



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: February 14, 2012

Approved

Date

2/17/12

COUNCIL DISTRICT: 6

SUBJECT: PD11-028 and ABC11-012. Appeal of the Planning Commission's decision to deny a Planned Development Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol, the full range, at a full-service grocery store in an existing approximately 3,350-square-foot tenant space in a mixed-use development on an approximately 1.4-gross-acre site, in the A (PD)-Planned Development Zoning District, located at the northwest corner of Santana Row and Olin Avenue (355 Santana Row, Suite 1030).

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends Council uphold the appeal of the Planning Commission's decision and approve the subject Planned Development Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Planned Development 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 Council approve the proposed Planned Development Permit and grant a Determination of Public Convenience or Necessity, the proposed full-service grocery store would be allowed the ability to acquire a State of California Alcoholic Beverage Control (ABC) license to allow the ability to sell alcoholic beverages limited to beer and wine 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 Planned Development 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 Planned Development 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 such establishments exceeds four (4) 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 Alcoholic 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 Planned Development Permit or 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;
2. Approval of the proposed use would not result in a grouping 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 use;
3. The proposed use would not be located within five hundred (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 Planned Development Permit in that approval of one without the other is moot. Appeal of the Planning Commission's decision is

heard by Council. One of the changes made to the ordinance was to include the opportunity for Council to make a finding of overriding public benefit should one of the mandatory factual findings not be met. The City 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 Planned Development 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 residence. Therefore, the Planning Commission was compelled to deny both the request for a Planned Development Permit and Determination of Public Convenience or Necessity as discussed below. The applicant subsequently appealed the Commission's decision to deny these applications to Council.

Based on an analysis of the findings required for Council to approve the Planned Development Permit and Determination of Public Convenience or Necessity in the face of negative factual findings by the Planning Commission, staff concludes that one of the 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 Council approve the request for a Planned Development Permit and Determination of Public Convenience or Necessity.

BACKGROUND

Planning Commission Hearing

On January 25, 2012, the Planning Commission held a public hearing to consider the proposed Planned Development Permit and Determination of Public Convenience or Necessity (File Nos. PD11-028 & ABC11-021). The Director of Planning recommended mandatory denial of the Planned Development 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 or residentially zoned property.

Public Testimony

The applicant testified that they understood the mandatory denial and they looked forward to a hearing before Council.

The Planning Commissioners stated that they appreciated the store's design, cleanliness, products, and its function of gathering place. They recommended strongly that Council approve the proposal even though the Planning Commission must deny it. The Planning Commissioners stated that the store exemplifies what we are looking for in mixed-use areas within a neighborhood. The Planning Commissioners stated that if they could, they would approve the

proposal. The motion to deny per staff recommendation was approved unanimously (6-0-1, Commissioner Kamkar absent).

Appeal

On February 6, 2012, an appeal was filed by the applicant's representative, Givargis Khoshaba (see attached Notice of Permit Appeal). The applicant states in their appeal that the proposed use meets all the conditions for approval by City Council.

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 Planned Development 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 Planned Development Permit, and enabled the Commission to make only three of the four findings required to grant a Determination of Public Convenience or Necessity. For the subject application, approval of both a Planned Development 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 City 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 City 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 full-service grocery store at a mixed-use development 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 no more than ten percent (10%) of the store's net floor area. The Police Department has indicated that they are neutral to this proposal with conditions included in the permit that are recommended by the Police. The proposed use would occupy a commercial building with adequate parking, landscaping, and trash and loading facilities that was developed consistent with the City's development standards. The addition of the off-sale uses 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, 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 is not a low-population density tract in relation to other tracts in San José. Adding the off-sale of alcohol for the proposed project would contribute to a concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area, but there are no other off-sale establishments within a 1,000-foot radius of the subject site.

- 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 census tract is regularly shaped as depicted on the attached map.

- 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 proposal for off-sale of alcoholic beverages, the full range, is incidental to a large full-service grocery store that would sell 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 10% of the total net floor area. Therefore, the proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and the subject store will 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 of alcoholic beverages 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 Planned Development Permit for off-sale of alcoholic beverages, the full range, 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, the full range. Given the ability to make all the relevant findings, staff recommends that the City Council uphold the appeal of the Planning Commission's decision and approve the subject Planned Development Permit and grant a Determination of Public Convenience or Necessity for the off-sale of alcohol, the full range, 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 appeal and approve the project as proposed by the applicant/appellant and permit the off-sale of alcoholic beverages, the full range, at the proposed full-service grocery store;
or
2. Uphold the Planning Commission's decision to deny the subject Planned Development Permit and Determination of Public Convenience or Necessity.

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)**

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.

HONORABLE MAYOR AND CITY COUNCIL

February 14, 2012

Subject: PD11-028 / ABC11-012

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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

Attachments:

- Draft Council Resolution
- Map identifying location of nearby off-sale establishments
- Planning Commission Staff Report and Attachments
- Appellant's correspondence

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

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ APPROVING A PLANNED DEVELOPMENT PERMIT AND GRANTING A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW OFF-SALE OF ALCOHOL (FULL RANGE), AT A FULL-SERVICE GROCERY STORE IN AN EXISTING APPROXIMATELY 3,350-SQUARE-FOOT TENANT SPACE IN A MIXED-USE DEVELOPMENT ON AN APPROXIMATELY 1.4-GROSS-ACRE SITE AT THE NORTHWEST CORNER OF SANTANA ROW AND OLIN AVENUE (355 SANTANA ROW, SUITE 1030).

