



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** July 29, 2011

Approved

Date

8/4/11

**COUNCIL DISTRICT:** 4  
**SNI AREA:** No

**SUBJECT:** CP11-003. APPEAL of the Planning Commission's decision to deny off-sale of alcohol as an allowed use in a Conditional Use Permit in conjunction with a new approximately 17,000 square-foot retail store/pharmacy with a drive-through use and 24-hour use on an approximately 0.788 gross-acre parcel in the CG-Commercial General Zoning District, in an approximately 38.7-acre shopping center on the northeast side of North 1<sup>st</sup> Street, 210 feet northwesterly of Headquarters Drive (4110 North 1<sup>st</sup> Street).

## RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the Council deny the appeal and uphold the Planning Commission's decision to approve the construction of an approximately 17,000 square foot retail store/pharmacy with a drive-through use and 24-hour operation without the off-sale of alcohol.

## OUTCOME

Should the Council deny the appeal of the Planning Commission's decision and approve the proposed Conditional Use Permit without the off-sale of alcohol, the proposed retail store/pharmacy with a drive-through use and 24-hour use would be allowed to operate without the ability to sell alcoholic beverages for off-site consumption.

## EXECUTIVE SUMMARY OF OFF-SALE APPROVAL PROCESS

On February 1, 2006, City regulations affecting establishments that sell prepackaged alcohol for off-site consumption ("off-sale alcohol") became effective. The updated regulations revise the approval process and include enhanced findings for approval of an off-sale proposal as part of a Conditional Use Permit.

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The enhanced findings for a Conditional Use Permit include a provision to address the proliferation of establishments in close proximity to existing off-sale uses by requiring additional findings when the number of establishments are more than four within a 1,000-foot radius. Additionally, the existing finding that addresses the location of such establishments proximate to sensitive uses such as schools and residences has been augmented to add public parks, childcare centers, social service agencies, and residential care and service facilities to the list of sensitive uses. If a new off-sale alcohol establishment is to be located within 150 feet of a residential use or residentially zoned property, or within 500 feet of one of the other specified sensitive uses, it must be determined that the proposed establishment is situated and oriented such that it would not adversely affect the sensitive use(s).

Should the Planning Commission find that the above conditions exist further consideration of the request is subject to discretionary findings. Appeal of the Planning Commission's decision is heard by the Council. This report, along with the Planning Commission staff report, includes a discussion of the project and whether the required findings can be made for the proposed use of off-sale of alcohol to be allowed as part of the subject Conditional Use Permit. The Planning Commission was unable to make all necessary findings for the off-sale of alcohol request as part of the subject Conditional Use Permit as discussed below. The applicant subsequently appealed the Commission's decision to the Council.

Based on an analysis of the findings required for the Council to approve the requested off-sale of alcohol in the face of negative factual findings by the Planning Commission, staff concludes that the necessary findings cannot be made. For these reasons, staff recommends that the Council deny the request for off-sale of alcohol and uphold the Planning Commission's decision. The Council will be conducting its hearing de novo and therefore this report contains information beyond the off-sale of alcohol issue.

## **BACKGROUND**

### Planning Commission Hearing

On June 20, 2011, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit (File No. CP11-003). The Director of Planning recommended approval of the Conditional Use Permit without the off-sale of alcohol use because the required findings for the proposed off-sale use could not be made, as stated in the original staff report (see attached).

### Public Testimony

Holly Grzywacz, Director of Development for the Landmark Retail Group, spoke on behalf of CVS, the prospective tenant. She stated that a letter from their office sent to the Commission (see attached correspondence) explains CVS's alcohol policies and some of the additional measures to mitigate the concerns of overconcentration. She commented that this is one area in the City where there is not an overconcentration of existing alcohol retailers or an issue of high crime.

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She noted that the issue of alcohol sales has been addressed in CVS's policies and how they manage and operate their stores through security cameras, and security capping of bottles. She stated that she wanted to make it clear that the applicant is not requesting a new liquor store here. She said the off-sale is a small convenience item and an accessory use to what is really a pharmacy and a community-serving business.

Ms. Grzywacz added that this project will bring 25 new jobs to the community, sales tax revenue from adjacent cities, and support the growing community in North San Jose. She noted that the proposed off-sale use is part of the request for extended hours and the pick-up window/drive-through use. She stated that these uses are all identified as convenience items for CVS's primary customers coming to the store for pharmaceutical goods to provide one-stop, convenient shopping.

There were no other speakers from the public.

#### Planning Commission Discussion

Commissioner Cahan asked the applicant's representative to clarify if the proposed retail store/pharmacy will have a section that has milk and some food items, including soups and pastas. The applicant's representative confirmed that there will be basic grocery items available.

The Director of Planning noted that providing fresh food in every one of the City's neighborhoods is one of the fundamental items in the new Draft General Plan and that the City recognizes that getting grocers into neighborhoods is really critical. He added that staff is worried about barriers for grocers because they operate under extremely tight margins and alcohol is a high profit margin. He said that staff has looked at provisions that the City can offer to encourage the availability of fresh food in the community, including fresh meat and produce, so that residents can walk to grocers. He added that the City is working on code changes to deregulate alcohol sales related to grocery stores. He commented that staff's recommendation to not approve the proposed off-sale of alcohol use for the subject retail store/pharmacy is based on minimizing barriers to full-service grocery stores.

Commissioner Cahan asked the Planning Director if the Target Store in the subject shopping center has a grocery. The Planning Director responded that Target Store has fresh produce and fresh meats available and that all the Target Stores in San Jose have full groceries now.

Commissioner Cahan noted that one of the letters from a resident in the area expressed concerns about the lack of walkability to this particular site. The Commissioner stated that the subject proposal includes a drive-through right next to a Chick-fil-A which has a drive-through, and that having two drive-throughs right next to each other does not promote walking. She stated this situation would make her afraid she was going to get hit by somebody somewhere, and the six lanes of traffic also does not support pedestrian activity. She asked what the plan is to make this area more walkable.

The Director of Planning responded that North First Street does carry a lot of traffic because of its proximity to State Route 237 and that the City has added signals that help neighborhood

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residents cross North First Street. He added that staff spent a lot of time with the applicant on the drive-through design so that we were not putting the pedestrians on North First Street that are walking to and moving around within the site in harm's way.

The Director of Planning commented that the City looks at pharmacy drive-throughs differently than fast-food restaurant drive-throughs, recognizing that for parents with children looking for prescriptions, such establishments provide a benefit. However, one of the issues for drive-throughs and off-sale of alcohol is that the chains say, "The other one has a drive-through so I need one. The other has alcohol so I need alcohol." The Director stated that this is a race to the bottom.

