

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.:** CP12-036 & ABC12-010

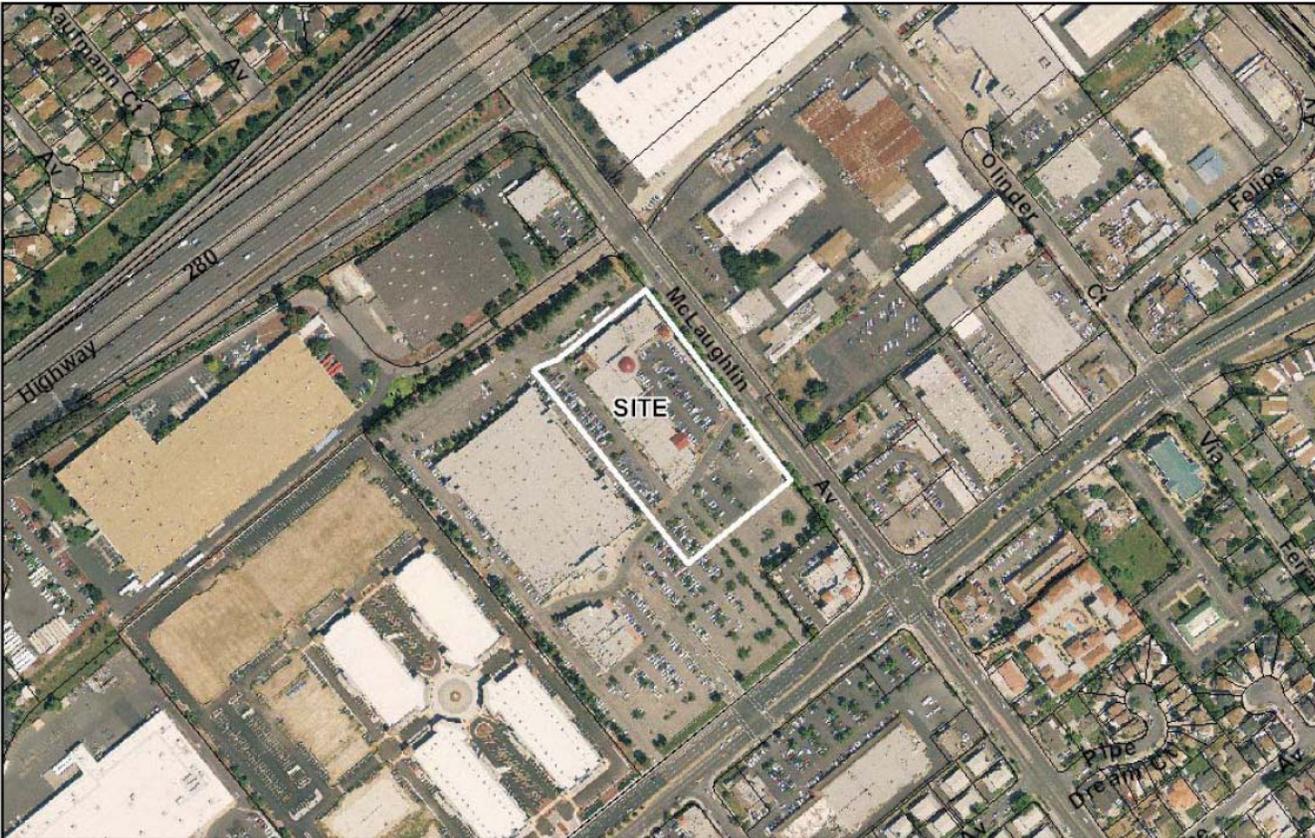
**Submitted:** September 7, 2012

**PROJECT DESCRIPTION:** Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol at a full-service grocery store (Maxim Market) in an existing commercial building (formerly occupied by another grocery store) in the CN Commercial Neighborhood zoning district on an approximately 4.62 gross acre site.

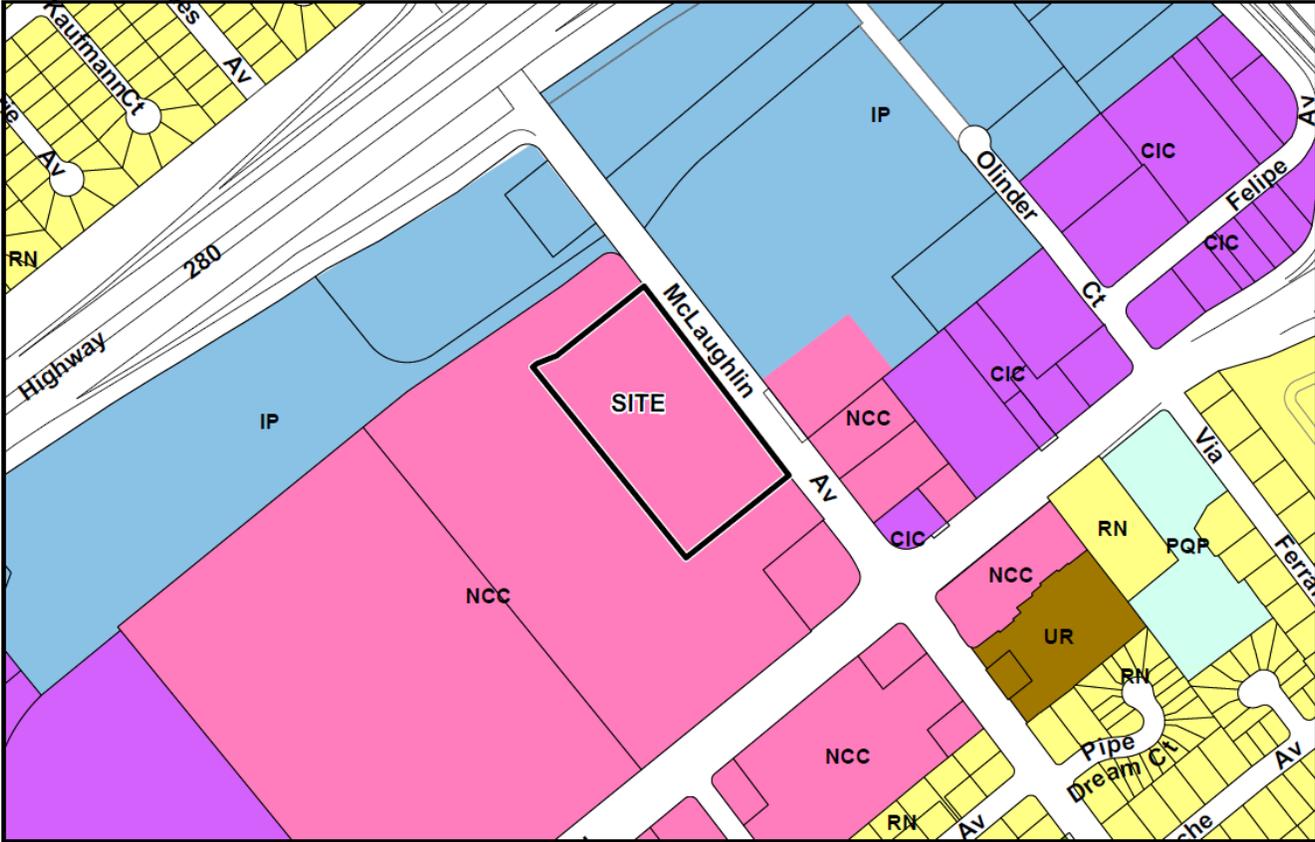
**LOCATION:** West side of McLaughlin Avenue, approximately 600 feet northerly of Story Road (955 McLaughlin Avenue).

