

PLANNED DEVELOPMENT PERMIT

FILE NO.	PDA07-100-01
LOCATION OF PROPERTY	Southeast corner of Santana Row and Stevens Creek Boulevard (302 Santana Row)
ZONING DISTRICT	A(PD) Planned Development established by Ordinance No. 28306.
GENERAL PLAN DESIGNATION	Regional Commercial w/Intensification Corridor Overlay.
PROPOSED USE	Remodel 10,310 square feet of existing vacant space for a new full-service restaurant (public eating establishment with drinking establishment) on the ground floor of a 5-story building.
ENVIRONMENTAL STATUS	EIR Resolution #68210
OWNER / ADDRESS	FRIT Town and Country, LLC Attention: Randy Paul 3055 Olin Avenue, Suite 2100 San José, CA 95128

FACTS

1. The subject parcel is one (1) acre in size, which is a part of the 40.39 acres Santana Row property.
2. The site is developed with commercial uses.
3. Zoning of the parcel is A(PD) Planned Development, originally approved in 1998 (File Number PDCSH97-06-036) and revised in six subsequent Planned Development (PD) Rezoning (File Nos. PDCSH00-09-095, PDCSH01-02-023, PDC02-005, PDC03-083, PDC05-030, PDC07-095).
4. A Planned Development Permit was issued for the construction of the subject building in May 2008 (File No. PD07-100).
5. The subject 10,310 square-foot tenant space is an existing space.
6. The applicant, the Yard House (tenant) / FRIT Realty (owner) is proposing to operate as a drinking establishment with a public eating establishment.

7. Per Ordinance No. 28306 adopted by the City Council (Planned Development Rezoning for Santana Row City File No. PDC07-095) Conditional Uses of the CG-Commercial General Zoning District require a Planned Development Permit and PDC07-095 Zoning standards require a Planned Development Permit for tenant improvements for public eating establishments exceeding 9,000 s.f.
8. Per Table 20-90 of Section 20.40.100 of the San José Municipal Code, a drinking establishment requires a Conditional Use Permit (a Planned Development Permit in Planned Development Zoning District).
9. Condition No. 5 in Planned Development Permit File No. PD07-100 was addressed previously with the approval of Planned Development Permit File No. PD08-035, which fulfilled the time-conditioned permit amendment requirement for architectural design for the garage. Planned Development Permit File No. PD07-100 does not allow off-sale of alcohol, and a separate Planned Development Permit is required for off-sale of alcohol.
10. A Planned Development Permit Amendment to Planned Development Permit PD07-100-01 fulfills the requirement of a Planned Development Permit for the subject proposal because no additional building square footage is proposed, and the project is categorically exempt from CEQA review.

FINDINGS

1. The Planned Development Permit Amendment, as issued, furthers the policies of the General Plan in that:
 - a. The zoning for the property is consistent with the General Plan Land Use designation of Regional Commercial w/Intensification Corridor Overlay.
2. The Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
 - a. This Planned Development Permit will allow drinking establishment uses at an existing tenant space consisting of an approximately 10,310 square-foot public eating establishment with a bar (Yard House Restaurant).
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 no change in existing architectural design or orientation is being proposed.
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. The environmental impacts of this project were addressed by a Final EIR entitled, "Town & Country Village," and certified on June 16, 1998, by the City of San José City Council.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

CONDITIONS PRECEDENT

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

CONCURRENT CONDITIONS

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

1. **Additional Permits.** The operator shall obtain and maintain all applicable permits from other agencies required per the San José Municipal Code.
2. **Alcohol Service.** Alcohol service shall be limited to those hours and areas allowed and specified in the State Department of Alcoholic Beverages license for this site and use.
3. **Food Service.** Food service shall be available for the patrons during all operating hours.
4. **Loitering Prohibited.** Loitering by the patrons within a 500-foot radius of the doors of the premises is prohibited during hours of operation or after closure. The operator shall proactively work to clear this area (500-foot radius of the doors of the premises) within half an hour of closure of their operation on all days of the week.
5. **Contact Phone Number for Residents.** The operator shall arrange for notifying the residents of Santana Row, and keep updating them at least once a year, and whenever there is a change, a contact number and name of a contact person, for receiving concerns from the residents regarding the operation of the facility or nuisance created by the patrons. This number shall be equipped with an answering machine, and shall be attended at a minimum from 8:00 p.m. until half an hour after the closure of the operation, every night.
6. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.