FILE NOS. PD11-028 & ABC11-012

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 7, 2011 applications (File Nos. PD11-028 & ABC11-012) were filed for a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (the full range), at a full-service grocery store in an existing approximately 3,350-square-foot tenant space in a mixed-use development on an approximately 1.4-gross-acre site, on that certain real property (hereinafter referred to as "subject property"), situate in the A (PD)-Planned Development Zoning District, located at the northwest corner of Santana Row and Olin Avenue (355 Santana Row, Suite 1030);
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 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 development plan for the subject property entitled, "Olin Avenue Market, 355 Santana Row, Suite 1030, San Jose, CA, 95128" dated July 9, 2010, and said plan is on file in

the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ 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 Regional Commercial on the adopted San José 2040 General Plan Land Use/ Transportation Diagram.
2. The project site is located in the A (PD) Planned Development Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Director of Planning has determined pursuant to the provisions of CEQA as well as the provisions of Title 21 of the San José Municipal Code that this project is exempt from environmental review.
4. The project proposes the off-sale of alcohol (full range), at a full-service grocery store in an existing approximately 3,350-square-foot tenant space in a mixed-use development on an approximately 1.4-gross-acre site for off-site consumption as a minor part of the overall sales area of the full-service grocery store, not to exceed ten percent (10%) of the net floor area, such that alcohol sales would not represent a majority of the proposed full-service grocery store use.
5. The project includes no exterior modifications to the existing building.
6. The subject tenant space is located within a mixed use development that is surrounded by a mix of residential and commercial uses to the north, south, west, and east.
7. No increase in parking demand results from this proposed project.
8. The subject retail establishment can operate at 6:00 a.m. and close at midnight as-of-right.
9. The Police Department memorandum indicates that the project site is located within an area of high crime.
10. The project site is not within a census tract that has an over-concentration of off-sale licenses.
11. 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.

12. 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.
13. Due to the high-crime rate, 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 as prescribed by Title 6 of the San José Municipal Code in order to consider granting a Determination of Public Convenience or Necessity.
14. 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.
15. The project site is not located within 500 feet of a school.
16. The project building is located adjacent to and within 150 feet of residentially zoned property to the south.
17. The public-serving entrance of the subject store is within approximately 50 feet of a residential building as measured by an unobstructed path of pedestrian travel.
18. There is one other off-sale establishment or license issued within 500 feet of the subject site per data from the State Department of Alcoholic Beverage Control.
19. There are two (2) other off-sale establishments within 1,000 feet of the subject site.
20. The proposed use would increase the number of off-sale establishments within a 500-foot radius of the subject site to two (2) and within a 1000-foot radius of the subject site to three (3).
21. The proposed sales of alcoholic beverages are incidental to a larger retail use.
22. The full-service grocery store will sell a complete array of food items including fresh produce and fresh unprocessed meat that shall constitute at least 10% of the net floor area.
23. The full-service grocery store will devote no more than 10% of the net floor area to the sale of alcoholic beverages.
24. No member of the public other than the applicant's representative spoke on the proposal at the Planning Commission hearing.
25. Without the granting of a Determination of Public Convenience or Necessity, the Planned Development Permit cannot be effectuated.
26. The Planning Commission denied the proposed request for the off-sale of alcohol on January 25, 2012 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.
27. The applicant appealed the Planning Commission decision on February 6, 2012.

The City Council concludes and finds, based on the analysis of the above facts in

regards to the Planned Development Permit, that:

1. The use is located closer than one hundred fifty (150) feet from a residentially zoned property; however, the proposed use is situated and oriented in such a manner that should not adversely affect such residential use.

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, but not 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 (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 proposed use is within one hundred fifty (150) feet of an existing residence.
- d) Alcohol sales would not represent a majority of the proposed use.

Further, with respect to 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 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 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 Planned Development 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 are 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 Planned Development 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 José Municipal Code Section 20.100.290.D shall have been fully performed or caused to be fully performed.

1. **Acceptance of Permit.** Per Section 20.430.290(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 Planned Development 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 Planned Development Permit. The date of adoption is the date the Resolution granting this Planned Development 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 José Municipal Code.
 - a. **Use Authorization.** This Planned Development Permit authorizes the off-sale of alcoholic beverage, the full range, to be implemented only in conjunction with a full-service grocery store that shall provide shall provide at least ten percent (10%) of their net floor space for the display of fresh unprocessed meat and produce on the property.
3. **Conformance with Plans.** The use of this property shall conform to approved plans entitled, "Olin Avenue Market, 355 Santana Row, Suite 1030, San Jose, CA, 95128" dated July 9, 2010 on file with the Department of Planning, Building and Code Enforcement.
4. **Limitation on Sales Area of Off-Sale Alcohol.** The sale and display of alcohol shall be limited to no more than ten percent (10%) of the net floor area of the full-service grocery store and the full-service grocery store shall provide at least ten percent (10%) of their net floor space for the display of fresh (unprocessed) meat and produce.
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. **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.
7. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
8. **Lighting.** This permit allows no new exterior lighting except as designated on the approved plans.
9. **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.
10. **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.
11. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with the San José Municipal Code.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
13. **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.
14. **Compliance with Other Permits.** The developer shall comply with all terms and conditions of the previously approved permits on the site.
15. **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.
16. **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.
17. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.