Existing Zoning	CN – Commercial Neighborhood
Proposed Zoning	No change
General Plan	Neighborhood/Community Commercial
Council District	7
Annexation Date	McLaughlin No.3 July 31, 1959
Historic Resource	N/A
Redevelopment Area	N/A
Specific Plan	N/A

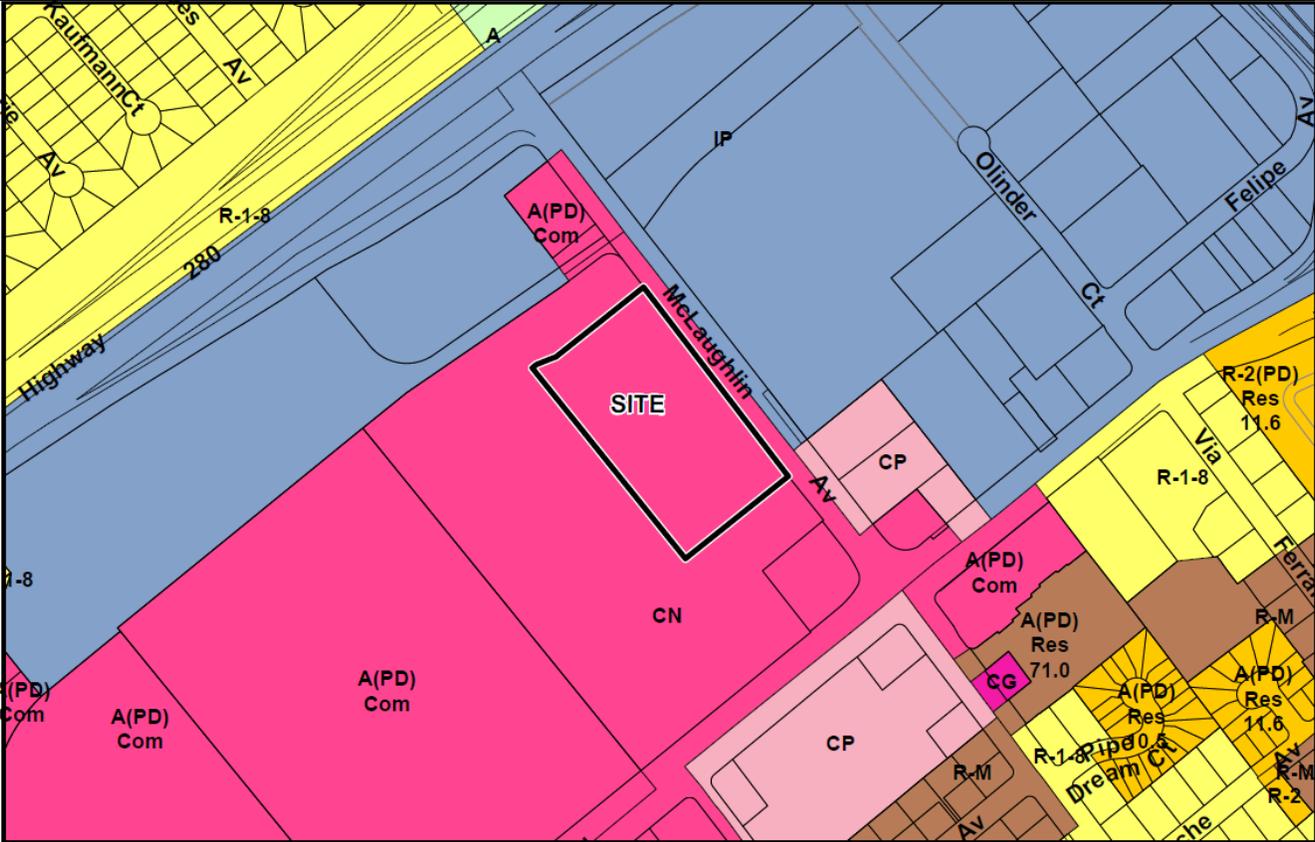
**AERIAL MAP**



### GENERAL PLAN



### ZONING



## **RECOMMENDATION**

Planning staff recommends the Planning Commission find that the project is in conformance with the California Environmental Quality Act (CEQA) and approve the proposed Conditional Use Permit and Determination of Public Convenience or Necessity as conditioned by staff for the following reasons:

1. The project conforms to the General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial, in that a grocery store with off-sale is in conformance with this designation.
2. The proposed use at the location requested will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area and will not impair the utility or value of the property of other persons located within the vicinity of the site.
3. The proposed project conforms to the requirements of CEQA.
4. The addition the off-sale of alcohol to a full service grocery store would provide for a more complete shopping experience. Since no more than five percent (5%) of the total sales floor space would be dedicated to the sale of alcoholic beverages, the proposed use will be a minor portion of the business.