The Planning Division Manager noted that there is a condition in the resolution to modify the site plan so that pedestrians don't have to go around a trash enclosure to enter the site.

Commissioner Cahan stated she was really glad to hear that we are considering the pedestrians as a major focus and that she had become more opposed to drive-throughs, especially for fast-food restaurants, because idling cars are not good for the environment. She said it seemed hypocritical to try to make citizens healthier while letting them sit in their cars to get fast-food. She stated that a drive-through serves a good purpose for a CVS, when a parent has children in the car, because it is really convenient to not have to drag children out of the car for 20 minutes while the prescription is being filled. She urged staff to limit the drive-throughs on this site and other areas in the City. She also hoped that perhaps drive-throughs and the impacts on the City and environment can be included in a future discussion with the Planning Commission.

Commissioner Bit-Badal stated that she read a letter from one of the neighbors regarding concerns about not having clear access for nearby residents to visit the site. She said she had seen shopping centers proposed with parking lots and buildings and she wondered what could be done to make the shopping center more pedestrian-friendly and much more attractive to nearby residents.

Chair Jensen encouraged staff to consider making some modifications out on North First Street to better accommodate pedestrians and cyclists. She suggested hiding the cars, pushing the buildings to the front of the street, building parking garages, and creating a truly urban center especially on North First Street, where so much housing is going in. She stated that San Jose does not need any more giant parking lots creating big heat islands.

Commissioner Kline stated it is really disturbing that this is a brand new shopping center in one of the worst traffic congested areas of town, which is also brand new, and that it is basically a freeway system with pedestrians and bicyclists taking their lives into their hands. He said it is extremely difficult to walk around the area because the streets are designed with wide right-hand turns for cars to go as fast as possible and the idea of actually having people walk in this area is pitiful. He said the area is designed to get to your office as fast as possible, go shopping as fast as possible, and get home as fast as possible with little regard for surrounding neighborhoods and that even if you look at the surrounding neighborhoods, they are just cul-de-sacs trapped in walled-off communities. He commented that this was unfortunate because this is a brand new area, not an antiquated shopping center to be retrofitted. He stated there was a lost opportunity

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here because this could have been a new downtown or Santana Row. He noted that for future shopping center proposals we should make sure there is a street going through the shopping center, and that there are windows on that street, with housing or other development above shops.

The Planning Commission voted unanimously 6-0-1, with Commissioner Platten absent, to approve the subject application without the off-sale of alcohol, as recommended by staff.

### Appeal

On June 20, 2011, an appeal was filed by the applicant's representative, Derek Hunter Jr. (see attached Notice of Permit Appeal and letter supporting the Appeal). The applicant states in their appeal that this is a location where incidental off-sale of alcohol is appropriate and the overall project will be a benefit to the surrounding community. The applicant states further that this CVS/ pharmacy will provide a valuable and vital service to an underserved area in North San Jose and that CVS is a neighborhood-serving business and a leading pharmacy healthcare provider with expert care and innovative and affordable health care solutions. In addition to quality pharmaceutical items, the applicant states that CVS intends to offer limited alcohol, basic household items and cleaners, office and stationery goods, beauty and cosmetics, seasonal merchandise, and photo finishing. The applicant also states that CVS/ pharmacy has acquired an exiting Type 21 ABC License to be transferred to this location to ensure there is no net increase to the number of licenses in the City of San Jose and specifically within Council District 4. The applicant also states that this proposal to allow CVS/pharmacy incidental off-sale will provide safe, convenient, one-stop shopping for the residents of North San Jose, decreasing the need for separate trips to multiple stores.

The letter also reiterates the comments stated by Holly Grzywacz, Director of Development for the Landmark Retail Group, at the public hearing with the Planning Commission held on June 8, 2011.

### ANALYSIS

The original staff report (see attached) provides a full analysis of this project with respect to the findings required to be made by the Planning Commission to approve a Conditional Use Permit without the off-sale of alcohol. In summary, staff's review provided the Planning Commission with information that enabled that body to make required findings for approval of the Conditional Use Permit without the off-sale of alcohol as recommended by staff.

As an update to this analysis, on July 11, 2011 the City received a Conditional Use Permit application for off-sale of alcohol for a full-service grocery store in the same shopping center at the southeast corner of North First Street and Holger Way. As discussed above by the Director of Planning, the City is concerned that grocery stores may be less viable without the ability to have off-sale, and for this reason, the City has identified prioritizing approving the use of off-sale of alcohol for full-service grocery stores over approving the use of off-sale for other retail establishments.

## CONCLUSION

Based on the above summary of the Planning Commission discussion, and the previous analysis provided in the attached staff report to the Planning Commission, staff concludes that the required findings for issuance of a Conditional Use Permit that includes the off-sale of alcoholic beverages cannot be made with regard to the proposal. Staff concludes that:

1. The proposed off-sale of alcohol at the location requested will:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; and
  - b. Be detrimental to public health, safety or general welfare.
2. The proposed sale of alcohol is not needed to enhance an already viable existing retail/office commercial center.
3. The number of off-sale establishments in the area already offer convenience for the neighborhood.

Given the inability to make all the relevant findings, staff recommends that the City Council deny the appeal and uphold the Planning Commission's decision and approve the subject Conditional Use Permit without the off-sale of alcohol in accordance with the facts, findings, and conditions noted in the draft resolution.

## ALTERNATIVES

The City Council in their review of the project can take the following actions:

1. Uphold the Planning Commission's decision to approve the subject Conditional Use Permit without the off-sale of alcoholic beverages, or
2. Approve the project as suggested by the applicant/appellant and permit the off-sale of the full range of alcoholic beverages, or permit the off-sale of alcoholic beverages limited to beer and wine.

## PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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)**

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Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 1,000 feet of the project site. This memorandum and the staff report to the Planning Commission are posted on the City website. Staff has been available to discuss the proposal with members of the public.

### **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's office.

### **CEQA**

The California Environmental Quality Act (CEQA) allows the Lead Agency to prepare an Addendum to a previously adopted Final EIR when it can be demonstrated that the changes to the project, and the environmental effects from such changes, are minor relative to the original project. Section 15164 of the CEQA Guidelines sets forth the requirements allowing for preparation of an Addendum to an EIR.

