

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. 6/26/02 Item No. 3.g.

File Number
CP 02-013

Application Type
Conditional Use Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
249-44-019

STAFF REPORT

PROJECT DESCRIPTION

Completed by: John Davidson

Location: west side of N. third Street, approximately 150 feet north of E. Julian Street

Gross Acreage: 0.34

Net Acreage: 0.34

Net Density: n/a

Existing Zoning: R-M Residence

Existing Use: Mosque (Islamic Center)

Proposed Zoning: No Change

Proposed Use: Continuation of religious assembly use

GENERAL PLAN

Completed by: JED

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JED

North: apartments

R-M Residence

East: duplexes and apartments

R-M Residence

South: apartments

CO Office Commercial

West: office and parking lot

LI Light Industrial

ENVIRONMENTAL STATUS

Completed by: JED

Environmental Impact Report found complete
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: JED

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT / DEVELOPER / OWNER

South Bay Islamic Association
Attn: Muhammad Janjua
325 N. Third Street
Los Altos, CA 94024

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JED

Department of Public Works

See Conditions of Approval.

Other Departments and Agencies

See Conditions of Approval.

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant is requesting a Conditional Use Permit to allow the continued use of a religious facility, the South Bay Islamic Center, with off-site parking in the R-M Residence District, located on the west side of N. Third Street, approximately 150 feet north of E. Julian Street (325 N. Third Street). The mosque is located in an existing 16,000 square foot building on a 0.34 acre site. Surrounding uses include multi-family residential to the north, east, and south, and office uses to the west.

A Conditional Use Permit was originally issued in 1986 for a one-year time period, and subsequently renewed in 1987 for three years, and again in 1991 and 1997 for five-year time periods. No change to the site, structure or operation of the facility is proposed.

The mosque is open for prayers five times a day from about 5:30 a.m. to 8:00 p.m. The largest congregations occur at about 1:30 p.m. on Fridays with 100 to 150 worshipers. All other prayer times attract a minimal crowd of five to ten people. Special prayers and ceremonies which draw larger crowds, such as the annual Ramadan prayer, and weddings are performed off-site at the County Fairgrounds or other larger locations. The only other gathering that attracts a large group of people is the Sunday school, which is open from 10:00 a.m. to 1:00 p.m. for 6 to 14 year olds. The maximum Sunday school attendance to date has been about 100 students and 50 parents.

PUBLIC OUTREACH

Notices of the Planning Commission public hearing were mailed to all owners and tenants of property within a 500-foot radius of the project site. Staff has been available to discuss the project with members of the public.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 (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.

GENERAL PLAN CONFORMANCE

The site has a General Plan Land Use/Transportation Diagram designation of General Commercial. The proposed continuation of the religious assembly use is consistent with the General Plan in that the General Plan's discretionary alternate use policies allow Public/Quasi-Public uses under any land use designation.

ANALYSIS

The relevant Policy issues include parking and noise attenuation.

Parking

The parking requirement for the mosque, which has a capacity of 150, is 38 spaces based on the Zoning Code requirement of one parking space for every four people. To meet this requirement and supplement the existing six parking spaces on site, the applicant has entered into a parking agreement to provide up to 60 additional spaces within one-and-a-half blocks of the site, at 359 N. Fourth Street. This agreement has been in effect since the 1991 Conditional Use Permit approval. Planning staff has not received any complaints regarding the operation of the mosque.

As a part of the conditions of approval of this permit, staff recommends that the applicant be required to furnish the Director of Planning with a copy of the recorded parking agreement.

Noise Attenuation

The applicant does not propose to use any amplified sound, loudspeakers, microphones, or public address systems outside the building. An existing intercom system would continue to be used within the building during prayers, but not between 9:00 p.m. and 9:00 a.m. and only with the doors and windows closed. The intercom system appears to be working satisfactorily, and staff has not received any complaints from the neighboring properties about noise impacts.