18. **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.
19. **Revocation, Suspension, Modification.** This Planned Development 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 Planned Development 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 6th day of March 2012, by the following vote:

AYES:

NOES:

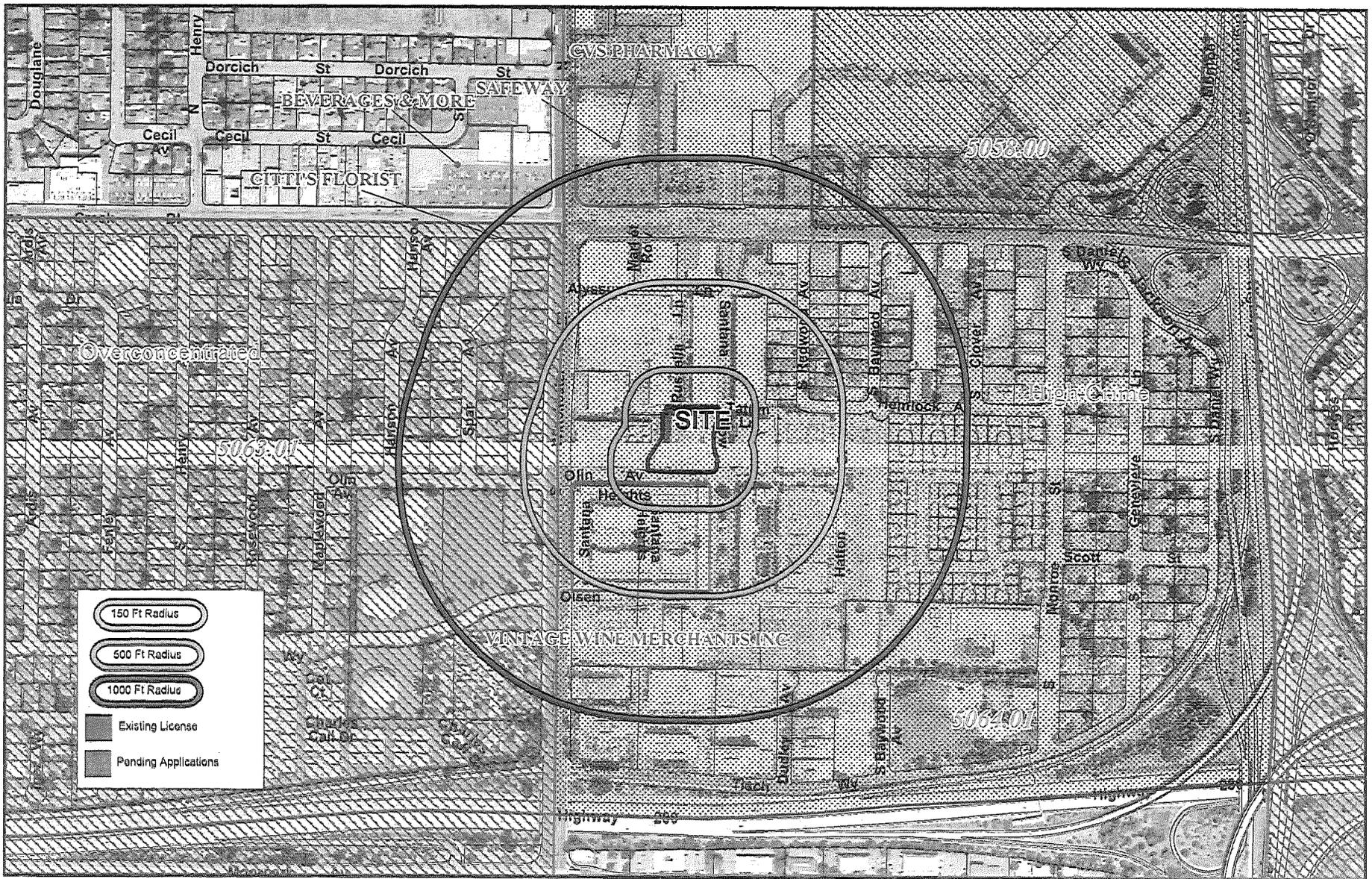
ABSENT:

DISQUALIFIED:

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk

CHUCK REED
Mayor



File No: PD11-028 & ABC11-012
District: 6

Nearby Alcohol Sales



Prepared by the Department of Planning,
 Building and Code Enforcement
 10/04/2011

STAFF REPORT
PLANNING COMMISSION

FILE NO.: PD11-028 & ABC11-012

Submitted: 09/07/2011

PROJECT DESCRIPTION: Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (full range) for a full-service grocery store in an existing approximately 3,350-square-foot tenant space in a mixed-use development (Santana Row) on an approximately 1.4-gross-acre site.

LOCATION: The northwest corner of Santana Row and Olin Avenue (355 Santana Row, Suite 1030).

