

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

Hearing Date/Agenda Number
P.C. 12-06-06 Item # 3.f.

File Number
CP 06-040

STAFF REPORT

Application Type
Conditional Use Permit

Council District
4

Planning Area
Berryessa

Assessor's Parcel Number
244-23-067

PROJECT DESCRIPTION

Completed by: John Davidson

Location: East side of Oakland Road, approximately 300 feet northerly of Rock Avenue

Gross Acreage: 2.66

Net Acreage: 2.66

Net Density: N/A

Existing Zoning: HI – Heavy Industrial

Existing Use: Vacant industrial building

Proposed Zoning No Change

Proposed Use: Church / religious assembly

GENERAL PLAN

Land Use/Transportation Diagram Designation
Heavy Industrial with Mixed Industrial Overlay

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

North: Industrial Building

HI Heavy Industrial Zoning District

East: Industrial Park

IP Industrial Park Zoning District

West: Residential (under construction)

A (PD) Planned Development Zoning District

South: Industrial Building

HI Heavy Industrial Zoning District

ENVIRONMENTAL STATUS

Environmental Impact Report found complete
 Negative Declaration circulated on 11/15/06
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Annexation Title: Orchard No. 91

Date: March 9, 1981

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date:

Approved by: _____
 Action
 Recommendation

OWNER/APPLICANT

DEVELOPER

William Cilker
1631 Willow Street, Suite 225
San Jose, CA 95125

Ruth and Going
attn: Gerry DeYoung
2216 The Alameda
San Jose, CA 95050

Bible Way Christian Center
Attn: Pastor Oscar Dace
1746 Junction Avenue
San Jose, CA 95112

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: John Davidson

Department of Public Works

See attached memorandum.

Fire

See attached memorandum.

OTHER CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The property developer, the Bible Way Christian Center, is requesting a Conditional Use Permit to allow a church/religious assembly use, with up to 424 seats in the sanctuary, within an existing 37,000 square foot industrial building. The developer is also proposing a 100-square foot addition to create a new entrance to the building. A Conditional Use Permit is required for church/religious assembly uses in the HI – Heavy Industrial Zoning District with a Mixed Industrial Overlay General Plan Designation. The Conditional Use Permit will also act as the Site Development Permit for the building addition.

The site is currently developed with an industrial building that was approved in 1984 (File No. H84-195). A General Plan Amendment for the site was recently approved by the City Council, which added the Mixed Industrial Overlay General Plan land use designation to the site (File No. GP05-04-03). The Mixed Industrial Overlay is a requirement for the approval of a religious assembly use in an industrial zoning district. At the time of the General Plan Amendment proposal, staff expressed concern regarding the precedent-setting nature of the proposal to designate a Heavy Industrial parcel with the Mixed Industrial Overlay Designation, and the fact that the overlay could induce further conversion of industrial lands to non-industrial uses in the vicinity, continuing the loss of heavy industrial land that would have long-term impacts on the City's economy. Staff also expressed concern that non-industrial uses could be subject to nuisances from surrounding properties, and that implementation of measures to reduce possible nuisances caused by industrial businesses could result in future limitations being imposed on the industrial uses in the immediate vicinity of subject site, thereby potentially compromising the future viability of surrounding businesses.

Surrounding land uses include industrial buildings to the north and south, industrial park uses to the east, and new townhouses, currently under construction, to the west across Oakland Road. The industrial uses immediately north and south of the project site include a machining business, with uses immediately to the east being primarily office in character.

Project Description

This Permit would allow a church/religious assembly use with up to 424 seats in the main sanctuary, along with a fellowship hall, chapel, associated church offices and bible study classrooms. The majority of activity on the site would be on Sundays, Tuesdays, and Fridays, with fewer than 50 people on site during the rest of the week. Beyond the 100 square foot entryway addition, no significant exterior improvements to the site are proposed.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration circulated on November 15, 2006 indicates that the project will not result in a significant environmental impact when the identified mitigations are incorporated. The Mitigated Negative Declaration addressed issues such as air quality, biological resources, geology and soils, noise, traffic, water quality, air quality and construction related impacts. The complete Initial Study can be found online at <http://www.sanjoseca.gov/planning/eir/MND.asp>.

The primary environmental issue identified in the Initial Study was the proximity of the proposed use to significant quantities of hazardous materials, and the possibility of an accidental release of hazardous materials. Regarding hazardous materials, the three most significant uses identified were the Shell Oil products gasoline storage tanks, the Agnews power plant, and the San Jose Water Pollution Control Plant facilities. The possibility of an accidental release from any of these facilities was considered to be very low to improbable, based on industry statistics and facility experience. The recommended mitigation for the proposed project is the creation of an emergency preparedness plan, describing procedures to shelter-in-place or evacuate in the event of such an emergency. The emergency preparedness plan would be required prior to issuance of a building permit or certificate of occupancy.

