



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: September 2, 2011

Approved

Date

9/14/11

COUNCIL DISTRICT: 9
SNI AREA: N/A

SUBJECT: CP11-047 and ABC11-009. Appeal of the Planning Commission's decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol (beer and wine only) at a full-service grocery store in the CP Commercial Pedestrian Zoning District located within an existing approximately 19,247 square foot tenant space on an approximately 2.55 gross acre site.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the Council uphold the appeal of the Planning Commission's decision and approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Conditional Use Permit can be made, and find there is a significant overriding public benefit served by the proposed off-sale of alcohol and grant a Determination of Public Convenience or Necessity.

OUTCOME

Should the Council approve the proposed Conditional Use Permit, the proposed retail tenant space would operate as a full-service grocery store with fresh meat and produce with the ability to acquire a State of California Alcoholic Beverage Control (ABC) license to allow the ability for the grocery store to sell alcoholic beverages (beer and wine only) for off-site consumption.

EXECUTIVE SUMMARY OF OFF-SALE APPROVAL PROCESS

On February 1, 2006, Council-adopted 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, and mandatory findings for a Determination of Public Convenience or Necessity, when such a determination is required by the State Department of Alcoholic Beverage Control.

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).

The State Department of Alcohol Beverage Control, prior to licensing of a new off-sale alcohol establishment in an area of undue concentration or high crime (as defined by State law), requires business operators to obtain a Determination of Public Convenience or Necessity from the local jurisdiction. All applications for a Determination of Public Convenience or Necessity are considered by the Planning Commission in conjunction with any associated application for a Conditional Use Permit. The revised regulations include factual findings the Planning Commission is required to make in order to consider a request for a Determination of Public Convenience or Necessity. The four findings are as follows:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the Chief of Police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and
2. Approval of the proposed use would not result in a grouping of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000 foot radius from the proposed use; and
3. The proposed use would not be located within 500 feet of a school site, day care center site, public park, social services agency site, residential care facility site or residential service facility site, or within 150 feet of a site upon which a residential use is conducted or that is residentially zoned; and
4. Alcohol sales would not represent a majority of sales of the proposed use.

Should the Planning Commission find that the above conditions exist, further consideration of the request is subject to discretionary findings. If the Planning Commission is unable to make all necessary findings noted above in order to consider making a Determination of Public Convenience or Necessity, it is compelled to deny both the request for a Determination of Public Convenience or Necessity as well as any associated Conditional Use Permit in that approval of

one without the other is moot. Appeal of the Planning Commission's decision is heard by the Council. One of the changes made to the ordinance was to include the opportunity for the Council to make a finding of overriding public benefit should one of the mandatory factual findings not be met. The Council is the only decision-making body that can make the finding of greater public benefit.

This report, along with the Planning Commission staff report, includes a discussion of the project and whether the required findings can be made in both the case of the Conditional Use Permit and in the Determination of Public Convenience or Necessity. The Planning Commission was unable to make all necessary findings for a Determination of Public Convenience or Necessity in that the proposed subject use is within 150 feet of a residential use. Therefore, the Planning Commission was compelled to deny both the request for a Conditional Use Permit and Determination of Public Convenience or Necessity as discussed below. The applicant subsequently appealed the Commission's decision to deny these applications to the City Council.

Based on an analysis of the findings required for the Council to approve the Conditional Use Permit and Determination of Public Convenience or Necessity in the face of negative factual findings by the Planning Commission, staff concludes that two of the four necessary findings can be made to determine that a "significant or overriding public benefit or benefits will be served by the proposed use." For these reasons, staff recommends that the Council approve the request for a Conditional Use Permit and Determination of Public Convenience or Necessity.

BACKGROUND

Planning Commission Hearing

On August 10, 2011, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit and Determination of Public Convenience or Necessity (File Nos. CP11-047 & ABC11-009). The Director of Planning recommended mandatory denial of the Conditional Use Permit and request for a Determination of Public Convenience or Necessity because one of the required four findings for the Determination of Public Convenience and Necessity could not be made. As stated in the original staff report (see attached), staff was unable to find that the proposed off-sale use is not within 150 feet of a residential use.

