

RESOLUTION NO. 74199

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE TO APPROVE A CONDITIONAL USE PERMIT TO ALLOW THE OFF-SALE OF ALCOHOLIC BEVERAGES AT A REMODELED GASOLINE SERVICE STATION WITH CAR WASH AND 1,650 SQUARE FEET OF RETAIL (APPROVED BY PREVIOUS CP05-057) LOCATED AT 3295 SOUTH WHITE ROAD.

FILE NO. CP07-019

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on March 9, 2007, an application (File No. CP07-019) was filed for a Conditional Use Permit for the purpose of off-sale of beer and wine, on that certain real property (hereinafter referred to as "subject property"), situate in the CN Commercial Neighborhood Zoning District, located at 3295 South White Road, San Jose; 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, "Satnam Petroleum Inc.," **dated March 9, 2007**, said development 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:

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

1. The subject site is located within CN Commercial Neighborhood Zoning District.
2. This site has a designation of Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The applicant is requesting a Conditional Use Permit (CUP) to allow off-sale of alcohol at an existing gas station with a new car wash and a 1,650 square foot retail space on the northwest corner of South White Road and Aborn Road (3295 S. White Road).
4. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, 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.
5. The proposal is consistent with the General Plan and Zoning District for the subject property.
6. The subject site is less than five (5) acres in area and is surrounded by urban uses.
7. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
8. The site can be adequately served by all required utilities and public services.
9. The areas surrounding the site are designated CP Commercial Pedestrian, CN Neighborhood Commercial and A(PD) Planned Development zoning districts. The subject site is currently surrounded by commercial uses on all sides.
10. Per Table 20-140 of the San José Municipal Code, a Conditional Use Permit is required for off-sale of alcoholic beverages in the CN Commercial Neighborhood Zoning District.
11. The Police Department has submitted written correspondence indicating that the Department is neutral to the proposed off-sale of alcoholic beverages at the subject premises.
12. The premises are not currently located in a Strong Neighborhood Initiative area or a Neighborhood Revitalization area.
13. The crime statistics in the area of the subject premises are not over the 20 percent crime index.
14. There are a total of three (3) off-sale of alcoholic beverage licenses from the State ABC Department in the census tract of the subject premises.
15. The five census tracts centered on the corner of White and Aborn Roads contain a total of approximately 27,000 people.

16. There are a total of eleven (11) off-sale of alcoholic beverage licenses issued by the State ABC Department in this area.
17. Based on population, a total of six (6) new off-sale licenses could be approved in these census tracts before the area would be considered over-concentrated.
18. The subject premises is not located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility.
19. The project site is not located within 150 feet of residentially zoned property.
20. Planning Commissioner Zito expressed concern at the hearing on this item before the Planning Commission of the City of San José that an approval at the subject site would be a precedent for approvals for off-sale of alcohol at the two gas stations on opposite corners of the street.
21. There are a total of six off-sale licenses within a 1,000 foot radius of the proposed use.
22. The premises are not located within 500 feet of a publicly-accessible park.

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

1. The proposed project conforms to the City's General Plan.
2. The proposed project conforms to the San José Zoning Ordinance.
3. 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. There are four (4) other off-sale outlets within five hundred feet and six (6) existing business located within a one thousand (1,000) foot radius of the proposed use that provides alcoholic beverages for off-site consumption.
4. 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.
5. The proposed use is located within 500 feet of other off-sale outlets, the outlets are located in different census tracts and some of the outlets sell alcoholic beverages in conjunction with grocery stores.

6. 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, childcare center, public park, social service agency, residential care facility, residential service facility and/or school use. The proposed use is **not** located within 500 feet of a childcare center, a social service agency, a residential care facility, a residential service facility, a secondary school or a college or university. The project site **not** located within 150 feet of residentially zoned properties.

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

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Recordation.** 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 this Resolution has been recorded with the County Recorder.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Conformance with Plans.** The use development shall conform to approved plans entitled, "Site Improvements, Vikram Singh 76" dated March 9, 2007 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
5. **Previous Conditional Use Permit.** File No. CP05-057 is still in full force and effect.
6. **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.

7. **Hours of Operation.** The retail store shall operate between the hours of 6:00 a.m. to 12 midnight.
8. **Operations Plan.** Loitering is prohibited on or around the premises or the area under the control of the applicant licensee(s). No alcoholic beverages shall be consumed on any property adjacent to the premises over which the project developer/applicant has control. The project developer/applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.
9. **Floor Area.** The maximum floor area devoted to the display of alcohol beverages shall be limited to 15% of the floor area of the retail space.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
11. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
12. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a Conditional Use permit to use the subject property for said purpose specified above in the manner described above is hereby **approved**.

APPROVED this 18th day of December, 2007, by the following vote:

AYES: CAMPOS, CONSTANT, CORTESE, PYLE,
WILLIAMS; REED

NOES: CHU, LICCARDO, NGUYEN, OLIVERIO

ABSENT: CHIRCO

DISQUALIFIED: NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk