

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  
C.C. 04-05-05

File Number  
CC 05-017

Application Type  
Conforming Rezoning

Council District  
3

Planning Area  
Rincon South

Assessor's Parcel Number(s)  
Various

# STAFF REPORT

## PROJECT DESCRIPTION

Completed by: Sanhita Mallick

Location: Both sides of San Juan Ave, between Sonora Ave to the north and Ferrari Ave to the south

Gross Acreage: 16                      Net Acreage: 16                      Net Density: N/A

Existing Zoning: R-2 Residential                      Existing Use: Single -Family Residential, 5 Two-Family Dwellings

Proposed Zoning: R-1-8 Residential                      Proposed Use: Single Family Residential, 5 Two-Family Dwellings

## GENERAL PLAN

Completed by: SM

Land Use/Transportation Diagram Designation  
Rincon South Planned Community  
Medium Low Density Residential (8 DU/AC)

Project Conformance:  
 Yes     No  
 See Analysis and Recommendations

## SURROUNDING LAND USES AND ZONING

Completed by: SM

North: R & D, Multi-Family                      A (PD) Planned Development

East: Single Family Residential                      R-1-8 Residence District

South: Vacant                      R-1-8 Residence District

West: Freeway and Airport

## ENVIRONMENTAL STATUS

Completed by: SM

Environmental Impact Report found complete (GP 2020 EIR certified 8/16/1994)  
 Negative Declaration circulated on  
 Negative Declaration adopted on

Exempt  
 Environmental Review Incomplete

## FILE HISTORY

Completed by: SM

Annexation Title: Rosemary Garden Unit No.1

Date: 3/29/1946

## PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

Date March 14, 2005

Approved by: *Susan Walton*  
 Action  
 Recommendation

## APPLICANT/OWNER/DEVELOPER

Numerous

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**PUBLIC AGENCY COMMENTS RECEIVED**

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Completed by: SM

Department of Public Works

None received

Other Departments and Agencies

**Airport Department**

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**GENERAL CORRESPONDENCE**

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None received

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

This is a City Council-initiated rezoning from R-2 Two-Family Residence District to R-1-8 Single-Family Residence District on approximately 16 acres. As indicated in the attached memorandum from Councilmember Cindy Chavez, dated November 3, 2004, this proposed rezoning is in response to neighborhood concerns that properties on San Juan Avenue be allowed the same flexibility with home additions that applies to the remainder of the Rosemary Garden area already zoned R-1-8 Residence and to preserve the character of the existing predominantly single family neighborhood, consistent with the San Jose 2020 General Plan. As indicated in the memorandum initiating this rezoning, a petition supporting this rezoning has been signed by approximately 40 of the approximately 80 impacted property owners.

The existing R-2 Two-Family Residence District provides for single- and two-family dwellings at a density of roughly between 8 to 16 dwelling units per acre. The proposed R-1-8 Single-Family Residence District would provide for new residential development of single-family homes on lots of 5445 square feet or greater, generally consistent with the existing lotting pattern. While both the R-2 and R-1-8 Residence zoning districts provide for single family dwellings as an allowed use, some development standards such as required structure setbacks from the property lines differ between the two Districts, as is described below.

**Project Description**

The proposed City Council initiated conforming rezoning will rezone approximately 16 acres of land along both sides of San Juan Avenue (see attached map) from R-2 to R-1-8 Residence District, between Sonora Avenue to the north and Ferrari Avenue to the south. A total of 83 parcels will be affected by this initiative.

**Site and Surrounding Uses**

The proposed area to be rezoned is overwhelmingly single family, with only five of the 83 parcels identified by staff as currently developed with two-family residences (duplexes), and the remainder with typical one or two story single family residences. The area to be rezoned is on the

western edge of the Rosemary Gardens Neighborhood which is predominantly zoned R-1-8 Residence District and developed with single-family residential uses. The Guadalupe Freeway is to the west. The San Jose International Airport lies across the Guadalupe Parkway. To the north, across Sonora Avenue lies a planned development site for a combination of research and development, retail and hotel uses and 315 multi-family attached residences. Interstate 880 is to the south.