Pursuant to Section 15164 of the CEQA Guidelines, the City of San José has prepared an Addendum to an Environmental Impact Report (EIR). The environmental impacts of this project were addressed by a Final EIR entitled, "North San José Area Development Policies Update," and findings were adopted by City Council Resolution No. 72768 on June, 2005. The City of San José may take action on the proposed project as being within the scope of the North San José Area Development Policies Update Final EIR, which adequately addresses the environmental effects of the proposed project. The Addendum has identified that the project would not result in significant environmental effects that are not already identified in the Final EIR. The project, therefore, meets the eligibility requirements for preparation of an addendum and does not require a supplemental EIR or Negative Declaration.

/S/

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

#### Attachments:

Appealed Planning Commission Resolution/Decision  
Map identifying location of nearby off-sale establishments  
Planning Commission Staff Report and Attachments  
Appellant's correspondence  
Public correspondence

For questions please contact Mike Enderby at 408-535-7843



Department of Planning, Building and Code Enforcement

JOSEPH HORWEDEL, DIRECTOR

June 10, 2011

TSA AT FIRST, LLC  
10121 Miller Avenue, Suite 200  
Cupertino, CA 95014

Dear TSA AT FIRST, LLC:

RE: **Conditional Use Permit, File No. CP11-003**, located on the northeast side of N. 1st Street 210 feet northwesterly of Headquarters Drive.

The enclosed is your copy of the Planning Commission's action on this Conditional Use Permit.

*This permit may contain one or more conditions, such as revised plans, which must be met within a specific deadline. If conditions are not met the permit will automatically expire. Please read your permit carefully!*

The Planning Commission's action taken on this permit or any of the conditions of this permit may be appealed by the applicant to the City Council by filing a Notice of Appeal and a \$2,232.00 fee. The appeal must be submitted in person and presented on the Notice of Appeal form available from this department on or before **5:00 p.m., June 20, 2011**. If you have any questions, please feel free to contact your Project Manager, **Jenny Nusbaum**, at (408) 535-7872 or by e-mail at [jenny.nusbaum@sanjoseca.gov](mailto:jenny.nusbaum@sanjoseca.gov).

Sincerely,

  
Deputy

cc: USR AT 1<sup>ST</sup>, LLC, 20725 Green Valley Drive, Suite 100, Cupertino, CA 95014

Enclosures

JN:cs

## RESOLUTION NO. 11-030

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing the development of a new approximately 17,000 square-foot retail store/pharmacy with a drive-through use and 24-hour operation on an approximately 0.78 gross-acre parcel, located within an approximately 38.7 acre retail/office commercial center on the north side of N. First Street 210 feet north of Headquarters Drive (4110 N. First Street)

### FILE NO. CP11-003

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 11, 2011, an application (File No. CP11-003) was filed for a Conditional Use Permit for the purpose of allowing the development of an approximately 17,000 square-foot retail store/pharmacy with a drive-through use and 24-hour use on an approximately 0.788 gross-acre parcel located in an approximately 38.7-acre retail/office commercial center and on May 4, 2011 a request for off-sale of alcoholic beverages was added to the subject application, on that certain real property (hereinafter referred to as "subject property"), situate in the CG-Commercial General Zoning District, located on the northeast side of North 1st Street 210 feet northwesterly of Headquarters Drive (4110 North 1st Street) 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, this 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, "CVS/Pharmacy @ First, San Jose, California" dated January 11, 2011 and last revised May 23, 2011. 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;

NOW, THEREFORE:

After considering evidence presented at the public hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project is located on an approximately 0.78 gross-acre parcel located within an approximately 38.7 acre retail/office commercial center on the north side of N. First Street 210 feet north of Headquarters Drive (4110 North 1st Street).
2. The subject parcel has a designation of Combined Industrial/Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The subject parcel is in the CG-Commercial General Zoning District.
4. Per Table 20-140 of the San José Municipal Code, a Conditional Use Permit is required for a drive-through use, a late night use and/or the off-sale of alcohol in the CG-Commercial General Zoning District.
5. This Permit would allow the development of an approximately 17,000 square-foot retail store/pharmacy with a drive-through use and 24-hour operation.
6. The applicant also requested that the permit allow for the off-sale of alcohol.
7. The new building is integral to a larger retail center that includes 880,000 square feet of office/research and development space (Brocade), a large-format commercial/retail building (Target), a 164-room hotel (Hotel Sierra), a 157-room hotel (Marriott), and various other retail spaces including retail pad buildings and a drive-through restaurant (Chik-Fil-A). The subject parcel is surrounded by commercial (retail and hotel) uses to the northeast, residential uses across North First Street to the west and southwest, and office/research and development and hotel uses to the east and southeast.
8. The proposal is subject to City Council Policy 6-10: Drive-Through Uses.
9. The proposal is subject to City Council Policy 6-27 (Evaluation of 24-Hour Uses).
10. The proposal is subject to City's Commercial Design Guidelines.
11. The proposed drive-through lane is placed at the edge of the 25-foot setback line and is 145 feet from the closest residential property line.
12. The closest residential unit is part a recently approved multi-family attached residential development located on the opposite side of N. First Street, a six-lane arterial street.
13. A retail store/pharmacy with a drive-through use on the subject site will contribute to revenue generation for the City without compromising the viability of industrial uses in the larger area and supports the General Plan Economic Development Major Strategy.
14. The proposed use is consistent with the North San Jose Area Development Policy in that retail store/pharmacy uses within this area support the interaction between retail land uses and industrial land uses and can help internalize trips within the North San Jose boundaries.

15. The Police Department has indicated that they are neutral to this proposal with respect to the off-sale of alcohol and late night use.
16. The subject site is not located within a census tract that has an undue concentration of off-sale licenses.
17. The path of travel for that residentially zoned property is more than 300 feet from the subject publicly accessible tenant space entrance.
18. The front doors of the subject tenant space are oriented towards the central parking area of the retail center.
19. The parking for this use and other commercial uses within the same retail center is provided at a ratio of one parking space per 225 square feet of floor area for the entire retail center.
20. There is one other off-sale retail establishments that is within 1,000 feet of the subject tenant space within the same retail center.
21. Pursuant to Section 15164 of the CEQA Guidelines, the City of San José has determined that the project described below is pursuant to or in furtherance of the Final Environmental Impact Report (EIR) entitled "North San José Development Policy Update," and findings were adopted by City Council Resolution No. 72768 on June 21, 2005.