## **BACKGROUND AND PROJECT DESCRIPTION**

On September 7, 2012, the applicant, Daniel J. Kramer, on behalf of Lucky Best Inc., applied for a Conditional Use Permit and Determination of Public Convenience or Necessity to allow for the full range of off-sale of alcohol at a full-service grocery store which will occupy 21,600 square feet of a 44,369 square-foot building at a neighborhood shopping center. The site is approximately 4.62 gross acres. This tenant space was formally occupied by a grocery store. Currently the applicant is proposing that 68 square feet, less than one percent (1%) of the grocery store be utilized for the off-sale of alcohol but would like the option to expand the space for the off-sale of alcohol to five percent (5%) should the market dictate.

The Zoning Ordinance requires a Conditional Use Permit for the off-sale of alcohol. Per data from the Department of Alcoholic Beverage Control, the site is located in a census tract that currently does not exceed the ratio of off-sale retail licenses to population but, if this license were to be approved, then it would be over concentrated by one (1) establishment. Additionally, City of San José data identifies the site as located in an area with a crime index greater than 20 percent (20%) of the City average. For this reason a Determination of Public Convenience or Necessity (PCN) is required for the off-sale of alcohol uses on the subject site.

There are industrial uses to the north and northeast of the proposed location and commercial uses to the south, west, and southeast. The closest residentially zoned property is located 610 feet to the southeast. There is a major intersection that acts as a buffer between the closest residentially zoned property and the site.

## **ANALYSIS**

In order for the supermarket to be able to sell alcoholic beverages at the subject location for off-site consumption, the applicant needs a Conditional Use Permit and a Determination of Public Convenience or Necessity. The primary issues analyzed with this proposal include: 1) conformance with the Zoning Ordinance findings for off-sale of alcohol, 2) conformance with the Zoning

Ordinance findings for Conditional Use Permits, 3) requirements for a Determination of Public Convenience or Necessity, 4) conformance with the San José 2040 General Plan, and 5) conformance with the requirements of the California Environmental Quality Act (CEQA).

### Zoning Ordinance Requirements for the 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 three (3) 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.* There are no other existing businesses located within 500 feet of the proposed use that have a license to provide alcoholic beverages for off-site consumption. If this license were to be approved, the proposed use, together with existing facilities, would result in four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location. Therefore, the addition of this proposed use would not exceed the threshold of off-sale liquor licenses in the direct geographic proximity to the proposed site thereby allowing the Planning Commission to make this required finding for approval of a Conditional Use Permit for the off-sale of alcohol.

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.* Since the proposed use will not result in more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius of the proposed location and the neutral position of the Police regarding the off-sale of alcohol at this site (see attached memo), suggests that the resulting concentration of such uses in the area will not adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area, or impair the utility or value of property of other persons located in the vicinity of the area, or be detrimental to public health, safety or general welfare. The proposed off-sale use will be incidental and a minor portion of an existing full-service grocery store that can support public health and welfare. Therefore, the Planning Commission can make this required finding for approval of a Conditional Use Permit for off-sale of alcohol.

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, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis of Required Finding.* The subject use is not located 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 and is not located within 150 feet of a residentially zoned property. The closest residentially zoned property is 610 feet southeast of the site with a major intersection acting as a significant buffer between the proposed use and the closest residentially zoned property. Given these facts, the finding can be made that the building in which the proposed use is to be located is situated and oriented in such a manner that the use would not adversely affect residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school uses.

Based on the above analysis of the three (3) required findings for off-sale of alcohol, an additional off-sale of alcohol establishment would not negatively effect the existing concentration of off-sale liquor establishments in the area. Furthermore, the addition of an off-sale establishment as proposed would not 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 due to the incidental nature of the off-sale of alcohol to a full service grocery store. Finally, the subject site is not located within 150 feet of residentially-zoned property and there are significant buffers between the proposed use and surrounding residentially-zoned properties which reduces any potential impact the off-sale of alcohol could have on the residents in the area.

#### Required Findings under the Zoning Ordinance for all Conditional Use Permits/Amendments

To approve a Conditional Use Permit the Planning Commission must make findings that include the following:

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.
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

*Analysis of Required Findings.* The subject use would be part of a full service grocery store at a neighborhood commercial shopping center which is well served by existing infrastructure, fronting

on an arterial public street, with good access to an expressway, and surrounded by commercial uses. The sales area for alcoholic beverages is incidental to the larger sales of food products and would comprise no more than five percent (5%) of the store's net floor area. The Police Department has indicated that they are neutral to this proposal although this site is located in an area of high crime. The proposed use would occupy an existing commercial building with adequate parking, landscaping and trash and loading facilities that was developed consistent with the City's Commercial Design Guidelines. The addition of the off-sale uses would further the City's goals of economic development by contributing to the viability of conveniently located full-service grocery stores in the City of San José, and enhance access to fresh food in proximity to residents and workers in the City.

Based on the above analysis, staff concludes that the above general findings, related to the approval of a Conditional Use Permit, can be made.