Existing Zoning	A(PD) Planned Development
Proposed Zoning	No change
2020 General Plan	Regional Commercial
2040 General Plan	Regional Commercial
Council District	6
Annexation Date	February 18, 1954
SNI	No
Historic Resource	No
Redevelopment Area	No
Specific Plan	No

Aerial Map

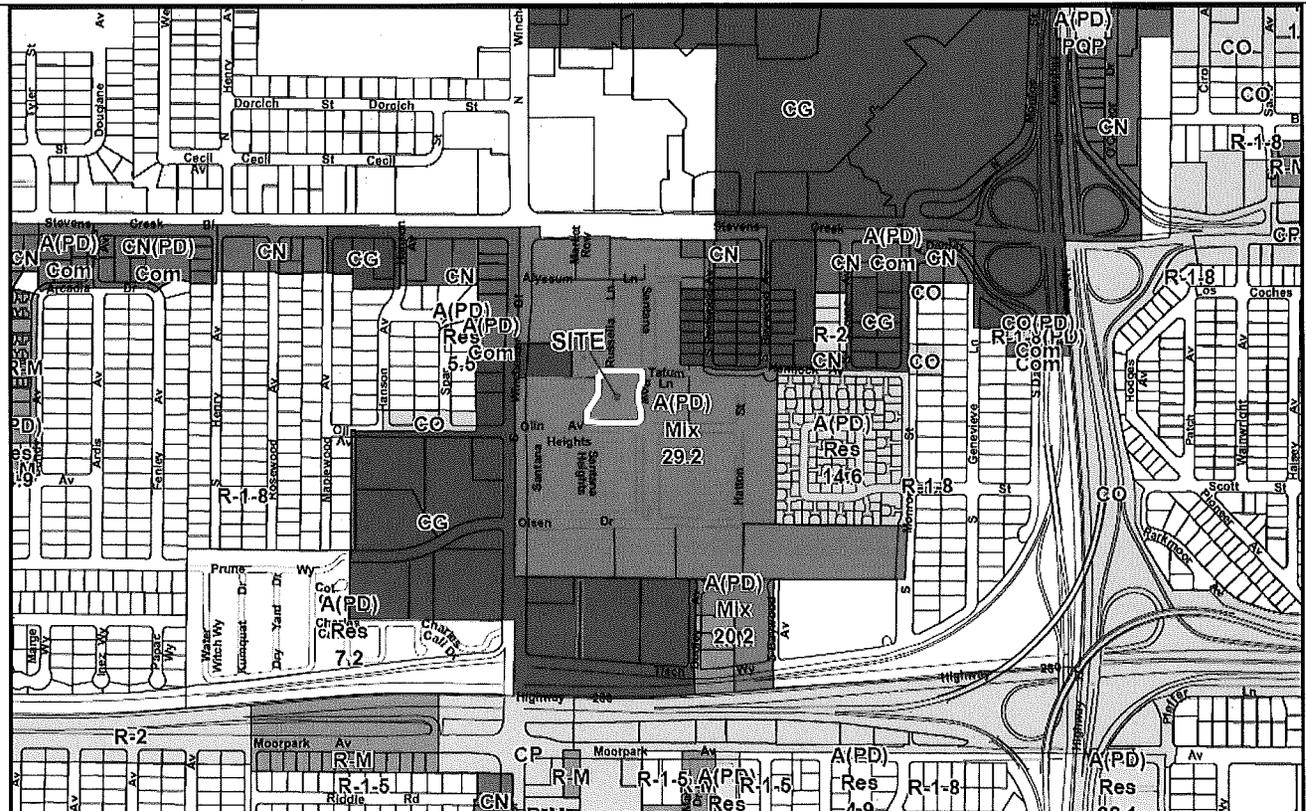
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SAN JOSE 2020 GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends that the Planning Commission deny the requested Planned Development Permit and not grant a Determination of Public Convenience or Necessity, as mandated by the Municipal Code, and include the facts and findings as included in the attached Resolution for the following reason:

- 1) The subject site is within 150 feet of a residence.

BACKGROUND

On September 7, 2011, Olin Market requested a Planned Development Permit (File No. PD11-028) and a Determination of Public Convenience or Necessity (File No. ABC11-012) to allow off-sale of alcoholic beverages, the full range, at a full-service grocery store in an approximately 3,350-square-foot tenant space in a commercial building in a mixed-use development (Santana Row) on an approximately 1.4-gross-acre site in the A(PD) Planned Development Zoning District. The site is located on Santana Row (355 Santana Row, Suite 1030). The subject tenant space is surrounded by a mix of residential and commercial uses to the north, south, east, and west. Per data and criteria from the State Department of Alcoholic Beverage Control (ABC) and the City of San Jose Police Department, the site is located in a census tract with a high crime rate. For this reason, a Determination of Public Convenience or Necessity (PCN) is required. The San José Municipal Code allows concurrent processing of a Planned Development Permit application for off-sale with an application for a Determination of PCN (File No. ABC11-012). If the Planning Commission's decision is appealed, the concurrent applications would then be scheduled for a new public hearing with the City Council.