Based on the above facts, this Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, 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. This finding is not applicable because the proposed location of the off-sale of alcoholic beverages use is not closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages and 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.
2. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would 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, that the resulting excess concentration of such uses will not:
  - a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the area; or
  - c. Be detrimental to public health, safety or general welfare.

This finding is not applicable because 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.

3. For such a use at a location 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, that the building in which the proposed use is to be located is situated and oriented in such a manner that it would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use in that although the nearest residentially zoned property line is approximately 145 feet from the subject property line, the subject tenant space is more than 150 feet from the nearest residential building the path of travel for that residentially zoned property is more than 300 feet from the subject publicly accessible tenant space entrance, and the subject entrance faces into the central area of the retail center.

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

1. The proposed sale of alcohol is not needed to enhance an existing retail center. The off-sale of alcohol in the subject tenant space as proposed by the applicant could introduce an element to the neighborhood that could impact the public's health and safety by creating a greater opportunity for problems associated with alcohol to occur such as public drunkenness, litter, etc., that could negatively impact surrounding uses. The addition of alcohol to the general retail store/pharmacy will not provide for a more complete shopping experience. A more complete shopping experience for this neighborhood would be a substantial offering of healthy food options including fresh meat and produce. The existing off-sale establishment(s) in the area already offer convenience for the neighborhood.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious, in that:
  - a. The subject retail/pharmacy building with drive-through use and associated site improvements are similar in scale, materials, and colors to the existing large-format commercial building, hotels, and 888,000 square-foot office building complex on the 38.7-acre site.
  - b. Sufficient open space separates all structure(s) and uses.
  - c. Sufficient maneuvering room will be provided on site to allow smooth circulation and minimize interference with other uses.
  - d. The project conforms to City Council Policy 6-10: Drive-Through Uses.
  - e. The project conforms to the City's Commercial Design Guidelines.

2. The orientation, location, and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood, in that:
  - a. The proposed building height, materials as conditioned, and colors are similar to surrounding buildings and structures.
  - b. The building and structures are located and oriented on-site to provide convenient vehicular and pedestrian access from other buildings in the area.
  - c. The project conforms to City Council Policy 6-27: Evaluation of 24-Hour Uses.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties, in that:
  - a. The environmental impacts of this project were addressed by a Final EIR entitled, "North San José Area Development Policies Update and findings were adopted by City Council Resolution No. 72768 on June, 2005. The City of San José may take action on the proposed project as being within the scope of the North San José Area Development Policies Update Final EIR, which adequately addresses the environmental effects of the proposed project. The review through the Addendum has identified that the project would not result in significant environmental effects that are not already identified in the Final EIR. The project, therefore, meets the eligibility requirements for preparation of an addendum and does not require a supplemental EIR or Negative Declaration.
  - b. Mitigation measures have been incorporated into this Permit as Permit conditions.
4. Traffic access, pedestrian access and parking are adequate in that:
  - a. Sufficient parking and traffic capacity including mitigation measures funded by traffic fees are available for the traffic this project will create.
  - b. Convenient and attractive pedestrian paths of travel, with modifications required as part of this permit, connect the street to the building and with other buildings and structures on the site.
5. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior hearing, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
  - a. The proposed landscaping and publicly accessible plazas help the site blend with its surroundings.
  - b. Ventilation, plumbing, utility, and trash facilities are screened.
6. The Permit, as issued, furthers the policies of the General Plan, in that the project is consistent with the site's General Plan Land Use/Transportation Diagram designation of Combined Industrial/Commercial.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed drive-through and 24-hour uses at the location requested will not

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in 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 and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
  3. The proposed site is adequately served:
    - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
    - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire four years from and after the date of issuance hereof by said City Council, if within such four-year time period, the construction of the buildings has not commenced, pursuant to and in accordance with the provision of this Conditional Use Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/ Amendment to extend the validity of this Permit in accordance with Title 20.
3. **Use Authorization.** This Conditional Use Permit authorizes the following uses to be implemented on the property subject to the terms of this permit:

- a. Drive-through use associated with an approximately 17,000 square-foot general retail store/pharmacy.
  - b. Late night/24-hour use of the general retail store/pharmacy and associated drive-through use.
  - c. This permit does not authorize the off-sale of alcoholic beverages.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-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 Quality 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 approval authority.
6. **Conformance with Plans.** Except as noted under condition #7 of this permit, construction and development shall conform to approved Conditional Use Permit plans entitled, "CVS/Pharmacy @ First, San Jose, California" dated January 11, 2011 and last revised May 23, 2011 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
7. **Permit Adjustment Required.** The applicant shall secure and agree to implement a Major Permit Adjustment within 90 days of approval of this Permit to the satisfaction of the Director of Planning to address the following:
- a. *Parking and Vehicle Circulation Requirements.* The site plan shall be modified to provide bicycle and motorcycle parking in compliance with the Zoning Ordinance.
  - b. *Trash Enclosure.* The trash enclosure shall be reconfigured and/or relocated so that it is outside the 18-foot wide sidewalk/landscaping area along side the project entrance driveway. The trash enclosure should be well screened by landscaping and avoid conflicts with vehicular circulation when enclosure doors are ajar. A portion of the driveways that provide access to the drive-through pick-up window and to the loading dock may overlap if necessary to accomplish the objectives noted in this condition.
  - c. *Canopy.* The canopy over the drive-through pharmacy pick-up window shall be revised architecturally to be less bulky and more subordinate to the building extension on the south elevation.

- d. *Height of wall screening loading/unloading area.* The height of the screen wall currently shown as ten (10) feet in height shall be revised to be no taller than seven (7) feet in height.
  - e. *Façade treatment of materials.* The stucco pop-out building elements near the middle of the building elevations on the east and west side of the building shall be clad in tile veneer to match the canopy over the drive-through lane on the south elevation.
8. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
- a. *Transportation:* The project site is located within the North San Jose Policy Area. The proposed land use support the industrial and residential uses in the Policy Area and is consistent with the General Retail, Food Service and General Service uses, as defined in the City's Zoning Ordinance. Per the NSJ Policy, traffic impact fees are not required with the proposed land use. We conclude that the subject project will be in conformance with the North San Jose Policy and a determination for a negative declaration can be made with respect to traffic impacts.
  - b. *Grading/Geology:*
    - i. The existing grading permit (Permit No. 08-026518 GR) may need to be revised to reflect the proposed changes or a new a grading permit may be required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
    - ii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
  - c. *Stormwater Runoff Pollution Control Measures:* This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.
    - i. The project's Stormwater Control Plan and numeric sizing calculations has previously been reviewed and this project will be in conformance with City Policy 6-29.
    - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
    - iii. Any changes to the previously-approved Stormwater Control Plan will need to be shown on the Grading Plan.

