

STAFF REPORT
CITY COUNCIL

FILE NO.: C07-099

Submitted: 11/28/07

PROJECT DESCRIPTION: Conforming Conventional Rezoning from CP Commercial Pedestrian Zoning District to CN Commercial Neighborhood Zoning District to allow commercial uses on 0.88 gross acre site.

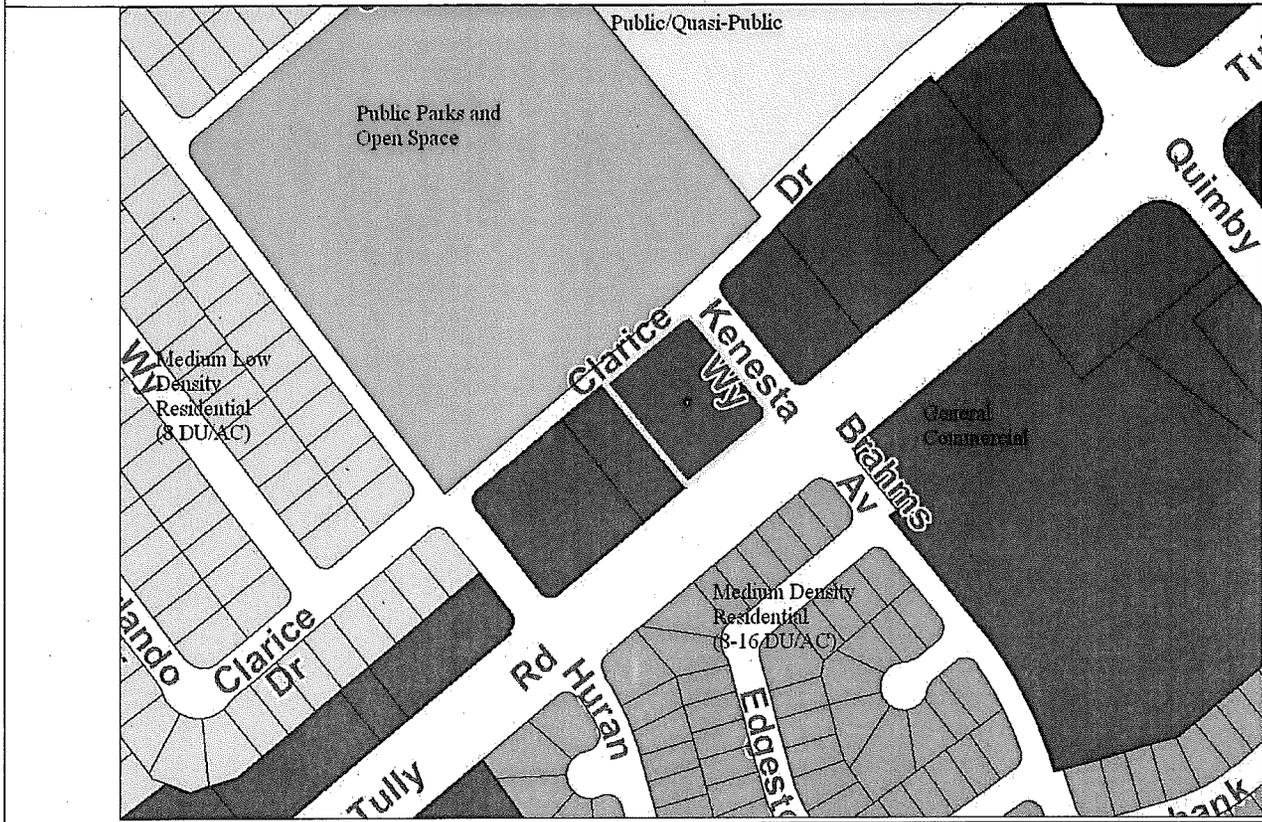
LOCATION: Northwest corner of Tully Road and Kenesta Way (1935 Tully Road).

Existing Zoning	CP Commercial Pedestrian
Proposed Zoning	CN Commercial Neighborhood
General Plan	Commercial General
Council District	8
Annexation Date	06/29/1956
SNI	K.O.N.A.
Historic Resource	N/A
Redevelopment Area	Yes
Specific Plan	N/A

