of Public Convenience or Necessity would result in a new retail market operating on the subject site without alcoholic beverages in its inventory.

BACKGROUND

On October 11, 2006, the Planning Commission held a public hearing to consider the proposed Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcoholic beverages in a new retail establishment located at 360 E. Taylor Street.

The Planning Commission was unable to make the required finding that the subject use was located more than 150 feet from a residentially zoned property and therefore voted 7-0-0 to deny the proposed project.

While the San Jose Municipal Code did not afford the Planning Commission the discretion to approve the subject Public Convenience or Necessity application based on the required findings that they were obliged to make, the City Council does have greater discretion. Upon an appeal of a denial of the granting of a Determination of Public Convenience or Necessity, the City Council would need to find conformance with one of the four following additional special findings in order to approve the proposal:

1. The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety; or

2. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety; or

3. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the City, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area; or

4. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

On December 5, 2006, the City Council held a public hearing to consider an appeal of the Planning Commissions action to deny the Planned Development Permit and Determination of Public Convenience or Necessity that was denied by the Planning Commission. Council member Chavez said that she could not support the application without clear support from the Japantown Neighborhood Association. The City Council deferred the item to an undetermined date to allow the applicant to conduct outreach to the Japantown Neighborhood Association to obtain their support. See discussion under the Analysis section below.

ANALYSIS

On February 8, 2007 the proposed project was presented to the community at the Japantown Neighborhood Association meeting. The applicant, Mulugeta Shumeye, gave a brief presentation regarding the nature of the business. He stated that Taylor Street Market's hours of operation are 7:00 a.m. to 9:00 p.m. Mr. Shumeye said he would like to sell beer and wine only, and he would not sell single bottles of beer. He also stated that the terms of his tenant lease are strict, and that they opened a market at the subject site to serve a void in the community. Further, he does not want to cause the community problems.

The following comments were received from the community at the meeting:

- Transients have been seen along the tracks and at Bernal Park drinking alcohol. Some even sit outside of Santos Market, but the owner asks them to leave.
- Signs advertising alcohol should not be plastered all over the windows.
- It would be bad faith for the City Council to deny the project. Taylor Street Market is filling a vacant retail space, and for a resident of the complex, it would be more convenient to be able to buy beer and wine at this location.
- The applicant has already made an investment in the community; the Market also helps residents avoid driving to other such retail establishments.
- Taylor Street Market is a good thing for the community because it is helping to further extend and connect Japantown together.
- The Market is a convenience store and they should have the ability to sell beer and wine.
- The residents want the business to succeed.
- The Esplanade development has the greatest to lose if this business was to get out of hand, rents are high at the complex and they have a vested interest too.

At the close of the discussion, William Lambson President of the Japantown Neighborhood Association, asked the room for a show of hands to either support, oppose, or be neutral of the issuance of the proposed permits. Everyone in attendance supported the project and no one voted neutral or in opposition. Mr. Lambson also said that he had spoken with the Japantown Business Association and that they were neutral on the issue.

POLICY ALTERNATIVES

The City Council decision to uphold the Planning Commission's action to deny the Planned Development Permit and Determination of Public Convenience or Necessity would result in a new retail market operating on the subject site without alcoholic beverages in its inventory. A City Council decision to approve the Planned Development Permit and Determination of Public Convenience or Necessity would result in a new retail market operating on the subject site with alcoholic beverages in its inventory.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Notices for the community meeting, and public hearings for the project, and for this appeal, were mailed to the owners and tenants of all properties located within 500 feet of the project site. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the City Council agenda, on the City's website. Staff has been available to discuss the proposal with members of the public.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

FISCAL/POLICY ALIGNMENT

The proposed project is aligned with the Economic Development, Growth Management, and Sustainable City General Plan Major Strategies.

COST SUMMARY/IMPLICATIONS

N/A

BUDGET REFERENCE

N/A

CEQA

CEQA: Exempt, PD06-015 and ABC06-014

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Lesley Xavier at 408-535-7800.

cc: Mulugeta Shumeye, Taylor Street Market, 360 E. Taylor Street, San Jose CA, 95112

Attachments:
- General Correspondence
- Planning Commission Memo
- Staff Report
- Plans
- Resolution

Xavier, Lesley

From: William Lambson [wlambson@adobe.com]

Sent: Friday, February 16, 2007 4:47 PM

To: lesley.xavier@sanjoseca.gov

Cc: sam.liccardo@sanjoseca.gov; mjcmccully@aol.com; kowenca@earthlink.net

Subject: Taylor Street Market

Hi Lesley,

Thank you for attending the Japantown Neighborhood meeting in regards to the Taylor Street Market's desire to obtain a beer and wine license. As you observed in the meeting there were a lot of good questions and discussion. Based on the community feedback, the Japantown Neighborhood Association supports the Taylor Street Market's application for a beer and wine license.

Thank you for working with the Taylor Street Market and the Japantown Neighborhood Association to determine the community position on these important issues. I am very pleased to see a stronger working relationship between the City and community associations. We look forward to working with you on future issues.

Regard,
William Lambson
President Japantown Neighborhood Association

COUNCL AGENDA: 12-05-06
ITEM: 11.5

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 13, 2006

Approved

Date 11/27/06

COUNCIL DISTRICT: 3
SNI AREA: None

SUBJECT: PD06-015 / ABC06-014. APPEAL OF THE PLANNING COMMISSION'S ACTION TO DENY A PLANNED DEVELOPMENT PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOLIC BEVERAGES IN A NEW RETAIL ESTABLISHMENT LOCATED AT 360 E. TAYLOR STREET ON THE SOUTH SIDE OF E. TAYLOR STREET BETWEEN 7TH AND 9TH STREETS.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends that the City Council uphold the Planning Commission's action to deny the Planned Development Permit and Determination of Public Convenience or Necessity.

OUTCOME

The City Council decision to uphold the Planning Commission's action to deny the Planned Development Permit and Determination of Public Convenience or Necessity would result in a new retail market operating on the subject site without alcoholic beverages in its inventory.

BACKGROUND

On October 11, 2006, the Planning Commission held a public hearing to consider the proposed Planned Development Permit and Determination of Public Convenience or Necessity. The Director of Planning recommended denial of the proposed project based on the attached staff report. The applicant, Melsew Berihun, spoke in support of the proposed project. No one spoke in support of, or opposition to, the proposed project.

Commissioner Platten said the Commission could not approve the Determination of Public Convenience or Necessity because the proposed market is located on the ground floor of a mixed-use building beneath a residential unit. He said that under Title 6 of the4 San Jose Municipal Code, the required findings for a Determination of Public Convenience or Necessity cannot be made since the proposed off-sale of alcohol use is located within 150 feet of a residential use or zoning.

Commissioner Platten said the subject site is appropriately designed for the proposed use. He suggested that the City Council use its discretion to consider approval of the proposal on the site with a mixed-use design and appropriate amenities on site.

The Planning Commission then closed the public hearing. Subsequently, the Planning Commission voted 7-0-0 to deny the proposed project.

On October 23, 2006 the applicant filed an appeal of the Planning Commission action to deny the subject proposal.

The original staff report (attached) provides an analysis of the proposal regarding required findings that must be made by the Planning Commission to approve a Planned Development Permit and Determination of Public Convenience or Necessity. The staff report provided the Planning Commission with information enabling them to make three of the four findings required to approve a Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License.

The Planning Commission was unable to make the required finding that the subject use was more that 150 feet from a residentially zoned property. Upon an appeal, per Title 6 of the San Jose Municipal Code, where the four required findings cannot be made, the City Council could approve a Determination of Public Convenience or Necessity upon finding that a significant and overriding public benefit or benefits will be served by the proposed use only after first making *one* of four *additional* special findings that are discussed in the analysis below under "Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License."

ANALYSIS

The attached Permit Appeal contains five reasons to support the appeal. Each reason to support the appeal is followed by a staff response.

1. *To sell beer and wine for Public Convenience and Necessity. The proposed site has strong support by the Neighborhood and Residents in the area.*

   Staff response: There is no evidence in the record to support this statement because a community meeting was not held, no correspondence was submitted, and no one spoke at the Planning Commission hearing.

2. *The site is currently zoned A(PD) Planned Development. The original planned Development Permit for the site file no. PD98-053 includes development standards, which state that the off-sale alcoholic beverages may be permitted.*

   Staff response: The site is zoned A (PD) Planned Development and does allow for the off-sale of alcohol upon issuance of a Planned Development Permit.

3. *The proposed use of this site is a market selling grocery items. The sale of alcohol will be a very small portion of the retail space. The proposed site would not represent a majority of the proposed use.*

   Staff response: No information exists in the application or plans to specify the amount of display space that would be devoted to alcoholic beverages. The applicant has verbally indicated that the alcohol sales area will include one cooler and 6 shelves. A dimensioned and labeled floor plan was not provided.

4. *The site is a grocery store selling beer and wine not a liquor store. The store hours are from 7 AM to 9 PM to meet the neighborhood and resident's convenience and necessity.*

   Staff response: There is no evidence in the record to support this statement because a community meeting was not held, no correspondence was submitted, and no one spoke at the Planning Commission hearing.

5. *The proposed off-sale license is not within 500 feet of a school, day care center, public parks, social service agency, residential care or service facility.*

   Staff response: According to the City's GIS database, the proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility.

Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License

While the San Jose Municipal Code did not afford the Planning Commission the discretion to approve the subject Public Convenience or Necessity application based on the required findings that they were obliged to make, the City Council does have greater discretion. Upon an appeal of a denial of the granting of a Determination of Public Convenience or Necessity, the City Council would need to find conformance with <u>one</u> of the four additional findings noted below in order to approve the proposal.

1. *The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety.*

The subject census tract is not unusually configured because it is generally rectangular in shape similar to other census tracts in the area. Further, the surrounding community is not underserved with retail establishments that sell alcoholic beverages because there are two retail markets with off-sale licenses, one within 1,000 feet of the subject site and a the second within 1,500 feet of the subject site.

2. *The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety.*

   The approval of off-sale may help enhance the vitality of the proposed business and the other commercial tenant spaces in the building and surrounding area by filling a vacant tenant space. The Chief of Police is opposed to the issuance of the proposed permit because the site is located in a census tract that is over concentrated.

3. *The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area.*

   Census tract boundaries are redrawn every 10 years to ensure that each tract has about the same population. The subject census tract no. 5011 does exceed the ratio of on-sale and off-sale retail licenses to population in the County. As of March 16, 2006, there are 9 off-sale licenses in the census tract.

4. *The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.*

   The proposed use of the site is a market selling grocery items and alcoholic beverages. The sale of alcohol will be an incidental portion of the retail space because it would not represent a majority of display space for the proposed use.

Conclusion

Taylor Street Market will provide grocery items that will serve members of the public, specifically those living and working within the mixed-use project on the site and those in the surrounding neighborhood. Should the Council decide to approve the Public Convenience or Necessity application, staff recommends that the Resolution include a condition which limits the alcoholic beverage display area at the subject establishment to 15 percent of the overall sales area.

POLICY ALTERNATIVES

While General Plan policies encourage commercial land uses such as small grocery stores within mixed-use buildings, the provisions under Title 6 of the SJMC which regulate off-sale of alcohol do not provide flexibility to implement this specific combination of uses encouraged by

General Plan policies. Therefore, staff or the Planning Commission were not able to consider approval of the subject application. There are no policies alternatives available for consideration that would allow approval of this application without an appeal to the City Council.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater.
  (Required: Website Posting)
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Notices for the public hearings for the project and for this appeal were mailed to the owners and tenants of all properties located within 500 feet of the project site. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the City Council agenda, on the City's website. Staff has been available to discuss the proposal with members of the public.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

FISCAL/POLICY ALIGNMENT

The proposed project is aligned with the Economic Development, Growth Management, and Sustainable City General Plan Major Strategies.

COST SUMMARY/IMPLICATIONS

N/A

BUDGET REFERENCE

N/A

CEQA

CEQA: Exempt, PD06-015 and ABC06-014

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Lesley Xavier, Project Manager, at 535-7852.

Attachments:
- Notice of Permit Appeal
- Planning Commission Staff Report & Attachments
- SJMC Part 6.84 Determination of Public Convenience or Necessity For An Alcoholic Beverage Control License

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

CITY OF SAN JOSE
Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113-1905
tel (408) 535-3555 fax (408) 292-6055
Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER PD06-015 ABC06-014	RECEIPT # 430449
PROJECT LOCATION 350 E. Taylor Street	AMOUNT 1925.00
	DATE 10/23/2006
	BY AT

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:
360 E. TAYLOR STREET SANJOSE, CALIFORNIA 95112

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): PLEASE SEE THE ATTACHMENT

PUBLIC CONVENTENCE AND NECESSITY
THIS APPLICATION FULLY SUPPORTED BY PLANNING COMMITTION ON OCT 11, 2006.

PERSON FILING APPEAL

NAME MELSEW BERIHUN | MULUGETA SHUMEYE		DAYTIME TELEPHONE (408) 655-9878	
ADDRESS 360 E. TAYLOR STREET	CITY SANJOSE	STATE CA	ZIP CODE 95112
SIGNATURE		DATE	

RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet)

CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME THE SAME AS ABOVE			
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE (408) 655-9878	FAX NUMBER (408) 298-6357	E-MAIL ADDRESS MBERIHUN@SBCGLOBAL.NET	

PROPERTY OWNER

NAME The Esplanade		DATE 10/23/06	
ADDRESS 350 E Taylor St	CITY San Jose	STATE CA	ZIP CODE 95008

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE 2ND FLOOR OF THE DEVELOPMENT SERVICES CENTER, CITY HALL.

1) To sell beer and wine for Public Convenience and Necessity.
   The proposed site has strong support by the Neighborhood and Residents in the area.

2) The site is currently zoned A (PD) Planned Development.
   The Original planned Development permit for the site file no PD98-053 include development standard which states that the off-sale alcoholic beverage may be permitted.

3) The proposed use of this site is a market selling grocery items. The sale of alcohol will be a very small portion of the retail space. The proposed site would not represent a majority of the proposed use.

4) The site is Grocery store selling beer and wine not a Liquor store. The store hours are from 7 AM to 9 PM to meet the neighborhood and resident's convenience and necessity.

5) The proposed off-sale license is not within 500 feet of school, day care center, public parks, social service agency, residential care or service facility.

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 E Santa Clara Street
San José, California 95113

STAFF REPORT

Hearing Date/Agenda Number
P.C 10/11/06 Item No.: 4e

File Number
PD06-015 and ABC06-014

Application Type
Planned Development Permit and Liquor License Exception Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
249-37-007

PROJECT DESCRIPTION — Completed by: Lesley Xavier

Location: South side of East Taylor Street between 7th and 9th Streets.

Gross Acreage: 9.02 Net Acreage: n/a Net Density: n/a

Existing Zoning: A (PD) Planned Development Existing Use: Vacant tenant space

Proposed Zoning: No change Proposed Use: Retail with off-sale of alcohol

GENERAL PLAN — Completed by: LX

Land Use/Transportation Diagram Designation
Mixed Use #3 (Jackson Taylor Planned Residential Community)

Project Conformance:
[ ] Yes [ ] No
[x] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING — Completed by: LX

North:	Gordon Biersch Brewery	A(PD) Planned Development
East:	Industrial	A(PD) Planned Development
South:	Multi-Family Residential	A(PD) Planned Development
West:	Vacant parcel zoned for Multi-Family Residential	A(PD) Planned Development

ENVIRONMENTAL STATUS — Completed by: LX

[ ] Environmental Impact Report certified on
[ ] Negative Declaration circulated on
[ ] Negative Declaration adopted on

[x] Exempt
[ ] Environmental Review Incomplete
[ ] Addendum to

FILE HISTORY — Completed by: LX

Annexation Title: Original City Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[ ] Approval
[ ] Approval with Conditions
[x] Denial
[ ] Uphold Director's Decision

Date: 10/3/06

Approved by:
[X] Action
[ ] Recommendation

PROPERTY OWNER	APPLICANT/CONTACT	
The Esplanade Attn: Jacque Mazutis 350 E. Taylor Street San Jose, CA 95112	Melsew Berihun & Mulugeta Shumeye 360 E. Taylor Street San Jose, CA 95112	

PUBLIC AGENCY COMMENTS RECEIVED — Completed by: LX

Department of Public Works

- No comments.

Other Departments and Agencies

- Police Department (See attached)

GENERAL CORRESPONDENCE

- None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Taylor Street Market, is requesting a Planned Development Permit and Liquor License Exception Permit (ABC), also referred to as a Determination of Public Convenience or Necessity, to allow for the off-sale of alcohol at a proposed new retail market.

The subject site is located within the A (PD) Planned Development Zoning District. The Planned Development Zoning covers a project commonly known as, "Esplanade". This project included 272 multi-family attached residential units, 6 live/work units, and 6 retail spaces. The original Planned Development Permit for the site, File No. PD98-053, includes a development standard, which states that the off-sale of alcoholic beverages may be permitted on the site upon the issuance of a Planned Development Permit. For sites within a Planned Development Zoning District, a Planned Development Permit takes the place of a Conditional Use Permit, which is typically the process used to approve off-sale of alcohol proposals. Also per the Development Standards, the tenant spaces designated for retail uses in the project do not require any parking.

Site Conditions and Context

The subject site is located on the south side of East Taylor Street between 7th and 9th Streets. The site is bounded by the Gordon Biersch Brewery to the north, an industrial building to the east, multi-family residential to the south, and an undeveloped parcel zoned for multi-family residential uses to the west. The closest residential use is located directly above the subject tenant space. The Santo Market, which has a license for off-sale, is located approximately 2 blocks from the subject site to the west. Grant Elementary School is located within 1,000 feet of the subject site to the

southeast. The subject site is also located just outside of the border of the 13th Street Strong Neighborhoods Initiative Area.

GENERAL PLAN CONFORMANCE

The subject site has a *San Jose 2020 General Plan* Land Use/Transportation Diagram designation of Mixed Use #3 (Jackson Taylor Planned Residential Community). This designation allows High Density Residential (25-50 DU/AC) uses, up to 192,625 square feet of office, and between 7,500 and 18,125 square feet of retail uses. Retail uses should be located on the south side of Taylor Street between Seventh Street and the rail tracks. The proposed project is for a new retail market located on the south side of Taylor Street between Seventh Street and the rail tracks in an existing mixed use (residential and commercial) building. The proposed use is consistent with the General Plan land use designation.