- d. *Stormwater Peak Flow Control Measures:* The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
  - e. *Flood: Zone A*
    - i. The flood zone designation for the project site is Flood Zone A, effective May 18, 2009, per the new Countywide flood maps issued by the Federal Emergency Management Agency (FEMA). Although the flood elevation is not shown on the flood map, the City has determined the flood elevation to be a minimum Elevation 12.00' NAVD 1988 (9.00' NGVD 1929) based on the effect of tidal flooding. Therefore, the project should be elevated or floodproofed to this minimum elevation.
    - ii. The project shall also conform to the Updated 2006 North San Jose Floodplain Management Study (NSJFMS). The NSJFMS was updated to reflect the completed Downtown and Lower Guadalupe River Flood Protection Projects and to show the resulting blockage requirements for applicable projects in North San Jose. Based on the 2006 NSJFMS, ultimate blockage should not to exceed 75% of the site perpendicular to flow of flood waters. Flow direction is south to north.
    - iii. The blockage requirements for the project site was addressed with the adjacent project, The Offices @ First (Planning Permit H07-018), which included a Private Flood Path Easement on a parcel map recorded on May 5, 2008 in Book 824, pages 39-42, File number 19841502.
    - iv. The following conditions apply:
      - 1) Elevate the lowest floor of the building above 12.00' NAVD 1988 (9.00' NGVD 1929) or floodproof to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
      - 2) An Elevation Certificate (FEMA Form 81-31) based on construction drawings is required prior to issuance of a building permit. Consequently, an Elevation Certificate based on finished construction is required prior to issuance of an occupancy permit.
      - 3) If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) for each building and floodproofing details, along with an Elevation Certificate (FEMA Form 81-31) are required prior to the issuance of a Public Works Clearance.
      - 4) Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.
  - f. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
9. **Covenant of Easement.** An easement for the purposes of emergency vehicle access, cross-access for parking, and general ingress/egress shall be recorded to the subject property prior to the issuance of Building Permits.

10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - b. *Construction Plans.* This permit file number, CP11-003, shall be printed on all construction plans submitted to the Building Division.
  - c. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
  - d. *Lot Line Adjustment.* Prior to issuance of a building permit, the property line shall be removed or relocated as appropriate. This will include removal of the existing easements.
  - e. *Compliance with Required Major Permit Adjustment.* The developer shall comply with project design modifications as noted under condition number 7.
11. **Fire Department Requirements.** The project shall conform to the requirements of the Fire Department at the building plan review stage to the satisfaction of the Chief Building Official and the Fire Chief.
- a. Indicate that the required fire flow of 1625 gpm (with 50% reduction from 3250 gpm for fire sprinklers) thru 2 fire hydrants will be available at the project site. Please ask the applicant to immediately contact Robert Moore of Great Oaks Water Co. at 408-227-9540 to get the water flow information.
  - b. Provide a copy of the letter from the Great Oaks Water Company that indicates the water flow available.
  - c. Plans shall show the locations of all fire hydrants that serve the site. The average distance between hydrants shall not exceed 350 feet (based upon 3250 gpm fire flow). The maximum distance from any point on street or road frontage to a hydrant shall be 210 feet. Any exterior portion of all buildings shall be within 400 feet of a hydrant.
  - d. All fire department connections shall be located within 100 feet from a standard public fire hydrant. The public fire hydrant(s) shall be located on the same frontage as all fire service connections. There shall be multiple fire department connections—for both sprinkler system(s) and stand pipe system(s)-on opposite ends of the building subject to the approval of the San Jose Fire Department.
  - e. There are property lines shown all over the site plan. The fire department access can not cross over property line. Show the fire department access to the buildings with hatch marks. Plans shall be submitted to the Fire Department by appointment only (Please call Kelly Gangar at 408-535-7696) as soon as possible.

12. **Hours of Operation.** This Conditional Use Permit allows late night/24-hour use of commercial uses beyond midnight seven (7) days a week for the retail store/pharmacy and associated drive-through use.
13. **Signage.** Unless shown on the approved plan set, this Conditional Use Permit does not include the approval of any signage. Signs are to conform to the regulations of Title 23 of the Municipal Code and allowed with the issuance of a Sign Permit Adjustment.
14. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
15. **Noise.** Any noise generated from the use between the hours of 10 p.m. and 6 a.m. that is audible by normal hearing within a residential unit with their windows closed shall be reduced to a level such that it is no longer audible, or it will constitute a nuisance.
16. **Refuse.** All primary trash enclosure areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed / permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping. Any drainage within trash enclosure areas shall be connected to sanitary system. The following special conditions shall apply:
  - a. No hazardous waste or special waste material shall be allowed to enter the solid waste stream (garbage or recycling), sanitary or storm sewer systems.
  - b. The property owner shall provide for independent disposal of waste, such as, but is not limited to, pharmaceutical or medical waste, paint products and solvents, chemicals and nutrients used for landscaping, batteries and automotive fluids.
  - c. Trash receptacles for the use of customers shall be provided near the store entrance and in the adjacent parking area.
17. **Colors and Materials.** All building colors and materials are to be as specified on the approved plan set.
18. **Street Cleaning and Dust Control.** During construction, the developer shall sweep and wash down the public streets each working day. In any on-site area visible to the public from the public right-of-way, the site shall be clean of debris, rubbish and trash at least once a week. The developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the construction site.
19. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Interior construction that is not audible at the adjacent property lines is permitted on Saturday and Sunday between 9:00 am and 6:00 pm.
20. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

21. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
22. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
23. **Recycling.** It is required that scrap construction and demolition debris be recycled instead of disposing of it in a landfill. An infrastructure exists within San José to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. Additional information may be found at <http://www.sjrecycles.org/construction-demolition/cddd.asp> or by contacting the Commercial Solid Waste Program at (408) 535-8550.
24. **Recycled Water.** The development is adjacent to an existing recycled water pipeline and therefore must conform to Chapters 15.10 and 15.11 of the San José Municipal Code. These chapters require all new and rehabilitated landscaping for projects that require a development permit from the City to be designed and constructed to receive recycled water. All irrigation systems shall be metered separately from the potable water supply system, shall have no on-site cross-connections to the potable water supply and shall meet all other legal requirements necessary to allow for recycled water use. The use of potable water to irrigate any outdoor landscaping plumbed for recycled water where recycled water is available to the property is prohibited. The design and construction of the irrigation system shall conform to South Bay Water Recycling (SBWR) Rules and Regulations and must be submitted to and approved by SBWR. Standard Details, specifications and notes are available online at [www.sanjoseca.gov/sbwr](http://www.sanjoseca.gov/sbwr) or by calling (408) 277-3671. The project should also consider using recycled water in lieu of drinking water for other non-potable applications such as toilet flushing, commercial laundry, and building cooling. Further, section 15.10.260 of the Municipal Code prohibits the use of potable water for construction purposes, such as dust control, without an exception from the City. A recycled water truck-fill station is located on Spring Street near Hedding Street to provide recycled water for construction uses. Please visit SBWR's website for more information and a complete list of approved uses of recycled water. Questions regarding recycled water use should be directed to Nicole Quesada or SBWR staff at the above number.
25. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
26. **Lighting.** All proposed lighting shall conform to the City of San José's Outdoor Lighting Policy.
27. **Air Quality.** Consistent with guidance from the BAAQMD, the following measures shall be required of construction contracts and specifications for the project.
  - a. *Demolition.* The following controls shall be implemented during demolition:

- i. Watering shall be used to control dust generation during demolition of structures and break-up of pavement.
  - ii. Cover all trucks hauling demolition debris from the site.
  - iii. Use dust-proof chutes to load debris into trucks whenever feasible.
- b. *Construction.* The following controls shall be implemented at all construction sites:
- i. Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers to control dust;
  - ii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
  - iii. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites;
  - iv. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality;
  - v. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
  - vi. Apply non-toxic soil stabilizers to inactive construction areas;
  - vii. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
  - viii. Limit traffic speeds on unpaved roads to 15 mph;
  - ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
  - x. Replant vegetation in disturbed areas as quickly as possible;
  - xi. Install base rock at entryways for all exiting trucks, and wash off the tires or tracks of all trucks and equipment in designated areas before leaving the site;
  - xii. Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
28. **Green Building Requirements.** The project shall comply with applicable Green Building standards in the City of San Jose Municipal Code in effect at time of submittal of building permit application.
- a. The project is subject to the mandatory requirements of the State of California Green Building Code Standards in effect at time of submittal of building permit application (currently 2010 standards).
  - b. The proposed project is subject to the bicycle parking and Clean Air Vehicle parking requirements of Chapter 20.90 Parking and Loading of the Zoning Ordinance, Title 20 of the San José Municipal Code.

29. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

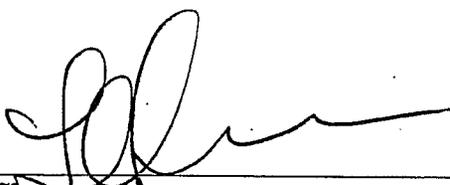
**APPROVED** and issued this 8<sup>th</sup> day of June 2011, by the following vote:

AYES: ABELITE, BIT-BADAL, CAHAN, JENSEN, KAMKAR, KLINE

NOES: NONE

ABSENT: PLATTEN

ABSTAIN: NONE

  
\_\_\_\_\_  
Chairperson

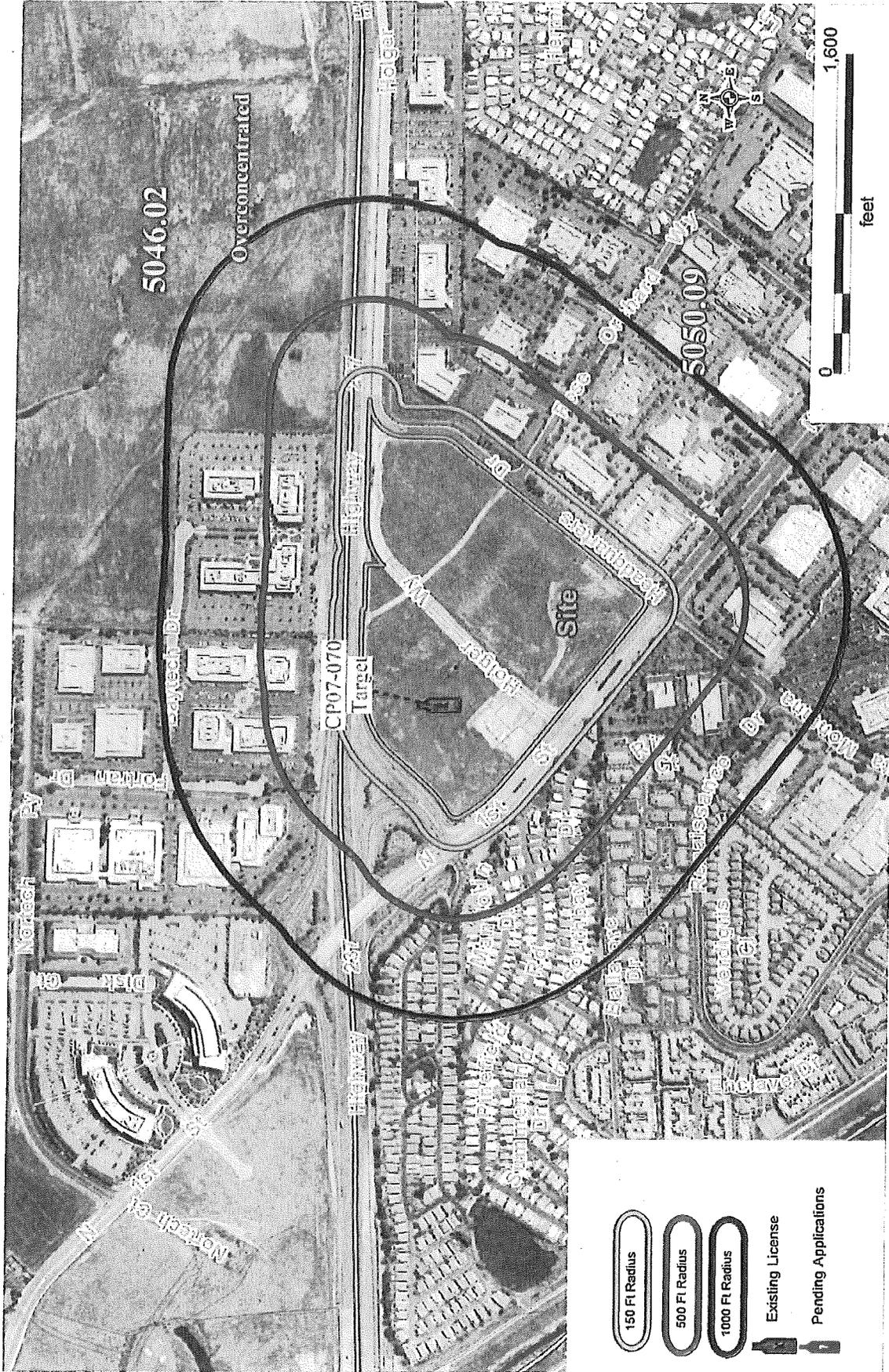
ATTEST:

