



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

SUBJECT: SEE BELOW

FROM: Stephen M. Haase

DATE: September 9, 2004

COUNCIL DISTRICT: 3

SUBJECT: PDC04-055. PLANNED DEVELOPMENT REZONING FROM CN NEIGHBORHOOD COMMERCIAL ZONING DISTRICT TO A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO 35 AFFORDABLE MULTI-FAMILY ATTACHED RESIDENCES AND 3,775 SQUARE FEET FOR COMMERCIAL USE ON A 0.42 GROSS ACRE SITE.

RECOMMENDATION

The Planning Commission voted 6-0-1 (Commissioner Dhillon, absent) to recommend that the City Council approve the proposed rezoning.

BACKGROUND

On September 8, 2004, the Planning Commission held a public hearing to consider a Planned Development rezoning from CN Neighborhood Commercial Zoning District to A(PD) Planned Development Zoning District to allow up to 35 affordable multi-family attached residences and 3,775 square feet for commercial use on a 0.42 gross acre site.

The Director of Planning, Building and Code Enforcement recommended approval of the proposed rezoning.

Planning staff gave a brief staff report, explaining that the project was a good opportunity to develop a mixed-use project fully consistent with the vision of the Rincon South Specific Plan on an infill site. Additionally, the project would be developed with a high quality architectural design and would serve to make a development statement in implementing the Rincon South Specific Plan and relate positively to the Guadalupe Light Rail Line.

The applicant, Jeff Oberdorfer of First Community Housing, spoke on behalf of the project, also representing the property owner, the Southland Corporation, which plans to open a 7-11 convenience store on the site as part of the project. Mr. Oberdorfer emphasized that the project would be built with several "Green Building" and "sustainable" design features in addition to providing 100% affordable housing. He also stated that security will be addressed by the placement of lighting and cameras in the parking lot as well as within the building, and providing an on-site residential manager that will be present at all times.

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Five members of the community, including three from the Rosemary Gardens neighborhood and two owners of the adjacent restaurant, spoke on the project. The adjacent property owners were concerned that the new building will create an "alley" between their restaurant, inviting criminal activity impacting the business and customers, and that their existing signage would be less visible. The neighboring property owner(s) also expressed concern about the potential for additional traffic on Gish Road and potential neighborhood impacts of a future 24-hour use of a 7-11 market on the site. The adjacent property owner requested that staff consider a smaller project with greater setbacks to allow continued visibility of his existing sign and to address his concerns regarding the creation of an "alley".

Two residents of the Rosemary Gardens neighborhood, Joseph Fota and Steve Gates, and William Garbett, spoke against the project. Mr. Gates stated that the previous concerns regarding parking have been addressed and inquired about a possible agreement by the developer to restrict the sale of adult magazines, limiting hours and the sale of alcohol. Staff clarified these concerns would be resolved through the PD permit process which would involve the community in a meeting and a public hearing.

The second speaker, William Garbett, also spoke in opposition to the project, noting that the former gas station on the site could pose a hazard for future residents, that area high density housing would create significant traffic problems, and that the new 7-11 market would exacerbate criminal activities of the already existing bail bond businesses, and bars and hotels, and will result in the sale of tobacco and alcohol to underage customers.

The last speaker, Joseph Fota, was concerned that the proposed project is not meeting some of the design guidelines stipulated in the Rincon South Specific Plan, particularly for roof design and the setback from North First Street.

The Planning Commission discussion focused primarily on the adequacy of the proposed parking and whether the concerns of the neighborhood had been addressed from the previous proposal reviewed in 2002. Commissioners inquired whether the staff would require that future development permits restrict certain items from being sold on the subject site such as adult magazines or alcohol.

City Attorney Renee Gurza explained that City staff cannot preclude a business from selling certain magazine or reading material as a condition of a permit, as this would be violating First Amendment Rights; however, the off-sale of alcohol and/or the proposed 24 hour use of the future 7-11 market would be subject to further department review, community input, and a public hearing process.

The applicant responded to some of the neighborhood concerns stating that a full time residential manager would be present on site and that any issues regarding behavior of residents of the development will not be tolerated. The applicant explained that the unique roofline of the building is needed to accommodate the use of photovoltaic (solar) panels, a "Green Building" element, and is of urban character, appropriate along North First Street.

