

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 12/6/2006 Item:

File Number
CPA03-061-01

Application Type
Conditional Use Permit Amendment

Council District SNI
3 13th Street

Planning Area
Central

Assessor's Parcel Number(s)
467-18-090

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Steven Rosen

Location: Northeast corner of East Santa Clara Street and 7th Street (301 E. Santa Clara Street)

Gross Acreage: 0.22 Net Acreage: 0.22 Net Density: n/a

Existing Zoning: CG-Commercial General Existing Use: Public eating establishment

Proposed Zoning: No change Proposed Use: Public eating establishment with late night use until 3 a.m.

GENERAL PLAN

Completed by: SR

Land Use/Transportation Diagram Designation
General Commercial with Transit Oriented Development Corridor
Overlay

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: SR

North: Martial Arts School , Day Care

RM – Multiple Family Residential

East: Parking Lot

CG – Commercial General

South: Restaurant

CG – Commercial General

West: Public School

CG – Commercial General

ENVIRONMENTAL STATUS

Completed by: SR

Environmental Impact Report found complete
 Negative Declaration
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: SR

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT/DEVELOPER

Charles Borello
T&C Corp
1047 Locust St. San José, CA 95110

OWNER

Charles Huang
995 Rose Avenue
Mountain View, CA 94040

ARCHITECT

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: SR

No Comments.

Other Departments and Agencies

Police Comment Attached

GENERAL CORRESPONDENCE

No Comments

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On January 28, 2004 the Planning Commission approved Conditional Use Permit file no. CP03-061 to allow (1) the operation of the City Bakery and Café restaurant between the hours of midnight and 3:00 a.m., and (2) various exterior modifications to the existing commercial building at the northeast corner of East Santa Clara Street and North 7th Street. On October 28, 2005, the applicant submitted an application for a Conditional Use Permit Amendment to renew the Conditional Use Permit. Since November 30, 1984, the Zoning Ordinance has required that all commercial uses in Commercial Zoning Districts operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit.

The existing building was originally constructed circa 1910; however, significant modifications have been made to the structure since that time. The 2004 approval included changes to the exterior of the structure that, in conformance with the Secretary of the Interior's Standards for Rehabilitation of Historic Structures, reverted the corner element of the structure to the main entryway. All exterior changes approved with CP03-061 have been completed. Currently, the structure is listed as a Structure of Merit on the City of San José Historic Resources Inventory.

The subject restaurant occupies the corner tenant space in an existing building nearest to the intersection of E. Santa Clara and N. 7th Streets. It occupies approximately one-third of the existing structure comprising approximately 44 linear feet along N. 7th Street. A single, separate restaurant occupies the remaining two-thirds of the structure, approximately 93 linear feet along N. 7th Street.

Surrounding land uses include a restaurant within a commercial structure to the south across Santa Clara Street, a parking lot to the east, a martial arts academy and day care to the north, and a public school to the west across 7th Street.

Project Description

The existing restaurant proposes to renew its permit for late night activity between the hours of midnight and 3:00 a.m. The restaurant is currently operating until 1:00 a.m. Sunday to Wednesday and until 3:00 a.m. Thursday to Saturday. It proposes no exterior changes to the structure.

The applicant has an existing Type 41 permit for on-sale beer and wine from the Department of Alcoholic Beverage Control to allow the on-sale consumption of alcoholic beverages as an incidental use to the public eating establishment. The on-sale consumption of alcoholic beverages is an incident to the operation of a public eating establishment pursuant to SJMC 20.200.940.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15303. Under this section, projects qualifying for exemption include those that involve the conversion of existing small structures from one use to another. In this instance, the project qualifies under this exemption in that it proposes to continue the late night use of an existing restaurant.

GENERAL PLAN CONFORMANCE

The proposed late night operation of a restaurant use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that the designation includes both strip commercial areas along major thoroughfares as well as freestanding commercial establishments such as the existing restaurant.

ANALYSIS

The key issues analyzed for the proposed late night use are consistency with *Council Policy 6-27, Evaluation of 24-hour Uses*, parking, impacts from the existing use, and issues from the previous hearing,

Consistency with the Policy for Evaluation of 24-hour Uses

The policy for Evaluation of 24-hour Uses is intended to provide guidelines for the appropriate development of commercial businesses that operate between the hours of 12:00 midnight and 6:00 a.m. Key elements are discussed below.

Area Use Compatibility

The Policy states that “twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area.” As discussed below in the “Use Separation” and “Police Issues” section in more detail, the proposed use should not be detrimental to the nearby residential or other surrounding areas.

Use Separation

The Policy states that generally, 24-hour uses should not be located within 300 feet of residential properties. It continues, however, to state that the separation may be increased or decreased on a case-by-case review of the specific circumstances of the site and proposed use based on intensity of use, location of other buildings and physical features, neighborhood input, or other relevant criteria.

The closest residential property to the subject property is two parcels to the north, approximately 175 feet from the subject tenant space. Approximately 93 feet of the subject building extends northward beyond the subject tenant space. Beyond the remainder of the existing building, the vacant rear yard of the adjacent day care center accounts for an additional 82 feet of separation. The closest residential parcels to the south are approximately 240 feet away, separated from the subject site by E. Santa Clara Street and by approximately 125 linear feet of a commercial building located at the southeast corner of N. 7th Street and E. Santa Clara Street.

The subject sit-down restaurant, unlike nightclubs and drive-through restaurant uses, tends to be less problematic when in close proximity to residential uses, as discussed in the Policy. In this case the use is not problematic given the lack of amplified sound and the proper supervision provided by the proprietor and staff. Furthermore, intervening streets and existing commercial structures separate the subject tenant space from the residential areas, thereby compensating for a full 300-foot separation. Given the nature and location of the proposed sit-down restaurant, it is unlikely that any noise from the proposed use will be audible or distinguishable at the closest residential property line.