This proposed rezoning has been initiated as a conforming rezoning, consistent with the General Plan and pursuant to chapter 20.120.100 of the Title 20 of San Jose Municipal Code, may be heard by the City Council without a recommendation by the Planning Commission.

### **ENVIRONMENTAL REVIEW**

The environmental impacts of this project were addressed by a Final EIR entitled, "San José 2020 General Plan EIR." The City of San José City Council adopted a resolution of findings on August 16, 1994.

The City of San Jose may take action on the proposed project as being within the scope of the General Plan and uses of the Program EIR in that (1) the Final EIR is a Program EIR pursuant to CEQA and CEQA Guidelines Section 15168, (2) it is determined that no new significant impacts will occur from this proposed project, and no new mitigation measures would be required beyond those contained in the General Plan and Final EIR pursuant to CEQA Guidelines 15162.

### **GENERAL PLAN CONFORMANCE**

The proposed rezoning is consistent with the San Jose 2020 General Plan. The site is located within the Rincon South Planned Community which designates the site and the entire Rosemary Gardens neighborhood as Medium Low Density Residential (8 Dwelling units per acre). Preservation of the Rosemary Gardens neighborhood is a primary goal of the Rincon South Specific Plan. This rezoning will assist in the preservation of the neighborhood by limiting future development to only single-family residential uses.

The proposed rezoning also promotes the Urban Conservation/Preservation Major Strategy of the General Plan that underscores the importance of protecting and enhancing San Jose's neighborhoods to promote resident's pride in the quality of the their living environment.

### **ANALYSIS**

The proposed rezoning to R-1-8 Single-Family Residence zoning district will bring the site's zoning into conformance with the General Plan land use designation of Medium Low Density Residential (8 DU/AC) and will contribute towards the preservation of this portion of the Rosemary Gardens neighborhood by limiting future residential development to single family residential uses. It will also allow for the modification of or addition to single-family homes in a manner consistent with other single-family homes throughout San Jose.

The minimum building setbacks of the two districts are given in the following table:

<b>Minimum Set Back (in Feet)</b>	<b>R-1-8</b>	<b>R-2</b>
Front	25	20
Side, Interior	5	5
Side, Corner	12.5	10
Rear, Interior	20	25
Rear, Corner	20	25

While the front setback requirements are greater (25 versus 20 feet) in the R-1-8 Residence Zoning District than the R-2 Residence Zoning District, the rear setback is less (20 versus 25 feet) in the proposed R-1-8 Zoning District, with specific exceptions for as little as a 15-foot rear setback for single-story additions of limited size. This exception does not exist in the R-2 Residence Zoning District which is a primary reason that the area residents have requested this rezoning.

As a result of the proposed rezoning, the few existing duplexes in the area would become legal non-conforming uses and would be allowed to remain. As indicated in the Zoning Ordinance, any lawful use of land or structure which ceases to conform to the provision of Zoning Ordinance because of rezoning; or any legally constructed building or structure under the applicable code at the time of construction are *legal non-conforming*. Chapter 20.150 of Title 20 contains provisions for permitting the continued operation of *legal non-conforming* uses, and use and replacement of *legal non-conforming* buildings and structures. Legal non-conforming uses can be continued on a property as long as the use is not discontinued or abandoned for more than six months. Such a non-conforming use as a duplex can also be rebuilt in the event of a catastrophic event beyond the control of the property owner. However, if a legal non-conforming use is discontinued for six months or more, the use loses its *legal non-conforming* status and becomes *non-conforming*. A Special Use Permit would be required to substantially modify, expand or reinstate a *legal non-conforming* use.

### **PUBLIC OUTREACH**

A notice of the public hearing was distributed to the owners and tenants of all properties located within 300 feet of the project site. Staff has been available to answer questions and discuss issues with members of public.

### **COORDINATION**

As a standard procedure in the development review process, this project was coordinated with the Department of Public Works, Fire Department, Police Department, Environmental Services Department, Airport Department and the City Attorney.