GENERAL PLAN CONFORMANCE

The project site is designated Heavy Industrial with the Mixed Industrial Overlay on the General Plan Land Use Diagram.

The proposed religious assembly use facility is consistent with the General Plan designation of *Heavy Industrial with Mixed Industrial Overlay*. The Plan states that areas designated with the *Mixed Industrial Overlay* may be appropriate for a mixture of primarily industrial with compatible commercial or public/quasi-public uses. The Plan also specifies that new uses that include sensitive receptors should be considered within an Overlay Area only when they are compatible and will not inhibit industrial uses. At the time of the General Plan Amendment for the Mixed Industrial Overlay, the Council considered the appropriateness of the Mixed Industrial Overlay for the area, and found that it was appropriate, given the new residential neighborhood being built to the west across Oakland Road, the Industrial Park uses to the east, and given the fact that the adjoining industrial uses to the north and south are completely contained within enclosed buildings.

Based on the Initial Study prepared for the project, staff believes that the proposed religious assembly use would not inhibit surrounding industrial uses, as no mitigation measures relating to compatibility with industrial uses have been proposed, other than the requirement for an emergency preparedness plan in the extremely unlikely event of an accidental chemical release.

ANALYSIS

The key issue analyzed for the proposed project is land use compatibility.

Land Use Compatibility

Staff believes that the proposed use is compatible with the characteristics of the surrounding area and site. Existing land uses include a new residential neighborhood to the west across Oakland road, and existing industrial uses to the north, south, and east. Given the fact that the surrounding industrial uses are all operated within completely enclosed industrial-park style buildings, the introduction of a church/religious assembly use into this setting is not expected to negatively impact the ongoing operation of these industrial businesses. Staff has included a 5-year time limit for the Conditional Use Permit to allow review of the appropriateness of the religious assembly land use in the future. No significant exterior changes beyond a new entryway to the building are proposed at this time, which could allow future uses consistent with the Heavy Industrial General Plan designation and zoning in the future.

The project meets the Zoning Code parking requirements for church uses of one space per four fixed seats. The project proposes to provide 106 on-site parking spaces to serve the 424-seat church, in conformance with the Zoning Code.

A Risk Analysis was prepared for the project to address potential impacts caused by the storage or use of hazardous materials on adjacent properties, including the Water Pollution Control Plant (WPCP) to the north. The analysis recommended that the project be required to submit an Emergency and Protective Action Plan (to address emergency response planning) that is coordinated with local emergency officials, including the Fire and Police Departments. That Report has been reviewed by the City of San Jose Fire Department, which concurred with the conclusions in the analysis.

Based on the above analysis, staff has added a condition to the draft permit requiring the preparation of an emergency preparedness plan prior to the church obtaining a certificate of occupancy, and has concluded that the proposed project is appropriate for this site and compatible with existing uses within the surrounding neighborhood.

Conclusion

Based on the above analysis, staff concludes that, with the City Council's decision to approve the Mixed Industrial Overlay on the subject site, the proposed religious assembly use is appropriate at this location and will be compatible with uses on the site and in the surrounding area, and will not inhibit the operation of nearby industrial facilities.

PUBLIC OUTREACH

A notice of the public hearing was published, posted on the City's web site and distributed to the owners and tenants of all properties located within 1,000 feet of the project site. A sign describing the project has been displayed at the project site. In addition, a community meeting was held on November 6, 2006. One member of the public, representing the adjoining property owner, was in attendance, and did not indicate any objections to the proposed project. Staff has been available to discuss the proposal with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the findings and conditions as shown in the attached draft Resolution.

Attachments:

Draft Resolution
Location Map
Public Works Memorandum
Fire Department Memorandum
Mitigated Negative Declaration
Hearing Notice
Plans

RESOLUTION NO.