Commissioners Dhillon and Pham asked how the current project is addressing the neighborhood's previous parking concerns. Staff responded that the new project meets the parking requirements of the Zoning Ordinance, whereas the prior project required a significant reduction in the parking ratio.

Commissioner Levy requested clarification as to when the project operational conditions would be detailed (e.i., zoning stage vs. permit stage). The City Attorney confirmed that project operational conditions will be resolved at the Planned Development Permit stage, if the proposed rezoning is approved.

Commissioner Campos asked whether the applicant would enter into a "friendly neighborhood agreement" to limit the type of businesses that may locate in the second tenant space on-site. The applicant responded by stating that they would be willing to work with the City or neighborhood regarding such an agreement, but noted the City has no formal process to do so.

The Commission asked staff to respond to the public testimony. Planning staff responded to the adjacent property owner signage concerns by informing them that a new sign would need to be located subject to the City's Sign Ordinance standards. Staff noted that the applicant would be flexible to work with the adjacent property owner to assist in placing a security gate in the "alley" area, at the PD permit stage. Staff also responded to inquiries regarding agreements made by the developer and the future 24-hour use and alcohol sales.

Staff addressed the Rincon South Specific Plan conformance concerns raised by Mr. Fota, stating that the slightly reduced setback is being recommended to address site constraints due to the small size of the site (less than a half acre) and that the project would still implement an urban, tree-lined streetscape to foster ridership of the adjacent light rail line. Additionally, the project's design is of a unique urban architectural style that will help set a precedent for future development in the Specific Plan area, and substantially conforms to all other aspects of the plan.

The Planning Commission then closed the public hearing, found the project's environmental review complete and in compliance with CEQA, and recommended approval of the proposed rezoning.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site as well as published in a local newspaper. The applicant also held a community meeting on August 9, 2004 at the Wyndham Hotel in which 30-40 people attended. Discussion of the community input is provided in the attached staff report.

COORDINATION

This project was coordinated with the Department of Public Works, Fire Department, Police Department, Environmental Services Department, and the City Attorney.

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CEQA

An Initial Study was prepared for the former mixed-use 3,230 square foot retail and 22 multi-family attached residential unit project and a Mitigated Negative Declaration was circulated for public review by the Director of Planning on June 6, 2002. The mitigated Negative Declaration was adopted on June 28, 2002. Staff has determined that the current project for slightly more commercial square footage and for 13 additional dwelling units would not result in additional or new impacts from those previously considered and therefore staff has prepared an Addendum to the previously adopted Mitigated Negative Declaration for the subject site.


for STEPHEN M. HAASE
Secretary, Planning Commission

Attachments: Planned Development Zoning Development Standards



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PLANNED DEVELOPMENT ZONING PDC 04-055 ORDINANCE NO. _____

EXHIBIT C: LAND USE PLAN AND DEVELOPMENT STANDARDS

PERMITTED USES

- Up to 35 Single-Family attached residences on 0.42 gross acres.
- Other Permitted Uses: Up to 3,775 square feet of ground floor commercial/retail consistent with General Retail and Food Service subcategories of the CP Pedestrian Commercial Zoning District stipulated in the San Jose Municipal Code Title 20 and shall be allowed by right. Conditionally permitted uses in the CP Pedestrian Commercial Zoning District may be allowed subject to the issuance of a Planned Development Permit/Amendment.

DEVELOPMENT STANDARDS

Maximum Height: 54 feet, three-stories of residential over ground floor commercial (total of four stories)

Minimum Setbacks:

<i>Front from North First Street:</i>	15 Feet
<i>Side from Gish Road:</i>	10 Feet
<i>Northerly property line:</i>	0 Feet
<i>Easterly (rear) property line:</i>	0 Feet

Architecture: Architectural design and building materials are subject to approval by the Director of Planning, Building and Code Enforcement and shall be of equal or superior quality to those shown on the building elevations of Sheet 5, "Conceptual Building Elevations" of the approved plan set for this Planned Development Zoning, PDC 04-055.