Joseph Horwedel, Secretary

  
Deputy

**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.*



File No: CP11-003  
 District: 4

Nearby Alcohol Off-Sales



Prepared by the Department of Planning,  
 Building, and Code Enforcement  
 5/19/2011



**CITY OF SAN JOSE**

Planning, Building and Code Enforcement  
 200 East Santa Clara Street  
 San José, CA 95113-1905  
 tel (408) 535-3555 fax (408) 292-6055  
 Website: www.eanjo.seca.gov/planning

**NOTICE OF PERMIT APPEAL**

**TO BE COMPLETED BY PLANNING STAFF**

FILE NUMBER CP11-003	RECEIPT # 625574
PROJECT LOCATION 4110 North 1st Street: north side of N. 1st Street 210 feet from Headquarters	AMOUNT 2855
	DATE 6/20/11
	BY HM

**TO BE COMPLETED BY PERSON FILING APPEAL**

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):  
 \*\*Please See Attached\*\*

**PERSON FILING APPEAL**

NAME DEREK K HUNTER, JR - USR AT FIRST, LLC	DAYTIME TELEPHONE (408) 255-4100
ADDRESS 1021 Miller Ave, Suite 200 Cupertino	STATE ZIP CODE CA 95014
SIGNATURE <i>[Signature]</i>	DATE 6/20/11
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) property owner on behalf of tenant (CVS)	

**CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)**

NAME Holly Grzywacz, Director of Development, LandMark Retail Group		
ADDRESS 5850 Canoga Ave., Suite 650	CITY Woodland Hills	STATE ZIP CODE CA 91360
DAYTIME TELEPHONE (818) 880-4400	FAX NUMBER (818) 880-4422	E-MAIL ADDRESS hgrzywacz@lrgdev.com

**PROPERTY OWNER**

NAME USR at First, LLC	DATE 6/20/11
ADDRESS 1021 Miller Ave, Suite 200	CITY STATE ZIP CODE Cupertino CA 95014

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

File No. : CP11-003

Project Location: 4110 North 1<sup>st</sup> Street (north side of N. 1<sup>st</sup> Street, 210 feet from Headquarters)

Person Filing the Appeal: TSA @ First (property owner) on behalf of CVS/ Pharmacy (tenant/operator)

Justification for Appeal of Planning Commission's Denial of Off Site Alcohol Sales

CVS/ pharmacy respects staffs concerns regarding consideration of the approval of off site alcohol sales and understands the sensitivity to off site alcohol sales throughout the City of San Jose. We believe in the process of conditional use approvals which require that these determinations be made on a case by case basis for each proposed project and respectfully ask for consideration of our appeal of the denial of off site alcohol sales as noted in the approved CUP for this location as we believe that this is a location where incidental off site alcohol sales is appropriate and the overall project will be a benefit to the surrounding community.

In response to staff's analysis on page 8 of the Staff Report presented to the Planning Commission on 6/8/11 which notes that added concentration without providing any offsetting improvements, we respectfully disagree and over the following:

This CVS/ pharmacy will provide a valuable and vital service to an underserved area in North San Jose. CVS is a neighborhood serving business and a leading pharmacy health care provider with expert care and innovative and affordable health care solutions. In addition to quality pharmaceutical items, CVS will offer a complete range of basic needs products and services such as vitamins and other health care goods, grocery items including limited alcohol, basic household items and cleaners, office and stationary goods, beauty and cosmetics, seasonal merchandise, and photo finishing at this location.

CVS/ Pharmacy has acquired an existing Type 21 ABC License to be transferred to this location to ensure there is no net increase to the number of licenses in the City of San Jose and specifically within Council District 4. (license transfer information from ABC attached)

This location is not over concentrated nor high crime and does not require a finding of Public Convenience and Necessity. Per the Memorandum from SJPD - Ofcier C. Zarate #3165 dated 5/31/11 to Staff, the location "is not considered unduly concentrated per B&P Section 23958.4(a)(1)" and "the reported crime statistics as defined by B&P Section 23958.4 (C) are not over the 20% crime index." (see attached area map from Staff Report showing existing off-sale retailers in the area)

With regard to alcohol sales, CVS takes responsible sales very seriously and understands the sensitivity to the issue of off site sales within the communities they serve. Through employee training programs, store design and security measures and a strong track-record of working with surrounding communities, CVS is committed to responsibly managing the sale of alcohol. We have attached a fact sheet that outlines our experience and strict compliance with the State of California's policies as well as CVS' own

employee training program, which has been recognized and approved by the State ABC, related to alcohol sales. Additional information can be provided upon request.

Additionally, as was noted in the staff report and at the Planning Commission Hearing last week, one of the only concerns raised by nearby residents regarding the CVS was a concern of increased vehicular traffic and the proposal to allow CVS/ pharmacy incidental off site alcohol sales in conjunction with high quality will allow for safe, convenient, one-stop shopping for the residents of North San Jose decreasing the need for separate trips to multiple stores.

Another key concern noted by staff and Director Horwedel was that, approval of off sale alcohol sales at the CVS might jeopardize the opportunity to bring a full service grocery store to this shopping center. In response, we offer the following for consideration:

1. CVS/ pharmacy is a perfect co-tenant for full service grocers and particularly smaller format grocers such as Fresh & Easy, Trader Joes, and others. We often work in tandem with these grocers on projects to backfill vacant big box grocers and find that rather than being a competitive co-tenant, the uses are complimentary and in fact replace the services once provided in traditional large format grocers of the past.
2. The census tract is not over concentrated nor high crime and a CUP for off site alcohol for a grocer could be approved without causing over concentration within the census track
3. CVS/ pharmacy acquired an existing type 21 license located within the council district which upon transfer of the license will result in no net gain of licenses within the City of San Jose and specifically, Council District 4
4. The Property Owner continues to work with grocer options to bring to the @ First Shopping Center and the execution of the CVS/ pharmacy project will only add interest of other grocers and retailers currently considering locating here or those whom may not have without executed leases and approved projects. It is important for the success of all tenants in the center for each to be successful as it will draw business and energy to the overall center

CVS/ Pharmacy looks forward to providing a necessary service to the residents of North San Jose and will continue to work with the Planning Staff, SJPD, Council Office, and all interested stakeholder.



