

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. 7/10/02 Item: 4.a.

File Number
PDSH 02-026

STAFF REPORT

Application Type
Appeal of the Director's Decision to Approve a
Planned Development Permit

Council District
5

Planning Area
Alum Rock

Assessor's Parcel Number(s)
481-19-132, 133, 134 and 135

PROJECT DESCRIPTION

Completed by: Andrew Crabtree

Location: Southeast corner of Alum Rock Avenue and McCreery Avenue.

Gross Acreage: 2.49

Net Acreage: 2.12

Net Density: 49.5 DU/AC

Existing Zoning: A(PD) Planned Development

Existing Use: Retail/vacant

Proposed Zoning: No Change

Proposed Use: up to 93 multiple-family attached dwelling units and 7,600 square feet of commercial space

GENERAL PLAN

Completed by: AC

Land Use/Transportation Diagram Designation
General Commercial, Medium High Density Residential(12-25
DU/AC), within Transit Oriented Development Corridor and
Neighborhood Business District Overlay

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AC

North: Commercial and Residential

CG Commercial, A(PD)

East: Commercial

CG Commercial

South: Residential

R-1-8 Residence

West: Commercial and Residential

CG Commercial, R-1-8 Residence

ENVIRONMENTAL STATUS

Completed by: AC

Environmental Impact Report certified
 Negative Declaration circulated
 Negative Declaration adopted on May 22, 2002

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: AC

Annexation Title: Capitol No. 29

Date: April 28, 1970

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT/OWNER

Green Valley Corporation
777 North 1st St, 5th Floor,
San Jose, CA95112

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: SBW

Department of Public Works

See attached memorandum.

Other Departments and Agencies

See attached memoranda from Fire Department, Police Department, and Environmental Services Department, Valley Transportation Authority(VTA).

GENERAL CORRESPONDENCE

See attached correspondence from appellant.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

Betty Usher, representing the San José Rock Creek Home Owners Association, has appealed the Planning Director's decision to approve a Planned Development Permit (File No. PDSH02-026) for the construction of 93 multi-family attached residential units and approximately 7,300 net square feet of commercial space. The Planned Development Permit was heard at the June 19, 2002 Director's Hearing and approved by the Planning Director on June 21, 2002.

A Planned Development Zoning (File No. PDC02-029) for the subject property was approved by the City Council on June 18, 2002. The Zoning allowed for the development of a vertically mixed-use project including 7,600 square feet of commercial uses on the ground floor, 93 multiple-family attached affordable residential units, and up to 12 single-family attached affordable units. (Staff reports and memoranda prepared for the Zoning are attached to this report for reference.)

The proposed Planned Development (PD) Permit implements the first phase of the Zoning and does not include the single-family attached units that could be built at the rear of the project site. The project design of the PD Permit is very similar to that which was included as a conceptual illustration in support of the approved Zoning and recently discussed by both the Planning Commission and City Council.

Existing uses in this area include a diverse mixture of commercial and single- and multiple-family residential uses. A commercial center is located across Alum Rock Avenue to the north. The Rock Creek condominium (attached single-family) development is located further north behind this center. The properties east of the subject site are currently developed with commercial uses. Most of this development is older and are anticipated to be redeveloped with residential or mixed-use projects similar to the subject project. The properties to the south of the subject site are residential and include single-family homes and duplexes. Land uses to the west of the site, across McCreery Avenue, are also residential and include a mix of older single-family and newer multi-family projects. An application has been filed to redevelop a vacant lot and three of the single-family homes on the opposite side of McCreery with a multi-family project. The site is also located in the Mayfair Strong Neighborhood Initiative (SNI) planning area.

The project fronts on to the Alum Rock Transit-Oriented Development Corridor. The Valley Transportation Authority (VTA) is expected to start construction on this light rail corridor in 2005. The Santa Clara/Alum Rock line will connect to Downtown to the west and to the Capitol Avenue corridor to the east, which is already under construction and expected to be operative by 2004. The light rail line would eventually also connect to Eastridge Shopping Center, and then southwesterly to State Route 87/ Guadalupe Corridor. City policy strongly encourages the development of this type of vertical mixed-use transit-oriented development along the Alum Rock light rail corridor. The project will be located within 2,000 feet of two planned light rail transit stations.

