

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 11/19/03 Item 4.d.

File Number  
PDC 03-069

### STAFF REPORT

Application Type  
Planned Development Rezoning

Council District  
2

Planning Area  
Edenvale

Assessor's Parcel Number(s)  
684-29-012 & 013

#### PROJECT DESCRIPTION

Completed by: Jeff Roche

Location: Southeast corner of Monterey Highway and Edenvue Drive

Gross Acreage: 0.55

Net Acreage: 0.55

Net Density: n/a

Existing Zoning: CP – Commercial Pedestrian

Existing Use: Retail & vacant

Proposed Zoning: A(PD) Planned Development

Proposed Use: Retail

#### GENERAL PLAN

Completed by: JR

Land Use/Transportation Diagram Designation:  
High Density Residential (25-50 DU/AC)

Project Conformance:  
 Yes  No  
 See Analysis and Recommendations

#### SURROUNDING LAND USES AND ZONING

Completed by: JR

North: Commercial

A (PD) Planned Development

East: Attached Residential

R-M (PD) Planned Development

South: Attached Residential

R-M (PD) Planned Development

West: Monterey Highway, Railroad Tracks

R-1-8 Residence District

#### ENVIRONMENTAL STATUS

Completed by: JR

Environmental Impact Report  
 Negative Declaration

Exempt  
 Environmental Review Incomplete

#### FILE HISTORY

Completed by: JR

Annexation Title: Monterey Park No. 36

Date: January 22, 1960

#### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
 Action  
 Recommendation

OWNER

DEVELOPER

Anita Messina, Trustee  
721 North Capitol Avenue  
San Jose, CA 95133

Penoeil Odisho  
6623 Whitbourne Drive  
San Jose, CA 95120

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jeff Roche

Department of Public Works

See attached memorandum.

Other Departments and Agencies

See attached memoranda from Fire Department and Police Department.

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GENERAL CORRESPONDENCE

See attached letters from Ben Hurley and information from Tom Greenland (7 Eleven).

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ANALYSIS AND RECOMMENDATIONS

## BACKGROUND

### Project Description

The subject 0.55-acre parcel is proposed to be rezoned from CP Commercial Pedestrian to A (PD) Planned Development to allow an existing approximately 2,200 square-foot retail building, and the construction of a new, approximately 3,922 square-foot retail building and associated improvements. A Planned Development Zoning is required because General Plan conformance for the project is based on the Discretionary Alternate Use Policy; *Commercial Uses on Residentially Designated Parcels*.

### Existing Site Conditions and Surrounding Uses

The northerly portion of the subject site is developed with an existing 2,200 square-foot retail building occupied by 7-Eleven and a parking lot. The southerly portion of the site is currently vacant. Surrounding land uses include commercial to the north, attached residential to the east and south, and Monterey Highway (designated an Arterial 115-130 feet on the City's General Plan) and the railroad tracks to the west.

## PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the project with interested members of the public. Copies of all correspondence received on the project is attached to this report.

Staff presented the project to the Edenvale/Great Oaks Neighborhood Advisory Committee (NAC). This group did not support new uses at this site with late night operation or off-sale of alcohol, but expressed no concern regarding continuation of existing legal non-conforming uses.

## ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from further environmental review pursuant to the California Environmental Quality Act since the proposal involves a minor expansion of an existing facility or use.

## GENERAL PLAN CONFORMANCE

The project site is designated High Density Residential (25-50 DU/AC) on the City's General Plan land Use Transportation diagram. The General Plan Discretionary Alternate Use Policy, *Neighborhood Serving Commercial Uses on Residentially Designated Parcels*, allows expansion of a commercial use which is located within a residential neighborhood, but separate from any larger commercial area, with a Planned Development Zoning provided that the total area of new and existing contiguous commercial properties does not exceed 30,000 square feet, that the use is primarily neighborhood serving, that the scale of any new structures and associated activity is compatible with the surrounding neighborhood and that the proposed commercial use does not result in parking, noise, litter or other impacts. This provision is intended to provide for small expansions of existing neighborhood uses in situations such as the subject proposal.

The subject site, including the existing and proposed commercial buildings, totals approximately 23,958 square feet and is not located adjacent to other commercial uses. The project site plan and building massing have been designed to match the existing retail facility and to be compatible with surrounding residential uses. The project includes a new 7-foot masonry wall along the easterly and southerly site boundaries adjacent to existing residential uses. The range of allowed uses, primarily neighborhood-serving, and the hours of operation for the proposed facility have been limited in the Draft Development Standards (see attached) in order to ensure land use compatibility. For these reasons, staff has concluded that the proposed Planned Development Rezoning is consistent with the General Plan.

## ANALYSIS

The primary issues associated with this project are conformance to the Commercial Design Guidelines, 24-hour uses, off-sale of alcohol and restaurant/vehicle-related uses.