Public Testimony

Scott Raymond, Construction Manager for Grocery Outlet, stated that the applicant is investing approximately \$2,000,000 into this new Grocery Outlet location and will be hiring approximately 40 local individuals to staff the grocery store. He indicated that beer and wine sales would be a convenience to customers. Mr. Raymond also stated that alcohol sales will only account for 2% of the net floor area and that he is not proposing to have the store open past 9 p.m. He stated Grocery Outlet would only sell wine bottles, and 6-packs and 12-packs of beer; he indicated they do not sell single containers of beer.

There were no speakers from the public.

Planning Commission Discussion

Commissioner Kamkar asked what Grocery Outlet would do if the Council denies the appeal and upholds the Planning Commission's mandatory decision to deny the off-sale of alcohol. Mr. Raymond indicated that Grocery Outlet would consider whether to open the grocery store at this location.

Commissioner Kamkar asked why Grocery Outlet did not take over the previous tenant's off-sale license and whether if they had done so, Grocery Outlet would have gone through a similar Conditional Use Permit and Determination of Public Convenience or Necessity process. Mr. Raymond explained that previous tenant's ABC license expired before they were able to transfer it to Grocery Outlet.

Commissioner Kamkar asked whether staff recommended denial of the permit solely because the project site is located within 150 feet of a residential use and whether the Planning Commission could override this finding. Staff explained that the proximity to residential use within 150 feet is a mandatory finding that cannot be modified.

The Planning Commission unanimously voted to deny the subject application 4-0-2, with Commissioners Cahan, and Platten absent. Commissioner Bit-Badal stated that the Commission hopes the Council will uphold the appeal of the Commission's decision and approve the project.

Appeal

On August 18, 2011, an Appeal was filed by the applicant's representative, Wayne Dong of MCG Architecture (see attached Notice of Permit Appeal). The applicant states in their appeal that this new Grocery Outlet is a full-service grocery store that is proposing the off-sale of only beer and wine. The applicant also states that the off-sale of alcohol would benefit shoppers by allowing a broader range of products.

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 and to make a Determination of Public Convenience or Necessity. 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, and enabled the Commission to make only one of the four findings required to grant a Determination of Public Convenience or Necessity. For the subject application, approval of both a Conditional Use Permit and Public Convenience or Necessity is necessary in order for a Liquor License to be issued by the State of California.

Upon an appeal, per Title 6 of the San José Municipal Code, where the four required findings cannot be made, the Council may still make a Determination of Public Convenience or Necessity if it finds that that a "significant or overriding public benefit or benefits will be served by the

proposed use.” In addition, the Council would also be required to make at least one of the four special findings as listed below in italics. Following the description of the finding, staff has provided analysis of the finding.

- A. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety.*

The subject use would be part of a new full-service grocery store at an existing vacant neighborhood commercial shopping center that is well served by existing infrastructure, fronting on arterial public streets and surrounded by commercial uses. The sales area for alcoholic beverages is incidental to the larger sales of food products and would comprise only two percent (2%) of the store’s net floor area. The Police Department has indicated that they are neutral to this proposal and that this site is not located in an area of high crime. The proposed use would occupy a tenant space previously occupied by a grocery store with an off-sale of alcohol use. The reinstatement of the off-sale use would further the City’s goals of economic development by contributing to the viability of conveniently located full-service grocery stores in the City of San José, provide an anchor tenant to a fully vacant shopping center, and enhance opportunities for the provision of fresh meat and produce in proximity to residents and workers in the City. Based on the above analysis, staff concludes that the above general findings related to the granting of a Determination of Public Convenience or Necessity can be made.

- B. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area.*

The census tract in which the proposed outlet is located does have a lower population density as compared to City average. In fact, the subject census tract (5029.02) has a population density of 11.1 persons per acre, which is less than the City-wide census tract average of 14.3 persons per acre. With respect to the second part of this finding, the subject census tract is currently over-concentrated with off-sale licenses. Therefore, the approval of this permit would add an additional off-sale establishment to the area. For the reasons stated above, this finding cannot be made.

- C. The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety.*

The shape of the subject census tract is similar to surrounding census tracts with no unusual appendages. The neighborhood located in the vicinity of the subject proposal is not underserved by off-sale establishments. As stated above, the Police Department has indicated that they are neutral to this proposal. Based on the recent crime data provided by the Police, staff has concluded that the outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety. However, because the census tract is not unusually configured, this finding cannot be made.

D. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

The proposed store is a large full-service grocery store/supermarket that sells a complete array of food items including fresh produce and meat. The percentage of net floor area allowed for the off-sale of alcoholic beverages would not exceed 5% of the total floor area. Therefore, the proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and the subject store does provide a more complete and convenient shopping experience.

Findings of Overriding Public Benefit

Staff has concluded that two of the four findings, described above, can be made to grant a Determination of Public Convenience or Necessity to allow off-sale alcoholic beverages (beer and wine only) at the subject store. Based on the analysis of the required findings, staff has concluded that there would be a significant or overriding public benefit served by the proposed use.

CONCLUSION

Based on the above analysis and the previous analysis provided in the attached Staff Report to the Planning Commission, staff concludes that all the required findings for issuance of a Conditional Use Permit for the off-sale of alcoholic beverages of beer and wine only can be made with regard to the proposal. Further, staff concludes that the findings specific to the granting of a Determination of Public Convenience or Necessity can be issued in the case of off-sale of alcoholic beverages of beer and wine only. Given the ability to make all the relevant findings, staff recommends that the Council uphold the appeal of the Planning Commission's decision and approve the subject Conditional Use Permit and grant a Determination of Public Convenience or Necessity for the off-sale of alcohol (beer and wine only) in accordance with the facts, findings and conditions noted in the draft resolution.

ALTERNATIVES

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

1. Uphold the Planning Commission's decision to deny the subject Conditional Use Permit and Determination of Public Convenience or Necessity, or
2. Approve the project as requested by the applicant/appellant and permit the off-sale of alcoholic beverages (beer and wine only) at the existing full-service grocery store.

PUBLIC OUTREACH



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

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- 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)**

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 500 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

Exempt.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Jeannie Hamilton at 408-535-7850

Attachments:

Draft City Council Resolution
Applicant Notice of Permit Appeal
Map Identifying Location of Nearby Off Sale Establishments
Planning Commission Staff Report and Attachment

DRAFT REFLECTING PLANNING STAFF RECOMMENDATION

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ APPROVING A CONDITIONAL USE PERMIT AND GRANTING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW OFF-SALE OF ALCOHOL OF BEER AND WINE IN CONJUNCTION WITH AN APPROXIMATELY 19,247 SQUARE FOOT FULL-SERVICE GROCERY STORE WITHIN AN EXISTING SHOPPING CENTER LOCATED AT 1165 FOXWORTHY AVENUE ON AN APPROXIMATELY 2.55 GROSS-ACRE SITE.

FILE NO. CP11-047 & ABC11-009

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on June 28, 2011 respectively applications (File Nos. CP11-047 & ABC11-009) were filed for a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol of any type in conjunction with an approximately 19,247 square-foot full-service grocery store within an existing shopping center, on that certain real property (hereinafter referred to as "subject property"), situate in the CP Commercial Pedestrian Zoning District, located on the northwest corner of Foxworthy and Meridian Avenues (1165 Foxworthy Avenue), 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 Jose Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

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

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Grocery Outlet Tenant Improvement, 1165 Foxworthy Avenue, San Jose, CA 95124," dated May 18, 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 Jose Municipal Code and the rules of this City Council.

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

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram. Commercial uses such as the full-service grocery store with proposed off-sale of alcohol are consistent with this land use designation.
2. The project site is located in the CP Commercial Pedestrian Zoning District.
3. The Zoning Ordinance requires a Conditional Use Permit for the off-sale of alcohol in the CP Commercial Pedestrian Zoning District.
4. A Conditional Use Permit may be issued for the off-sale of alcoholic beverages if the Planning Commission makes the findings required by Title 20 of San José Municipal Code Sections 20.80.900 and 20.100.720.
5. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
6. The site is located at a commercial building that is surrounded by commercial uses to the east and south, and residential uses to the north and west. The existing residential uses to the north and west are located adjacent to the subject site and within 150 feet of the grocery store with the proposed off-sale of alcohol.
7. No physical expansion of the previously developed building is proposed.
8. The subject site is located on a site developed with a commercial building.
9. Access to the site is provided from Foxworthy and Meridian Avenues.