## CVS – Experience Matters

CVS is a neighborhood serving business and a leader as a pharmacy health care provider. CVS offers integrated health care solutions across the entire spectrum of pharmacy care, which makes them uniquely positioned to provide greater access, to engage plan members in behaviors that improve their health, and to lower overall health care costs for health plans, plan sponsors, and their members.

At CVS, highly trained pharmacists are available to dispense prescriptions as well as helpful advice. CVS offers customers unparalleled access to quality health care services: sixty percent of stores provide drive-thru pharmacy windows as well to service the physically impaired to the busy parent or those feeling under the weather that want a fast, convenient way to access prescriptions.

CVS successfully operates stores in communities throughout California and the greater Bay Area, where they provide alcohol products to customers as a matter of convenience. CVS has significant and longstanding experience with the sale of alcohol and engages at a local level with policymakers, the area police department, and the individual community members whom they serve to address store-specific agreements and conditions to address concerns raised with regard to off site alcohol sales.

CVS is a responsible vendor with an effective training and management policy for controlling the sale of alcohol. Nationally, CVS adheres to the following corporate alcohol sales policies:

- **No “nuisance alcohol” sales.** CVS does not sell typical “problem” alcohol products such as individual beverages or “singles”, beer or wine with alcohol content greater than 16% by volume, fortified liquors, sale of single cups or containers that may lead to loitering or consumption on or near the premise, etc.
- **Employee alcohol training program.** This program, which is approved by the California Department of Alcohol and Beverage Control, must be completed by all CVS employees within 14 days of their hire and before they are permitted to operate the registers.
- **Alcohol sales procedures.** To prevent sales to anyone under the legal age who may look older than their age, employees must ask for proper identification to verify the age of any buyer under 27 before selling alcohol products.
- **Zero tolerance policy.** Any employee knowingly or recklessly selling any age-restricted product to a minor or to an adult purchasing a product for a minor is subject to immediate disciplinary action up to and including termination.
- **Security cameras.** Security cameras are equipped throughout CVS pharmacies and particularly in the area of alcohol sales (which are limited to roughly 2% to 5% of the total floor area of a typical pharmacy).
- **Checkout monitoring.** All checkouts are equipped with electronic scan detection systems to control the sale of age-restricted products and prompt cashiers to require proper identification before a sale is completed.
- **Store Layout & Design.** The placement of beer and wine products is carefully planned to allow employees and management to monitor activities visually in addition to access to security cameras.



**Nusbaum, Jenny**

**From:** Moniz, Lori  
**Sent:** Thursday, February 03, 2011 1:52 PM  
**To:** Shance Ordell  
**Cc:** Nusbaum, Jenny  
**Subject:** RE: CP10-059 - CVS/Pharmacy

Hi Shance,  
I'm forwarding this message to the Project Manager for that project, Jenny Nusbaum.

Lori

Lori Moniz  
Project Manager  
Planning Division  
City of San José  
200 East Santa Clara Street  
3rd Floor, Tower  
San José, CA 95113-1905  
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**From:** Shance Ordell [<mailto:sordell@FinancialEngines.com>]  
**Sent:** Thursday, February 03, 2011 1:48 PM  
**To:** Moniz, Lori  
**Cc:** Shance Ordell  
**Subject:** CVS/Pharmacy

Lori,

I attended the community meeting at Novellus on 01/13/11 regarding the freeway sign and marriott courtyard hotel (CP10-059 and H10-020). During that meeting it was brought up that the corner of North First Street and Headquarters Drive was being considered for CVS/Pharmacy. It was also brought up that the public would be given an opportunity to weigh in on that decision. I am against a CVS/Pharmacy on that corner. There is already a Target on property with a pharmacy and there will eventually be a grocery store that will also contain a pharmacy. And down the road there is a phaarmacy In the Safeway of Rivermark. Please let me know who to contact about this decision before it is too late.

Thanks.

5/26/2011

**Nusbaum, Jenny**

**From:** Sanela Latic [sanelads@gmail.com]  
**Sent:** Wednesday, May 25, 2011 10:24 AM  
**To:** Nusbaum, Jenny  
**Subject:** Project CP11-003

Dear Jenny,

I am writing you this e-mail in response to the letter I just received regarding a development in North San Jose on North First Street. When I read the letter about the proposed store/pharmacy coming to the same location where a Target just opened in October, I can say I was very disappointed. This just shows how San Jose continues to make mistakes when planning and developing the city. Instead of building a community where residents can go buy groceries, sit at a coffee shop and grab a bite at a small local restaurant; San Jose continues to build large shopping centers where you can only come with your car and leave after your business is done. I live in the California Renaissance condo community and Target is within a walking distance, but yet I find myself driving to it. Why is this? Well I have to cross a 6 lane street (N 1st St) which has a 45 MPH speed limit, then I would have to cross the huge parking lot in order to get to the Target entrance. So I drive because I do not feel safe walking. So who ever developed this plan definitely didn't have the pedestrian in mind. San Jose is built for cars and not for pedestrians. It's just so disappointing to see that it does not look like it will ever change. You can't build a sense of community with these style of developments. Perhaps planners could have visited other cities that have successfully created this. Emeryville is a perfect example: a combination of housing, shopping and dining. How about looking at Palo Alto, Santa Cruz who have created areas with this style which are pedestrian friendly. Do we really need another store with a pharmacy when we already have an enormous Target? Do we really need another hotel when Hotel Sierra just opened and there is another one 5 minutes away? How about a small grocery store that sells local and organic food? How about some locally owned restaurants? I can see that this development will mimic the one on Coleman street: chain stores and restaurants with huge parking lot (where when I went to Target I would get back in my car and drive to Trader Joe's-because it wasn't pedestrian friendly). Again I am very very sad to see that San Jose doesn't have its citizens interests, instead it will approve projects based on the amount of money it will bring to the city. :  
( What about us that live in those communities?

Lastly, the Oakmead building that is being destroyed on the corner of 1st and Vista Montana, why were all the trees cut down? They made the street look so much prettier. What is coming there?

I know this will not make a difference but just felt strongly that I had to express my disappointment.

Thank you for your time.  
Sincerely,  
Sanela

5/26/2011