

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. 11-14-01 Item 4.i

File Number
CPA 98-02-015

Application Type
Conditional Use Permit Amendment

Council District
1

Planning Area
West Valley

Assessor's Parcel Number(s)
237-06-088, 089

STAFF REPORT

PROJECT DESCRIPTION

Completed by: **Darren McBain**

Location: Northwest corner of Moorpark Avenue & Saratoga Avenue

Gross Acreage: 2.2

Net Acreage: 2.2

Net Density: n/a

Existing Zoning: CN Commercial Neighborhood

Existing Use: Hotel, restaurant

Proposed Zoning: No change

Proposed Use: Same, with landscape restoration and mitigation

GENERAL PLAN

Completed by: **DM**

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: **DM**

North: Interstate 280

Highway

East: Commercial

CN Commercial Neighborhood

South: Commercial/restaurant

CP Commercial Pedestrian

West: Duplexes, commercial office

R-2 Residence, CO Commercial Office

ENVIRONMENTAL STATUS

Completed by: **DM**

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

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: **DM**

Annexation Title: Boynton No. 13

Date November 12, 1968

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Uphold Director's Decision
 Denial

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT

Greg Pinn
Pinn Brothers Construction
1475 Saratoga Ave., #250
San Jose, CA 95129

OWNER/DEVELOPER

Dan and Raymond
Perusina
4325 Kirk Road
San Jose, CA 95124

Department of Public Works

None received.

Other Departments and Agencies

None received.

GENERAL CORRESPONDENCE

None received.

BACKGROUND

The applicants, Dan and Raymond Perusina, filed an application for a Conditional Use Permit Amendment on June 14, 2001 to:

- A) legalize the removal of five ordinance-size trees and approximately 15 smaller trees that were previously removed without permits, and establish on-site and off-site mitigation; and
- B) allow site modifications including deletion of several previously required areas of landscaping and relocation of a trash enclosure.

Tree removal and minor site modifications on a commercial site typically require a Tree Removal Permit and a Permit Adjustment from the Director of Planning. A Permit Adjustment is a discretionary permit of a more minor nature, in that there is not a noticed public hearing and there is no appeal of the Director's decision on an Adjustment. At staff's discretion, a Permit Amendment can be required, rather than an Adjustment, when the scope of the modifications and/or other circumstances warrant a higher level of review. In this case, staff is requiring the applicant to file a Conditional Use Permit Amendment because of the cumulative magnitude of the changes (see below) that were made to the site without approval from the Director of Planning and because, unlike an Adjustment, an Amendment requires the applicant to formally accept the conditions of approval that are associated with it. Under this process, the applicant would have an opportunity to appeal the decision of the Planning Commission.

The subject site includes a newly opened hotel that was approved by the Planning Commission in 1998 (File No. CP98-03-015, Resolution attached), and a restaurant (Tony Roma's). The land uses surrounding the site consist of duplexes and commercial/office on the west side, a service station and Applebee's restaurant on the east side, commercial uses to the south across Moorpark Avenue, and Interstate 280 to the north of the site.

A project (File No. CPA98-01-015, Resolution attached) for this site was last heard before the Planning Commission on January 25, 2000, to allow addition of three rooms to a previously approved 77-story hotel. Following approval of that permit and during construction of the hotel, the applicants and/or their tenants

removed five ordinance-size trees and approximately 15 non-ordinance size trees on the site without benefit of permit. The illegal tree removals were noticed by Planning staff. A subsequent investigation by staff revealed numerous other discrepancies between the approved site layout and the existing conditions, including:

- a. Trees were illegally removed as noted above, including five large ordinance-size redwoods.
- b. Several improved landscape areas that were shown on the approved plan sets were not constructed.
- c. Additional driveways and approximately 10 parking spaces were added to the site in place of approved landscaped areas.
- d. Landscaping along the west property line is approximately 6' wide, rather than the 10' shown on the approved plans.
- e. The trash enclosure was relocated without Planning approval.
- f. A shed-like structure was added onto the restaurant without permits.

On September 14, 2001, the Director of Planning conditionally approved a Tree Removal Permit (File No. TR01-07-091) to establish on-site and off-site mitigation for the illegal tree removals. The required mitigation in the Tree Removal Permit included replacement on-site of all trees that were removed, plus five trees planted off-site in City-owned parks for each of the ordinance-size trees. The applicant has indicated that the on-site tree replacement has already been completed. However, there remain numerous discrepancies between existing and approved conditions on the site, most notably several areas of trees and other landscaping that were either removed or were never constructed in the first place (see Analysis section, below).

Except for two minor exceptions related to items "d" and "e" above, staff is recommending that the applicant be required to restore the site to its approved configuration as shown on the plans corresponding to File No. CPA 98-01-015. The applicant has not provided plans that respond to this direction from staff. The site plan submitted by the applicants simply identifies the most noticeable changes that have been made to the site layout, with proposing to correct any of the deficiencies and discrepancies. Therefore, staff is recommending that the project be denied. The matter would subsequently be dealt with by staff as a Code Enforcement issue. The attached exhibit, prepared by Planning staff, identifies the missing landscaped areas and other compromised portions of the site.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under section 15301 of the California Environmental Quality Act.

