



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** February 23, 2009

**COUNCIL DISTRICT:** 4  
**SNI AREA:** N/A

**SUBJECT: PDC08-022. PLANNED DEVELOPMENT REZONING FROM A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW A 400 SQUARE FOOT OUTDOOR UNCOVERED PATIO AT AN EXISTING RETAIL COMMERCIAL USE ON A 0.63 GROSS ACRE SITE LOCATED ON THE SOUTHWEST CORNER OF HOSTETTER ROAD AND FROST DRIVE.**

## RECOMMENDATION

The Planning Commission voted 7-0-0 to recommend that the City Council approve the proposed rezoning from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow a 400 square foot outdoor uncovered patio at an existing retail commercial use on a 0.63 gross acre site located on the southwest corner of Hostetter Road and Frost Drive.

## OUTCOME

Should the City Council approve the Planned Development Rezoning, the applicant would be able to file and secure a subsequent Planned Development Permit to facilitate the build-out of the outdoor patio project as described above.

## BACKGROUND

On February 11, 2009, the Planning Commission held a public hearing to consider the proposed Planned Development Rezoning. The Director of Planning, Building and Code Enforcement recommended approval of the proposed rezoning. In a brief report, staff noted that the applicant had provided sufficient information to indicate the outdoor patio would have minimal noise impacts and commented that recent changes to the allowed uses in the commercial districts in the Zoning Code provide for outdoor eating areas with up to 25 seats under certain conditions, with no requirement for additional parking.

## **Public Testimony**

The applicant was represented by Jon Nelson. He gave a summary of the history of the project and all the work that was done to ensure that the patio, built originally without permits and now closed, would have minimal impact on the adjacent residences. He also noted that the level of business at the two food service uses (Quizno's and Bar Code) had been down since the patio had been closed.

Seven members of the public spoke on the project. The five who spoke in opposition of the project all were or had been residents of Frost Drive across the street from the project site. Noise was cited as a concern with the site, especially during the summer and during the late evening hours. One resident noted that the patio caused people to loiter on the site and some people tended to play loud music from cars parked along Frost Drive. Speakers also stated that litter from these patrons was a problem, as was parking, especially during the lunch hour. Several speakers commented that patrons of the shopping center parked along Frost Drive on the residential side of the street, and sometimes block driveways, mailboxes and trash pickup. They also stated that speeding along Frost Drive is a concern. Two speakers, Moon Chien (who represented Bar Code) and Sunil Tomar (who represented Quizno's) spoke in favor of the proposal, noting that their business had been down by as much as 35% since the patio had been closed. Mr. Tomar stated that he didn't believe that his customers were causing any of the complaints the neighbors mentioned.

Jon Nelson spoke in response to some of the neighbor concerns. He noted that some of the traffic concerns were related to the fact that Frost Drive serves as a cut-through route to Hostetter Road and was not related to traffic from his project. He also noted that many of the Frost Drive parking issues were a result of the adjacent shopping center and not the project site. In response to the concerns about noise, Mr. Nelson stated that the outdoor patio would be closed at 8:00 pm and be limited to only four tables with up to 16 seats. The Planning Commission then closed the public hearing.

In response to the testimony, staff noted that the neighborhood could attempt to work with the Department of Transportation regarding possible traffic calming measures to mitigate for the existing cut-through traffic and the potential for permit parking along the residential side of Frost Drive. Staff also noted that from several site visits during the peak lunch hour, staff did not identify a shortage of parking on the site.

## **Commission Discussion**

Commissioner Do made a motion, which was seconded, to recommend approval of the proposed re-zoning as recommended by staff. Commissioner Jensen stated that she wanted to be sure that the patio would only be open from 11:00 am to 8:00 pm, that signage regarding showing courtesy to area residents be provided on site, and that enclosed trash bins and a low line of shrubbery surrounding the patio be included to help deal with litter issues. She also made a strong recommendation to the Department of Transportation to work with the neighborhood to try to deal with parking issues. Staff clarified that the restricted hours of operation were included in the staff's Draft Development Standards, and that the other recommendations would be incorporated into the project at the Planned Development Permit stage. Commissioner Zito echoed Commissioner Jensen's sentiments.

The Planning Commission then voted 7-0-0 to recommend approval of the proposed rezoning to allow a 400 square foot outdoor patio.

### ANALYSIS

A complete analysis of the issues regarding this project, including General Plan conformance and consistency with the Commercial Design Guidelines, is contained in the attached staff report.

### EVALUATION AND FOLLOW-UP

The applicant will be required to secure a Planned Development Permit from the Planning Director in order to implement the subject rezoning.

### POLICY ALTERNATIVES

Not Applicable

### 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. A community meeting was held for this project on October 27, 2008. One member of the public, Davy Hua, attended the meeting stating that he was representing his neighborhood. He provided letters (all with the same text) of opposition to the patio signed by five area residents. Mr. Hua identified a number of concerns about the site including noise from patrons on the patio, and litter generated on the patio, as well as loitering on the patio area after the businesses were closed. He also expressed concern over parking issues, stating that users of the shopping center commonly park along Frost Drive. In one case, he indicated someone who parked on the street moved a trash collection bin onto a resident's lawn in order to park, and as a result that person's garbage was not collected. He also expressed concern about tour buses (generally bound for casinos in California) parking and allowing patron boarding on the 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.

**COORDINATION**

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

**FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report.

**COST SUMMARY/IMPLICATIONS**

Not applicable.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

CEQA: Exempt

  
JOSEPH HORWEDEL, SECRETARY  
Planning Commission

For questions please contact Ed Schreiner at 408-535-7845.

Attachments:

Planning Commission Staff Report and Attachments