ENVIRONMENTAL REVIEW

The Director of Planning, Building, and Code Enforcement has determined that this project is exempt from environmental review requirements under Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act (CEQA). Pursuant to Section 15303(c) of the CEQA Guidelines, permitting the location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed retail market is located in an existing 1,440 square foot commercial space. The proposed project qualifies for this exemption in that the project does not involve the use of significant amounts of hazardous substances and does not exceed 2,500 square feet in floor area.

ANALYSIS

As of January 1995, the State of California Legislature implemented AB2897 by amending the Business and Professions Code (Section 23958) to require the Department of Alcoholic Beverage Control (ABC) to deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses." Undue concentration is defined as follows:

- If issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses. Undue concentration is defined as follows: The premises of the proposed license is located in an area that has 20 percent more reported crimes than the average number of reported crimes for the City as a whole, or;

- The premises of the proposed license is located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio of retail off-sale licenses to population in the County of the proposed premise.

The liquor license applicant may request that the City grant an Exception based on "Public Convenience or Necessity." Unless the City makes a Determination of Public Convenience or Necessity, the State Department of Alcohol Beverage Control (ABC) will not issue a liquor license for off-sale of alcohol if the business is located in an area of undue over-concentration.

In this case, the subject site is not located in an area with a crime index greater than 20%, but it is located in a census tract that exceeds the ratio of on-sale off-sale outlets in the area. Therefore, a Determination of Public Convenience or Necessity must be made in order for the applicant to obtain an ABC Permit from the State Department of Alcoholic Beverage Control. Such a determination can be made by the Planning Commission or the City Council on appeal.

Municipal Code Section 6.84.030 - Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License

Subject to the provisions of Section 6.84.030(B) of the San Jose Municipal Code, the Planning Commission may issue a determination of Public Convenience or Necessity in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-sale of alcoholic beverages if *all four* of the findings below can be made. A discussion on how the proposed project conforms to the findings follows each finding statement.

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the Chief of Police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and

   The proposed off-sale license is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area. It is also not located within an area in which the Chief of Police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or would increase the severity of existing law enforcement or public nuisance problems in the area.

2. The proposed use would not lead to the grouping of more than four (4) off-sale uses within a one thousand (1,000) foot radius from the proposed use; and

   The proposed off-sale license would not lead to a to the grouping of more than four (4) off-sale uses within a 1,000-foot radius from the proposed use. Currently, one off-sale license, Santo Market, exists within a 1,000-foot radius. The addition of the proposed license would bring the total number of licenses to two within a 1,000-foot radius of the subject site.

3. The proposed use would not be located within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty (150) feet of a residence; and

According to the City's GIS database, the proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility. However, the proposed off-sale license is within one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, because the subject building is a mixed-use (residential and commercial) building. Therefore, this finding may not be made.

4. Alcohol sales would not represent a majority of the proposed use.

   The proposed use of the site is a market selling grocery items and alcohol. The sale of alcohol will be an incidental portion of the retail space because it would not represent a majority of the proposed use.

Planned Development Permit

To approve the Planned Development Permit, the Planning Commission must find, pursuant to San Jose Municipal Code Section 20.100.940, that (1) the Planned Development Permit furthers General Plan policies, (2) the Planned Development Permit conforms to the Planned Development zoning of the property, (3) the interrelationship between the proposed buildings and other uses on-site are appropriate, compatible, and aesthetically harmonious, and (4) the environmental effects of the project will not have an unacceptable effect on adjacent properties. Although most of the findings for approval of the PD Permit could generally be made on their face, approval of the proposed PD Permit is only of value if a determination of Public Convenience or Necessity (PCN) can be granted for off-sale alcohol. In this case, the PCN findings may not be made. Arguably, it is difficult to predict with any certainty that since a residential unit is located directly above and so close to the subject store, that the sales of alcoholic beverages would not impact the residential use. Therefore, staff recommends the Planning Commission deny the proposed PD Permit application.

Conclusion

Based on the above analysis, staff concludes that the Planning Commission may not make the findings required for a Determination of Public Convenience or Necessity for this proposal pursuant to Municipal Code Section 6.84.030(B) #3, which states that the proposed use would not be located within one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, as the subject building is a mixed-use (residential and commercial) building.

In instances where not all of the findings can be made, Title 6 provides an opportunity upon appeal whereby the City Council can approve such a proposal. This can only be approved if the City Council identifies and finds that a significant and overriding public benefit or benefits will be served by the proposed use.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the

subject property. The Planning Commission Agenda is posted on the Planning Divisions' website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission deny the requested Liquor License Exception Permit (Determination of Public Convenience or Necessity) and Planned Development Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The subject site is located on the south side of East Taylor Street between 7th and 9th Streets.

2. The subject site is a tenant space in one building of a lager mixed-use site that is 9.02 gross acres in size.

3. The subject site has a *San Jose 2020 General Plan* Land Use/Transportation Diagram designation of Mixed Use #3 (Jackson Taylor Planned Residential Community). The proposed use is consistent with this designation.

4. The site is currently zoned A(PD) Planned Development.

5. The original Planned Development Permit for the site, File No. PD98-053, includes a development standard, which states that the off-sale of alcoholic beverages may be permitted on the site upon the issuance of a Planned Development Permit. For sites within a Planned Development Zoning District, a Planned Development Permit takes the place of a Conditional Use Permit, which is typically the process used to approve off-sale of alcohol proposals.

6. The site is bounded by the Gordon Biersch Brewery to the north, an industrial building to the east, multi-family residential to the south, and an undeveloped parcel zoned for Multi-Family Residential the west.

7. A Liquor License Exception Permit (Determination of Public Convenience or Necessity) is required to allow the off-sale of alcohol at a site that is located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio of retail off-sale licenses to population in the County of the proposed premise.

8. The proposed off-sale license is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area. It is also not located within an area in which the Chief of Police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or would increase the severity of existing law enforcement or public nuisance problems in the area.

9. The proposed off-sale license would not lead to a to the grouping of more than four (4) off-sale uses within a 1,000-foot radius from the proposed use. Currently, one off-sale license, Santo Market, exists within a 1,000-foot radius. The addition of the proposed license would bring the total number of licenses to two within a 1,000-foot radius of the subject site.

10. In this case, the subject site is not located in an area with a crime index greater than 20%, but it is located in a census tract that exceeds the ratio of on-sale off-sale outlets in the area.

11. Based on the fact noted above, this proposal is subject to ABC Exception Permit requirements that mandate a finding that the proposed use be located 150 feet from a residential use.

12. According to the City's GIS database, the proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility. However, the proposed off-sale license is within one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, and is situated in a manner that would be incompatible with the proposed off-sale alcohol use.

13. The proposed use of the site is a market selling grocery items and alcohol. The sale of alcohol will be an incidental portion of the retail space because it would not represent a majority of the proposed use.

14. The Police Department has indicated their opposition to the proposal.

15. The Director of Planning, Building, and Code Enforcement has determined that this project is exempt from environmental review requirements under Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act (CEQA), pursuant to Section 15303(c) of the CEQA Guidelines.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.

3. The proposed project is in compliance with the California Environmental Quality Act.

4. The proposed off-sale license is not within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or within an area in which the Chief of Police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or would increase the severity of existing law enforcement or public nuisance problems in the area.

5. The proposed off-sale license would not lead to a to the grouping of more than four (4) off-sale uses within a 1,000-foot radius from the proposed use. Currently, one off-sale license exists within a 1,000-foot radius. The addition of the proposed license would bring the total to two.

6. The proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility.

7. The proposed off-sale license is within one hundred fifty (150) feet of a residence. The closest of the above-mentioned use is located directly above the subject tenant space.

8. The proposed use of the site is a market and alcohol sales will make up a small percent of the retail space and would not represent a majority of the proposed use.

9. Municipal Code Section 6.84.030(B) 3 states that such a proposed use must be located more than one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, as the subject building is a mixed-use (residential and commercial) building.

10. Findings may not be made for a Determination of Public Convenience and Necessity for the subject liquor license.

Finally, based upon the above-stated facts and findings, the Planning Commission concludes and finds that:

