

Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 28, 2006

COUNCIL DISTRICT: Citywide

SUBJECT: PP06-172. PROTEST OF A NEGATIVE DECLARATION FOR AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 20.90 OF THE SAN JOSE MUNICIPAL CODE TO REDUCE PARKING REQUIREMENTS FOR SPECIFIC GROUND FLOOR COMMERCIAL USES WITHIN THE NEIGHBORHOOD BUSINESS DISTRICTS AND TO REDUCE PARKING REQUIREMENTS FOR MINIWAREHOUSE/MINISTORAGE USES CITYWIDE.

BACKGROUND

This staff report addresses the protest of a Negative Declaration for an ordinance to amend Chapter 20.90 of the San Jose Zoning Code to reduce parking requirements for specific ground floor commercial uses within the Neighborhood Business Districts (retail, personal service and restaurant/food and beverage service uses) to one space per 400 square feet of net floor area and to reduce parking requirements for mini-warehouse/mini-storage uses citywide. The proposed ordinance was scheduled to be considered by the Planning Commission on November 15, 2006, but was deferred to December 6, 2006, to allow staff to provide public notice of the protest hearing and to prepare this response. If the Planning Commission upholds the Director's decision to adopt the Negative Declaration, the proposed ordinance is scheduled to be considered by the Commission immediately following this item.

The San Jose 2020 General Plan designates nine Neighborhood Business Districts (NBDs): Alum Rock Avenue, East Santa Clara Street, Thirteenth Street, Japantown, The Alameda, West San Carlos Street, Lincoln Avenue, Willow Street, and Story Road (see Figure 1 of attached staff memorandum dated November 8, 2006). These districts consist largely of properties developed with existing commercial uses, but include some residential and mixed use development and a limited amount of industrial uses. The NBDs are surrounded by residential neighborhoods of varying densities.

CEQA Negative Declaration Requirements

A Negative Declaration (ND) must be prepared in conformance with the California Environmental Quality Act (CEQA) of 1970, as amended. Public Resources Code Section 21064.5 and CEQA Guidelines Section 15070 state that an ND may be prepared if the Initial Study identifies a potentially significant effect for which the project proponent has made or agrees to make project revisions that clearly mitigate the effects. In this case, the Initial Study did not identify any potentially significant effects, and therefore the proposed ordinance does not need to include mitigation. Additionally, a Negative Declaration may not be used if any substantial evidence indicates that the revised project with mitigation may still have a significant adverse effect on the environment.

Negative Declaration

On October 26, 2006, the Director of Planning, Building and Code Enforcement (PBCE) completed an Initial Study and circulated a Draft Negative Declaration for the proposed project to a broad list of neighborhood and business associations and individuals. A Notice of Intent to Adopt the Negative Declaration was published in the San Jose Post Record and Mercury News and the Draft Negative Declaration and Initial Study were made available (1) at the Department of Planning, Building and Code Enforcement, (2) on line on the Department's website, (3) at the Main Martin Luther King Jr. Library, and (4) at the Alum Rock, Rose Garden, Biblioteca and Hillview Branch Libraries. The public review period began on October 26, 2006, and ended on November 15, 2006. A copy of the Initial Study is attached.

Letters of Protest

On November 15, 2006 a Protest of the Negative Declaration was filed in the Department of Planning, Building and Code Enforcement by Marc Morris, a resident of property located at 1163 Martin Avenue proximate to The Alameda Neighborhood Business District, based on concern that the proposed ordinance will result in additional parking and traffic spillover into adjacent residential neighborhoods. Additional comments on the proposed ordinance were submitted by Mr. Morris on November 21, 2006 (see attached). The issues raised in the protest are discussed in the Analysis section below. A copy of the protest and subsequent comments are attached.

Negative Declaration (ND) Protest Hearing Procedure

San Jose Municipal Code Section 21.06.030 sets forth the Negative Declaration protest hearing procedures. If, after reviewing a protest, the Director of Planning adopts the Negative Declaration, the Planning Commission must hold a noticed public hearing on the Negative Declaration protest to consider all relevant information and materials concerning whether the project may have a significant effect on the environment. The action of the Planning Commission in considering the protest is limited to environmental issues. If the Commission finds there is a "fair argument" based on substantial evidence that the project may have a significant effect on the environment, the Commission must require the preparation of an Environmental Impact Report. If the Planning Commission finds that the project will not result in a significant impact on the environment and upholds the action of the Director to adopt the Negative Declaration, the Commission may proceed to make a recommendation on the proposed ordinance. The decision of the Planning Commission to uphold the Negative Declaration may be appealed to the City Council within three business days. The decision by the City Council on the appeal of a Negative Declaration is final.

A proposed ordinance to modify the Municipal Code hearing procedures relative to the Negative Declaration process has been considered by the Planning Commission and is proposed to be considered by the City Council on December 5, 2006. The proposed hearing procedure changes, if approved, will not be effective until January, 2007 and are not applicable to this Draft Negative Declaration.

ANALYSIS

Following is a response to the specific concerns raised in the protest received on November 15, 2006 and in subsequent comments submitted on November 21, 2006. For purposes of considering a formal protest of the adoption of a Draft ND, the key consideration is whether the protest introduces *substantial evidence* sufficient to constitute a “fair argument” that the revised project may still result in significant effects on the environment. According to the CEQA statute and guidelines, the term “substantial evidence” includes facts, fact-related reasonable assumptions, and expert opinion. Substantial evidence does not include arguments, speculation, unsubstantiated opinions or narrative, clearly inaccurate or erroneous evidence, or socioeconomic impacts not related to the physical environment.

Protest Comments Received on November 15, 2006:

The protestant asserts that the finding of the Initial Study that the proposed ordinance would not result in a significant environmental impact relative to transportation and traffic is incorrect and is based on inadequate and faulty analysis. Specifically, the protest takes issue with the finding that the ordinance would result in a less than significant impact relative to parking capacity. The protest states:

“In fact, a single popular restaurant – and unpopular ones don’t survive – creates a sharply increased, highly localized demand for parking. Without an adequate near-by parking supply, this creates heavy spill-over traffic and parking on adjacent residential streets, with accompanying noise, pollution, trash, and interference with residents’ driveways. A concrete example of this effect is in the 1100 block of Martin Avenue, adjacent to The Alameda Business District. Immediately after the opening of a popular restaurant at the corner with The Alameda six years ago, this previously quiet, graceful street started to experience heavy traffic, cruising up and down the block for parking spots, with all the accompanying problems, at both lunch time and in the evening. In effect, the block became a de facto adjunct parking lot, for both customers and employees.”

The protest concludes that the new ordinance will create parking shortages in other places and that mitigation is needed to prevent this from happening.

Response to Comments Received on November 15, 2006:

The Initial Study indicates that the proposed ordinance would not result in any significant impact relative to parking, traffic, air quality or noise, as discussed below.

1. *Parking*

Parking Impact - Threshold of Significance

The Initial Study correctly identifies that the proposed ordinance would not result in a significant adverse environmental impact relative to inadequate parking capacity. The lack of adequate parking does not, in and of itself, constitute a significant environmental impact, and in this specific instance, a potential decrease in the availability of on-street public parking is not, in and of itself, a significant environmental impact. Inadequate parking would be considered a significant environmental impact only where that lack of parking would result in a secondary physical impact that is significant and adverse.

In the case of the current proposal, the impacts of the proposed reduction in required parking would be considered significant if the lack of adequate parking resulted in a significant land use impact, such as the physical decline of the neighborhoods surrounding the affected Neighborhood Business District, or in significant traffic, noise or air quality impacts. As indicated in the Initial Study, these types of impacts are not expected to occur as result of the proposed ordinance.

Existing Parking Conditions within the NBDs

Existing off-street parking on private property within the Neighborhood Business Districts (NBD) does not meet current parking requirements because much of the development within these areas occurred prior to adoption of the current parking requirements. Off-street parking is supplemented by on-street parking, and, in most of the NBDs, by public parking lots (see attached Table 1). In most of the Districts, the off-street parking on private property, together with available public parking, still does not achieve the equivalent of current Zoning Code parking requirements for the existing uses under current standards. Despite these conditions, parking studies conducted for NBDs with the most constrained parking conditions (including The Alameda, Alum Rock Avenue, Japantown, East Santa Clara Street, and Lincoln Avenue) indicate that although 'hot spots' exist, where parking is insufficient due to a specific use or grouping of uses, generally, parking within these Business Districts is adequate to meet demand. Staff observation indicates that this is the case for all of the NBDs.