### Conformance to the Commercial Design Guidelines

The proposed project complies with the development standards of the Commercial Design Guidelines for new neighborhood centers with respect to setbacks, building placement, architecture, parking, and landscaping. The project includes an attractive new building that will add interest to the project site. The new retail building will share both existing driveways and a service area at the rear of the site with the existing retail facility. A driveway and a row of carports for the adjacent residential project border the site along the shared interior property lines. The applicant has proposed to install a new 7-foot masonry wall along the shared residential property line with a tubular steel gate at the northerly side of the service area, resulting in a much better interface than currently exists between the residential and commercial uses. Trash enclosures will be installed with this project and will be placed in the service area at the rear of the site. Fencing, walls, and gates are proposed to keep out unauthorized use of the service area.

Landscaping will also be installed on the project site consistent with City standards. The developer has also proposed to preserve the significant trees on the site and has incorporated them into the project's landscape plan. Staff will continue to work with the applicant and landscape architect to ensure that adequate landscaping is

provided. The proposed plan will also include pedestrian connections to Edenvue Drive. At the Planned Development Permit stage, Staff will ensure that adequate light levels are provided in both the parking and service areas to address potential security and safety concerns.

### 24-Hour Uses

In 1984 the City amended the Zoning Code to require that commercial uses operating between 12 midnight and 6:00 a.m. obtain a Conditional Use Permit. The City Council also established a Council Policy 6-27, *Evaluation of 24-Hour Uses* to provide guidance in the review of Conditional Use Permits for late night and early morning uses to ensure that these uses are compatible with the surrounding neighborhood (see attached). New 24-hour uses on this site would not conform to the Council Policy due to the proximity of residential uses located immediately adjacent to the site. Furthermore, communication from the Police Department indicates that the site is currently subject to a relatively high number of calls for service (see attached electronic message).

The existing 7-Eleven store has been operating since approximately 1973-1974. Communication from the corporate headquarters of 7-Eleven indicates that the majority of 7-Eleven stores have operated on a 24-hour basis since the late 1960's (see attached). Although staff believes that it is likely that the store has been operating with late night hours since the mid-1970's, the applicant has not provided the necessary documentation to substantiate legal non-conforming status for this use.

Staff is recommending that the Planned Development Zoning allow the 24-hour operation to continue only if the applicant can provide documentation that it was legal non-conforming at the time of the approval of this Planned Development Zoning. Staff has included a condition in the Draft Development Standards that allows the existing mini-market to operate on a 24-hour basis provided that its prior legal non-conforming status is documented through the Planned Development Permit process. The new building and the 7-foot masonry wall proposed along most of the residential interface will provide new buffering between the commercial site and the surrounding residential neighborhood, improving the compatibility of the existing 24-hour use should it be allowed to continue. The Development Standards prohibit any new 24-hour uses.

### Off-Sale of Alcohol

In May 1990, the City passed Ordinance No. 23428 that made the off-sale of alcoholic beverages subject to a Conditional Use Permit in all Commercial Zoning Districts. The existing 7-Eleven facility has been operating since 1988 under a valid permit from the State of California, Department of Alcoholic Beverage Control (see attached permit information) for off-sale of alcohol; consequently, the off-sale of alcohol predates the requirement for a Conditional Use Permit and is considered a legal non-conforming use.

The legal non-conforming off-sale alcohol use existing on the site in conjunction with the mini-market use is proposed to remain as a legal use under the proposed Planned Development Zoning. New off-sale of alcohol uses are not allowed. The Development Standards for this PD Zoning have been drafted to allow the existing use but prohibit new uses with off-sale of alcohol.

### Restaurants/Vehicle Related Uses

The applicant has proposed parking that is sufficient to accommodate only retail, office and other uses with similar parking demands. For this reason, restaurant and vehicle related uses, which require a greater parking ratio, are not allowed as part of this Zoning.

## Conclusion

Based on the above analysis, staff concludes that the proposed rezoning will facilitate additional development of an existing underutilized infill site, provide additional buffering for the surrounding residential neighborhood from the existing commercial uses, and allow new uses compatible with the surrounding neighborhood.

## **RECOMMENDATIONS**

Planning staff recommends approval of the subject Planned Development Rezoning for the following reasons:

1. As a neighborhood-serving commercial use on a residentially-designated parcel, the proposed project is consistent with the site's General Plan Land Use/Transportation Diagram designation of High Density Residential (25-50 DU/AC).
2. The project conforms to the City's Commercial Design Guidelines.
3. The project includes development standards and use limitations to ensure that subsequent development is compatible with the surrounding neighborhood.

Cc: Ben Hurley, Grubb & Ellis, 1732 North First Street, Suite 100, San Jose, CA 95112-4543  
Ira Etessam, Etessam Associates, 2845 Via Carmen, San Jose, CA 95124  
Tom Greenland, 7 Eleven, c/o Ben Hurley, Grubb & Ellis, 1732 North First Street, Suite 100, San Jose, CA 95112-4543