On June 26, 2002, Betty Usher filed an appeal of the Director's decision to approve the subject Planned Development Permit (see attached letter). Ms. Usher's individual comments are listed below in the Analysis section followed by staff's response.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration for the project was adopted by the Director of Planning on May 2, 2002 (attached). The Initial Study included a noise report, traffic report, cultural /historic resources report, a tree survey and a burrowing owl survey. Mitigation measures identified in the reports have been incorporated into the project.

The project Traffic Report, prepared by an independent traffic consultant, concluded that the project would generate 71 AM peak hour trips and 52 PM peak hour trips, which is considered to be a less than significant impact per City thresholds. The Public Works Department also performed a subsequent in-house traffic analysis for this project which concluded that the net increase would be less than significant and that the project would be in conformance with the City Transportation Level-of-Service Policy. A new traffic signal is warranted at the Intersection of Alum Rock Avenue and McCreery Avenue and the applicant will be required to contribute \$35,000 toward the traffic signal that is anticipated to be installed within one year of the project approval. There would be no significant level-of-service impacts to local or regional streets resulting from the project.

The potential impacts to the "Orange" structure, a designated City Landmark, will be mitigated to a less than significant level by requiring the applicant to relocate and rehabilitate the Orange and its associated sign. A separate Permit has been approved to provide for the relocation.

GENERAL PLAN CONFORMANCE

The overall project is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designations of General Commercial and Medium High Density Residential (12-25 DU/AC) with a Neighborhood Business District Overlay through use of any one of three Discretionary Alternate Use policies (Two Acre Rule, Residential Uses on Commercially Designated Parcels, and Density Bonus for Affordable Housing). The subject site is located within a Transit Oriented Development Corridor (TODC) and the General Plan encourages use of these Discretionary Alternate Use policies to achieve higher density residential (20+ DU/AC) and mixed-use development in proximity to transit. The proposed project provides exactly the type of development being promoted within these corridors. The project also meets the goals of the Alum Rock Development Strategy and the implementation plan for the Strategy, currently under preparation, since this project will support the existing business uses on Alum Rock Avenue and provide neighborhood-serving retail and office uses. The project is consistent

with the Strategy recommendation for the development of a new residential street parallel to Alum Rock Avenue to facilitate improved access and future development for the long, narrow parcels to the east of this site.

The project is also consistent with the Growth Management, Housing, and Sustainable City General Plan Major Strategies, in that the project makes efficient use of an existing urban infill site to provide higher density, affordable housing and commercial uses near light rail transit, a major transportation corridor and existing jobs.

ANALYSIS

The primary issue raised by the Appellant is an objection to the proposed project density. Related to this, the Appellant expresses concern regarding vehicular and automobile traffic congestion and traffic safety impacts, and concern regarding the process through which the City made the decision to approve the proposed project density. In an earlier correspondence, submitted prior to the official Appeal, the Appellant also expressed concern over the adequacy of parking provided with the project, the opportunity for public input and the Planned Development Zoning and Permit process. These issues are discussed below.

The allowed project density (49.5 Dwelling Units per Acre) has been established in the Planned Development Zoning (PDC02-029) approved by the City Council on June 18, 2002. The Planning Commission also previously recommended approval of the project density at the May 22, 2002 Commission hearing. Both groups discussed the proposed density and determined that it would be appropriate given the project location along a Transit Oriented Development Corridor and that it would be compatible with the existing neighborhood character. Land-use issues, including density and neighborhood compatibility, are resolved through the Planned Development Zoning process and are not pertinent to the review and approval of a subsequent Planned Development Permit except that the Permit should provide for project implementation, including architecture and landscape details, consistent with the approved Zoning.

Proposed Residential Density / Land Use Compatibility.

As discussed in the staff report for the approved Zoning, the project has already been determined to be in conformance with Council Policy 6-24 (Evaluation Criteria for High Density Housing near Rail Transit) and in conformance to the Residential Design Guidelines for Mixed-use Projects.

The architecture and landscaping of the subject Permit are nearly the same as those shown as “conceptual” within the approved Planned Development Zoning. Some architectural elements, such as additional landscaping, have been added along the project’s exterior façades to enhance the project’s visual character. These elements in no way detract from the overall land use compatibility of the project and should further improve upon it.

The approved Zoning requires that each multi-family residential unit be provided with a 60 square-foot private open space area (typically an outdoor balcony) and that a minimum of 9,300 square feet of common open space be provided for the entire project. The subject PD Permit includes the required private open space area for each unit and provides 10,805 square feet of common open space.