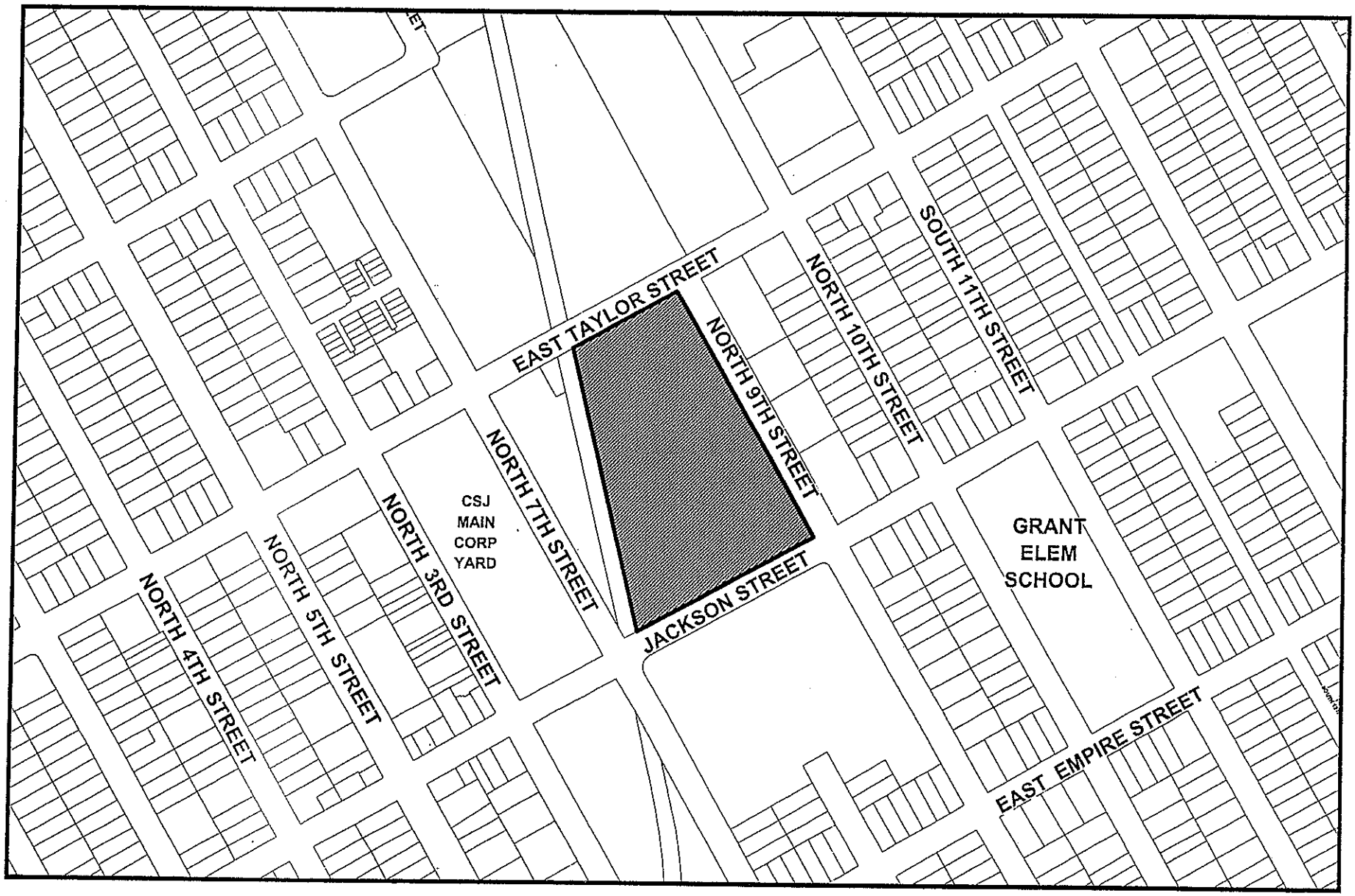
1. The Planned Development Permit generally further the policies of the General Plan;

2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property;

3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are <u>not</u> appropriate, compatible and aesthetically harmonious;

4. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water run off, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Therefore, the Planning Commission hereby **denies** said Planned Development Permit and Liquor License Exception Permit.



N

Scale: 1"= 400'

Map Created On: 06/07/2006

Noticing Radius: 500 feet

File No: PD06-015

District: 3

Quad No: 67

CITY OF SAN JOSÉ, CALIFORNIA
DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT
STATEMENT OF EXEMPTION

FILE NO.	PDA98-053-01
LOCATION OF PROPERTY	Southwest corner of East Taylor and North Ninth Streets (350 E. Taylor Street)
PROJECT DESCRIPTION	Planned Development Permit Amendment to allow off-sale of alcoholic beverages and a new sign at an existing retail store (Taylor Street Market) on a 9.02 gross acre site.
ASSESSOR'S PARCEL NUMBER	249-37-007

CERTIFICATION

Under the provisions of Section 15303(c) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

- **15303(c). New Construction or Conversion of Small Structures.** Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to: A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement

Ron Eddow

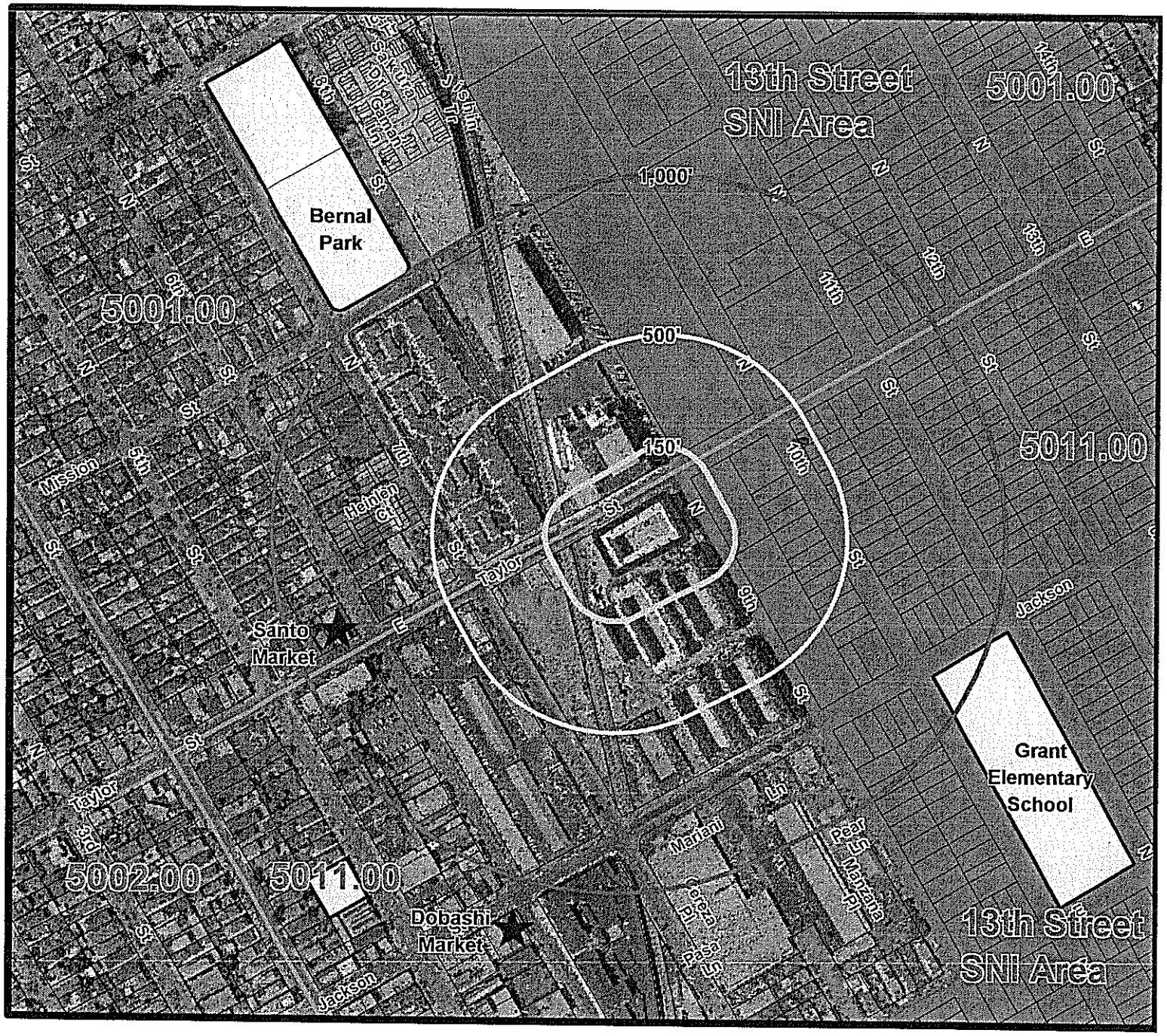
Deputy

Date September 20, 2006

Project Manager: Lesley Xavier

(Rev. 10/23/02)

PDA98-053-01
ABC06-014



Proposed Location

Existing Off-Sale ABC Licenses

Census Tract

Parks, Schools, and Residential Care Facilities

1000 feet from Proposed Location (for license grouping determination)

500 feet from Proposed Location (for proximity to specified uses)

150 feet from Proposed Location (for proximity to residential use– may require field verification)

N W E S

Scale: 1 inch = 450 feet

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY
10th Largest U.S. City

City of San Jose, Planning Services Division, July, 2006

Source: C:\Permits\ABC_Template

TAYLOR STREET MARKET

E. TAYLOR STREET AND N. EIGHTH STREET

360 E. TAYLOR STREET

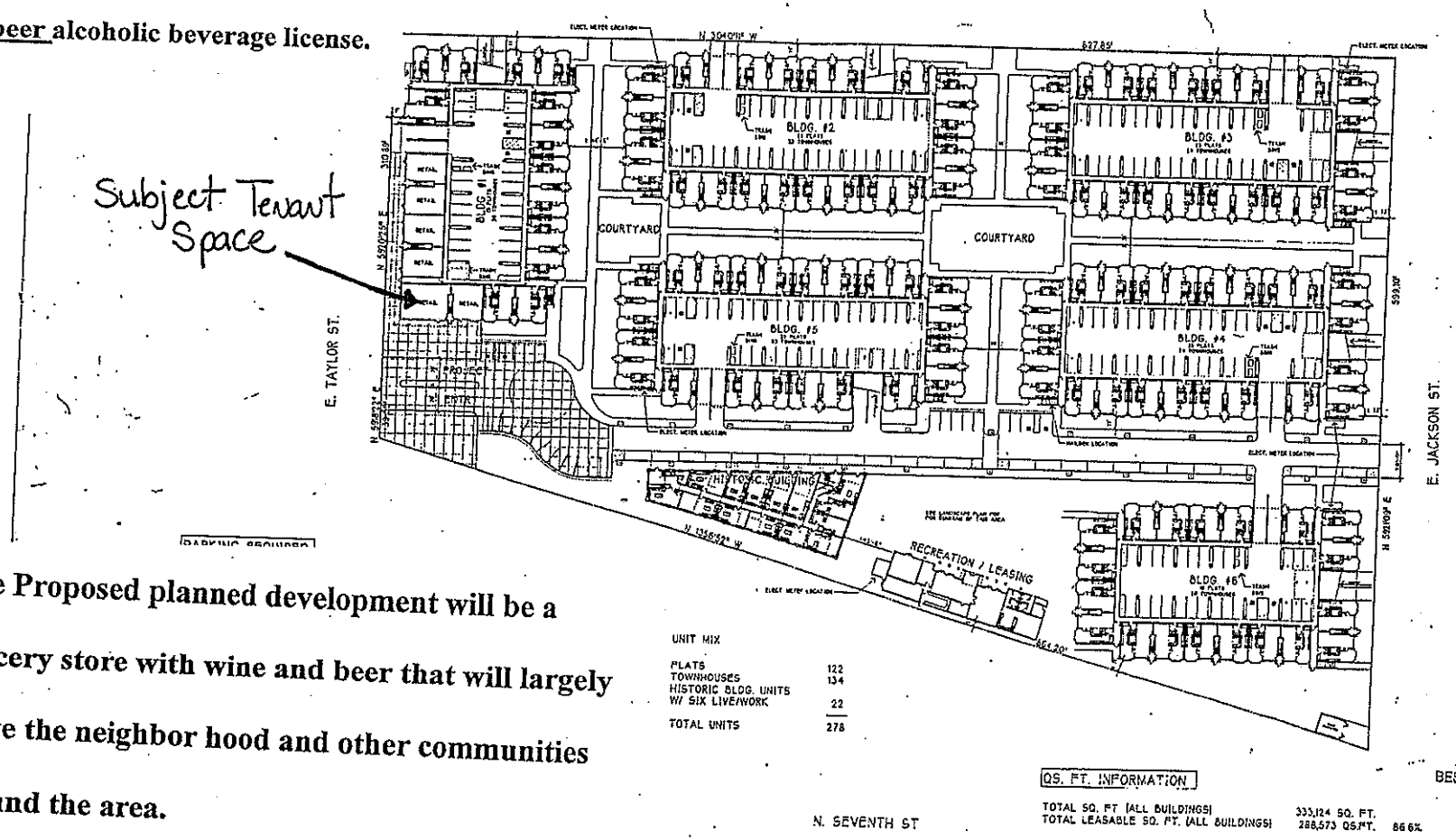
SAN JOSE, CALIFORNIA 95112

Contact Person:

MELSEW BERIHUN
Phone # (408) 655-9878
OR
MULUGETA SHUMEYE
Phone # (408) 515-8877

Date: October 11, 2006

The type and number of alcoholic beverage license requested to issue on this site will be one that is wine and beer alcoholic beverage license.



The Proposed planned development will be a grocery store with wine and beer that will largely serve the neighbor hood and other communities around the area.

