

RESOLUTION NO. 73549

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE DENYING A CONDITIONAL USE PERMIT TO USE CERTAIN REAL PROPERTY DESCRIBED HEREIN FOR THE PURPOSE OF THE SALE OF BEER AND WINE FOR OFF-SITE CONSUMPTION IN A 4,000 SQUARE FOOT GROSS SQUARE-FOOT RETAIL SPACE LOCATED ON THE SOUTHWEST CORNER OF STORY AND KING ROADS

FILE NO. CP06-015

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 1, 2006, an application (File No. CP06-015) was filed for a Conditional Use Permit for the purpose of the sale of beer and wine for off-site consumption in a 4,000 square foot gross square-foot retail space, on that certain real property (hereinafter referred to as "subject property"), situate in the CN Commercial Neighborhood Zoning District, located at South side of Story Road, approximately 200 feet west of King Road, San José, 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 José Municipal Code, the Planning Commission conducted a hearing on said application, notice of which was duly given; and

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

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Dollar Market, N& L Trading, INC," dated August 6, 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 José Municipal Code and the rules of this Planning Commission;

WHEREAS, at said hearing on August 23, 2006, the Planning Commission denied said application; and

WHEREAS, on September 25, 2006, an appeal of the Planning Commission's decision to deny the subject application was submitted; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the City Council conducted a hearing on said appeal of the Planning Commission's decision to deny 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 Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Dollar Market, N& L Trading, INC," dated August 6, 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 José Municipal Code and the rules of this City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

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 within the CN Commercial Neighborhood Zoning District.
2. This site has a designation of Neighborhood Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram. Commercial uses such as the proposed retail store are consistent with the General Commercial designation.

3. The proposed project is to allow the off-sale of alcoholic beverages at The Dollar Market.
4. The applicant has indicated his intention to sell beer only and brands that can be sold between \$4.50 to \$5.00 per six-pack.
5. The project site has adequate parking for the existing and proposed use.
6. The subject site is located within the Story Road Neighborhood Business District, a commercial district with a mix of retail, personal service, restaurant/food service, home improvement and office uses that draws customers from the surrounding neighborhood.
7. Under the provisions of Section 15301(a), Existing Facilities, 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. Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality.
8. The project site is across the street from police beats C1 and C3, both of which have crime statistics over the 20% crime index.
9. Crime analysis from the Police Department indicate that a total of 2,535 calls for service and self-initiate events occurred within a 1000 feet radius of 1690 Story Road in a 12 month period (July 14, 2005-July13, 2006).
10. The Police Department memorandum indicates that the project site is not itself located within an area of high crime and that the area does not have an over-concentration of existing liquor licenses.
11. The project site is developed with a multi-tenant building offering sales of household and personal goods and services.
12. Tropicana Foods and Mi Pueblo Food Center are the only two other off-sale of alcohol outlets within a 1,000-foot radius of the subject site.
13. The City does not need to grant a Determination of Public Convenience or Necessity because the site is not located an area which is over concentrated in sales of alcohol or crime.
14. The subject site was formally considered a blighted area in the City. A contributing factor to this blight was the number of off-sale of alcohol outlets and alcohol related uses in the community. There is concern that additional off-sale of alcohol outlets will reverse progress this site has made towards revitalization and crime reduction.

15. The store operates seven days a week until 9PM.
16. The subject building is adjacent to a variety of commercial uses to the west and east. Single-family residential uses are located to the south and Emma Prusch Park is located north of the site.
17. The project site is located approximately 450 feet from the Miller Elementary School site.
18. The project site is located within 150 feet from residentially zoned property on Marsh Street, to the south.
19. The project site is located within the KONA SNI area.
20. The KONA SNI NAC provided the Planning Department with a petition, including 183 signatures, opposing the proposal for the off-sale of alcohol at the Dollar Market.
21. The Story and King intersection is undergoing a major revitalization effort by the Redevelopment Agency and private property owners.

The Planning Commission concludes and finds, based on the analysis of the above facts in regards to the Conditional Use Permit, that:

- a) For the use located closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location; and
- b) The proposed location of the off-sale of alcoholic beverages use would result in a total of less than five (5) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, and therefore 20.80.900 is not an applicable finding to be made for this proposal.
- c) The use is located closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, where the proposed use is situated and oriented in such a manner that would adversely affect such residential use.

Finally, based on the above-stated findings and subject to the conditions set forth below, the City Council finds that:

1. The proposed use at the location requested will:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

- b. Impair the utility of value of the property of other persons located within 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, loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the surrounding area.
3. The proposed site is adequately served:
- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Based on the above findings, this project is hereby denied.

ADOPTED this 5th day of December, 2006 by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,
NGUYEN, PYLE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
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.