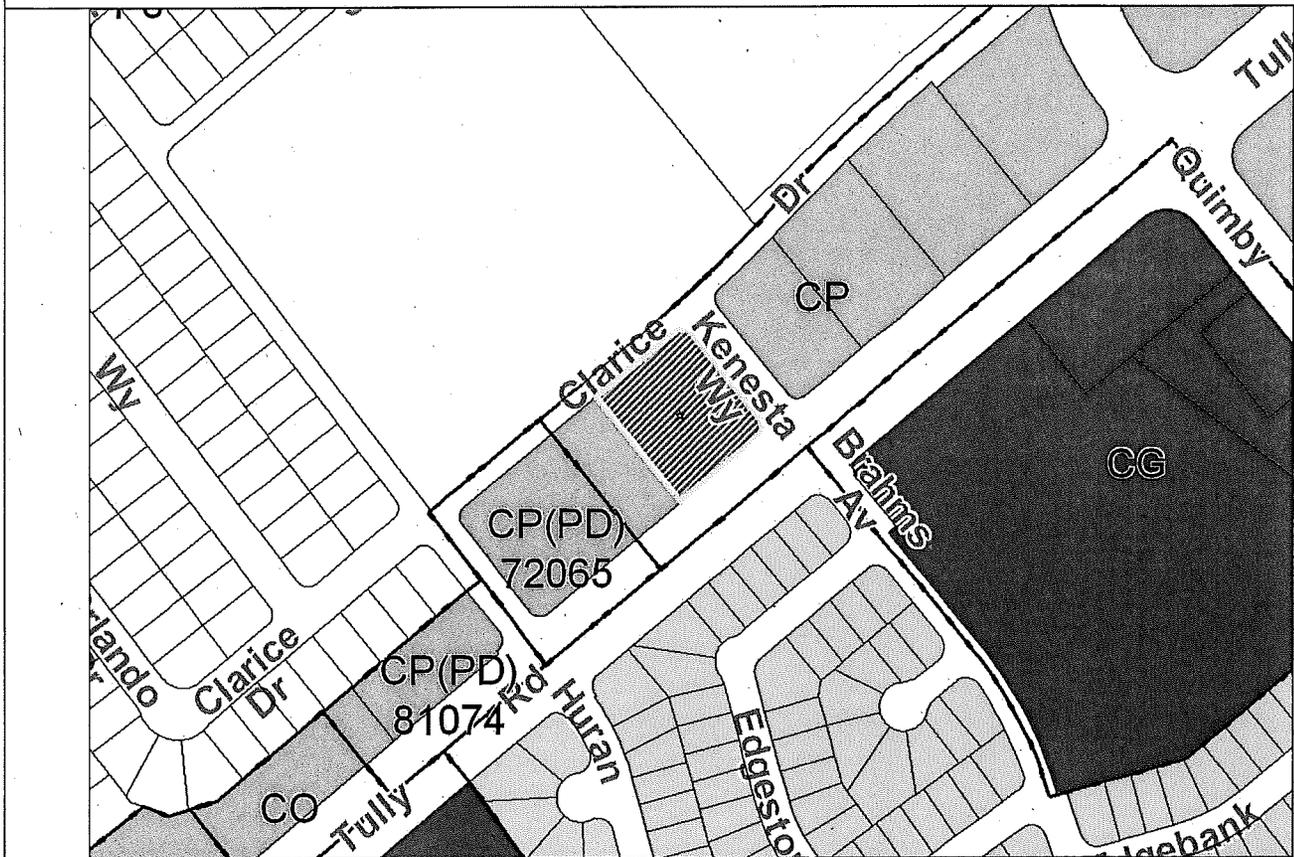
Aerial Map



GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends approval of the proposed Conforming Conventional Rezoning for the following reasons:

1. The proposed rezoning is consistent with the San José 2020 General Plan Land Use/Transportation designation of General Commercial.
2. The proposed land use is compatible with existing uses on the adjacent and neighboring properties.

BACKGROUND & DESCRIPTION

This is a Conforming Conventional Rezoning of the subject site from CP Commercial Pedestrian Zoning District to CN Commercial Neighborhood Zoning District to allow commercial uses on a 0.88 gross acre site. The applicant, Franchise Realty Interstate Corporation, has initiated this rezoning to facilitate the subsequent proposal to allow the construction of a new restaurant on the site with a drive-through. Drive-through uses are not a permitted use in the CP Commercial Pedestrian Zoning District. In the CN Commercial Neighborhood Zoning District, a drive-through use may be permitted through the issuance of a Conditional Use permit.

The site is surrounded by commercial uses to the east and west, a park to the north and single-family residential uses (which back on to Tully Road) to the south, across Tully Road.

The subject site consists of an existing fast food restaurant with a drive-through (McDonald's) on a parcel of approximately 0.88 gross acres. The existing General Plan land use designation for the entire site is General Commercial. Conditional Use Permit CP07-100 is also currently on file for this property. This Conditional Use Permit proposes demolition of the existing restaurant building and re-construction of a new restaurant on the west side of the site with a re-configured drive-through and parking area.

GENERAL PLAN CONFORMANCE

The site is designated General Commercial on the San Jose 2020 General Plan Land Use/Transportation Diagram. The proposed CN Commercial Neighborhood is consistent with this designation because it would allow commercial uses consistent with the General Plan designation.

ENVIRONMENTAL REVIEW

The environmental impacts of the rezoning portion of the project were addressed by a Final EIR entitled, "San José 2020 General Plan," and certified on August 16, 1994, by the City of San José City Council.