Resolution of the Planning Commission of the City of San Jose granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing a 424-seat religious assembly use, along with associated fellowship hall, dining room, classrooms, and offices, on a 2.6 gross acre site, located on the east side of Oakland Road, 300 feet northerly of Rock Avenue. (2080-2090 Oakland Road)

FILE NO. CP06-040

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

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on July 3, 2006, an application (File No. **CP06-040**) was filed for a Conditional Use Permit for the purpose of allowing a 424-seat religious assembly use, along with associated fellowship hall, dining room, classrooms, and offices, on that certain real property (hereinafter referred to as "subject property"), situate in the HI Heavy Industrial Zoning District, located on the east side of Oakland Road, 300 feet northerly of Rock 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 Jose 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, "Bible Way Christian Center" last revised August 30, 2006. 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 Jose 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 project site is located on the west side of Oakland Road, approximately 300 feet northerly of Rock Avenue (2080/2090 Oakland Road). This Permit would allow a church/religious assembly use with up to 424 seats in the main sanctuary along with an associated fellowship hall, dining room, religious classrooms, and office space, in an existing office/industrial park building.
2. The site has a designation of Heavy Industrial with a Mixed Industrial Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is zoned to the HI Heavy Industrial Zoning District.
4. A Mitigated Negative Declaration for the project indicates there is no substantial evidence that the project, with proposed mitigation, will have a significant effect on the environment.
5. The subject site is surrounded by residential uses to the west, and industrial uses to the north, south, and east. All of the industrial uses are operated within completely enclosed buildings.
6. The Zoning Ordinance requires a Conditional Use Permit for a church/religious assembly use in the HI Heavy Industrial Zoning District, with a Mixed Industrial Overlay on the General Plan.
7. The project proposes to allow the conversion of an existing office/industrial use to church/religious assembly use. As conditioned, the church/religious assembly use will be restricted to a maximum of 424 seats in the sanctuary, along with an associated dining hall, fellowship hall, classrooms, and offices.
8. The proposed use is proposed to occur totally within the existing building, and only minor modifications are proposed to the exterior and the site.
9. The Zoning Code parking requirement for a religious assembly use is one space per four fixed seats.
10. A total of 106 parking spaces exist on the site. A parking analysis was prepared for the project and is shown on the Site Plan for the project. That analysis shows that there is sufficient parking to serve the proposed use. Based on the proposed 424 fixed seats, the parking requirement for this use is 106 spaces.
11. As conditioned, the project developer/facility operator will be required to obtain and fully comply with all applicable City Permits and must submit an emergency preparedness plan prior to occupancy.

This Planning Commission concludes and finds, based upon an analysis of the above facts 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 church/religious assembly use is compatible with surrounding uses.

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

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 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 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.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are 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 applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and

- b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

CONCURRENT CONDITIONS

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

1. **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.
2. **Conformance with Plans.** Construction and development shall conform to the approved Conditional Use Permit plans entitled, "Bible Way Christian Center" dated, August 30, 2006, 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).
3. **Number of Seats/Operation of Facility.** This facility shall be limited to the maximum of 424 seats in the main sanctuary. Changes to the operation of the facility as a church/religious assembly use from those described in the project plans and the Building Use Chart shall be subject to additional permitting, to the satisfaction of the Director of Planning.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Noise.** The sound level generated on this site shall not exceed 60 dba DNL at any property line adjacent to a property used for commercial purposes and shall not exceed 70 dba DNL at any adjacent property line of property used for industrial purposes.

6. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
7. **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.
8. **Landscaping.** Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
9. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
10. **Assembly Permit.** An assembly permit for the proposed use is required. Contact Captain Steve Padilla, San Jose Fire Department, at (408) 277-8781, to obtain Fire Department “Assembly Permit” after issuance of the Certificate of Occupancy.
11. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
12. **Emergency Preparedness Plan.** Prior to issuance of an Occupancy or Building Permit for the religious assembly use, the project developer shall file and receive approval of an Emergency Preparedness Plan, to the satisfaction of the City of San Jose, Fire Chief and Director of Planning. This plan shall describe evacuation procedures, the shelter-in-place program, and other procedures to follow in the event of an emergency.
13. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-05672) to the satisfaction of the Director of Public Works:
 - a. *Public Works Clearance for Building Permit(s):* Prior to the issuance of Building permits, 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.
 - b. *Minor Improvement Permit:* The public improvements conditioned as part of this permit may 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.

- c. *Transportation:* An in-house traffic distribution has been performed for this project comparing the proposed church use with the existing industrial use. The projected traffic for this project would not exceed those of the existing use. We conclude that the subject project will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
 - d. *Grading:* A grading permit may be required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - 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. *Undergrounding:* The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Oakland Road prior to issuance of a Public Works clearance. Ten percent (10%) of the base fee in place at the time of payment will be due. (Currently, the base fee is \$224 per linear foot of frontage.)
 - h. *Street Improvements:* Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
14. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP 06-040, shall be printed on all construction plans submitted to the Building Division.
 - b. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
15. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five (5) years from the date this Permit.
16. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to

be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

CONDITIONS SUBSEQUENT

1. **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 or the construction of buildings 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 for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **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.