The subject tenant space has been occupied by a delicatessen-market that sells pre-cooked food, sandwiches, packaged food items, non-alcoholic beverages and fresh fruit. The applicant has stated on their plans that they will provide at least ten percent (10%) of their net floor space for the display of fresh (unprocessed) meat and produce and no more than ten percent (10%) of their net floor space for the display of alcoholic beverages. With the inclusion of these provisions, the market would meet the criteria of a full-service grocery store.

Project Description

The applicant has indicated that the proposed full-service grocery store intends to add the off-sale of alcohol (full range) to the array of items for sale, and that the proposed display area for alcoholic beverages will be no more than 10% of the total net floor area. There is no proposed expansion of building area. The store is not requesting to operate past midnight.

ANALYSIS

In order for the full-service grocery store to be able to sell off-sale of alcohol at the subject location, the applicant needs to obtain a Planned Development Permit and be granted a Determination of Public Convenience or Necessity (PCN). An approval of one without the other is of no value in ultimately facilitating the off-sale of alcohol use. For this reason, this staff report links the two required applications together for concurrent consideration. The primary issues for this project include: 1) conformance with the Zoning Ordinance required findings for approval of a conditional use in a Planned Development Zoning District; and 2) conformance with the requirements for a PCN.

Additionally, the proposal is reviewed for conformance with the San José 2020 and Envision San José 2040 General Plans and the California Environmental Quality Act (CEQA).

Zoning Ordinance Findings for the Off-Sale of Alcohol

A Planned Development Permit (or Conditional Use Permits as applicable) may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three special findings applicable to the off-sale of alcoholic beverages:

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, 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.

Analysis of Required Finding. There is one other business establishment located within 500 feet and two other businesses located with 1,000 feet of the proposed use that are licensed by the State Department of Alcoholic Beverage Control to sell alcoholic beverages for off-site consumption. The proposed location would not result in a total of more than 4 within 1,000 feet of the subject site.

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.

Analysis of Required Finding. This finding is not applicable because the proposed 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 would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility or school use.

Analysis of Required Finding. The subject site 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 subject site is located within 150 feet of at least one (1) residentially zoned property. The closest residential property, also within

Santana Row, is approximately 50 feet from the building in which the retail store tenant space is located. The store's publicly accessible entrance is approximately 50 feet from residential property on the south side of Olin Avenue. The publicly-accessible grocery store entrance is at ground level and oriented toward the commercial-retail tenant spaces at ground level of the subject building containing residences. The mixed-use development in which both buildings are located is patrolled by security personnel employed by Santana Row during the hours that the retail establishments are in operation.

Given these facts, the finding can be made that the building in which the proposed use is to be located is situated and oriented in such a manner that the use would not adversely affect residential uses nearby.

Based on the above analysis of the applicable required finding for off-sale of alcohol, staff concludes that the addition of the off-sale of alcohol in conjunction with a full-service grocery store as proposed would not adversely affect the nearby residential area.

Zoning Ordinance Findings for Planned Development Permits

The approved Planned Development Zoning allows uses as enumerated in the CG Commercial General Zoning District. The off-sale of alcohol is identified as a "conditional use" in the CG Commercial General Zoning District, and as set forth in the zoning would require a Planned Development Permit. Since the proposal involves only a use related matter and no actual physical development, the findings identified in the Zoning Ordinance for a Conditional Use Permit are applicable in this instance. The required findings are as follows:

1. The proposed use 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 of value of the property of other persons located within the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare.

Analysis of Required Findings. The proposed use would occupy an existing tenant space in a commercial building in a highly urban mixed-use development (Santana Row) with adequate parking, landscaping, and trash and loading facilities that was built with retail uses consistent with the City's requirements for the Planned Development Zoning District in which the subject site is located. The subject site is part of a larger mixed-use development that is well-served by existing infrastructure, fronting on arterial public streets, and surrounded by a mix of commercial and residential uses. The sales area for alcoholic beverages is incidental to the larger sales of food products and would comprise no more than ten percent (10%) of the store's net floor area.

The addition of the off-sale of alcohol use would further the City's goals of economic development by contributing to the viability of a conveniently located full-service grocery store in a mixed residential-commercial area in the City of San José, and create a greater opportunity for a balanced commercial center.

The Police have stated that they are neutral to the proposal, and staff has concluded that the proposed off-sale use would not be detrimental to the welfare of persons residing or working in the surrounding area because the proposed use would provide an improvement to the welfare of persons

residing or working in the surrounding area by supporting the establishment of a full-service grocery store in the area that will sell the full array of food options, including, but not limited to fresh meat and produce.

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 area; and

Analysis of Required Findings. The subject tenant space is part of an existing mixed commercial and residential-use shopping center with uses in compliance with City requirements for parking, loading, walls, fences, landscaping, and other development features to integrate said use with the uses in the surrounding area. Therefore the site is such that the use can be integrated with uses in the surrounding area.

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Analysis of Required Findings. The subject tenant space is part of an existing commercial shopping center that is well-served by existing infrastructure, fronting on arterial public streets, with good access to a local street network, and surrounded by commercial and residential uses.

Based on the above analysis of required findings, staff concludes that the above general findings related to the approval of a Planned Development Permit for a "conditional use" can be made.