ANALYSIS

This rezoning is necessary to allow consideration of a proposed Conditional Use Permit for a drive-through use on the site, which is not permitted in the existing CP Commercial Pedestrian Zoning District. The existing restaurant has a legal non-conforming drive-through; however, the legal non-conforming status of the drive through use will be lost upon demolition of the existing restaurant with which it is associated. A Conditional Use Permit (File No. CP07-100) is on file that proposes a new fast food restaurant (McDonald's) with a drive-through in a different site design configuration than the existing facility. The CN Commercial Neighborhood zoning district is a conforming zoning district to the General Commercial General Plan land use designation. As a Conforming Rezoning, this application does not require review or recommendation by the Planning Commission.

PUBLIC OUTREACH/INTEREST

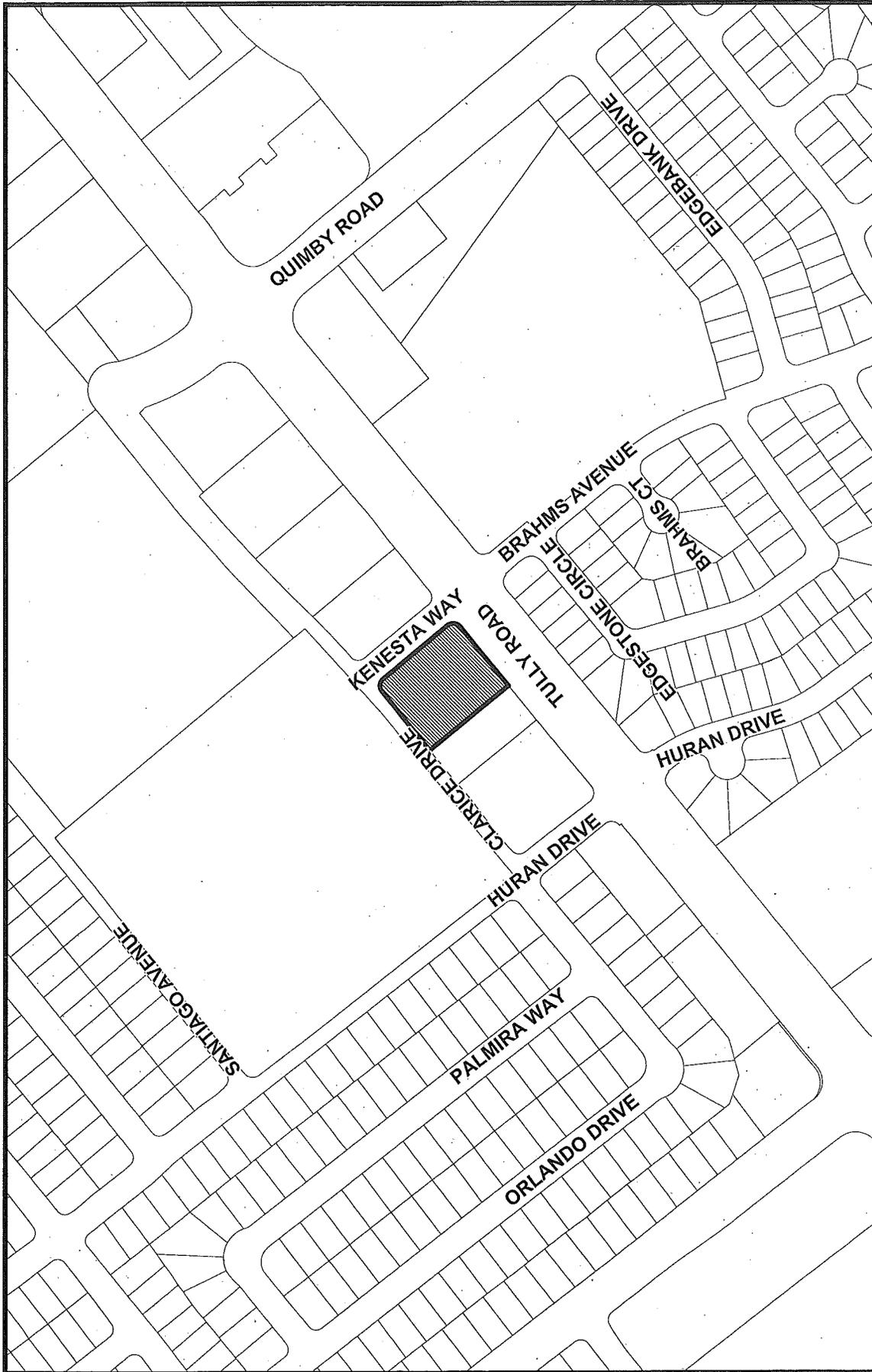
This project was presented at a West Evergreen NAC meeting on July 28, 2008. The NAC showed general support for the project, expressing some concern about possible late night hours proposed by the Conditional Use Permit. A sign has been posted on the project site. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The rezoning was also published in a local newspaper, the Post Record. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Approved by: *Susan Walton*

Project Manager: Ed Schreiner

Date: September 29, 2008

Owner/Applicant: Franchise Realty Interstate Corporation Attn: Donald D Lefler 5187 Harwood Drive San Jose, CA 95124	Attachments: Location map
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File No: C07-099

District: 8

Quad No: 84

Scale: 1"= 300'

Map Created On: 11/28/2007

Noticing Radius: 500 feet

