

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
200 E. Santa Clara Street  
San José, California 95113

Hearing Date/Agenda Number  
P.C. 09-12-07 Item #: 3.f.

File Number  
CP07-019

Application Type  
Conditional Use Permit

Council District SNI  
8 None

Planning Area  
Evergreen

Assessor's Parcel Number(s)  
673-14-006

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Suparna Saha

Location: Northwest corner of South White Road and Aborn Road

Gross Acreage: 0.63

Net Acreage: 0.63

Net Density: N/A

Existing Zoning: CN Commercial Neighborhood District

Existing Use: Gasoline Service Station with vehicle workstations and retail (snack shop).

Proposed Zoning: No Change

Proposed Use: Off-sale of alcoholic beverages at the remodeled gasoline service station with car wash and 1,650 square feet of retail (Approved by previous CP05-057).

### GENERAL PLAN

Completed by: SS

Land Use/Transportation Diagram Designation  
Neighborhood/Community Commercial

Project Conformance:  
 Yes  No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: SS

North: Commercial Shopping Center

CP(PD) - Planned Development Zoning District

East : Gasoline Service Station

A(PD) - Planned Development Zoning District

South: Gasoline Service Station

CP - Commercial Pedestrian Zoning District

West: Commercial Shopping Center

CP(PD) - Planned Development Zoning District

### ENVIRONMENTAL STATUS

Completed by: SS

Environmental Impact Report found complete

Exempt

Negative Declaration circulated on

Environmental Review Incomplete

Negative Declaration adopted on

### FILE HISTORY

Completed by: SS

Annexation Title: Evergreen No. 9

Date: June 15, 1961

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

Date:

Approved by:

Action  
 Recommendation

### APPLICANT/OWNER

Vikram Singh and Baljinder Kaur  
4055 Mezzamonte Place  
San José, CA 95148

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: SS

Department of Public Works

None

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**Other Departments and Agencies**

Police Department Memorandum

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**GENERAL CORRESPONDENCE**

None

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Vikram Singh, is requesting a Conditional Use Permit for the off-sale of alcoholic beverages in conjunction with a proposed gasoline service station with car wash and a 1,650 square foot retail store (under construction) at the subject 0.63 gross-acre site located on the northwest corner of South White and Aborn Roads (3295 South White Road). The applicant is proposing to file a Type 20 Liquor License, for sale of beer and wine only. Per Table 20-140 of the San José Municipal Code, a Conditional Use Permit is required for off-sale of beer and wine in the CN Commercial Neighborhood Zoning District. The applicant has indicated he would operate business seven (7) days a week (Monday through Sunday), from 6:00 a.m. to 12:00 midnight.

The site is currently developed with a gas station that includes a one-story building containing three vehicle workstations for incidental car service and repair and a 300 square foot snack shop. The applicant has an approved Conditional Use Permit under the File Number CP05-057, allowing the addition of an automated car wash service, removal of existing service bays and replacement with 1,650 square feet of retail. The subject site is surrounded by commercial uses on all sides. This CUP deals exclusively with the off-sale of alcoholic beverages use at this location. No additional changes to the site are proposed.

**ENVIRONMENTAL REVIEW**

Under the provisions of the Section 15301 of the State Guidelines for the Implementation of the California Environmental Quality Act, which relates to existing facilities, this project is found to be exempt from environmental review requirements of Title 21 of the San José Municipal Code. Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality.

**GENERAL PLAN CONFORMANCE**

The site is currently designated as Neighborhood/Community Commercial on the General Plan Land Use/Transportation Diagram. This designation allows neighborhood serving retail and service establishments. The intent of the Neighborhood/Community Commercial designation is for shopping centers to develop as a group of commercial establishments that are related in size and type of shops to the trade area it serves. The existing gas station is in proximity to a shopping center that serves the surrounding residential neighborhood. The addition of off-sale of alcohol at a retail facility would be consistent with the General Plan, which allows retail uses.

## ANALYSIS

In order for the new retail store at the existing gas station to be able to sell alcoholic beverages at the subject location, the applicant needs to secure a Conditional Use Permit. The primary issues for this project include conformance with the Zoning Code requirements for approval of a Conditional Use Permit for off-sale.

### **Required Findings under the Zoning Code for Conditional Use Permits for Off-sale of Alcohol**

A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following special findings applicable to the off-sale of alcoholic beverages:

1. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location.