Finding of Public Convenience or Necessity

As of January 1995, the State of California Legislature implemented AB2897 by amending the Business and Professions Code (Section 23958) to require the Department of Alcohol Beverage Control (ABC) to deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses," unless the City makes a Determination of Public Convenience or Necessity. Undue concentration is defined as follows:

- a) The premises of the proposed license are located in an area that has 20% more reported crimes than the average number of reported crimes for the City as a whole, or
- b) The premises of the proposed license are located in a census tract where the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

The attached Police Department memorandum indicates that the project site is located within an area of high crime, but per data from State Department of ABC, the census tract in which the subject site is located does not have an over-concentration of off-sale licenses as defined by State criteria. For ABC to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity, (PCN). The analysis of the proposal is based on the required findings.

Title 6 of the San José Municipal Code specifies that the Planning Commission, or the City Council on appeal, may issue a PCN only after first making the four specified factual findings identified below:

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.

Analysis of Required Finding: The proposed use is not located within a Strong Neighborhoods Initiative area. The Police stated in their memo that they are neutral to the proposed off-sale of alcohol.

2. 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.

Analysis of Required Finding: The proposed use would be the third off-sale establishment within a 1,000-foot radius of the site, thus would not lead to a grouping of more than four off-sale uses within a 1,000-foot radius from the proposed use. Therefore, the use is consistent with this required finding which must be made in order to consider granting a PCN.

3. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within 150 feet of a residence.

Analysis of Required Finding: The proposed use would not be located within 500 feet of a school, day care center, public park, or social services agency. The proposed use is located within 150 feet of a residence. Therefore, the use is not consistent with this required finding, which must be made in order to consider granting a PCN.

4. Alcohol sales would not represent a majority of the proposed use.

Analysis of Required Finding: The proposed use includes no more than 10% of the net floor area of the approximately 3,350-square-foot tenant space to be used for the off-sale of alcohol.

One of the findings required to consider granting a Determination of Public Convenience or Necessity (PCN) above, number 3 cannot be made by the Planning Commission. Therefore, in accordance with and as mandated by the Municipal Code, the Planning Commission must deny the requested PCN. Because a Planned Development Permit is of no value if a required PCN cannot be approved, Planning staff recommends that the Planning Commission deny the requested Planned Development Permit application.

General Plan Conformance

The subject site is designated Regional Commercial on the San José 2020 and the Envision San José 2040 General Plan Land Use/Transportation Diagram. The site is developed with mixed-use commercial and residential buildings. The proposed use is consistent with the General Plan land use designation in that commercial uses including uses associated with a full-service grocery store in an existing retail tenant space promote commercial activity within the City of San José.

Environmental Review (CEQA)

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. The project only involves minor interior improvements to the existing retail space. No physical expansion of the building is proposed by this permit application.

CONCLUSION

The location of the proposed off-sale of alcohol is in a full-service grocery store in an existing tenant space in a shopping center. There is one existing licensed off-sale establishment within 500 feet of the subject tenant space and two within 1,000 feet of the subject tenant space. The proposed off-sale establishment is located within 150 feet of residences on Olin Avenue. Therefore, as discussed above, although the findings for the Planned Development Permit can be made, however, the required findings to consider a Determination of Public Convenience or Necessity cannot be made. Because the applicant needs to be granted a Determination of PCN for the off-sale alcohol use and the Planning Commission cannot make the necessary findings for granting a PCN, the Planning Commission must deny the PCN and therefore should also deny the Planned Development Permit.

PUBLIC OUTREACH

Per the provisions of City Council Policy 6-30: Public Outreach, a sign was posted on-site to notify the public of the proposed development, and notices of the public hearing for this project were sent to all property owners and tenants within 500 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report, and staff has been available to discuss the project with members of the public.

Project Manager: Jenny Nusbaum **Approved by:**  **Date:** 01/19/2012

Owner:	Developer:	Attachments:
Jan Sweetnam FRIT San Jose Town & Country Village LLC 3055 Olin Avenue, Suite 2100 San José, CA 95128	R & K Inc. dba Olin Avenue Market 355 Santana Row, Suite 1030 San José, CA 95128	Draft Resolution Map of off-sale establishments San José Police Dept. Memorandum Plans

RESOLUTION NO. _____

Resolution of the Planning Commission of the City of San José denying a Planned Development Permit and not granting a Determination of Public Convenience or Necessity to allow off-sale of alcohol (full range) for a full-service grocery store in an existing approximately 3,350-square-foot tenant space in a mixed-use development on an approximately 1.4-gross-acre site located at 355 Santana Row, Suite 1030.

FILE NOS. PD11-028 & ABC11-012

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 September 7, 2011, applications (File Nos. PD11-028 and ABC11-012 respectively) were filed for a Planned Development Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol, the full range, on that certain real property (hereinafter referred to as "subject property"), situate in the A(PD) Planned Development Zoning District, located at 355 Santana Row, Suite 1030.