The Steinberg Group

PICERNE DEVELOPMENTS

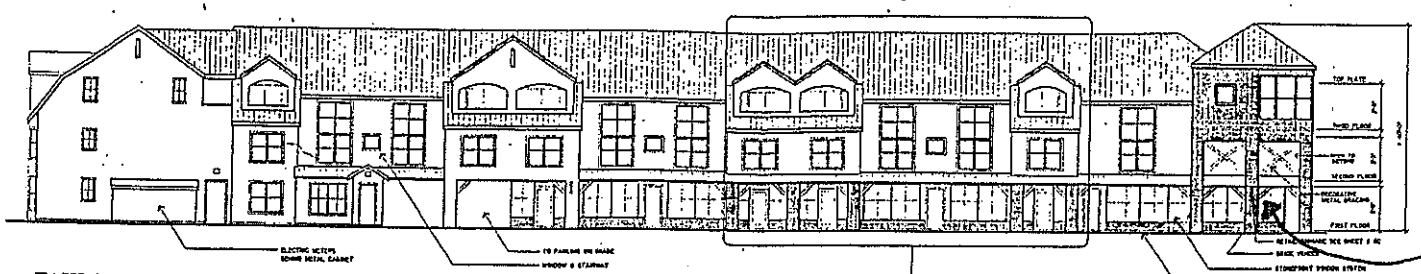
ESPLANADE

SAN JOSE, CALIFORNIA

SITE PLAN

PLANNED DEVELOPMENT PERMIT SET

Date: October 11, 2006
Taylor Street Market

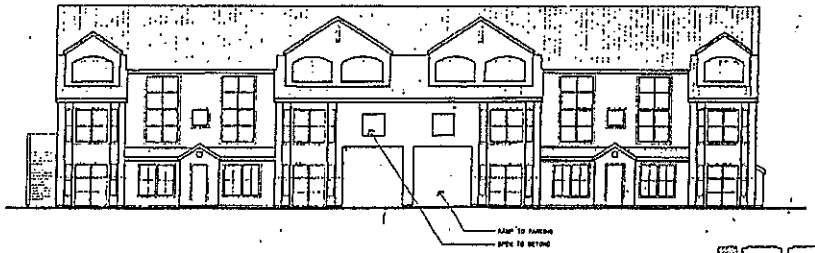


TAYLOR ST. ELEVATION BUILDING #1

Subject Tenant Space

ESPLANADE ELEVATION BUILDING #1

EIGHT ST. ELEVATION BUILDING #1



NINTH ST. ELEVATION BUILDING #1

BEST AVAILABLE COPY

The Steinberg Group

PICERNE DEVELOPMENTS

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ESPLANADE

SAN JOSE, CALIFORNIA

BUILDING #1 ELEVATIONS

PLANNED DEVELOPMENT PERMIT SET

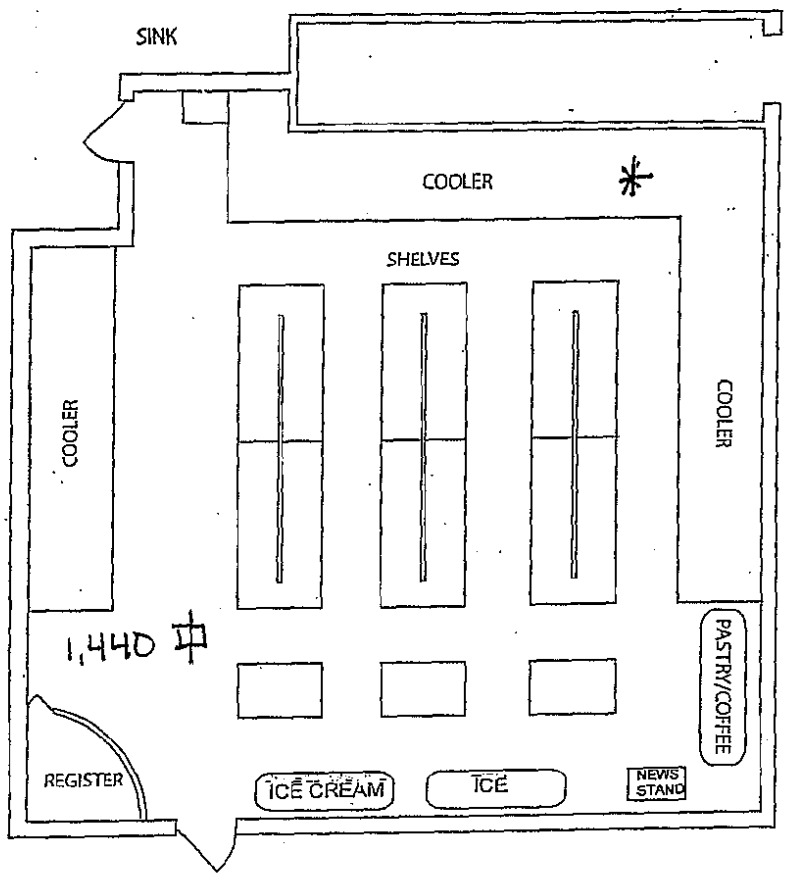
98-058 20

5B

Date: October 11, 2006
Taylor Street Market

6

Floor Plan

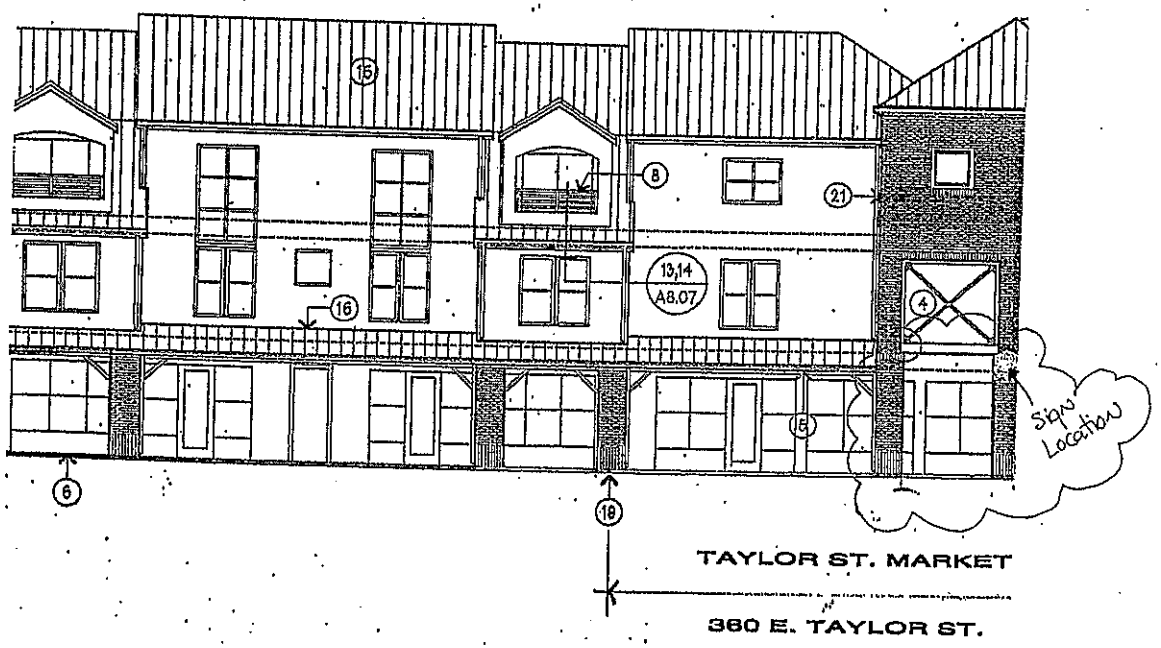


Taylor Street

* 6 shelves and 1 cooler, approximately, dedicated to alcohol sales

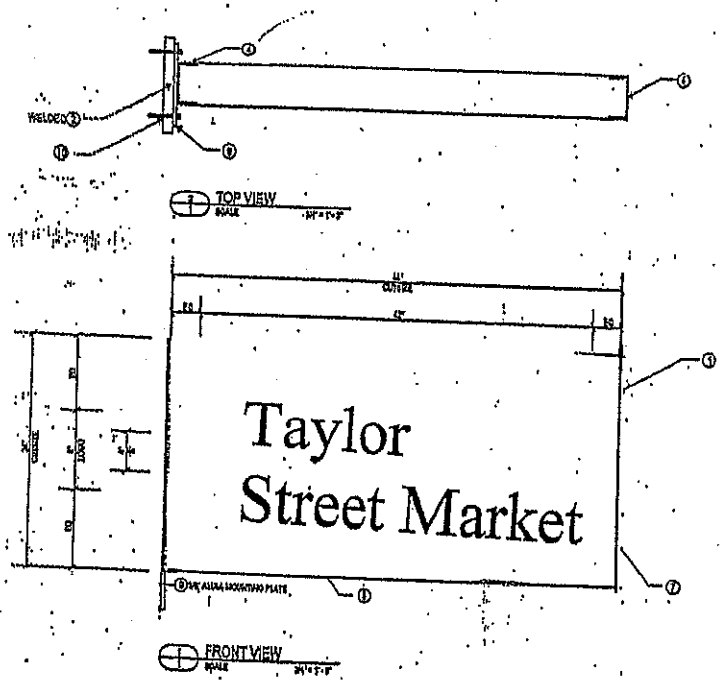
Date: October 11, 2006
Taylor Street Market

Taylor street market sig



The signage will be mounte
At 82.5 inch heights. Look t
The building elevation whe

Date: October 11, 2006
Taylor Street Market



Aluminum wall sign
New install

Height 2'
Width 4
Sq.ft 8

None Illuminations

Date: October 11, 2006
Taylor Street Market

RESOLUTION NO.

Resolution of the City Council of the City of San José granting, subject to conditions, a Planned Development Permit and Liquor License Exception Permit (Determination of Public Convenience or Necessity) to use certain real property described herein for the purpose of allowing a retail use with off-sale of alcohol.

FILE NO. PD06-015 and ABC06-014

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on June 7, 2006, an application (File No. PD06-015 and ABC06-014) was filed for a Planned Development Permit and Liquor License Exception Permit (Determination of Public Convenience or Necessity) for the purpose of allowing a retail use with off-sale of alcohol, on that certain real property, on that certain real property (hereinafter referred to as "subject property"), situate in the A(PD) Planned Development Zoning District, located at , located on the south side of East Taylor Street between 7th and 9th Streets, San Jose, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, the Planning Commission conducted a hearing on said application; and

WHEREAS, on October 11, 2006, the Planning Commission denied the application, from which decision the applicant has appealed to this City Council; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, this City Council; conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Planning Commission; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Taylor Street Market," dated October 11, 2006. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this City Council;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. The subject site is located on the south side of East Taylor Street between 7th and 9th Streets.

2. The subject site is a tenant space in one building of a lager mixed-use site that is 9.02 gross acres in size.

3. The subject site has a *San Jose 2020 General Plan* Land Use/Transportation Diagram designation of Mixed Use #3 (Jackson Taylor Planned Residential Community). The proposed use is consistent with this designation.

4. The site is currently zoned A(PD) Planned Development.

5. The original Planned Development Permit for the site, File No. PD98-053, includes a development standard, which states that the off-sale of alcoholic beverages may be permitted on the site upon the issuance of a Planned Development Permit. For sites within a Planned Development Zoning District, a Planned Development Permit takes the place of a Conditional Use Permit, which is typically the process used to approve off-sale of alcohol proposals.

6. The site is bounded by the Gordon Biersch Brewery to the north, an industrial building to the east, multi-family residential to the south, and an undeveloped parcel zoned for Multi-Family Residential the west.

7. A Liquor License Exception Permit (Determination of Public Convenience or Necessity) is required to allow the off-sale of alcohol at a site that is located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio of retail off-sale licenses to population in the County of the proposed premise.

8. The proposed off-sale license is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area. It is also not located within an area in which the Chief of Police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or would increase the severity of existing law

enforcement or public nuisance problems in the area.

9. The proposed off-sale license would not lead to a to the grouping of more than four (4) off-sale uses within a 1,000-foot radius from the proposed use. Currently, one off-sale license, Santo Market, exists within a 1,000-foot radius. The addition of the proposed license would bring the total number of licenses to two within a 1,000-foot radius of the subject site.

10. In this case, the subject site is not located in an area with a crime index greater than 20%, but it is located in a census tract that exceeds the ratio of on-sale off-sale outlets in the area.

11. Based on the fact noted above, this proposal is subject to ABC Exception Permit requirements that mandate a finding that the proposed use be located 150 feet from a residential use.

12. According to the City's GIS database, the proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility. However, the proposed off-sale license is within one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, and is situated in a manner that would be incompatible with the proposed off-sale alcohol use.

13. The proposed use of the site is a market selling grocery items and alcohol. The sale of alcohol will be an incidental portion of the retail space because it would not represent a majority of the proposed use.

14. The Police Department has indicated their opposition to the proposal.

15. The Director of Planning, Building, and Code Enforcement has determined that this project is exempt from environmental review requirements under Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act (CEQA), pursuant to Section 15303(c) of the CEQA Guidelines.

16. Upon an appeal of a denial of the granting of a Determination of Public Convenience or Necessity, the City Council would need to find conformance with <u>one</u> of the four additional findings noted below in order to approve the proposal.

    a. The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety; or

    b. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety; or

c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the City, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area; or

d. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

This City Council concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.

3. The Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property;

4. The proposed project is in compliance with the California Environmental Quality Act.

5. The proposed off-sale license is not within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or within an area in which the Chief of Police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or would increase the severity of existing law enforcement or public nuisance problems in the area.

6. The proposed off-sale license would not lead to a grouping of more than four (4) off-sale uses within a 1,000-foot radius from the proposed use. Currently, one off-sale license exists within a 1,000-foot radius. The addition of the proposed license would bring the total to two.

7. The proposed off-sale license is not within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility.

8. The proposed off-sale license is within one hundred fifty (150) feet of a residence. The closest of the above-mentioned use is located directly above the subject tenant space.

9. The proposed use of the site is a market and alcohol sales will make up a small percent of the retail space and would not represent a majority of the proposed use.

10. Municipal Code Section 6.84.030(B) 3 states that such a proposed use must be located more than one hundred fifty (150) feet of a residence. The nearest residence is located directly above the subject tenant space, as the subject building is a mixed-use (residential and commercial) building.

11. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience in that

the proposed use of the site is a market selling grocery items and alcoholic beverages. The sale of alcohol will be an incidental portion of the retail space because it would not represent a majority of display space for the proposed use.

Therefore, the City Council hereby **approve**s said Planned Development Permit and Liquor License Exception Permit.