***Analysis of Required Finding.*** Within five hundred (500) feet of the proposed use, there are four (4) other off-sale outlets. There are six (6) existing business located within a one thousand (1,000) foot radius of the proposed use that provides alcoholic beverages for off-site consumption. The proposed use together with existing facilities would result in a total of more than four (4) such establishments within a one thousand (1,000) foot radius. However, the subject site is not located in an over concentrated area of off-sale alcoholic beverages. The site is located at the intersection of four census tracts. The census tract (5033.15) where the subject site is located has only one grocery store nearby that has off-sale of alcoholic beverages and this is incidental to a grocery store. The other establishments are distributed in two other census tracts (5033.25 and 5033.27) (See attached map).

2. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, that the resulting excess concentration of such uses will not:
  - 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 area; or
  - c. Be detrimental to public health, safety or general welfare.

***Analysis of Required Finding.*** The proposed use is located within 500 feet of other off-sale outlets. The outlets, however, are located in different census tracts and some of the outlets sell alcoholic beverages in conjunction with grocery stores. Given that this area is at the intersection of four census tracts, and is a significant commercial node in which the applicant premises are located, it supports a very large area population; however, the ratio of off-sale retail licenses to population in census tract 5033.15 does not exceed the ratio of off-sale retail licenses to population in the county. The intersection of South White Road and Aborn Road is the major commercial node in the Evergreen area and approving additional off-sale outlet will not be detrimental to public health, safety or general welfare. Retail uses are clustered at this

intersection, and are well separated from residential uses. The public safety officer's report indicates that the proposed site is not located in a high crime or over concentrated area.

3. For such a use at a location closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, childcare center, public park, social service agency, residential care facility, residential service facility and/or school use.

***Analysis of Required Finding.*** The proposed use is not located within 500 feet of a childcare center, a social service agency, a residential care facility, a residential service facility, a secondary school or a college or university. The project site is not located within 150 feet of residentially zoned properties.

### **Required Findings under the Zoning Code for all Conditional Use Permits**

To approve a Conditional Use Permit, the Planning Commission must also make the following findings applicable to all CUPs. They are as follows:

1. The proposed use at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility of value of the property of other persons located within the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare.

Per the attached memo from the Police Department, the arrest rate for the Police Beat where the subject site is located is not more than 20% higher than the City average and thus the location is not considered unduly concentrated. The memo states that the ratio of off-sale retail licenses to population in the census tract does not exceed the ratio of off-sale retail to population in the county in which the applicant premises are located. The Police are neutral to the issuance of a new off-sale establishment.

The site is not located in a high crime area. The location of the site is in a busy commercial/retail hub that acts as a central node for Evergreen area. In addition, the use is not in close proximity to sensitive receptors. Although the proposal is located within 1,000 feet of six (6) other off-sale outlets, this is to be expected, because the location of the site is in a busy area-serving commercial area.

### **Conclusion**

Based on the above analysis, staff believes that the specific findings related to off-sale of alcohol for approval of a Conditional Use Permit discussed above can be made for the proposed use. The staff recommendation is based on the fact that the subject site is not located in a high crime area, and is located in the midst of busy commercial/ retail intersection and that the ratio of licenses to population in the census tract does not exceed the ratio in the county. Staff, therefore, recommends that the Planning Commission approve the subject Conditional Use Permit.

## **PUBLIC OUTREACH**

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the Planning Commission agenda, on the City's website. Staff has been available to discuss the proposal with members of the public.

An applicant-sponsored community meeting was held on June 26, 2007. Three members of the public attended the meeting. They were not opposed to the project, but did not want the retail be open past midnight. The applicant is not proposing to operate past midnight. A Council office representative was also present.

## **RECOMMENDATION**

Planning staff recommends approval of the requested Conditional Use Permit and with the facts and findings included in the attached draft resolution.

### Attachments:

Draft Resolution

Location Maps

Police Department Memorandum

## **RESOLUTION NO.**

A Conditional Use Permit approving a request to allow the off-sale of alcoholic beverages at a gas station with car wash and 1,650 square feet new convenience store on 0.63 gross acre site on the northwest corner of South White and Aborn Road (3295 S. White Road), San José.