Parking

The project includes adequate parking and open space entirely consistent with the standards established within the approved Planned Development Zoning. In approving the Zoning, the City Council approved a reduction from citywide parking standards in recognition of the mixed-use nature of the project and its proximity to the light rail. The Zoning requires that the entire project be provided with 170 parking spaces. Of these 170, 13 are allocated to support the townhouse portion of the development, and 157 are allocated to support the multi-family attached units and the commercial space. Development of the subject PD Permit, which does not include the townhouses, will provide 159 parking spaces and is consistent with the PD Zoning.

Automobile and Pedestrian Congestion and Safety

The Appellant expresses concern regarding lack of traffic signals, and an increase in risks to pedestrians with the development of this new high density project. As discussed above, traffic analysis completed for the project determined that it would not result in significant (automobile) traffic impacts per City standards. The City does not currently have standards regulating pedestrian traffic, but City policies promote the approval of land uses that will generate additional pedestrian traffic within Transit Oriented Development Corridors.

Implementation of the subject Planned Development Permit will include the installation of a new traffic signal at McCreery and Alum Rock as noted above. The new traffic signal will provide for improved vehicle and pedestrian safety at this intersection and along Alum Rock within the project vicinity. Implementation of the subject project will also include the construction of new, wider sidewalks along the project's Alum Rock and McCreery frontages, construction of a new "mews" street with accompanying sidewalks parallel to Alum Rock within the project site area and the provision of Ecopass transit passes to project residents. The new sidewalks will include street trees, repair or replacement of existing curbs and gutters and other pedestrian amenities. The subject Permit also includes requirements for on-site security measures which will contribute to the overall safety of pedestrians in the area.

Approval Process

The Appellant expresses objection to the project on the basis that it is inconsistent with the recommendations of the Alum Rock Development Strategy Advisory Committee expressed at the time the Strategy was presented to the City Council. The Strategy was adopted in June of 1999 and provides numerous goals regarding the desired quality of development along Alum Rock. The proposed project is specifically consistent with the Strategy's goals to 1) create a more urban condition along Alum Rock; 2) provide additional housing, including affordable housing to balance the amount of retail and housing in the area; and 3) to install a new traffic signal at the intersection of McCreery and Alum Rock. The project is also consistent with Strategy goals to upgrade the quality of development along Alum Rock and to provide for improved property maintenance. The Strategy does not contain any specific direction for the density of development on the subject site.

Land use density is established for the subject site by the site's Planned Development Zoning. The Zoning should be consistent with the General Plan. The General Plan designation of the site within a Transit Oriented Development Corridor encourages the development of mixed-use, high density

projects with a minimum density of 20 Dwelling Units per Acre. This designation is typically used along planned or existing transit lines such as the planned Alum Rock light rail line. General Plan designations are established through a public process that includes Planning Commission and City Council hearings. The City Council ultimately determines the General Plan designation after consideration of various neighborhood concerns and greater City goals. The subject project received support from neighborhood members, including the Alum Rock business association and local residents and is also consistent with several City goals including the provision of higher density housing along transit lines.

Conclusion

The subject Permit successfully provides for the implementation of the approved land uses and establishes the specifics of the project architecture and landscaping consistent with the approved Zoning. The project conforms to the relevant design guidelines for high-density mixed-use development and presents an opportunity for a model vertical mixed-use transit-oriented development project that will reduce traffic congestion and air pollution. The proposed high density housing takes advantage of the light rail line, and in turn reinforces the viability and efficiency of the light rail line by placing residents in a position to use it. The proposed structure meets the City's standards for architecture and landscaping and is compatible with the surrounding land uses.

COMMUNITY OUTREACH

A public hearing notice for the project was mailed to all property owners and tenants within 1000 feet of the subject site and the subject Permit was considered at a public Director's Hearing conducted on June 19, 2002. The applicant has also presented the project at several community meetings, the most recent taking place April 25, 2002. The project was recently discussed by members of the public at the Planning Commission and City Council hearings conducted for the approved Zoning. Members of the community have raised concern over the project density that the City has approved too many affordable housing units within Council District 5, and they indicated a preference for market-rate housing. Community members also expressed concern with traffic congestion, neighborhood security, parking, lack of parks, and adequacy of public services including schools and Police and Fire protection. Several people from the community have spoken in support of the mixed commercial/residential project and stated that they believe it is a high-quality project that will make a positive contribution to Alum Rock. They indicated that there is a great need for this type of housing and that most of the new housing being built in the area is too expensive for current residents.

RECOMMENDATION

Planning staff recommends that the Planning Commission uphold the Director's decision to approve the proposed Planned Development Permit and include the following facts and findings in its Resolution.

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

1. The site has designations of General Commercial and Medium High Density Residential (12-25 DU/AC), and is within the Alum Rock Neighborhood Business District and a Transit Oriented Development Corridor on the adopted San Jose 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A(PD) Planned Development Zoning District (File No. PDC02-029).
3. The subject site is surrounded by a mixture of commercial and multi-family and single-family residential uses.
4. The subject site is located in the Mayfair Strong Neighborhood Initiative (SNI) planning area.
5. A Planned Development Zoning (File No. PDC02-029) for the subject property was approved by the City Council on June 18, 2002. The Zoning allowed for the development of a vertically mixed-use project including 7,600 square feet of commercial uses on the ground floor, 93 multiple-family attached affordable residential units, and up to 12 single-family attached affordable units with an overall density of 49.5 dwelling units per acre.
6. The Planned Development Permit was heard at the June 19, 2002 Director's Hearing and approved by the Planning Director on June 21, 2002 for the construction of 93 multi-family attached residential units, and 7,300 square feet of commercial space.
7. On June 26, 2002, Betty Usher filed an appeal of the Director's decision to approve the subject Planned Development Permit.
8. The Appellant, Betty Usher, indicated an objection to the proposed project density. Related to this, the Appellant expressed concern regarding vehicular and automobile traffic congestion and traffic safety impacts, and concern regarding the process through which the City made the decision to approve the proposed project density.
9. The subject Planned Development Permit (File No. PDSH02-026) conforms to the approved Planned Development Zoning (File No. PDC02-029) in all aspects, including project density. The project design, including architecture and landscaping, is also consistent with the applicable City standards and policies and the approved Zoning.
10. A Mitigated Negative Declaration for the project was adopted by the Director of Planning on May 2, 2002. The project includes relocation of "The Orange" historic structure as mitigation to a potential impact upon a historic resource. A traffic analysis completed for the project determined that it would not result in a significant traffic impact. Installation of a traffic signal is warranted for the intersection of McCreery Avenue and Alum Rock Avenue and will be installed as part of the project.

FINDINGS

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

1. The Planned Development Permit, as issued, furthers the policies of the General Plan in that:
 - a. The project is consistent with the General Plan Land Use /Transportation Diagram designations of General Commercial, and Medium High Density Residential (12-25 DU/AC) through the application of the Two Acre Rule, Residential Uses on Commercially Designated Parcels, and Density Bonus for Affordable Housing Discretionary Alternate Use policies and is consistent with the policies of the Alum Rock Neighborhood Business District and Transit Oriented Development Corridor.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property in that:
 - a. The proposed development conforms to the development standards and regulations of the approved zoning's General Development Plan, Land Use Plan. The project complies with the approved Planned Development Zoning with regards to allowable uses including residential density, parking and other applicable development standards.
3. The interrelationship between the orientation, location and mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious in that:
 - a. The exterior wall and roof materials of the proposed and/or existing structure(s) match or are compatible in terms of color and texture.
 - b. The architectural elements of the proposed and/or existing structure(s) are integrated into a harmonious whole.
 - c. The proposed and/or existing structure(s) are comparable in terms of mass, scale and height.
 - d. Sufficient open space separates all structure(s) and uses.
 - e. Parking spaces are conveniently located in relation to the uses they support.
4. The environmental impacts of the project including, but not limited to, noise, vibration, dust, drainage, erosion, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. A Negative Declaration has been adopted for a previous and essentially the same project (File No. PDC02-029) which indicated there is no substantial evidence that the project has a significant adverse effect on the environment.
 - b. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.

5. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
 - a. Substantial landscaping will be added to the site and an adequate automatic irrigation system will be provided to support this landscaping.
6. Traffic access, pedestrian access and parking are adequate in that:
 - a. Sufficient driveway curb cuts and driveways will be provided on site to provide access to the site from Alum Rock Avenue, McCreery Avenue and the new residential street without interfering with off-site circulation.
 - b. Pedestrian walkways will be provided to all major building entrances. A sidewalk will be provided along Alum Rock Avenue, McCreery Avenue and both sides of the new residential street
 - c. A new 48- foot wide public residential street will be constructed and the applicant will contribute \$35,000 towards a new traffic signal installation at Alum Rock Avenue and McCreery Avenue
 - d. This Permit has been coordinated with the separate Conditional Use Permit File No. CP02-022, which allows for the relocation of the “Orange” historic landmark structure and the Mark’s Hot Dog’s sign from this site to a site located on Capitol Avenue.
7. Further, the Planning Commission concludes and finds, based on the analysis of the above facts, that:
 - a. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.
 - b. The proposed project is in conformance with the California Environmental Quality Act.

A report of findings has been prepared in compliance with the requirements of Section 20.100.900 and is made a part of this Planned Development Permit as noted below.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

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. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
3. **Permit Expiration.** This Planned Development Permit shall automatically expire 30 months from and after the date of issuance hereof by said Commission, if within such 30-month 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 Planned Development Permit. The date of issuance is the date this Permit is approved by the 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.
4. **Conformance with Plans.** Construction and development shall conform to approved Planned Development plans entitled, "PD Permit Tierra Encantada 1902-1920 Alum Rock Avenue", dated May 9, 2002, last revised May 31, 2002, 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. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
6. **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.
7. **Acceptance.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of Planning, Building and Code Enforcement within **60 days** from the date of issuance of permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.*
8. **Plan Revisions.** Within 60 days of the issuance of this Permit and prior to recordation, the Applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
 - a. Building Elevation with Colors and Materials. Provide a colored elevation of the project which shows all specific colors and materials of the buildings, and includes an 8 1/2 X 11-inch sized board (detailing color and materials specifications) for review and approval by the Director of Planning. Color samples shall be included in the submittal.
 - b. Textured pavement. Revise plans to specify the use of textured pavement at driveway entrances.
 - c. Site Plan Details. Revise plans to specify the locations and design details for the transformers and utility structures on the plan set. Utility Structures shall be enclosed or

screened to match existing fencing, screening or landscaping or placed underground.

- d. Revised Site/Landscape Plans. Revise the site plan and landscaping plan to provide a roof cover over the parking structure along the eastern property line and provide planting materials along the top of the cover.
9. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
10. **Billboard Removal.** The existing billboard near the easterly property line shall be removed to allow the development of the proposed project.
11. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
12. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
13. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
14. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
15. **Planter Boxes on Street Frontages.** Irrigation shall be provided for all planter boxes located along the streets. Planter boxes shall be planted per Landscape Plans and all plant materials shall be maintained by the Project management.
16. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
17. **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 Section 20.44.200 of the San José Municipal Code.

18. **Affordability Restriction.** The applicant shall ensure that 100% of the units are affordable to persons and families of low, very low and/or moderate income households by entering into an agreement with the City of San José to the satisfaction of the Director of the Housing Department.
19. **Ecopasses.** A VTA Residential Eco-Pass or other equivalent incentive to use transit shall be provided for all occupants (contact Scott Haywood with VTA at 321-7544 for Eco Passes).
20. **Bicycle Parking.** The applicant shall provide bicycle parking spaces/lockers for the residents and shall provide bicycle racks (7 bike racks on the podium for the residents and 2 bike racks in front of the commercial uses).
21. **Sign Program for Commercial Uses.** The applicant shall submit a Permit Adjustment for the Sign Program for the commercial uses. The program shall specify sign location, size, height, lighting and design for the commercial uses.
22. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-13767) to the satisfaction of the Director of Public Works:
 - a. *Public Works Development Review Fee:* An additional Public Works Review Fee is due. Based on established complexity criteria, the project has been rated high complexity. Prior to the project being cleared for the hearing and approval process, a sum of \$3,416 shall be paid to the Department of Public Works (Room 308).
 - b. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - c. *Geology:*
 - 1) A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - 2) The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the Project Engineer and/or City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Spec. Publ. 117) and the Southern California Earthquake.
 - d. *Flood: Zone AO, Depth 1 ft:* This project proposes to construct at-grade residential

units, commercial units and parking garage, and other residential units on the upper levels.

- 1) For the residential units and parking garage:
 - a) An Elevation Certificate, based on construction drawings, is required prior to the issuance of a building permit. Consequently, an Elevation Certificate for the built structure, based on finished construction, is required prior to issuance of an occupancy permit.
 - b) Elevate the lowest finished floor of the at-grade residential units to 1 foot above the highest existing adjacent grade to the proposed units.
 - c) Provide a minimum of two openings for the at-grade parking garage enclosure. Each opening shall be able to automatically equalize the lateral pressure of the floodwaters. The bottom of each opening shall be placed within twelve inches of finished grade. The total net area of such openings shall not be less than one square inch per one square foot of enclosed area.
 - 2) For the commercial units:
 - a) Elevate the lowest finished floor to 1 foot above the highest existing adjacent grade to the proposed units or floodproof to the same elevation.
 - b) If elevating the commercial units, an Elevation Certificate, based on construction drawings, is required prior to the issuance of a building permit.
 - c) If floodproofing the commercial units, a Floodproofing Certificate (FEMA Form 81-65), a Flood Emergency Operation Plan, and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
 - 3) Building support utility systems such as HVAC, electrical, and plumbing systems must be elevated above the base flood elevation or protected from flood damage.
- e. *Transportation:* An in-house traffic analysis has been performed for this proposed project to examine any difference in traffic generated from the previously proposed use and this new proposed use. The net increase is insignificant, and we conclude that with the referenced project condition, the subject project will be in conformance with the City of San José Transportation Level of Service Policy (Council Policy 5-3). A determination for a negative declaration can be made with respect to traffic impacts.

- 1) The applicant shall contribute \$35,000 towards the construction of the traffic signal at Alum Rock and McCreery Avenues.
- f. *Electrical:*
- 1) Install electrolier(s) along the project frontages to the satisfaction of the Director of Public Works.
 - 2) Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
 - 3) Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas.
- g. *Landscape:* Install street trees within the public right-of-way along the entire street frontages for Alum Rock Avenue, McCreery Avenue and the new residential street per City standards (24-inch box street trees are required). The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only. Contact the City Arborist at (408) 277-2756 for the designated street tree.
- h. *Street Improvements:* Applicant shall perform the following to the satisfaction of the Director of Public Works.
- 1) Remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - 2) Construct curb, gutter, and sidewalk along project frontages (10ft. sidewalk on McCreery Avenue and 12 ft. sidewalk on Alum Rock Avenue.
 - 3) The proposed driveway along Alum Rock Avenue shall be limited to right-turn-out only until the time in which the easterly parcel is developed, and the respective driveway approach is improved.
 - 4) Close unused driveway cut(s).
 - 5) Proposed driveway width to be 26'.
 - 6) Install handicap ramps as required at street intersections.
 - 7) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works. The new public street should conform to the Alum Rock Strategy Plan conditions, and a 48-foot public right-of-way width has been approved.

- 8) Provide a 10-foot wide sidewalk for McCreery Avenue and a 12-foot wide Alum Rock Avenue with street trees at back of curb. Additional dedication of public right-of-way is required. Decorative paving features for the public sidewalk should not be extended into the public right-of-way.
 - 9) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - i. *Referrals:* An encroachment permit will be needed from Caltrans for the work on Alum Rock Avenue.
 - j. *SNI:* This project is located within the Mayfair SNI area. Public improvements shall conform to the approved EIR and SNI neighborhood improvement plan if such a plan is in effect at the time of issuance of a public works clearance for the project.
 - k. *Construction Agreement:* The applicant will be required to obtain a Public Works Clearance prior to the issuance of a Building Permit. The clearance will require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
23. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San Jose Police Department.
 - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Site Clearing.* The applicant shall remove all existing buildings, structures and signs from the subject property.
 - d. *Park Impact Fees.* The applicant shall provide evidence to the Chief Building Official that the applicable Park Impact Fees, pursuant to Ordinance 24172 (Chapter 14.25 of Title 14 of the San José Municipal Code), have been paid to the satisfaction of the Director of Public Works.
 - e. *Mechanical Equipment.* No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DBA at the residential property line.

- f. *Construction Plans.* This permit file number, PDSH02-026, shall be printed on all construction plans submitted to the Building Division.