Outdoor Activities

No outdoor seating is currently proposed or permitted at the subject site. No outdoor activities associated with the restaurant, other than truck deliveries, maintenance, and garbage collection, are currently proposed or permitted in conformance with the policy.

Police Issues

The policy states that, “crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses”. In a memo dated November 22, 2006, Officer Rick Galea of the San José Police Vice Unit indicated that the Police Department is neutral to the renewal of the Conditional Use Permit for The City Bakery and Café for the following two reasons. The first is that the reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index thus the location is not considered unduly concentrated per B&P Section 23958.4 (a)(1). A crime analysis over the two years at the location revealed no significant policing problems. The second is that Department of Alcohol Beverage Control (ABC) records indicate that, pursuant to B&P Section 23958.4 (a)(3), the ratio of on-sale retail licenses to population in census tract 5010 does not exceed the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

Restroom Facilities

Interior restroom facilities within the restaurant remain open and available during the late night business hours in conformance with the policy.

Noise

No amplified sound is proposed in conjunction with the restaurant use. SJMC 20.200.940 allows instrumental and vocal music to be provided for the listening pleasure of patrons as an incidental use to the proposed public eating establishment between the hours of 6:00 a.m. and 10:00 p.m. Vocal and instrumental

music after these times as well as dancing, karaoke, comedy, and acting, are considered entertainment uses that would require a subsequent Conditional Use Permit. Given the proposed use as a public eating establishment, and the separation between it and the nearest residential uses, it is unlikely that noise from the proposed use will be audible or distinguishable from the nearby residential uses.

Lighting

As shown on the plan set, three existing electroliers illuminate the project frontage along East Santa Clara Street. The previous Conditional Use Permit required that the corner entryway, inside of the three, rounded-corner-arches, remain illuminated during all hours of darkness.

Cleaning and Maintenance

No cleaning and maintenance of outdoor areas which utilizes mechanical blowers, vacuums, or other noise generating equipment is permitted between the hours of 10:00 p.m. and 7:00 a.m. in conformance with the policy.

Mitigation Management Plan

Conditions of approval have been incorporated into the draft Resolution to mitigate potential impacts of the proposed 24-hour use. Litter control, Police issues, lighting, and exterior maintenance are addressed.

Specific Development Types – Sit Down Restaurants

The subject restaurant is a “sit down” type restaurant, which the policy states does not generally exhibit the problems normally associated with “take-out” restaurants because patrons do not remain in their vehicles in the parking lot, and food is consumed within the building with appropriate supervision. Litter is not typically a problem, as food is not served in disposable wrappings or containers. Therefore, impacts from littering, loitering, and noise are substantially reduced by the nature of the proposed use.

Parking

The property was developed prior to 1965 as a church use with no parking. In order for parking to now be required, the proposal must constitute a “substantial change” pursuant to SJMC Section 20.90.210(A). Generally, this means that there would have to be a 40 percent increase in the required number of spaces between the previous and proposed uses. Per Table 20-190 of the SJMC, a church use currently requires one parking space per 30 square feet of area designated for assembly, used together or separately for worship. Per the same table, a public eating establishment requires one parking space per 2.5 seats or one parking space per 40 square feet of dining area, whichever requires the greater number of parking spaces. A generously low approximation of assembly area for the previous church use would be 1,500 gross square feet, thereby requiring 43 parking spaces. The current proposal, with approximately 975 gross square feet of dining area, would require only 21 parking spaces under the current code. Because the restaurant use requires fewer parking spaces than the church use, there is not a “substantial change” in use per SJMC Section 20.90.210(A). Therefore, the applicant is not required to meet the parking standards of the current Zoning Code. Currently, the owner has an agreement with the adjacent property owner to the east to allow restaurant patrons to use the existing parking lot containing approximately 50 spaces,

however, this is a private arrangement that is not sanctioned by the City.

Impacts from the Existing Use

The existing restaurant is currently operating after midnight. To date, staff is not aware of any negative impacts resulting from the extended operating hours. Furthermore, the memorandum from the Police dated November 22, 2006, indicates that a crime analysis over the past two years for the subject site did not reveal any significant policing problems.

Issues from Previous Hearing

At the January 28, 2004, Planning Commission hearing, the the original Conditional Use Permit was pulled from the Consent Calendar by members of the public who were concerned about refuse disposal in off-site dumpsters. Though the applicant clarified that the trash disposal arrangement was included in the off-site parking arrangement, the applicant expressed his willingness to improve the situation. A Permit Adjustment has been approved by staff for construction of a trash enclosure on the adjacent property to the east that would serve the subject site.

CONCLUSION

While the subject site is not located in the Downtown Core Area, it is located a short distance to the east outside of the Core, where 24-hour uses are generally encouraged. Furthermore, the project is in close proximity to San José State University. The restaurant provides both students and downtown visitors with a late-night place to eat and makes the corner safer by bringing activity to the area.

The restaurant tenant space is located in the corner tenant space directly adjacent to both E Santa Clara Street and N 7th Street. Because of its location directly adjacent to a major connecting street between downtown San José and East San José and the building's transparency, the location is well suited for 24-hour operation and provides good opportunities for direct surveillance from the street.

For the reasons discussed above, staff is supportive of the subject application to continue the late night use of the existing restaurant.

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. A public hearing agenda has been posted online on the Planning Division's web page, and the staff report is accessible from that agenda. Staff has been available to discuss the proposal with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the proposed Conditional Use Permit and include the following facts, findings, and conditions as noted in the attached Resolution.