Minor Architectural Projections:

Minor architectural projections on the second through the fourth floors, such as balconies, awnings and roof overhang and supports may project horizontally for a distance of not more than four feet into the front setback area

Parking: Parking shall be provide in a below grade and surface parking garage. A total of 70 parking spaces shall be provided on site (54 residential spaces and 16 retail spaces)

Common Open Space: The project shall include a minimum of 105 square feet per unit of common open space.

Private Open Space: The project shall provide a minimum of 60 square feet of private open space per two and three unit. SRO units are not required to provide private open space.

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OFF-SITE IMPROVEMENTS

All public off-site improvements shall be implemented to the satisfaction of the Director of Public Works. Prior to the issuance of building permit(s), the applicant shall be required to obtain a Public Works clearance. Said clearance will require the execution of a Construction Agreement that guarantees the completion of the public improvements.

ENVIRONMENTAL MITIGATION

Air Quality

Precautions should be taken during construction activities. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site. BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices should be implemented during all phases of construction on the project site. With the inclusion of these mitigation measures, the short-term air quality impacts associated with construction will be reduced to less-than significant levels.

- a. Use dust-proof chutes for loading construction debris onto trucks.
- b. Water to control dust generation during demolition of structures and break-up of pavement.
- c. Cover all trucks hauling demolition debris from the site.
- d. Ware or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
- e. Cover all trucks hauling soil, sand, or loose materials, or required trucks to maintain at least two feet of freeboard.
- f. Sweep daily all paved access road, parking areas, and staging areas at construction sites.
- g. Sweep streets daily if visible soil material is carried onto adjacent public streets.
- h. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc)
- i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- j. Replant vegetation in disturbed areas as quickly as possible.

Cultural Resources

There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric resources.

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- a. If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
- b. If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the Planning Department Project Manager to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).
- c. In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 25-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
 - 1) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall reenter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
 - 2) A final report shall be submitted to the Planning Department Project Manager to the satisfaction of the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.

Hydrology and Water Quality

The project shall incorporate mitigation measures to minimize urban run-off. The mitigation measures include a storm water run-off management plan for construction activities to the satisfaction of the Department of Public Works, and compliance with all applicable City, Local, Regional, State and Federal laws. The project shall conform to the City of San Jose National Pollution Discharge Elimination System (NPDES) Storm Water Permit and shall include Best Management Practices (BMPs) as specified in the *Blueprint for a Clean Bay* to control the discharge of storm water pollutants including sediments associated with construction activities. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City project Engineer. The Erosion Control Plan may include BMPs as specified by the Association of Bay Area Government's Manual of Standard Erosion & Sediment

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Control Measures for reducing impacts on the City's storm drainage system from construction activities. The project will be required to mitigate for flooding through proper construction. A Flood Elevation Certificate for each proposed structure, based on construction drawings, is required prior to the issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction, is required prior to issuance of an occupancy permit. These certificates will confirm that all proper measures were taken to mitigate flood hazards to less than significant.

4. Noise

City of San Jose noise criteria and California Noise Insulation standards require that noise levels within new residential units must provide an interior noise level of 45 decibels or less. To meet the interior noise City of San Jose General Plan standards, the following mitigation shall be implemented:

- a. Construct a 42" high acoustically effective railing at all second, third and fourth floor balconies with a direct or side view to Gish Road. The balcony railing heights are in reference to the nearest balcony floor elevation. To achieve an acoustically effective balcony railing, it must be constructed air tight, i.e., without cracks, gaps or other openings, and must provide for long term durability including the balcony floor. The subject 42" high acoustical railing will help mitigate the exterior noise levels.
- b. Windows and glass doors within 110 feet of the centerline of North First Street shall be rated minimum Sound Transmission Class (STC) 33. All other windows and glass doors with a direct or side view to either road shall be rated minimum STC 29. Provide mechanical ventilation.

WATER POLLUTION CONTROL PLANT NOTICE

Pursuant to part 2.75 of chapter 15.12 of the San Jose Municipal Code, no vested right to a building permit shall accrue as the result of the granting of any land development approvals and applications when and if the city manager makes a determination that the cumulative sewage treatment demand on the San Jose – Santa Clara water plant will cause the total sewage treatment demand to meet or exceed the capacity of the San Jose – Santa Clara water pollution control plant to treat such sewage adequately and within the discharge standards imposed on the city by the state of California regional water control board for the San Francisco Bay region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approving authority.

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