Conclusion

Based on the above analysis, staff concludes that the proposed project as conditioned in the Draft Permit is consistent with the consistent with the General Plan and will be compatible with the existing neighborhood. Additionally, staff recommends approval of the subject CUP without a time condition, based on the previous 16 years of operation.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The subject site is 0.34 acres in size and is located in the CG General Commercial Zoning District.
3. The proposed project complies with all applicable provisions of the Zoning Ordinance.
4. The project was found to be exempt from further environmental review under the provisions of Section 15301 of CEQA.
5. The proposed project includes six on-site parking spaces.
6. The proposed project includes the provision of about 60 off-site parking spaces located at 359 N. Fourth Street.
7. The site is currently being used as a mosque.
8. The existing facility is a two-story building with a full basement, containing approximately 16,000 square feet with a maximum capacity of 150 worshippers.
9. The mosque has five formal prayer meetings daily, the first before sunrise, and the last around sunset.
10. The mosque conducts a Sunday school for pupils between 6 and 14 years old. The maximum population of the Sunday school to date has been 100 students and 50 parents.
11. Loudspeakers and public address systems will not be used outside the existing building. The existing intercom system may be used with the doors and windows closed.
12. The facility has been in operation for 16 years.
13. This Planning Commission concludes and finds, based upon an analysis of the above facts that:
14. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José in that the General Plan's Discretionary Alternate Use Policies allow public/quasi-public uses in any land use designation.
15. The proposed project complies with all applicable provisions of the Zoning Ordinance.
16. The proposed project is in compliance with the California Environmental Quality Act.
17. The six on-site parking spaces and sixty off-site parking spaces meet the parking requirements for the proposed project.

18. The religious assembly use has functioned at this location in a manner compatible with the surrounding neighborhood.
19. Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:
20. The proposed use at the location requested will not:
 21. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 22. Impair the utility or value of property of other persons located in the vicinity of the site; or
 23. Be detrimental to public health, safety or general welfare; and
 24. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
25. The proposed site is adequately served:
 26. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 27. By other public or private service facilities as are required.
28. The proposed off-site parking arrangement provides adequate parking facilities in that:
 - a. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the religious assembly use as specified in Chapter 20.90 of the Zoning Ordinance;
 - b. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the use, and
 - c. The parking facility is reasonably convenient and accessible to the use being served.

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

CONDITIONS PRECEDENT

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

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Submittals Prior to Recordation/Release.** The following items must be submitted for review and approval by the Director of Planning prior to the recordation of this Permit by the County Recorder and/or prior to the release of this permit to Public Works or the Building Division. *If these items are not submitted within 60 days of the adoption of this Resolution, this Permit will automatically expire regardless of any other expiration dates contained within this Permit.*
 - a. *Recorded Parking Agreement.* The applicant shall submit a recorded parking agreement with the Salvation Army, owner of the parking lot at 359 N. Fourth Street to provide up to 60 parking spaces for the use of the Islamic Center to the satisfaction of the Director of Planning.
3. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **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.

2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "South Bay Islamic association", dated June 21, 1997, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Refuse.** All trash areas shall be effectively screened from view, covered and maintained in an orderly state. Trash areas shall be maintained in a manner to discourage illegal dumping.
5. **Outdoor Storage.** No outdoor storage is allowed/permitted unless designated on the approved plan set.
6. **Roof Equipment.** All roof equipment shall be screened from view
7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
8. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
9. **Project Parking.** Project parking is sufficient to accommodate no more than 264 persons using the site at any one time, and project activities are to be limited so that no more than 264 people are allowed to use the site at any one time.
10. **Amplified Sound.** All amplified sound shall be contained within the buildings and the buildings shall be adequately insulated to prevent sound from emanating outside. Amplified sound shall not be used between the hours of 9:00 p.m. and 9:00 a.m.
11. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **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.

c: Applicant/Owner
Building Division (2)
Engineering Services

Attachments: Location Map
Environmental Exemption
Plans