7. **Ventilation.** Adequate ventilation, including but not limited to mechanical ventilation, shall be provided so that openings to the outside can be closed when the bar is at full capacity.
8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
9. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Yard House Restaurants LLC, Tenant Improvement, 300 Santana Row, Suite 101, San Jose, CA" on file with the Department of Planning, Building and Code Enforcement.
10. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage, including but not limited to the maximum occupancy of the facility.
11. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
12. **Cleaning.** Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include damp washing as necessary of all exterior walls and sidewalks along the project's frontage. Broom cleaning of the adjacent street shall occur before 8:00 a.m. each morning. All visible trash, cigarette butts, and any other materials shall be removed from the adjacent street and any street within 200 feet of the subject site that is not directly adjacent to another bar or nightclub facility. Hose washing of the sidewalks shall occur as necessary to accomplish this task, however, solid waste and bodily fluids shall not be rinsed into the storm drains. For vomit, human excrement, and bodily fluids such as blood, other cleaning methods such as use of sawdust shall be chosen.
 - a. Mechanical equipment used for outside maintenance, including blowers and street sweepers shall not be used between 10:00 p.m. and 6:00 a.m. daily.
 - b. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent street, nor create a nuisance for adjoining businesses.
13. **Age of Patrons.** Patrons under 21 years of age are permitted within the restaurant area, with the following exceptions: No patrons under the age of 21 years old shall be allowed within the area of the drinking establishment.
14. **Queues outside the Restaurant.** Neither patrons waiting in the queue, nor rope to control the queue, shall impede pedestrian travel in the pedestrian walkway outside the restaurant at any time. A minimum of five feet of clear space shall be provided between queuing locations and any obstructions in the pedestrian walkway, including but limited to a minimum five-foot separation between street trees, light posts, and street signs. Queues shall be arranged as to minimize impacts on any adjacent uses.
15. **Lighting.** This permit allows no new on-site, exterior lighting. Any exterior lighting shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
16. **Changes to the Structure.** Any exterior changes shall require approval by the Director of Planning, Building, and Code Enforcement.
17. **Sign Approval.** No new signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
18. **Environmental Services Department Comments.** The proposed facility must conform to the City of San José industrial waste discharge regulations. Any non-domestic wastewater discharge

into the sanitary sewer system will require Source Control Staff to review and approve the final plans. Contact Environmental Engineering Staff at (408) 945-3000 with any questions.

19. **Parking Locations.** The business shall post the locations of nearby parking in a prominent location on the business frontage.
20. **Hours of Glass Recycling.** No glass recycling is permitted after 6:30 p.m. or before 8:00 a.m.
21. **Security.** A minimum of two security officers shall be on duty for every 100 patrons using the facility during its hours of operation. The applicant shall maintain state-licensed security approved by the Police Department to effectively control crime, gang, drug and other police problems that may arise. Should the Police require additional security personnel, the applicant shall comply with the more stringent Police regulations.