ADOPTED and issued this 20th day of March, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

Chuck Reed, Mayor

ATTEST:

Lee Price, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

c:

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 10/17/01 Item 3.1

File Number
CP 00-07-051

Application Type
Conditional Use Permit

Council District 3

Planning Area
Central

Assessor's Parcel Number(s)
235-16-013

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Akoni Danielsen

Location: West side of Old Oakland Road, approximately 340 feet south of Horning Street (937 Old Oakland Road)

Gross Acreage: 0.64 | Net Acreage: 0.64 | Net Density: N/A

Existing Zoning: LI Light Industrial | Existing Use: Legal Non-conforming Drinking Establishment

Proposed Zoning: No Change | Proposed Use: Drinking Establishment and Entertainment Establishment

GENERAL PLAN

Completed by: AD

Land Use/Transportation Diagram Designation
Light Industrial with Mixed Industrial Overlay

Project Conformance:
[x] Yes [ ] No
[x] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AD

North:	truck washing station	LI Light Industrial
East:	industrial/warehouse	LI Light Industrial
South:	automotive repair	LI Light Industrial
West:	storage yard	LI Light Industrial

ENVIRONMENTAL STATUS

Completed by: AD

[ ] Environmental Impact Report
[ ] Negative Declaration circulated on
[ ] Negative Declaration

[x] Exempt
[ ] Environmental Review Incomplete

FILE HISTORY

Completed by: AD

Annexation Title: Orchard No. 8 | Date: 11/01/1951

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[x] Approval
[ ] Approval with Conditions
[ ] Denial
[ ] Uphold Director's Decision

Date: October 10, 2001

Approved by: Darryl Boyd
[ ] Action
[ ] Recommendation

APPLICANT	OWNER
Jose Antonio 937 Old Oakland Road San Jose, CA 95112	JEV Properties 937 Old Oakland Road San Jose, CA 95112

00-051

PUBLIC AGENCY COMMENTS RECEIVED Completed by: Akoni Danielsen

Department of Public Works

None received.

Other Departments and Agencies

See conditions of approval.

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This request is for a Conditional Use Permit (CUP) to allow the addition of an entertainment use to an existing legal non-conforming drinking establishment (Mexicali Club) on a 0.64-gross acre site in the LI Light Industrial Zoning District. The site is located at the west side of Oakland Road, approximately 340 feet southerly of Horning Street (939 Oakland Road) in a predominantly industrial neighborhood. Adjacent uses include a truck washing station to the north, the Modern Ice plant to the east across Oakland Road, automotive repair to the south and a storage yard to the west. There are residential uses mixed into the industrial pattern a block to the west, and a mix of commercial uses along Oakland Road.

what are the issues

The Zoning Code defines a drinking establishment as any place where alcohol is sold, offered for sale, or served to patrons independent of any other activity, including but not limited to eating, entertainment, karaoke, etc. An entertainment establishment is defined as any establishment (indoors or outdoors) where entertainment, either passive or active, is provided for the pleasure of the patrons, either independent or in conjunction with any other use. Such entertainment includes but is not limited to, vocal instrumental music, dancing, karaoke, comedy, and acting.

The subject application was filed and deemed complete prior to February 19, 2001, the effective date of the rewrite of the Zoning Code, and so has been processed according to the requirements of the M-1 Manufacturing Zoning District (now LI Light Industrial) in effect at the time it was deemed complete. Entertainment establishments are allowed upon issuance of a CUP in the M-1 Manufacturing District.

- how did got to the point

Planning staff have determined the Mexicali Club is a legal non-conforming drinking establishment that has routinely been open for business since 1947. Prior to 1971, drinking establishments were allowed by right in the M-1 Manufacturing Zoning District. In 1971, the Zoning Code was amended so that drinking establishments were allowed with a CUP, and the Club, which had never previously been subject to a CUP, became a legal non-conforming use. Since 1965, drinking establishments have been allowed dancing by the patrons as an incident to the operation, as well as instrumental and vocal music for the listening pleasure of the patrons, but no other entertainment. There could be no door charge as this would

What are the issues

turn the entertainment into the primary use and be considered an entertainment establishment. The requested CUP would allow collection of a door charge and entertainment as a primary use.

No additions or alterations are proposed to the exterior of the building. The building features double doors opening onto Oakland Road, and a single door facing the driveway alongside the southern side of the building. Proposed site improvements include new paving and striping of the parking lot at the rear of the property, and parking lot lights.

ENVIRONMENTAL REVIEW

The project was found to be exempt from environmental review under Section 15301 of the CEQA Guidelines, which exempts projects with existing facilities involving little or no expansion of an existing use. The project proposes no addition to the existing building, nor increase in seating or floor area open to the public. Additionally, the area in which the site is located is not environmentally sensitive.

GENERAL PLAN CONFORMANCE

The site has a General Plan Land Use/Transportation Diagram designation of Light Industrial with Mixed Industrial Overlay. Areas with this overlay designation contain or are surrounded by an existing mix of uses, so that additional non-industrial uses would not compromise the integrity of areas reserved exclusively for industrial uses. Examples of non-industrial uses include, but are not limited to, primary or secondary schools, hotels and motels, nightclubs, churches, free standing daycare centers, big box retailers, large gymnasiums, sports or arts instruction facilities, and hospitals. Drinking and entertainment establishments have been allowed to operate in industrially designated areas when they would not frustrate the City's industrial land use and economic development policies. The key consideration has been whether the non-industrial use would compromise the industrial integrity of the area by conflicting with the development and operation of surrounding industrial properties. In this case, the Mexicali Club has operated on the site for nearly 55 years, and the addition of an entertainment use in conjunction with the bar should not create conflicts with the surrounding industrial properties.

PUBLIC OUTREACH

Public Notices of the Planning Commission hearing on the Conditional Use Permit were mailed to area residents and owners of property with 500 feet of the subject site. Staff has been available to discuss the project with the public.

ANALYSIS

The primary project issue is conformance with Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars.

In 1991 the City Council adopted, and in 1993 revised, Guidelines for evaluating bars and nightclubs (attached). The Policy identifies the key issues of land use compatibility, noise, parking, garbage and litter, and restrictions on use.

Land Use Compatibility. The Policy discourages new entertainment establishments from opening adjacent to or near existing or planned residential uses. As stated above, residential uses are present in the neighborhood to the west. Additionally, the large Modern Ice property to the east across four-lane Oakland Road has recently been the subject of a General Plan Amendment for high density residential uses. However, the drinking establishment has existed since 1947, and the addition of entertainment should be compatible with the nearby residences for reasons described in more detail below. Per the Policy, the establishment is dispersed from other drinking/entertainment establishments and is not within 500 feet of a school. Consistent with the Policy, the project has been conditioned to control crowds queuing on the sidewalk and litter from patrons.

The Police Department has evaluated the proposal to ensure the safety and security of both patrons and citizens. Accordingly, the draft Permit includes conditions recommended by the Chief of Police requiring security guards responsible for interior and exterior surveillance, and additional exterior lighting. The Police Department has not indicated the existing use has been a law enforcement problem, nor has it suggested that the addition of the entertainment use would pose a law enforcement problem.

Noise. The operation of the entertainment use has been regulated to protect surrounding uses. All entertainment will occur within the existing building. Windows and doors will not be left open, and adequate ventilation is provided so that openings to the outside can be closed when the establishment is at full capacity. Noise generated by the establishment is conditioned to not exceed 60 dBA at the property line. To ensure compliance, noise measurements will be taken monthly after the entertainment use opens and a report submitted quarterly to the Planning Director. Should the establishment exceed 60 dBA at the property line, the report must identify measures to achieve compliance. As there is no proposed construction, surrounding uses will not be impacted from that typical activity.

Parking. The standard parking requirement for drinking and entertainment establishments is one space per 40 square feet of useable patron area. The building contains approximately 2,200 sq.ft. of useable area, for a nominal requirement of 55 parking spaces. However, the Zoning Code exempts structures or uses instituted prior to 1965 from the current requirements unless there is a substantial change in use. The Club was legally established in 1947 with 18 spaces, and has also informally used available parking on the adjacent property to the north also owned by the property owner. Staff is not aware that the existing drinking establishment has created parking impacts to the surrounding neighborhood. The proposed entertainment use would not result in additional seating or floor area open to public, and therefore is not a substantial change in use that would trigger application of the current rates. As mentioned above, new lighting will be provided to better illuminate existing parking available to the existing and proposed use.

Garbage and Litter. The project will be required to keep all publicly used areas free of litter, trash, cigarette butts, and garbage, and will daily damp wash the sidewalks in front of the building. Mechanical equipment used for outside maintenance, including blowers and street-sweepers, will not be used between 10:00 p.m. and 6:00 a.m. Ashtrays will be provided outdoors to accommodate smokers.

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Use Restrictions. Per the Policy, the drinking and entertainment establishment will not operate after 2:00 a.m. daily. The maximum occupancy will be as identified by the Fire Marshall. The draft Permit includes a five year time condition. At that time, the establishment will be reevaluated for compatibility with surrounding uses and applicable land use policy. A compliance review before the Planning

Commission is required in response to complaints filed with the Director of Planning.

Conclusion. Based on the above analysis, staff concludes that the proposed entertainment and drinking establishment, as conditioned by this Conditional Use Permit, would be compatible with the surrounding neighborhood and in conformance with the General Plan, applicable Zoning Code regulations, and Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars.

RECOMMENDATION

Planning Staff recommends that the Planning Commission approve the Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Light Industrial with Mixed Industrial Overlay on the adopted San Jose 2020 General Plan Land Use/Transportation Diagram.

2. The 0.64 acre site is located in the LI Light Industrial Zoning District.

3. The project site is developed with a single-story structure currently used as a legal non-conforming bar with approximately 2,200 sq.ft. of useable area for patrons.

4. The project proposes the addition of entertainment activities that would constitute an entertainment use.

5. No building addition or increase in net useable area for patrons is proposed. No exterior changes are proposed to the structure.

6. The subject application was deemed complete prior to February 19, 2001, the effective date of the rewrite of the Zoning Code, and so has been processed according to the requirements of the M-1 Manufacturing Zoning District in effect at the time it was deemed complete.