 - g. *Private Streets and Infrastructure.* If this project converts to condominiums at a future Date, all the private streets and infrastructure will be required to comply with the current Common Interest Development standards. This may result in the reconstruction or modification of all private infrastructure. In the future, if this apartment project converts to condominiums, it will be required that private streets and infrastructure comply with the current Common Interest Developments Standards, which may result in the reconstruction or modification of all infrastructure. The developer has the option to construct the project in accordance with CID standards at the present time if conversion is anticipated in the future.
24. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
25. **Cultural/Historic.** Prior to the issuance of a Public Works Clearance, Grading Permit or Building Permit, the developer shall (1) relocate and rehabilitate the Orange and Mark's Hot Dog's sign in conformance with Conditional Use Permit CP02-022, and (2) obtain a final inspection for the relocation and rehabilitation to the satisfaction of the Director of Planning, Building and Code Enforcement.
26. **Noise.** To reduce traffic noise mitigation measures, as described in the project Noise Report, have been incorporated into the project.
- a. The project shall incorporate wall and window noise insulation treatment (walls must be improved to 1-7/8" stucco on 3/4 plywood for all walls within 30 feet of Alum Rock Avenue; dual pane window aluminum frame windows with 3/32" outer pane and 1/8" inner pane separated by 9/16" air space).
 - b. To reduce the temporary increase in noise due to construction activities, the project developer shall make use of proper equipment mufflers, and maintenance of equipment. Noise generating construction operations shall be scheduled for the daytime hours of 7:00 AM to 7:00 PM Monday through Friday so as to avoid the more sensitive evening, nighttime, and weekend hours.
 - c. During project construction, the phone number of the contractor and the File No. PD02-

026 shall be clearly posted for emergency contact in the event of an emergency or a noise problem.

27. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
28. **Hydrology and Water Quality.** The project will incorporate mitigation measures to minimize urban run-off. The mitigation measures include a storm water run-off management plan for construction activities to satisfaction of Department of Public Works, and compliance with all applicable City, Local, Regional, State and Federal laws. The project shall conform to the City of San José National Pollutant Discharge Elimination System (NPDES) Storm Water Permit and shall include Best Management Practices (BMPs) as specified in the *Blueprint for a Clean Bay* to control the discharge of storm water pollutants including sediments associated with construction activities. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City project Engineer. The Erosion Control Plan may include BMPs as specified by the Association of Bay Area Governments' Manual of Standards Erosion & Sediment Control Measures for reducing impacts on the City's storm drainage system from construction activities. For additional information about the Erosion Control Plan, the NPDES permit requirements, or the documents mentioned above, please call the Department of Public Works at (408) 277-5161.
29. **Trash/ Recycling.** The project shall be designed to include recycling containers with space for storage and collection of recyclables. A second trash enclosure may be necessary to meet these requirements for this size project. Scrap construction materials shall be recycled. For assistance in this effort contact the Commercial Solid Waste Program at (408) 277-5533).
30. **Geology and Soils.** The project would be designed and constructed in accordance with the Uniform Building Code guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking on the site.
31. **Air Quality.** Prudent precautions should be taken during construction activities to protect air quality. While the project is under construction, the developer shall implement effective dust control ensures to prevent dust and other airborne matter from leaving the site. The Bay Area Air Quality Management District (BAAQMD) has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices should be implemented during all phases of construction on the project site. With the inclusion of these mitigation measures, the short-term air quality impacts associate with construction will be reduced to less-than-significant levels.
 - Use dust-proof chutes for loading construction debris onto trucks
 - Water to control dust generation during demolition of structures and break-up of pavement

- Cover all trucks hauling demolition debris from the site
 - Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind

 - Cover all trucks hauling soil, sand, or other loose materials, or require trucks to maintain at least two feet of freeboard
 - Sweep daily (preferably with water sweepers) all paved access road, parking areas, and staging areas at construction sites
 - Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets
 - Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
 - Install sandbags or other erosion control measures to prevent silt runoff to public roadways
 - Replant vegetation in disturbed areas as quickly as possible
32. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
33. **Roof Equipment.** All roof equipment shall be screened from view.
34. **Outdoor Storage.** There shall be no outdoor storage.
35. **Fire Alarm System.** Depending on UFC occupancy type the project shall be provided with an automatic fire system, including voice communication and public address system, and remote alarm system to the satisfaction of the Fire Chief.
36. **Fire Extinguisher System.** Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief.
37. **Fire Flow.** Required fire flow for the site is 4,500 gpm, or as otherwise approved in writing by the Fire Chief. Fire flow may be reduced upon construction of a four-hour wall, without openings, as per the adopted fire code. Construction of the area separation wall(s) is subject to review by the Fire Department.
38. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by the Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief. Due to the complexity of this project, the Fire Department recommends a meeting be arranged with the applicant's Fire Protection Engineer(s) and architect(s) for the above development. For hydrant locations please contact the San José Fire Department's Fire Protection Engineering Division at (408) 277-8756.
39. **Fire Lanes.** Fire lanes shall be suitably marked with standard signs, painted curbs, and/or other markers as approved or authorized for use by the Chief. Fire lane markings shall be indicated on plans submitted through the building permit process for review and approval by the Fire Department.