#### Finding of Public Convenience or Necessity

As of January 1995, the State of California Legislature implemented AB2897 by amending the Business and Professions Code (Section 23958) to require the Department of Alcohol Beverage Control (ABC) to deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses," unless the City makes a Determination of Public Convenience or Necessity. Undue concentration is defined as follows:

- a) The premises of the proposed license are located in an area that has 20% more reported crimes than the average number of reported crimes for the City as a whole, or
- b) The premises of the proposed license are located in a census tract where the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

Per City of San José data the project site is located within an area of high crime. Per data from ABC, the census tract in which the subject site is located does not currently exceed the ratio of off-sale retail licenses to population in the county. If this license is approved, the area will be over concentrated by one (1). For ABC to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity, (PCN). The analysis of the proposal is based on the required findings identified in Title 6 of the San José Municipal Code.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that the Planning Commission, or the City Council on appeal, may issue a PCN only after first making the four specified factual findings identified below:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

*Analysis of Required Finding:* The proposed use is not located within a Strong Neighborhoods Initiative area. The Police Department did not state that the subject property is located within an area where the proposed use would be detrimental to the public or increase the severity of public nuisance or existing

law enforcement problems.

2. The proposed use would not lead to the grouping of more than four off-sale uses within a 1,000 foot radius from the proposed use.

*Analysis of Required Finding:* If the proposed use were to be approved, there would be a total of four (4) establishments with off-sale liquor licenses within a 1,000 foot radius from the proposed use. The proposed use would not lead to a grouping of more than four (4) off-sale uses within a 1,000 foot radius from the proposed use, thereby, making the use consistent with this required finding.

3. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within 150 feet of a residence.

*Analysis of Required Finding:* The proposed use is not located within 150 feet of a residence.

4. Alcohol sales would not represent a majority of the proposed use.

*Analysis of Required Finding:* No more than five percent (5%) of the net floor area is proposed to be used for alcohol sales; therefore, the off-sale use would clearly represent an incidental component to the overall use and not represent a majority of the overall use.

Given that all of the above factual findings can be made, a finding to support the issuance of a Determination of Public Convenience or Necessity can be made for the off-sale of alcohol and therefore staff is recommending that the Planning Commission approve the proposed Conditional Use Permit and Determination of Public Convenience.

#### General Plan Conformance

The site is designated Neighborhood/Community Commercial on the Envision San José 2040 General Plan Land Use/Transportation Diagram. The intent of the designation is to support a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Uses consistent with this designation typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction.

The proposed use is consistent with the Neighborhood/Community Commercial designation in that commercial uses, such as retail establishments that sell alcohol for off-sale consumption, are uses that can serve the population of the communities in the neighborhood. By providing commercial uses, such as the one proposed in this application, residents have access to retail and services within their own neighborhood giving them the option to choose alternative modes of transportation and generally travel a shorter distance to fulfill their daily shopping needs. Additionally, the proposed use is also consistent with the Envision San José 2040 General Plan's Major Strategy of Design for a Healthful Community by improving access to healthful foods, particularly fresh produce.

Environmental Review (CEQA)

Under the provisions of Section 15301(a) (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project only involves minor interior improvements to the existing retail space. No physical expansion of the building is proposed by this permit application.

CONCLUSION

Based on the above analysis, staff concludes that all the required findings for issuance of a Conditional Use Permit for the full range of off-sale of alcoholic beverages can be made with regard to the proposal. Given the ability to make all the relevant findings, staff recommends that the Planning Commission approve the subject Conditional Use Permit and grant a Determination of Public Convenience or Necessity for the full range of off-sale of alcohol limited to five percent (5%) of the grocery store floor area.

PUBLIC OUTREACH

A community meeting was not held given the off-sale proposal is an incidental component to a large full-service grocery store, and does not involve new building construction. Per the provisions of City Council Policy 6-30: Public Outreach, notices of the public hearing for this project were sent to all property owners and tenants within 500 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report, and staff has been available to discuss the project with members of the public.

Project Manager: Megan Shrubsole Approved by:  Date: 12-3-12

Owner/Applicant	Attachments:
Vi Lu Golden Land Development 2020 Senter Road San Jose, CA 95122  Daniel J. Kramer Haas Najarian LLC 58 Maiden Lane, 2 <sup>nd</sup> Floor San Francisco, CA 94108	Police Memorandum Draft Resolution Plan Set



# Memorandum

**TO:** Aparna Ankola  
Planning Department

**FROM:** Ofc. Christine Zarate #3165  
San Jose Police Vice Unit

**SUBJECT:** Maxim Market  
CP12-036-ABC12-010  
955 McLaughlin Ave.

**DATE:** October 9, 2012

Approved

Date

I have received your request for input regarding Maxim Market, located at 955 McLaughlin Ave. San Jose, Ca. Maxim Market is seeking a Conditional Use Permit for off-sale of alcohol at a full service grocery store. Maxim Market is also seeking a Determination of Public Convenience or Necessity to allow off-sale of alcohol.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or its proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is currently in the Tully/Senter Strong Neighborhood Initiative area.

The 955 McLaughlin Ave. is located in San Jose Police Beat L2. The reported crime statistics as defined by B&P Section 23958.4(c) **are** over the 20% crime index thus the location **is** considered unduly concentrated per B&P Section 23958.4 (a)(1).

### Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
L2 (2011)	224	556	780	Yes
City Average	172	311	483	

Department of Alcohol Beverage Control (ABC) records indicate that 955 McLaughlin Ave is in census tract 5031.05. Pursuant to B&P Section 23958.4 (a)(2), the ratio of off-sale retail licenses population in census tract 5031.05 **currently** does not exceed the ratio of off-sale retail licenses retail licenses to population in the county in which the applicant premises are located. If this license were to be approved then it would be over concentrated by one.

## Authorized and Current ABC Licenses in Census Tract 5035.01

Census Tract	Authorized ABC Licenses as of August 2011		Current ABC Licenses as of August 2012		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5035.01	3	2	16	2	Yes	No

The San Jose Police is **neutral** to the issuance of a Conditional Use Permit and a Determination of Public Convenience or Necessity to allow off-sale of alcohol at a full service grocery store as long as the following conditions are included:

- No sales of malt liquor.
- Beer will be sold in six pack minimum, no single can or bottle sales.
- Hours of operation and alcohol sales shall cease at 10:00pm daily.

If these conditions are included, then the San Jose Police Department has determined that the proposed use would not be detrimental to the public health, safety, or welfare of persons located in the area, or would not increase the severity of existing law enforcement or public nuisance problems in the area.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Christine Zarate #3165  
Administrative Officer  
Special Investigations/Vice

## **RESOLUTION NO.**

A Resolution of the Planning Commission of the City of San José approving a Conditional Use Permit and Granting a Determination of Public Convenience or Necessity to use certain real property described herein for the purpose of allowing the full range of off-sale of alcohol at a full-service grocery store in the CN-Commercial Neighborhood Zoning District, located within an approximately 21,600 square foot tenant space in an existing approximately 44,369 square foot building on an approximately 4.62 gross acre site, located on the west side of McLaughlin Avenue, approximately 600 feet northerly of Story Road (955 McLaughlin Aveune).

### **FILE NO. CP12-036 & ABC12-010**

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 7, 2012, application (File Nos. CP12-036 and ABC12-010) were filed for a Conditional Use Permit and Determination of Public Convenience or Necessity for the purpose of allowing the full range of off-sale of alcohol at a full-service grocery store in the CN-Commercial Neighborhood Zoning District, located within an existing 44,369 square-foot building on an approximately 4.62 gross acre site, located on the west side of McLaughlin Avenue, approximately 600 feet northerly of Story Road (955 McLaughlin Avenue), 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 on November 12, 2012, 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 Site and Floor Plan for the subject property entitled, "McLaughlin Shopping Center" dated July 15, 1996, and said plans are on file in the Department of Planning, Building and Code Enforcement and are available for inspection by anyone interested herein, and said plans are 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, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

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

1. The site is located on the west side of McLaughlin Avenue, approximately 600 feet northerly of Story Road (955 McLaughlin Avenue).
2. The project site has a General Plan land use designation of Neighborhood/Community Commercial. Commercial uses such as the full-service grocery store with proposed off-sale of alcohol are consistent with this land use designation.
3. The subject site is located within the CN Commercial Neighborhood Zoning District.
4. The Zoning Ordinance requires a Conditional Use Permit for the off-sale of alcohol in the CN Commercial Neighborhood Zoning District.
5. A Conditional Use Permit may be issued for the off-sale of alcoholic beverages if the Planning Commission makes the findings required by Title 20 of San José Municipal Code Sections 20.80.900 and 20.100.720.
6. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
7. The site is located at a neighborhood commercial shopping mall that is surrounded by commercial and industrial uses to the east, and industrial uses to the north, and commercial to the west and south.
8. The proposed use is an approximately 21,600-square-foot tenant space within an approximately 44,369 square-foot retail commercial building on an approximately 4.62 gross-acre site.
9. No physical expansion of the previously developed building is proposed.
10. The subject site is located on a site developed with other commercial uses.
11. Access to the site is provided from McLaughlin Avenue and Story Road.
12. The applicant proposes to sell the full range of alcoholic beverages for off-site consumption as a minor part of the overall sales area of the full-service grocery store, not to exceed five percent (5%) of the net floor area; therefore alcohol sales would not represent a majority of the proposed full-service grocery store use.
13. The proposed use will not result in any change in the parking requirements for the site.

14. The subject site is not currently located within a census tract that the State Department of Alcoholic Beverage Control data show is over-concentrated with off-sale of alcohol establishments but, if the proposed license is approved, the census tract will be over-concentrated by one (1) establishment.
15. The subject site is in an area identified by the Police Department with a crime index greater than 20% above the City-wide average.
16. The subject tenant space is not located within five hundred (500) feet of any other retail establishment that sells alcohol for off-site consumption (off-sale of alcohol).
17. Three existing off-sale facilities are located within 1,000 feet of proposed subject use. The proposed use, together with existing facilities, would not result in a total of more than four such establishments within a 1,000-foot radius.
18. The proposed use is not located within five hundred (500) feet of any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university.
19. The proposed use is not within 150 feet of residentially zoned parcels.
20. The applicant has indicated that the retail establishment's hours of operation are 9:00 a.m.-9:00 p.m. and the subject retail establishment can operate 9 a.m. and close at 12 midnight as-of-right.
21. A Determination of Public Convenience or Necessity is necessary pursuant to San Jose Municipal Code, Title 6, because the subject site is located in a census tract that has a higher concentration of both on-sale and off-sale licenses than the countywide average and because it is located in a high-crime area according to the San Jose Police Department.

Based on the above stated facts, the Planning Commission concludes and finds that with respect to the Determination of Public Convenience or Necessity that:

1. The proposed use is not located within a Strong Neighborhoods Initiative area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the Police Department has determined that the proposed use would be detrimental to the public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area; and
2. The proposed use would not lead to the grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use; and
3. The proposed use would not be located within five hundred feet of a school, day care center, public park, social services agency, or residential care or service facility. The proposed use is not within one hundred fifty feet of an existing residence and is therefore in conformance with the requirements of Title 6 of the San Jose Municipal Code.
4. Alcohol sales would not represent a majority of the proposed use.