**RECOMMENDATION**

Planning staff recommends the City Council adopt an ordinance to approve the proposed zoning for the following reasons:

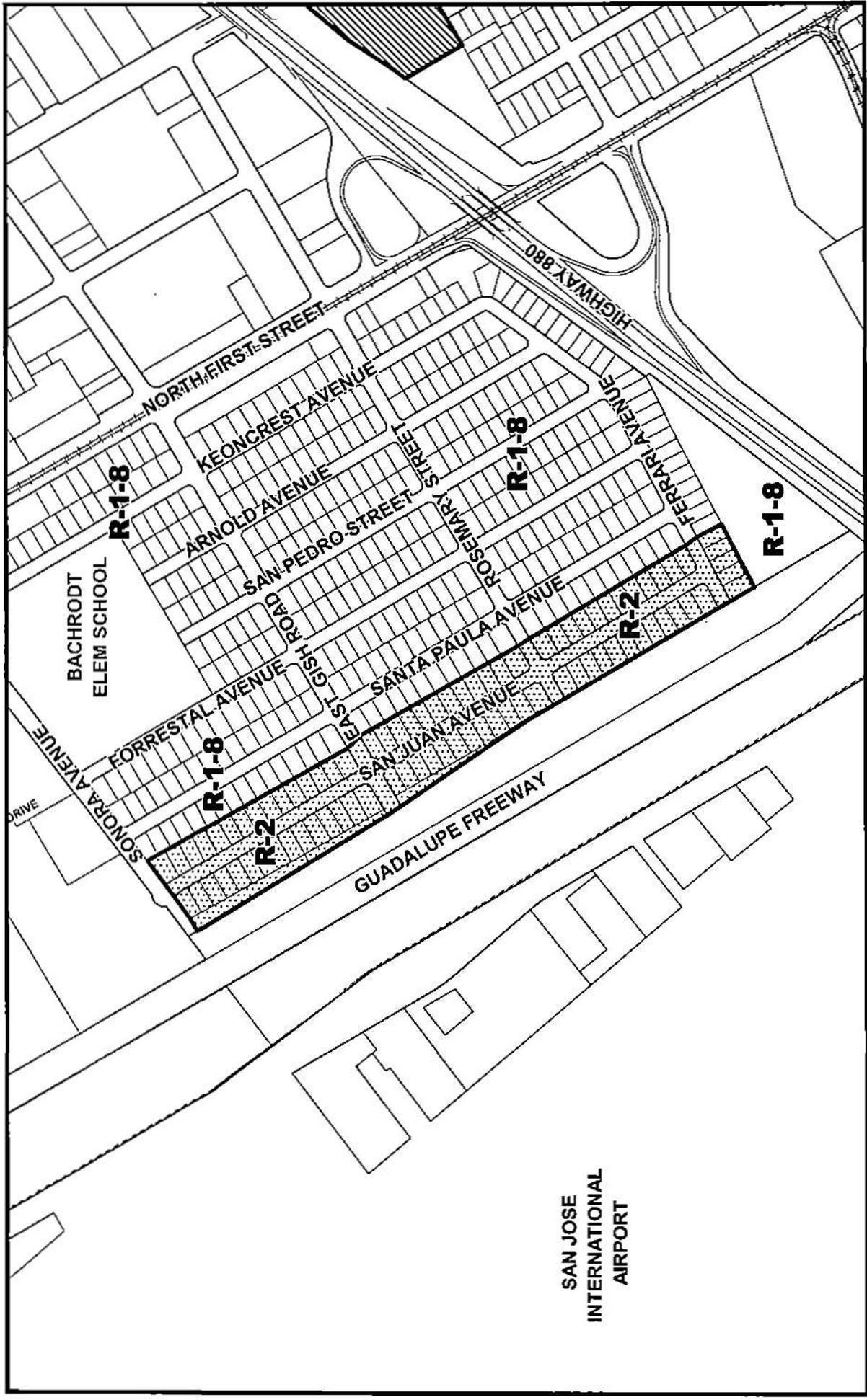
1. The proposed rezoning is in conformance with the General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC) as described in the Rincon South Specific Plan.
2. The proposed rezoning will contribute to the preservation of this portion of the Rosemary Garden single-family neighborhood by limiting future residential development to single-family residential uses.

*Attachments:*

*Map*

*Copy of Councilmember Chavez's Memo*

*Airport Department Memo*



File No: CC05-017

District: 03

Quad No: 66, 67

Scale: 1"=500'

Map Created On: 03/15/2005



SAN JOSE  
INTERNATIONAL  
AIRPORT