GENERAL PLAN CONFORMANCE

The existing use is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of General Commercial.

ANALYSIS

The changes that were made to the site without Planning approval, especially removal of five very large ordinance-size redwoods, have resulted in a considerable reduction in the visual aesthetic qualities of the built environment in this relatively high-profile area. The applicant has taken steps to offset the loss of these and approximately 15 other smaller trees that were removed. However, elimination of approximately 10 previously required small- to medium-sized areas of landscaping on the site has significantly reduced the applicant's ability to effectively mitigate the visual impact of the tree removals. Elimination of a portion of the landscaped setback area on the project's Moorpark Avenue frontage and placement of additional parking spaces in this area is particularly noticeable from the street.

The removed landscaped areas were previously required and approved in conformance with the Commercial Design Guidelines, which recommend for hotels a minimum of 25 feet of landscaping along a public street, as well as five feet of landscaping at the end of each parking aisle and along interior property lines. These guidelines are considered a minimum and are routinely required on projects of this kind. Landscaping is considered desirable in order to reduce the amount of paved surface and the resulting excessive amounts of storm runoff, as well as to minimize the visual impact of open surface parking areas. The previously approved landscape plan, was designed to meet these goals while providing an appropriate number of parking spaces for the project, and did conform to the Commercial Design Guidelines.

Except for the following three exceptions, staff is recommending that the site be restored to its approved configuration, including the missing landscaped areas.

1. Only a six-foot-wide landscaped area, rather than the approved 10 feet, was constructed along the northerly property line, adjacent to the existing residential uses. Subsequently, trees that were planted have become established in this relatively less-visible portion of the site, which is buffered from the adjacent property by an 8-foot-high masonry wall. It is staff's opinion that creation of several new pockets of landscaping between parking spaces would be an appropriate alternative to widening the perimeter landscaping out to 10 feet in width.
2. The hotel's trash enclosure was relocated to across the driveway to a nearby area of the site. This change does not constitute a significant visual impact.
3. The free-standing pay phone located near the property line shared with the adjacent gas station is no longer allowed under the Zoning Ordinance and should be removed.

The plans that were submitted for this project by the applicants do not reflect the direction given by staff to restore the deficient areas of the site, as shown on the exhibit prepared by staff, to their approved configuration. The plans that have been submitted by the applicants only identify the changes that have been made to the site layout, including deletion of numerous areas of landscaping and addition of parking spaces, with no indication that the discrepancies will be rectified. The applicants have been given ample time to prepare revised plans that correct the problems on the site. For these reasons, staff does not support the

project as it is proposed. Further, staff recommends that the Planning Commission take action on this application and direct the applicant to file another Conditional Use Permit Amendment request that properly addresses the issues raised in this report.

RECOMMENDATION

Planning staff recommends that the Planning Commission deny the requested Conditional Use Permit Amendment 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 project site is located in the CN Commercial Neighborhood Zoning District.
3. The subject site is 2.2 acres.
4. The Director of Planning has determined that this project is exempt from further environmental review under section 15301 of the California Environmental Quality Act.
5. A Conditional Use Permit was approved in 1998 that included more landscaped areas than are currently proposed, as well as the preservation of several large existing trees.
6. The Commercial Design Guidelines establish requirements for internal site landscaping along project perimeters and within parking areas.
7. The originally approved project conformed to the Commercial Design Guidelines.
8. Prior to filing this application, the applicants and/or their tenants illegally removed approximately 20 trees and performed numerous other site modifications that do not comply with approved plans for a previous project on the site.
9. This Permit Amendment proposes to A) legalize tree removals that were previously performed without benefit of permit and B) allow site modifications including deletion of several approved areas of landscaping and relocation of a trash enclosure.
10. On September 14, 2001, the Director of Planning approved a Tree Removal Permit (File No. TR01-07-091) to establish on-site and off-site mitigation for the illegal tree removals.
11. The required mitigation in the Tree Removal Permit included replacement on-site of all trees that were removed, plus five trees planted off-site in City-owned parks for each of the ordinance-size trees.
12. The required on-site tree replacement has been performed.
13. Other discrepancies still exist between existing and approved conditions on the site as shown on the approved plan set for Conditional Use Permit Amendment File No. CPA98-01-015, including several areas of trees and other landscaping that were either removed or were never constructed.

14. The applicant has not provided revised plans that propose to correct the discrepancies between existing and approved site conditions.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The project is not in conformance with the requirements of the Commercial Design Guidelines, in that several areas of perimeter landscaping have been compromised or deleted altogether.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will
 - 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 site; or
 - c. Be detrimental to public health, safety or general welfare, in that the elimination of trees and other landscaping without adequate replacement on the site constitutes a considerable adverse visual impact on the immediate surroundings; and
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 areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

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 denied.

- c: Greg Pinn, Pinn Brothers, 1475 Saratoga Avenue #25., San José CA 95129
Building(2)

Public Works

Attachments:

- Location Map
- Site Plans
- Copies of permits

DM/yt:207-10