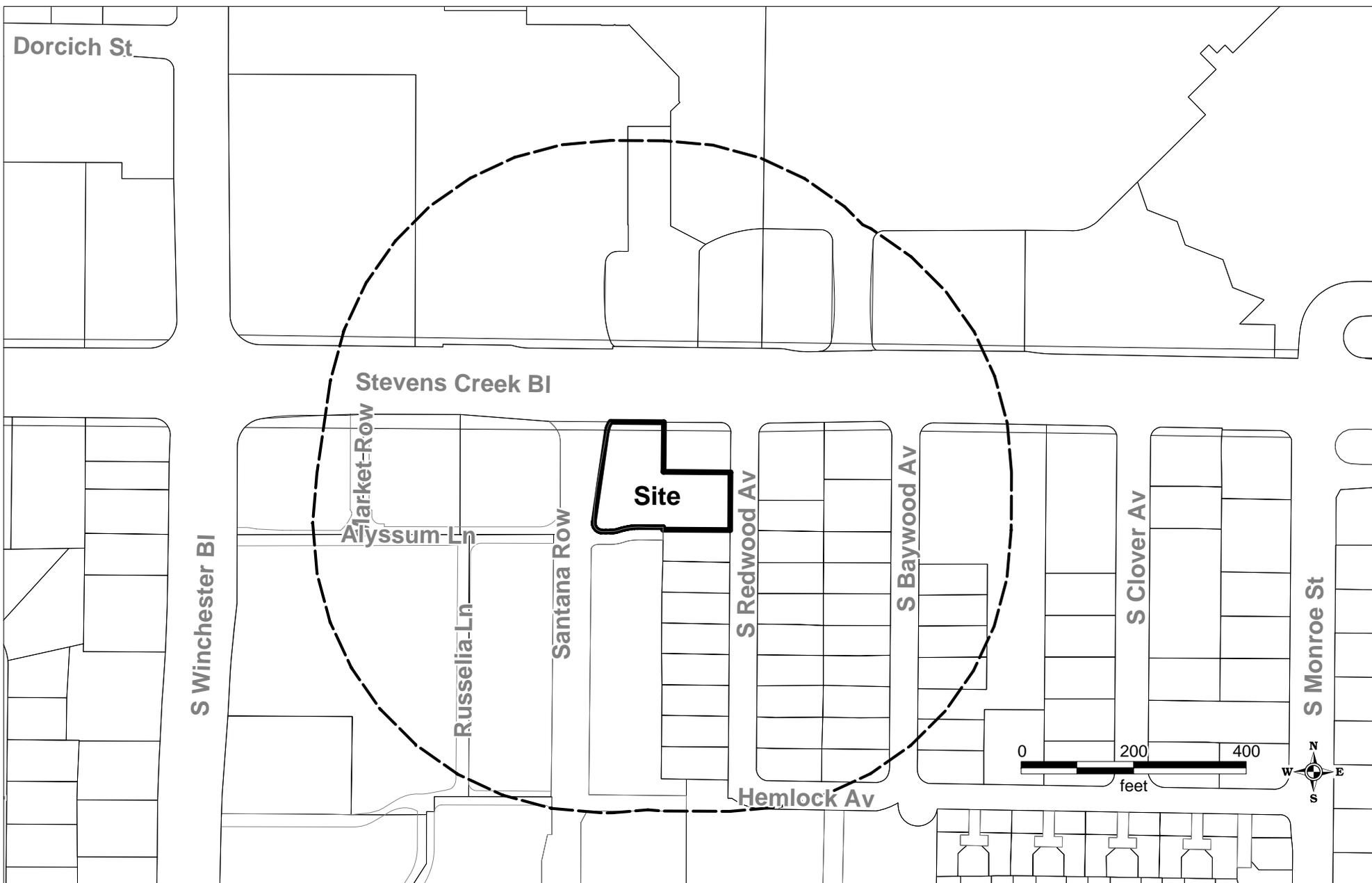
CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Planned Development Permit shall automatically expire two years from and after the date of approval by the Planning Director, or by the date of adoption of the Resolution by the Planning Commission 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 Planned Development Permit. However, The Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission 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 Planned Development 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

APPROVED and issued this **25th day of August 2010.**

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Deputy



File No: PDA07-100-01
District: 6

Noticing Radius: 500 Feet



Prepared by the Department of Planning,
Building, and Code Enforcement
7/9/2010