Further the Planning Commission is able to grant a Determination of Public Convenience or Necessity for the subject liquor license in that:

- a. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety; or
- b. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

The Planning Commission finds, based on the analysis of the above facts in regard to the Zoning Ordinance requirement for off-sale of alcohol that:

1. This use is not closer than five hundred (500) feet from another use involving the off-sale of alcoholic beverages, situate either within or outside the City, and 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. Therefore the three sub-findings below specific to the off-sale of alcohol are not applicable therefore not required to be made.
  - 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.
2. The use is not located closer than five hundred (500) feet any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university.
3. The use is not closer than one hundred fifty (150) feet from residentially-zoned property and the publicly accessible entrances to the subject site are more than 150 feet from any residences. Therefore, the buildings in which the proposed use is to be located are situated and oriented in such a manner that it would not adversely affect such residential use.

Further, based on an analysis of the above facts and findings, the Planning Commission concludes and finds that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is compatible with surrounding land uses.

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

1. The proposed uses 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 or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service for facilities as are requested.

In accordance with the findings set forth above, a Conditional Use Permit and Determination of Public Convenience or Necessity for off-sale of alcohol to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### **CONDITIONS PRECEDENT**

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 all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the permittee; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee 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.

## CONCURRENT CONDITIONS

2. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit pursuant to Title 20 of the San Jose Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Use Authorization.** This Conditional Use Permit authorizes the sale of the full range off-sale of alcoholic beverages, to be implemented only in conjunction with a full-service grocery store on the property subject to the terms of this permit as follows:
  - a. The sale and display of alcohol shall be limited to no more than five percent (5%) of the net floor area of the full-service grocery store.
4. **Permittee Responsibility.** The permittee shall ensure that the use authorized by this Permit is implemented in conformance with all of the provisions of this Permit.
5. **Conformance with Plans.** The use of this property shall conform to approved plans entitled, "McLaughlin Shopping Center" dated July 15, 1996, on file with the Department of Planning, Building and Code Enforcement.
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, as defined above.
7. **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.
8. **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.
9. **Hours of Operation:** The grocery store, with incidental sale of alcoholic beverages for off-site consumption, is allowed to operate by right between the hours of 9:00 a.m. and 12 midnight, seven days a week. In order to operate after 12 midnight, another Conditional Use Permit is required.
10. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.

11. **Lighting.** This permit allows no new exterior lighting.
12. **Waste Discharge.** The proposed facility shall conform to the City of San José industrial waste discharge regulations. Any non-domestic wastewater discharge into the sanitary sewer system shall require Source Control Staff to review and approve the final plans. Contact Environmental Engineering Staff at (408) 945-3000 with any questions.
13. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Conditional Use Permit incorporated by reference in this Permit in accordance with the San José Municipal Code.
14. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
15. **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.
16. **Compliance with Other Permits.** The developer shall comply with all terms and conditions of the previously approved permits on the site.
17. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The applicant shall maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.
18. **Sign Approval.** No signs approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
19. **Store Operator Point of Contact.** Store operator shall post in a visible location on the store premises a phone number, and other applicable contact information for the public to address questions and comments regarding management and maintenance of the subject store and store frontage.
20. **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, Chapter 20.100, 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.

Adopted and issued this 12<sup>th</sup> day of December, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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EDESA BIT-BADAL  
Chairperson

ATTEST:

---

JOSEPH HORWEDEL  
Director of Planning, Building & Code Enforcement  
Planning Commission Secretary

**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.

**EXHIBIT A**

**LEGAL DESCRIPTION**

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

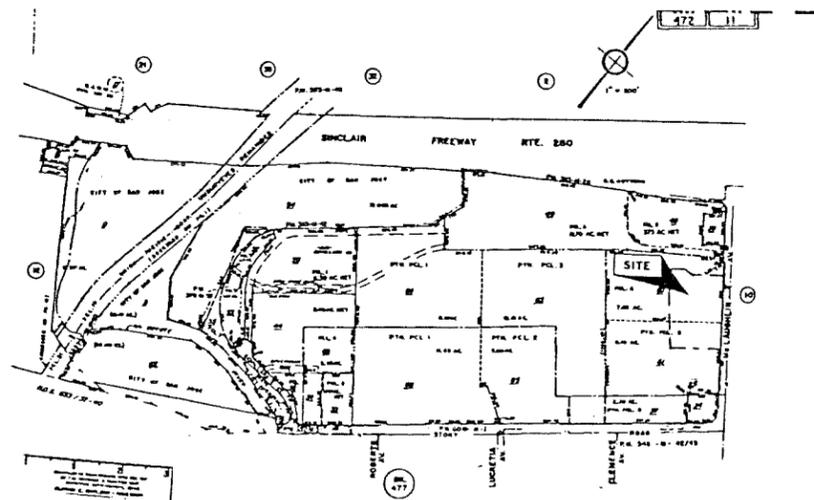
Parcel One:

Parcel 2, as shown on Parcel Map filed June 1, 1995 in Book 666 of Maps, at Pages 18 and 19, Santa Clara County Records.

Parcel Two:

An easement for the purpose of ingress and egress over Parcel 1, designated as "I.E.E.", as shown upon that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on June 1, 1995 in Book 666 of Maps, at Pages 18 and 19.

APN: 472-11-068



**LIGHT FIXTURE SCHEDULE:**

- ① GARGO FORM TEN LOW PRESSURE SODIUM LIGHT FIXTURE (1 FIXTURE) ON +18 FEET CRUCIFORM BLACK ANODIZED FINISH POLE ON 2 FEET CONCRETE PEDESTAL
- ② GARGO FORM TEN LOW PRESSURE SODIUM LIGHT FIXTURE (2 FIXTURES) ON +18 FEET CRUCIFORM BLACK ANODIZED FINISH POLE ON 2 FEET CONCRETE PEDESTAL
- ③ HUBBELL PERMAULTR 150W HPS P/L-050S-118; BRONZE FINISH WALL MOUNTED AT +15 FEET A.F.F. AT 60"-0" O.C.; REFER TO ELEVATION FOR EXACT LOCATIONS
- ④ SOFFIT LIGHTS: LITHONIA GOTHAM H.T.D. DOWN LIGHT WITH HIGH PRESSURE SODIUM LAMP, 9" ROUND WITH LENCED (L SERIES), 9'-0" O.C. TYPICAL

PARKING LOT TO HAVE 3-5 FT. CANDLE MIN. ILLUMINANCE.