10. The proposed use is an approximately 19,247 square foot tenant space within an approximately 33,570 square foot retail commercial building. The parcel with the proposed use is approximately 2.55 gross acres in size.
11. The applicant proposes to sell beer and wine for off-site consumption as a minor part of the overall sales area of the full-service grocery store, not to exceed five percent (5%) of the net floor area; such that alcohol sales would not represent a majority of the proposed full-service grocery store use.
12. The applicant does not propose to open late night between 12:00 midnight and 6:00 a.m.
13. The Police Department memorandum indicates that the project site is not located within an area of high crime, but is within a census tract that has an over-concentration of off-sale licenses.
14. The Police Department has indicated that they are neutral to the issue of off-sale of alcohol in conjunction with the full-service grocery store at this location.
15. The proposed use would not lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use.
16. Due to the undue concentration of off-sale licenses, the project is subject to the requirements for a Determination of Public Convenience or Necessity for a liquor license for the off-sale of alcoholic beverages. The granting of such a determination requires that four specific factual findings be made by the Planning Commission as prescribed by Title 6 of the San José Municipal Code in order to consider granting a Determination of Public Convenience or Necessity.
17. The subject site is not in an area identified by the Police Department with a crime index higher than 20% above the City-wide average, and their position is neutral to the proposal.
18. The subject tenant space is located within five hundred (500) feet of one other retail establishment that sells alcohol for off-site consumption (off-sale of alcohol).
19. Two existing off-sale facilities are located within 1,000 feet of proposed subject use. The proposed use, together with existing facilities, would not result in a total of more than four such establishments within a 1,000-foot radius.
20. The proposed use is not located within five hundred (500) feet of any childcare center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college, or university.
21. The proposed use is within 150 feet of residentially zoned parcels.
22. If the Planning Commission cannot make the required findings, the City Council, as part of an appeal hearing, has an opportunity to make a finding of overriding public benefit. Title 6 identifies how the Council can make the finding of overriding public benefit. The City Council is the only decision-making body that can make the finding of greater public benefit.

23. The subject site is separated from the nearest residential uses by fencing such that the publicly accessible entrance to the subject tenant space is approximately 600 feet walking distance from any residence.
24. The proposed use is not within a Strong Neighborhood Initiative area or other area designated by the city for targeted neighborhood enhancement services or programs.
25. There are two (2) other off-sale establishments or licenses issued within 1,000 feet of the subject site per data from the State Department of Alcoholic Beverage Control.
26. The approval of this permit would add more off-sale establishments to the area.
27. The proposed sales of alcoholic beverages are incidental to a larger retail use.
28. The subject census tract (5029.02) has a population density of 11.1 persons per acre, which is less than the City-wide census tract average of 14.3 persons per acre.
29. The full-service grocery store sells a complete array of food items, including fresh produce and meat.
30. The shape of the subject census tract has a configuration similar to surrounding census tracts with no unusual appendages.
31. Without the granting of a Determination of Public Convenience or Necessity, the Conditional Use Permit cannot be effectuated.
32. The Planning Commission denied the proposed request for the off-sale of alcohol on August 10, 2011 because it could not make all four (4) of the mandated findings set forth in the San José Municipal Code in order to consider granting a Determination of Public Convenience or Necessity.
33. The applicant appealed the Planning Commission decision on August 18, 2011.
34. Prior to the City Council hearing, no members of the public provided comments for or against the proposed request for the off-sale of alcohol.

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

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

Based on the above stated facts, the City Council concludes and finds with regard to the findings for a Determination of Public Convenience and Necessity that:

- a) The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area; and
- b) The proposed use would not lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use; and
- c) The proposed use would not be located within five hundred feet of a school, day care center, public park, social services agency, or residential care or service facility. The proposed use is within one hundred fifty feet of an existing residence.
- d) Alcohol sales would not represent a majority of the proposed use.

Further, with respect the additional findings for a Determination of Public Convenience and Necessity to be considered as part of an appeal, the City Council concludes and finds that:

1. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area.
2. The census tract in which the proposed outlet is located does have a lower population density in relation to other census tracts in the City and the proposed outlet would contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area.
3. The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is not unusually configured.
4. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

Finally, the City Council finds and concludes, based on the all of the above facts and findings, that that there would be a significant or overriding public benefit served by the proposed use.