40. **Gates.** Lock boxes or non-case hardened locks are required at gated entries. Lock boxes are required for buildings four or more stories and are recommended for buildings over 10,000 square feet. Applicant shall provide a manual switch on outside of any locked area within a locked device. The manual switch shall have the ability to lock the gate in an open position. Each locked gate on site shall have an approved device with unlocking capability. Contact the Fire Department's Bureau of Fire Prevention for approved devices. Provide a manual means of opening gate if there is a power failure. Gate hardware, post, etc., shall be placed inside the curbed area so as not to decrease the width of the fire lane and impede access to emergency vehicles. Installation shall conform with applicable Building and Electrical codes.
41. **Lock Boxes.** The project development shall provide lock boxes to the satisfaction of the Chief Building Official and Fire Chief.
42. **Street Numbering and Unit Directory for Police and Fire Safety.** A lighted address/directory including a plan of the numbered units and showing all buildings shall be provided at the main entrance to the site (12 inch letters are recommended). Unit numbers shall be prominently displayed and lit at night on each building and unit. Street numbers shall be visible day and night from the nearest street, either by means of illumination or by the use of reflective materials.
43. **Lighting for Police Security.** Adequate lighting of parking lots and associated driveways, walkways, and grounds shall be of sufficient wattage to light all areas and provide illumination to make clearly visible the presence of any person on or about the property during the hours of darkness and provide a safe secure environment for all persons, property and vehicles on site. All lighting shall be low- pressure sodium and shall be approved by the Police Department prior to final occupancy.
44. **Signage/Parking Lot.** "No Trespassing/Loitering" SJMC10.20.140 (A) and 10.20.140 (D) posted at the entrances of all parking lots and located in appropriate places. (Signs must be 2' X 1' in size, with white background and black 2" letters). All entrances to parking areas shall be posted with signs per 22658(a) CVC, to assist in removal of abandoned vehicles.
45. **Access to Parking Garage.** A "digital keypad" type entry system shall be utilized for apartment residences access (e.g. keycards, scanners) for quick access by emergency personnel to the interior of the development.
46. **Line of Sight/ Surveillance.** Project shall make use of appropriate design measures to provide adequate line of sight and surveillance for security reasons per the recommendations of the Police Department. Design measures may include reinforced windows or transparent materials designed into the doors, convex mirrors installed in elevator cabs and stairwells, and wide-angle peepholes used on front doors.
47. **Private Security.** The applicant shall provide a method of private security during the hours of darkness (e.g. off duty police, alarm systems, security cameras, security gates or other equivalent programs to achieve this objective). The details of the security program for the site shall be submitted to the Planning Department for review and approval. A project manager

shall be on duty at all times and a phone number for the manager shall be posted in a clearly visible well-lighted location for the neighborhood to use in the case of an emergency.

48. **Parking Structure Security.** Design of the interior of the parking structure shall incorporate appropriate design measures to provide adequate security for project residents per the recommendations of the Police Department. Design measures may include use of light colored paints, lighting, open stairways, convex mirrors and access control devices. An Emergency Notification form 200-14 should be filed with the Police Department.
49. **Hazardous Materials Storage.** This permit does not include approval of any facilities or areas on, within, or under the site to be used for the storage of hazardous, toxic, flammable, or combustible materials, and such facilities or areas are subject to review under separate Planned Development Permit.
50. **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 and shall be designed to prevent hiding places around the enclosures.
51. **Roof Equipment.** All roof equipment shall be screened from view.
52. **Fence Standards.** Fences shall be erected in accordance with the standards established on the Approved Plan Set. Changes to the approved fencing shall comply with Section 17.24.050 of the City of San José Fence Ordinance.
53. **Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside the property. Electroliers shall not exceed 10 feet in height in areas on the site which are adjacent to single family detached residential use.
54. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, the Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of subject Permit, including the plan sets. To prevent delays in the issuance of building Permits, please notify the Planning Division staff at least one week prior to the final Building Division inspection date.

c: Bill Zavalaris, Community Housing Developers, and 255 North Market St., San Jose, CA 95110