7. The M-1 Manufacturing District allowed entertainment establishments upon issuance of a Conditional Use Permit.

8. The bar and nightclub would operate between the hours of 6 a.m. until 2 a.m.

9. The existing gravel parking lot would be paved and striped and new lighting installed.

10. The site is surrounded to the north by a truck washing facility, to the east by a warehouse/ice plant, to the south by an automotive repair use, and to the west by an outdoor storage yard and residential uses. The site is not within 500 of a school.

11. The Police Department has recommended additional security guards and parking lot lighting to address security of both patrons and citizens.

12. As conditioned by this Permit, entertainment will occur within the building with windows and doors closed. Noise will not exceed 60 dBA at the property line.

13. The Zoning Code requires one space per 40 sq.ft. of useable patron area for drinking and entertainment establishments, or 55 parking spaces for the site's 2,200 sq.ft. of useable patron area.

14. The drinking establishment was instituted in 1947 with 18 parking spaces on-site. Additional parking is available on the adjacent northerly lot also owned by the applicant.

15. Under Section 20.90.210 of the Zoning Code, no structure constructed, or use instituted, prior to November 10, 1965 is required to meet the off-street parking requirements unless there is a substantial change in the structure or use.

16. The proposed change in use is not considered substantial for the purposes of calculating required parking under Section 20.90.210 of the Zoning Code, and therefore the current amount of parking is sufficient to satisfy the off-street parking requirements for both the existing and proposed use.

17. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

The Planning Commission concludes and finds based on an analysis of the above facts that:

1. The proposed project is consistent with the San Jose 2020 General Plan Land/Use Transportation Diagram designation of Light Industrial with Mixed Industrial Overlay.

2. The proposed project is in compliance with the requirements of the California Environmental Quality Act.

3. The proposed entertainment use will be compatible with the uses in the surrounding neighborhood.

4. As conditioned in this Permit, the drinking and entertainment establishment would conform to Council Policy 6-23.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not

   a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

   b. Impair the utility or value of property of other persons located in the vicinity of the site; or

c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:

   a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and

   b. By other public or private service facilities as are required.

4. Traffic access, pedestrian access and parking are adequate in that:

   a. Sufficient driveway curb cuts and driveways are provided on site to provide access to the site without interfering with off-site circulation.

   b. Pedestrian walkways are provided to all major building entrances. A perimeter sidewalk is provided.

   c. The proposed number and size of parking spaces complies with the requirements of the Zoning Ordinance.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. **Water Pollution Control Plant Notice.** This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.

2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

3. **Exterior Improvements.** No exterior improvements have been approved with this permit. Any proposed exterior improvements are subject to approval by the Director of Planning as required.

4. **Roof Equipment.** No new roof equipment is approved with this permit. Installation of new roof equipment is subject to approval by the Director of Planning.

5. **Signs.** No new signs are approved with this permit. New signs are subject to approval by the Director of Planning.

6. **Hours of Operation.** The bar and entertainment use shall be limited to 6 AM to 2 AM daily. Patrons shall have departed the site by 2:30 AM.

7. **Security.** A security officer shall be on duty for every 100 patrons using the bar facility during its hours of operation. Security shall regularly patrol the parking lot during afterdark hours.

8. **Noise and Acoustics.**

   a. During the hours of nightclub operation, windows and doors must remain closed to minimize the impacts of amplified sound on adjacent land uses. Adequate ventilation must be provided to allow windows and doors to remain closed.

   b. Noise generated by the facility shall not exceed the standard of 60 dBA measured at the property line.

   c. During the first year of operation, an acoustical engineer shall take measurements of the noise produced by the entertainment use at the property lines on a monthly basis, and submit quarterly reports to the Director of Planning. In the event entertainment noise exceeds 60 dBA at the property line, the report shall include recommended measures to bring the entertainment use into compliance with this Permit.

9. **Games.** No pool or billiard tables, coin-operated or other games regulated by the City shall be permitted in excess of the number allowed by Title 20 of the Municipal Code.

10. **Trash, Refuse, Garbage and Litter.**

    a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of sidewalks along the project's frontage on Old Oakland Road.

    b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.

    c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.

    d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the project frontage.

11. **Exterior Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 20 feet above grade.

12. **Occupancy.** Maximum occupancy shall be as determined by the Fire Marshall.

13. **ABC License.** The project operator shall obtain the appropriate permit, based on the use of the facility from the State of California Department of Alcoholic Beverages Control (ABC) and shall maintain that license according to the use operated.

14. **Entertainment Permit.** The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.

15. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.

16. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise specified in writing from the Fire Department.

17. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided as required by the Fire Department.

18. **Hazardous Materials Storage.** This permit does not include any approval of facilities or areas on, within, or under the site to be used for the storage of hazardous, toxic, flammable, or combustible materials, and such facilities or areas are subject to review under separate Site Development Permit.

CONDITIONS SUBSEQUENT

1. **Building Permit.** If this Conditional Use Permit includes construction of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, of the Chapter 20.44, of Title 20, of the San Jose Municipal Code it finds:

   a. A violation of any conditions of the Conditional Use Permit was abated, corrected or rectified within the time specified on the notice of violation; or

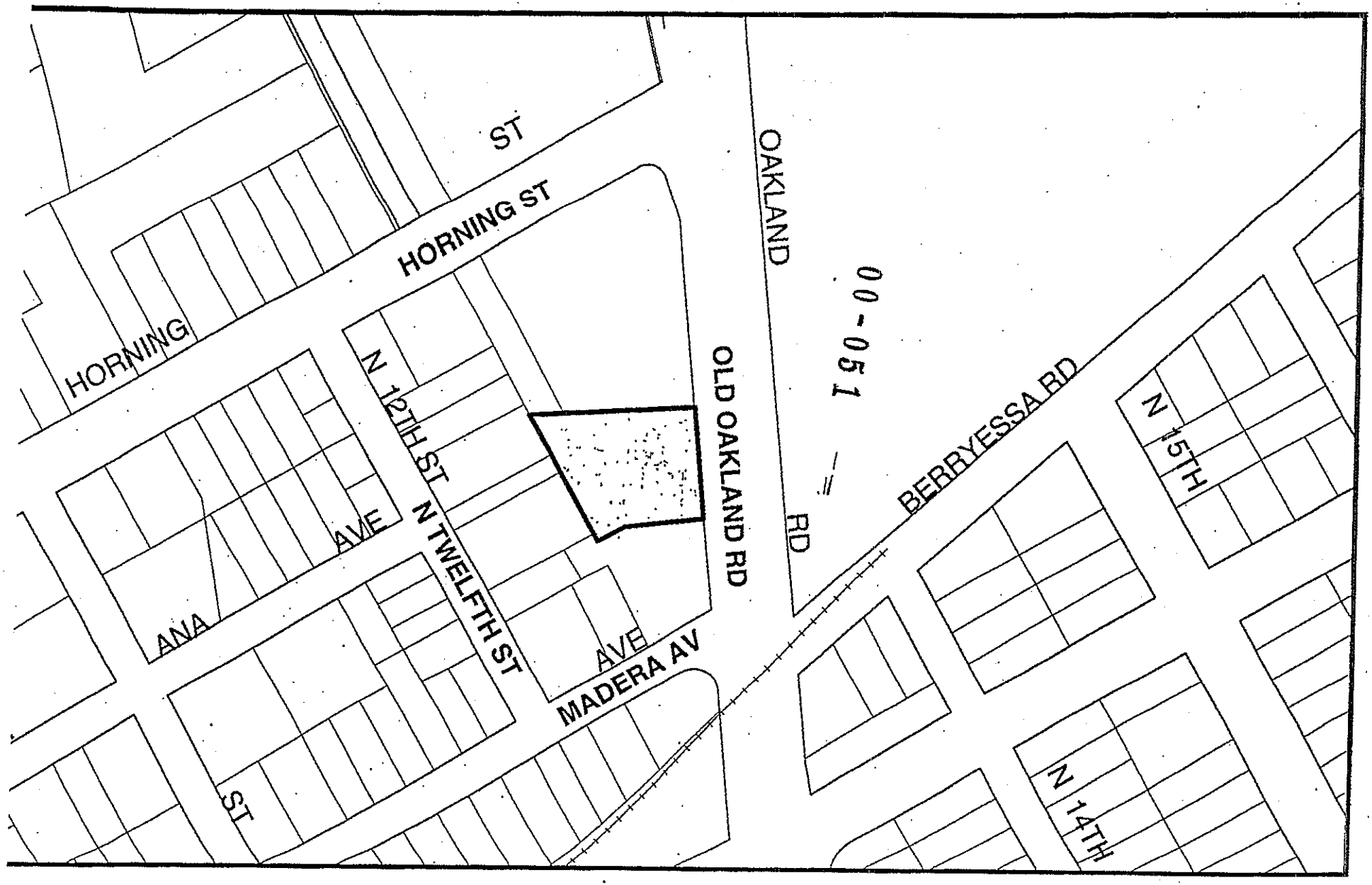
   b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

   c. The use presently conducted creates a nuisance.

3. **Time Limit.** This Conditional Use Permit expires and has not further force or effect five (5) years from the date of approval. This permit may be renewed in accordance with Condition #5, below.

4. **Compliance Review.** A Compliance Hearing may be required at the discretion of the Planning Commission or Director of Planning at any time during the period of time this permit is in effect.

5. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.



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File No: CP00-07-051

District: 3

Quad No: 67