**PROJECT ANALYSIS:**

LOT SIZE : 201,247 SQ. FT.  
4.62 ACRES

ZONING C2 COMMERCIAL

BUILDING SIZE :  
BUILDING : 44,380 SQ. FT.  
TOTAL AREA : 44,380 SQ. FT.  
COVERAGE : 21.96%

LANDSCAPE AREA :  
TOTAL : 28,500 SQ. FT.  
COVERAGE : 14.16%

PAVED AREA (INCLUDE DRIVE WAY):  
TOTAL : 128,367 SQ. FT.  
COVERAGE : 63.88%

PROPOSED USE:  
RESTAURANT : 8,000 SQ. FT.  
RETAIL : 36,198 SQ. FT.

PARKING REQUIRED:  
RESTAURANT (DINNING = 50% OF TOTAL)  
(DINNING AREA / 40) = 100  
RETAIL • 0.85 (1/200): 36,198 • 0.85 / 200 = 154  
TOTAL REQUIRED = 254

PARKING PROVIDED:  
EXISTING PARKING STALL 170  
NEW PARKING STALL 112  
TOTAL PROVIDED: 282

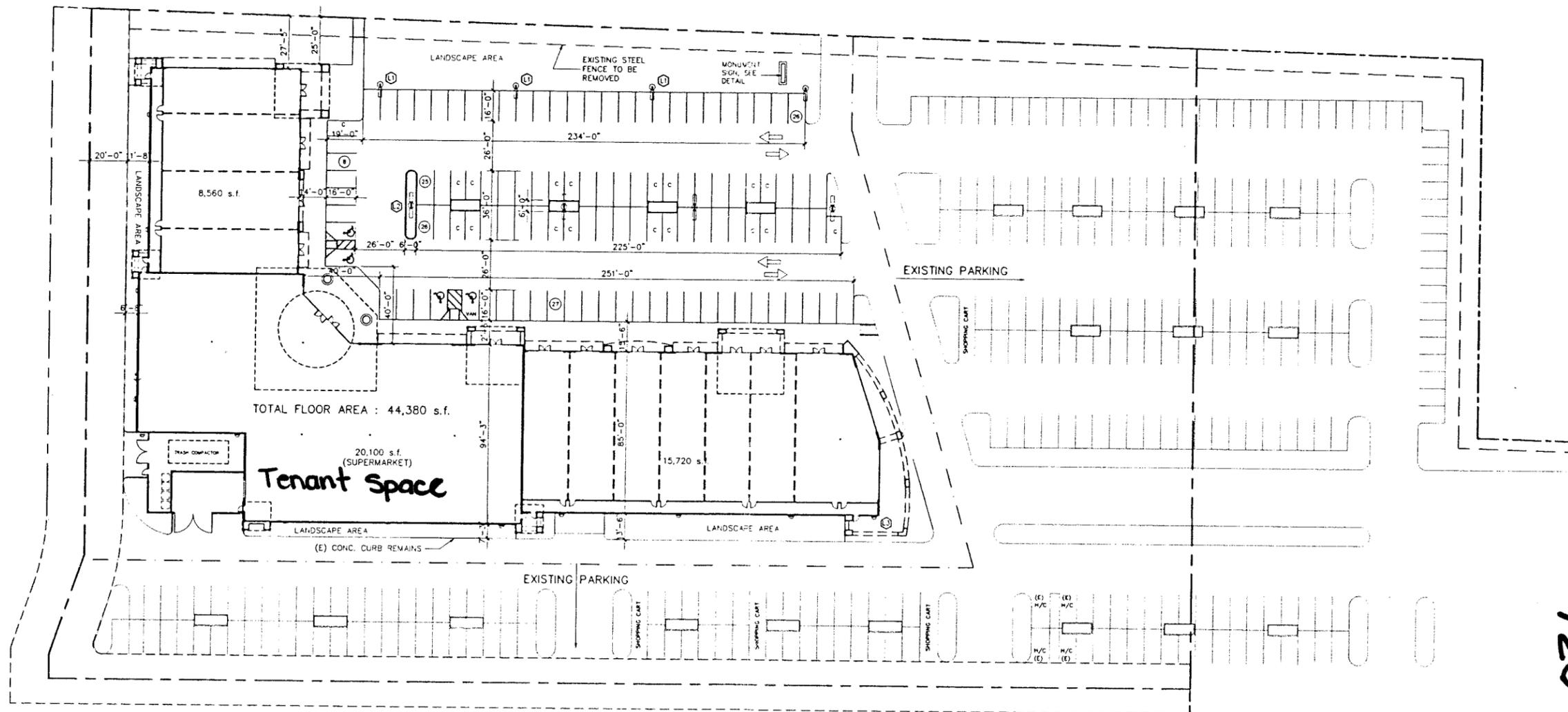
FLOOR AREA / CAR :  
44,950 / 283 = 158.8 : 1

HANDICAPED PARKING PROVIDED:  
H/C PARKING - VAN 1  
H/C PARKING 3  
TOTAL (N) PROVIDED: 4  
EXISTING H/C PARKING 4  
TOTAL PROVIDED: 8

TOTAL PARKING (W/ ADJACENT SITE) ANALYSIS:

	FLOOR AREA	REQ'D	PROVIDED	RATIO
(E) PRICE CLUB	122,278 s.f.	612	630	1/195
(N) SHOPPING CENTER	44,198 s.f.	254	282	1/156
TOTAL	166,416 s.f.	866	912	1/182.5

**Mc LAUGHLIN AVENUE**



STORY ROAD

**McLAUGHLIN SHOPPING CENTER**  
**CORNER OF McLAUGHLIN AND STORY**  
FOR: GOLDEN LAND DEVELOPMENT CO., SAN JOSE, CA

SY-CHENG TSAI C-24234  
DATE: JULY/15/96  
JOB NO: C960301

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SHEET NO. **A-2**  
DRAWN BY TSC

CP12-036

**SITE PLAN**  
SCALE: 1" = 30'-0"



**T SQUARE CONSULTING GROUP**  
2081 BERING DR UNIT #S (408) 436-1289  
SAN JOSE, CA 95131 FAX (408) 436-0335

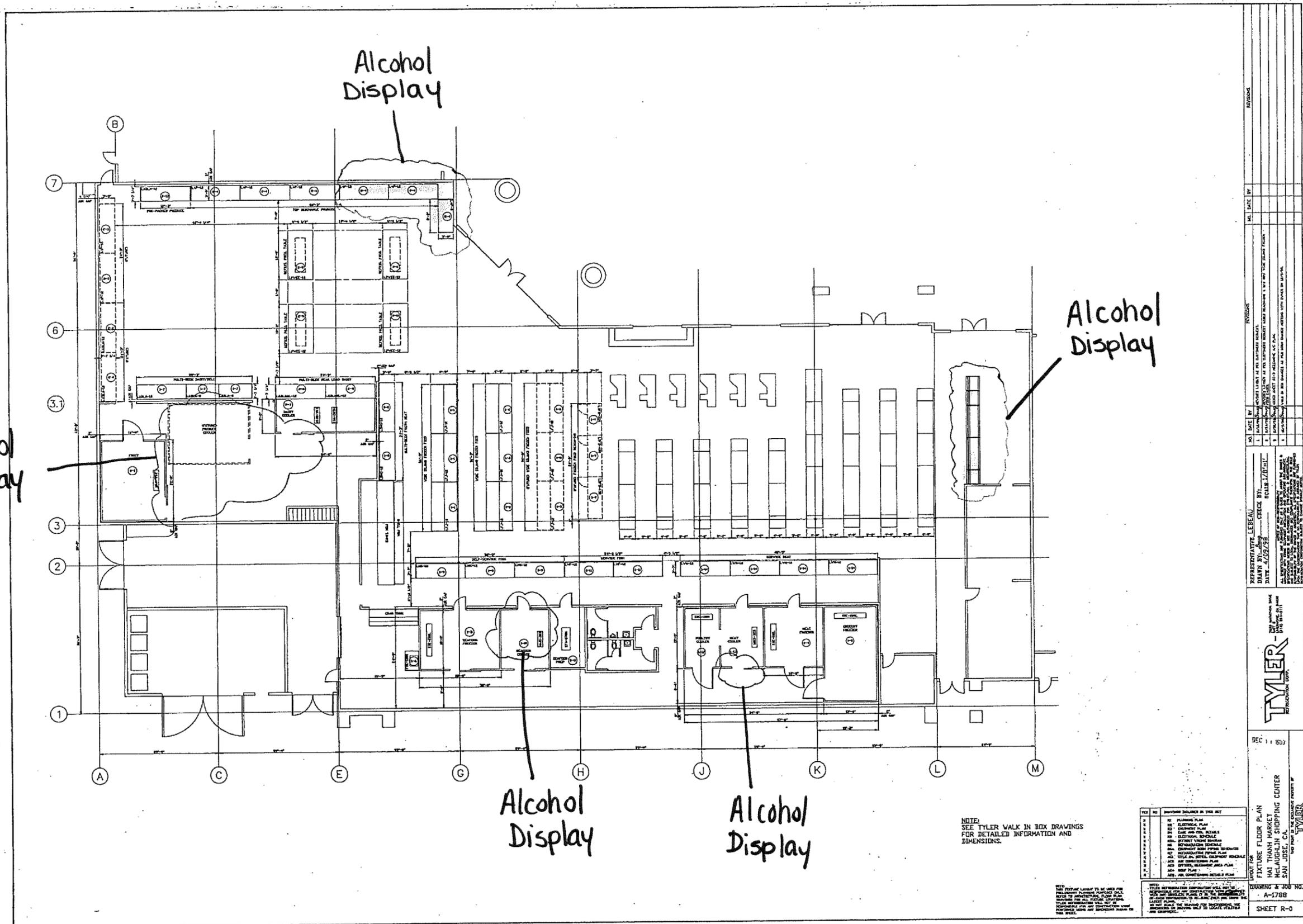
Alcohol Display

Alcohol Display

Alcohol Display

Alcohol Display

Alcohol Display



NOTE:  
SEE TYLER WALK IN BOX DRAWINGS  
FOR DETAILED INFORMATION AND  
DIMENSIONS.

NO.	DESCRIPTION	DATE
1	PLANNING PLAN	
2	ELECTRICAL PLAN	
3	MECHANICAL PLAN	
4	MECHANICAL SCHEDULE	
5	MECHANICAL SYMBOLS	
6	MECHANICAL LEGEND	
7	MECHANICAL SPECIFICATIONS	
8	MECHANICAL CONTRACT DOCUMENTS	
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TYLER  
ARCHITECTURE  
INCORPORATED  
SAN JOSE, CALIF. 95128  
TEL: (415) 434-1788  
FAX: (415) 434-1789  
WWW.TYLER-ARCH.COM

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PERMANENT LABEL  
CHECK BY  
DATE: 1/22/88

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