### **FILE NO. CP07-019**

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, a Conditional Use Permit, Permit Application No. CP07-019 was filed to allow the off-sale of alcoholic beverages on that certain real property (hereinafter referred to as “subject property”), situate in the CN Neighborhood Commercial Zoning District, located on the northwest corner of South White and Aborn Roads, (3295 South White Road), San José, California; and

WHEREAS, the subject property is all that real property described in Exhibit “A”, which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting this matter; and

WHEREAS, at said hearing, this Planning Commission received and considered the reports and recommendation of the staff; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, “Site Improvements, Vikram Singh, 76,” dated March 9, 2007. Said plan is on file in the Department of Planning and is available for inspection by anyone interested therein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission; and

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Neighborhood Community/ Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is currently zoned CN Commercial Neighborhood.

3. The site is 0.63 gross acres in size.
4. The applicant is requesting a Conditional Use Permit (CUP) to allow the off-sale of alcohol at an existing gas station with a new car wash and a 1,650 square foot retail space on the northwest corner of South White Road and Aborn Road (3295 Monterey Road).
5. The areas surrounding the site are designated CP Commercial Pedestrian, CN Neighborhood Commercial and A(PD) Planned Development zoning districts. The subject structure is currently surrounded by commercial uses on all sides.
6. Per Table 20-140 of the San José Municipal Code, a Conditional Use Permit is required for off-sale of alcoholic beverages in the CN Commercial Neighborhood Zoning District.
7. The Police Department, has submitted written correspondence indicating that they are neutral to the proposed off-sale of alcohol beverages.
8. The premises are not currently located in a Strong Neighborhood Initiative area or a Neighborhood Revitalization area.
9. The crime statistics are not over the 20 percent crime index.
10. There are a total of three off-sale licenses in the census tract.
11. There are a total of six off-sale licenses within 1,000 feet radius of the proposed use.
12. The premises are not located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility or within one hundred fifty feet of an existing residence.
13. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was found to be exempt from Environmental review.
14. The applicant shall be limited to use 15 percent (15%) of the floor area of the retail store for display of alcoholic beverages.
15. The project site is not located within 150 feet of residentially zoned property.
16. The proposed use does not include late night operation. The retail sales of beer and wine (Type 20) is to be in conjunction with a convenience store at a gas station.
17. The convenience store shall operate between the hours of 6:00 a.m. to 12:00 midnight.
18. This Conditional Use Permit is approved in conjunction with a previously approved Conditional Use Permit (CP05-057).

## **FINDINGS**

The Planning Commission finds that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project conforms to the San José Zoning Ordinance.
3. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location. There are four (4) other off-sale outlets within five hundred feet and six (6) existing business located within a one

thousand (1,000) foot radius of the proposed use that provides alcoholic beverages for off-site consumption.

4. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, that the resulting excess concentration of such uses will not:
  - 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 area; or
  - c. Be detrimental to public health, safety or general welfare.
5. The proposed use is located within 500 feet of other off-sale outlets, the outlets are located in different census tracts and some of the outlets sell alcoholic beverages in conjunction with grocery stores.
6. For such a use at a location closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, childcare center, public park, social service agency, residential care facility, residential service facility and/or school use. The proposed use is not located within 500 feet of a childcare center, a social service agency, a residential care facility, a residential service facility, a secondary school or a college or university. The project site not located within 150 feet of residentially zoned properties.
7. The proposed project is in compliance with the California Environmental Quality Act.

## CONDITIONS

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. **Recordation.** 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 this Resolution has been recorded with the County Recorder.
3. **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.

4. **Conformance with Plans.** The use development shall conform to approved plans entitled, “Site Improvements, Vikram Singh 76” dated March 9, 2007 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. **Previous Conditional Use Permit.** File No. CP05-057 is still in full force and effect.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
7. **Hours of Operation.** The retail store shall operate between the hours of 6:00 a.m. to 12 midnight.
8. **Operations Plan.** Loitering is prohibited on or around the premises or the area under the control of the applicant licensee(s). No alcoholic beverages shall be consumed on any property adjacent to the premises over which the project developer/applicant has control. The project developer/applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.
9. **Floor Area.** The maximum floor area devoted to the display of alcohol beverages shall be limited to 15% of the floor area of the retail space.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
11. **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.
12. **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.

In accordance with the findings set forth above, a Conditional Use permit to use the subject property for said purpose specified above is hereby approved.

**APPROVED** and issued this **12<sup>th</sup> day of September 2007** by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Chairperson

ATTEST:

Joseph Horwedel, Secretary

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Deputy

#### NOTICE TO PARTIES

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*