In accordance with the findings set forth above, a Conditional Use Permit and a Determination of Public Convenience and Necessity 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 City Council expressly declares that it would not have granted this permit and determination 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 and all of the requirements set forth in San Jose Municipal Code Section 20.100.290.D shall have been fully performed or caused to be fully performed.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee 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 two years from and after the date of adoption of the Resolution by the City Council, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit pursuant to Title 20 of the San Jose Municipal Code.
3. **Use Authorization.** This Conditional Use Permit authorizes the off-sale of beer and wine alcoholic beverages only, to be implemented only in conjunction with a full-service grocery store on the property subject to the terms of this permit as follows:
 - a. The sale and display of alcohol shall be limited to no more than five percent (5%) of the net floor area of the full-service grocery store.
4. **Conformance with Plans.** The use of this property shall conform to approved plans entitled "Grocery Outlet Tenant Improvement, 1165 Foxworthy Avenue, San Jose, CA 95124," dated May 18, 2011, on file with the Department of Planning, Building and Code Enforcement.
5. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.

6. **Permittee Responsibility.** The permittee shall ensure that the use authorized by this Permit is implemented in conformance with all of the provisions of this Permit.
7. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Conditional Use Permit incorporated by reference in this Permit in accordance with the San José Municipal Code.
8. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.
9. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
11. **Waste Discharge.** The proposed facility shall conform to the City of San José industrial waste discharge regulations. Any non-domestic wastewater discharge into the sanitary sewer system shall require Source Control Staff to review and approve the final plans. Contact Environmental Engineering Staff at (408) 945-3000 with any questions.
12. **Refuse.** All trash 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.
13. **Compliance with Other Permits.** The developer shall comply with all terms and conditions of the previously approved permits on the site.
14. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcoholic Beverage Control (ABC). The applicant shall maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.
15. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
16. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
17. **Store Operator Point of Contact.** Store operator shall post in a visible location on the store premises a phone number, and other applicable contact information for the public to address questions and comments regarding management and maintenance of the subject store and store frontage.

18. 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.

APPROVED this 27th day of September 2011, by the following vote:

AYES:

NOES:

ABSENT:

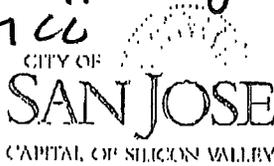
DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk

8/10 PC mandatory denial
 8/18 Appeal by applicant
 9/27 CC



CITY OF SAN JOSE
 Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San Jose, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6056
 Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER CP11-047 / ABC11-009	RECEIPT #
PROJECT LOCATION 1665 FOXWORTHY AVENUE	AMOUNT \$2,700
	DATE 8/18/11
	BY SD

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:

1665 FOXWORTHY AVE. SAN JOSE, CA

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

OFF-SALE ALCOHOL CONDITIONAL USE PERMIT REQUESTED FOR THIS NEW GROCERY OUTLET FULL SERVICE GROCERY STORE. ONLY BEER + WINES WILL BE SOLD. THIS WOULD BENEFIT SHOPPERS.

PERSON FILING APPEAL

NAME WAYNE DONG - MCG ARCHITECTURE	DAYTIME TELEPHONE (415) 974-6002
ADDRESS 250 SUTTER STREET STE 500	CITY SAN FRANCISCO STATE CA ZIP CODE 94108
SIGNATURE <i>Wayne Dong</i>	DATE 8-15-2011
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) ARCHITECTS REP. FOR TENANT (GROC. OUTLET)	

CONTACT PERSON

(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME SAME AS ABOVE.				
ADDRESS		CITY	STATE	ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS WDONG@MCGARCHITECTURE.COM		

PROPERTY OWNER

NAME FREMONT CENTER PLAZA, LLC BT: Anandhu S, MANAGER	DATE 8/15/2011
ADDRESS 4125 BLACKFORD AVE, #200	CITY SAN JOSE STATE CA ZIP CODE 95117

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

Permit Appeal.ppt05/Applications Rev. 10/13/2009

CP11-047 & ABC11-009
ESTABLISHMENTS W/OFF-SALE OF ALCOHOL LICENSES WITHIN 1,000 FOOT RADIUS OF SUBJECT SITE

