

RESOLUTION NO. 10-016

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Planned Development Permit to use certain real property described herein for the purpose of allowing demolition an existing commercial building and allowing construction of a new 17,000 pad building for retail/commercial uses, reconfiguration of 13,090 square feet of previously approved in-line retail space, and allow the off-sale of alcohol located at the northwest corner of Hillsdale and Meridian Avenues on a 8.96 gross acre site.

FILE NO. PD09-023

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, on June 30, 2009, an application (File No. PD09-023) was filed for a Planned Development Permit Amendment for the purpose of allowing demolition an existing commercial building and allowing construction of a new 17,000 pad building for retail/commercial uses, reconfiguration of 13,090 square feet of previously approved in-line retail space, and allow the off-sale of alcohol on a 8.96 gross acre site on that certain real property (hereinafter referred to as "subject property"), situate in the A(PD) Planned Development Zoning District, located at the northeast corner of Hillsdale Avenue and Meridian Avenue in the Hacienda Gardens Shopping Center, San José, 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, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

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

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Specific Development Plan- Hacienda Gardens- Retail Shopping Center", dated January 13, 2010. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested

herein, 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;

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:

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

1. The proposed project would allow demolition of an existing commercial building and allow the construction of a new 17,000 pad building for retail/commercial uses, minor reconfiguration of 13,090 square feet of previously approved in-line retail space, and allow the off-sale of alcohol on an 8.96 gross acre site.
2. The project proposes a drive-through pharmacy for the new pad building.
3. The subject pad building is the largest single new construction element of the shopping center.
4. The subject site is part of a Planned Development Zoning that includes encompasses a larger shopping center with over 100,000 square feet of planned retail and commercial uses referred to as the Hacienda Gardens Shopping Center. This same Planned Development Zoning also includes 2.33 acres of contiguous area that was recently the subject of an approved General Plan Amendment (File GP09-T-04) to change the land use designation from High Density Residential (12-25 DU/AC) to Very High Density Residential (25-50 DU/AC) more specifically identified as Mixed Use #13 by San Jose's 2020 General Plan.
5. Concerns were raised at public community meetings and/or hearings for the above noted General Plan Amendment and subject Planned Development Permit about traffic congestion on Foxworthy Avenue and the lack of a cross access with the recently approved 4,100 square foot retail building at the southwest corner of Foxworthy and Meridian Avenues which is under different ownership.
6. The Commercial Design Guidelines recommend that the parking lots of contiguous commercial uses be designed to facilitate cross access with one another to minimize operational traffic impacts on the adjoining public streets.
7. The applicant has indicated an objection to providing cross access with the adjoining commercial parking.
8. The primary area of the subject site where new construction is proposed is approximately 600 feet away from the adjoining commercial property.
9. Based on memorandum issued by the City's Public Works Department, it was determined that there would be some added convenience to shoppers of the retail center if cross access was provided which would enable better on-site circulation between properties that could slightly reduce the number of vehicles on the adjacent congested streets. The elimination of a driveway, through the creation of a shared driveway would improve pedestrian safety. It was not, however, indicated that the lack of provision for cross access would specifically result in a vehicular safety impact as a result of the proximate relationship of Meridian Avenue curb cuts for the project site and adjacent proposed retail site next to the subject shopping center.

10. There is currently a Rite Aid located within the same shopping center that will re-locate to the new proposed building, bringing its existing ABC license. No additional licenses for the off-sale of alcohol will be added to the site. The Rite Aid may also locate into an interim location on the site while their new building is under construction.
11. The project site is located within Census Tract 5029.02
12. The project site is not located within an area of high crime, but the area does have an over-concentration of existing off-sale liquor licenses.
13. The project is simply proposing to relocate an existing off-sale of alcohol license from another tenant space within the same shopping center, resulting in no increase of alcohol sales establishments on the site or in the same census tract.