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 plan for the subject property entitled, "Olin Avenue Market, 355 Santana Row, Suite 1030, San Jose, CA, 95128" dated July 9, 2010. 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. This site has a designation of Regional Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram and on the Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A(PD) Planned Development Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review.
4. The project proposes off-sale of the full range of alcohol for a full-service grocery store in an existing approximately 3,350-square-foot tenant space in a commercial building in a mixed-use development.
5. The project includes no exterior modifications to the existing building.
6. The subject retail establishment is allowed to open at 6:00 a.m. and close at midnight as-of-right.
7. The site is surrounded by a mix of residential and commercial uses to the north, south, west, and east.
8. No increase in parking demand results from this proposed project.
9. The full-service grocery store proposes to devote no more than 10% of the net floor area to the sale of alcoholic beverages and at least 10% of the net floor area to the sale of fresh meat and produce.
10. The Police Department memorandum indicates that the project site is located within an area of high crime.
11. The proposed site is not located within a census tract that has an overconcentration of off-sale licenses.
12. There are two (2) other off-sale establishments within 1,000 feet of the subject site.
13. The proposed use would increase the number of off-sale establishments within a 500-foot radius of the subject site to two (2) and within a 1000-foot radius of the subject site to three (3).
14. Due to the high-crime rate of the census tract in which the project site is located, 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 findings be made as prescribed by Title 6 of the San José Municipal Code.
15. 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.
16. The proposed use would not lead to the grouping of more than four off-sale establishments within a one-thousand-foot radius from the proposed use.
17. The project site is not located within 500 feet of a school.

18. The project building is located adjacent to and within 150 feet of residentially zoned property to the south.
19. The public-serving entrance of the subject store is within approximately 50 feet of a residential building as measured by an unobstructed path of pedestrian travel.

The Planning Commission concludes and finds, based on the analysis of the above facts in regards to the off-sale of alcohol, that:

1. The use is 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.
2. 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, and is located closer than one hundred fifty (150) feet from a residentially zoned property; however, the proposed use is situated and oriented in such a manner that should not adversely affect such residential use.

Additionally, based on an analysis of the relevant facts, with respect to the Planned Development Permit, the Planning Commission finds that:

1. The proposed use 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 the property of other persons located within the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences parking, loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the surrounding area.
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Finally, the Planning Commission concludes and finds that based on the four (4) required findings in the subsection below, the Planning Commission is not able to consider granting a Determination of Public Convenience or Necessity for the subject liquor license in that:

- I. The proposed use is not located within a Strong Neighborhoods Initiative area or other area designated by the city for targeted neighborhood enhancement services or programs, and is located within an area in which the Chief of Police has determined that the proposed use would not 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
2. 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
 3. 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 and is therefore not in conformance with the requirements of Title 6 of the San Jose Municipal Code.
 4. Alcohol sales would not represent a majority of the proposed use.

Based on the above findings for the Planned Development Permit and the Determination of Public Convenience and Necessity, this proposal for the addition of off-sale of alcohol is hereby denied.

DENIED this 25th day of January 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson

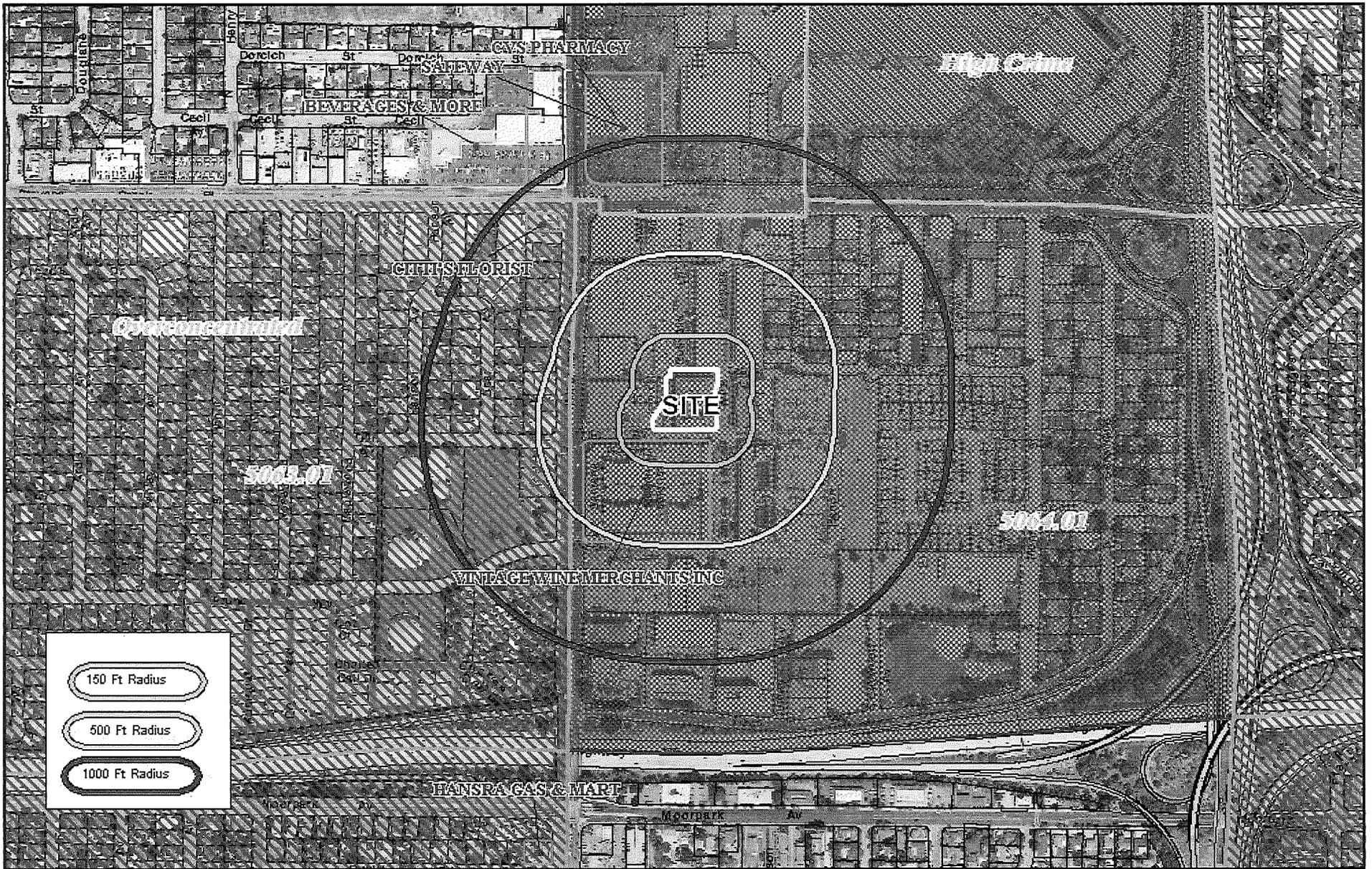
ATTEST:

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: PD11-028 & ABC11-012

District: 6

Nearby Alcohol Sales



Prepared by the Department of Planning,
Building and Code Enforcement
10/05/2011



Memorandum

TO: Jenny Nusbaum
Planning Department

FROM: Ofc. Christine Zarate #3165
San Jose Police Vice Unit

SUBJECT: Olin Avenue Market
355 Santana Row Suite #1030

DATE: September 28, 2011

Approved

Date

I have received your request for input regarding Olin Avenue Market, located at 355 Santana Row Suite #1030, San Jose, CA. 95128. Olin Avenue Market is an existing full service grocery store that is seeking a Planned Development Permit and Determination of Public Convenience and Necessity to allow off-sale of alcohol.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department and the Planning Commission are the delegated authorities to grant these exceptions.

The location is not currently in a Strong Neighborhood Initiative area or a Neighborhood Revitalization area.

Olin Avenue Market is located in San Jose Police Beat F2. The reported crime statistics as defined by B&P Section 23958.4(c) are over the 20% crime index thus the location is considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
F2 (2010)	712	157	869	Yes
City Average	314	215	528	

Department of Alcohol Beverage Control (ABC) records indicate Olin Avenue Market is in census tract 5064.01. Pursuant to B&P Section 23958.4 (a)(2), the ratio of off-sale retail licenses to population in census tract 5064.01 currently **does not** exceed the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

Authorized and Current ABC Licenses in Census Tract 5064.01

Census Tract	Authorized ABC Licenses as of April 2010		Current ABC Licenses as of May 18, 2010		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5064.01	5	2	27/1	2/0	Yes	No

The San Jose Police Department is **neutral** to the issuance of a Planned Development Permit for Olin Avenue Market, if the following conditions are included:

- Alcoholic beverage sales will cease at 11:00pm daily.
- No sales of single beers. Must be sold in a six pack minimum.
- No sales of malt liquor.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Christine Zarate #165
 Administrative Officer
 Special Investigations/Vice



Santana Row Shopping Center, San Jose, CA 95128

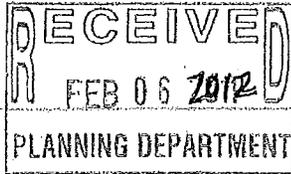
NORTH

SCALE 1" = 50'

SITE PLAN
OLIN MARKET
 OFF SALE GENERAL LIQUOR
 LICENSE TYPE 21
 GOURMET RETAIL GROCERY
 MARKET-DELI-PRODUCE-MEATS
 355 SANTANA ROW #1030
 SAN JOSE, CALIFORNIA
 APN 277-40-023

Imagery Date: 5/1/2011

37 10 14 32 N 121 56 52 22 E 200 21 N



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.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	PD11-028/ABC11-012	RECEIPT #	
PROJECT LOCATION	01h Market 355 Santana Row, Ste 1030 SAN JOSE, CA 95128	AMOUNT	3043.90
		DATE	2/6/2012
		BY	[Signature]

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.):
MANDATORY DENIAL OF PERMIT AND PCN LETTER FOR OFF-SALE ALCOHOL LICENSE - THE PROJECT MEETS ALL CONDITIONS FOR APPROVAL

PERSON FILING APPEAL

NAME	Givargis Khoshaba	DAYTIME TELEPHONE	()
ADDRESS	CITY	STATE	ZIP CODE
SIGNATURE	[Signature]	DATE	2/2/2012
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet)	STORE OWNER/DEVELOPER/TENANT		

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME	Gregg Kays		
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
(408) 297-2587	(408) 999-0784	g.kays@sbcglobal.net	

PROPERTY OWNER

NAME	DATE		
F.I.T SAN JOSE TOWN COUNTRY VILLAGE LLC	2-6-2012		
ADDRESS	CITY	STATE	ZIP CODE
3055 OLIN AVENUE #2100	SAN JOSE	CA	95128

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