FINDINGS

1. The Planned Development Permit, as issued, furthers the policies of the General Plan in that the zoning for the property is consistent with the General Plan Land Use designation of Neighborhood/Community Commercial as identified in Mixed Use #13.
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 General Development Plan.
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 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.
 - a. The proposed number and size of parking spaces complies with the requirements of the approved Planned Development Zoning.
 - f. Substantial landscaping will be added to the site and an adequate automatic irrigation system will be provided to support this landscaping.
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 Mitigated Negative Declaration adopted on October 15, 2002 for the previously approved PD Zoning (File No. PDC02-053) The major environmental issues addressed were air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, noise, and transportation/traffic. The Mitigated Negative Declaration included appropriate mitigation to reduce these potential environmental impacts to less than significant levels.
 - 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. The Planning Director has considered all of the following criteria in evaluating the proposed demolition.
- a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
 - b. The failure to approve the permit would jeopardize public health, safety or welfare.
 - c. The approval of the permit should maintain the supply of commercial space in the City of San José
 - d. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible.
 - e. Rehabilitation or reuse of the existing building would not be feasible.
 - f. The approval of the demolition of the building should facilitate a project which is compatible with the surrounding neighborhood.
 - g. The demolition of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.
6. The benefits of permitting the demolition, removal or relocating of the subject structures outweigh the impacts of the demolition, removal or relocation.
7. Pursuant to section 20.80.900 of the Zoning Ordinance, criteria for approval of facilities engaging in the off-sale of alcoholic beverages, the proposed permit is found to conform in that:
- a. The proposed number of off-sale establishments for approval under this permit are the same as for the existing uses that were legally permitted prior to approval of the subject permit.
 - b. There would be no increase in the number of off-sale establishments.
 - c. The specific findings in the above noted in section 20.80.900 of the Zoning Ordinance are not applicable since there is not an additional off-sale establishment proposed on this site or within the census tract.

APPROVED SUBJECT TO THE FOLLOWING 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. **Permit Expiration.** This Planned Development Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, the construction of buildings has not commenced, pursuant to and in accordance with the provision of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. 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.
3. **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.
4. **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.
5. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a Demolition Permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.
6. **Conformance with Plans.** Construction and development shall conform to approved plans entitled, "Specific Development Plan- Hacienda Gardens- Retail Shopping Center", dated January 13, 2010, 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).
7. **Applicability to Other Approved Permits.** Unless other noted in this permit, all conditions of the master Planned Development Permit (File PD03-038) shall remain in full force and effect.
8. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.

9. **Proposed Drive Through Use.** The Drive-through use for the subject pad building shall be limited to a pharmacy use only. Any modifications to said use shall require a Planned Development Permit or Amendment. The drive-through use shall be limited to operating hours between 7:00 a.m. and 10:00 p.m.
10. **Off-Sale of Alcohol.** This project includes the off-sale of alcohol within the new 17,000 square foot pad building as part of the relocation of Rite Aid which already is allowed for such a use. This permit also allows Rite Aid to relocate its use, including the off-sale of alcohol, into a temporary location within the same shopping center while the new building is under construction. The sale of alcoholic beverages shall be limited to 5% of the total floor area.
11. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
 - a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 - b. **Transportation:** Contribute \$10,000 for post-project traffic evaluation as required per zoning approval (PDC02-053).
 - c. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iii. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

- iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating the all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
 - e. **Flood: Zone D** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D.
 - f. **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.
 - g. **Easements:** Vacate existing PSE, EAE and IEE in conflict with the proposed Rite Aid structure prior to Public Works Clearance for Building Permit.
 - h. **Street Improvements:**
 - i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - ii. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontages.
 - iii. Relocate existing bus stop and construct new PCC bus pad to the satisfaction of the Director of Public Works.
 - iv. All proposed driveways shall be 26' wide and constructed per City standards.
 - v. All driveways along Meridian Avenue shall be restricted to right turns only except for the signalized entrance at Meridian Avenue and Lama Way.
 - vi. Construct City standard wheel chair ramps with detectable warnings at project corners.
 - vii. Install pan tilt zoom camera on the traffic signal at Hillsdale and Meridian Avenue.
 - viii. 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. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - j. **Street Trees:** 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. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings.
12. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
13. **Materials.** All building and materials are to be those specified on the approved plan set.

14. **Loading Activities.** All loading activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
15. **No Outside Storage.** No outside storage is permitted for the project except in designated enclosures. The trash enclosure doors shall remain closed except while in use. No outdoor storage is permitted within the loading area.
16. **Overflow Parking.** Pursuant to PD03-038, the commercial parking areas shall be made available as overflow parking by residents and guests of the future adjoining residential units on Yucca Avenue that are part of Mixed Use #13.

ADOPTED and issued this **9th day of June 2010**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson

ATTEST:

Joseph Horwedel, Secretary

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.