Parking Impact Findings

The Initial Study concludes that the ordinance would have a less than significant impact in regard to parking. The Initial Study specifies that the ordinance is likely to result in an increase in restaurant and other food and beverage uses on the ground floor of existing buildings as tenant spaces become available; this increase is expected to be incremental and dispersed. The ordinance will remove parking requirements as an impediment to new restaurants; however, other considerations, including costly improvements, compatibility with existing tenants and suitability of the tenant space are likely to influence property owner decisions regarding future uses as existing spaces become available. Staff estimates that under the most intense scenario, five percent of existing ground floor building area may convert to restaurant use as result of the proposed ordinance.

These new restaurant uses may result in additional demand for on-street parking and may increase the number of commercial patrons seeking parking on residential streets during peak periods, but, based

on past experience, this use of on-street parking is not expected to cause neighborhoods to physically decline or to result in any significant adverse impact on the environment. Residential areas that have experienced overflow parking from the Neighborhood Business Districts, including Blewett Avenue adjacent to the Lincoln Avenue NBD and Martin Avenue adjacent to The Alameda, continue to thrive despite the use of on-street parking by NBD patrons.

Conditions in the 1100 Block of Martin Avenue

The protest points to Martin Avenue as an example of impacts likely to occur as result of the proposed ordinance and argues that mitigation is necessary to prevent this type of impact from occurring elsewhere. The protest indicates that a successful restaurant implemented at the corner of The Alameda and Martin Avenue (Pasta Pomodoro) has cause the previously quiet Martin Avenue to experience heavy traffic, cruising up and down the block for parking spots and accompanying noise, pollution, trash and interference with residents' driveways.

The 1100 block of Martin Avenue is entirely residential (13 single-family houses) with the exception of restaurant uses located on both corners of its intersection with The Alameda. Staff surveyed the parking situation on this block of Martin Avenue on Thursday, November 16 and Friday November 17, 2006 and observed that patrons or employees of commercial uses appear to be using on-street parking in this first block of Martin Avenue during peak use periods. On Thursday evening at 6:15 p.m., parking spaces in front of three houses closest to The Alameda on the south side of Martin Avenue were occupied, although it is unknown whether by residents or commercial patrons. Spaces on the remainder of the block were almost totally unused. On Friday during the lunch hour (12:40 p.m.), all but three spaces on the 1100 block of Martin Avenue were filled. That evening at 7:00 p.m., approximately half of the on-street parking on the 1100 block was occupied.

Based on this limited survey, it appears that cars associated with commercial businesses do seek parking on Martin Avenue at lunchtime and to a lesser degree during the dinner hour. This parking by commercial patrons and/or employees may be annoying to residents of Martin Avenue who have an expectation that on-street parking will be available to, and primarily used by, residents, but it does not appear to have resulted in any significant environmental impacts. It is fairly limited in area and duration, and no significant secondary physical impacts on the neighborhood appear to have resulted from the parking overflow. Specifically, there is no apparent pattern of physical deterioration of structures due to decreased maintenance as a symptom of a decline in the block's attractiveness as a place to reside.

Mitigation Not Required

The proposed parking reduction is intended to facilitate additional restaurants like Pasta Pomodoro and may result in a greater demand for on-street parking; however, this demand is not expected to overwhelm residential neighborhoods surrounding the Neighborhood Business Districts or result in secondary physical impacts that are significant and adverse. As a consequence, no mitigation is necessary pursuant to the requirements of the California Environmental Quality Act (CEQA).

Residential Permit Parking

The City's Residential Permit Parking Program remains an option for neighborhoods experiencing significant parking overflows associated with non-residential uses. This program, administered by the Department of Transportation, is currently being used to address parking on residential streets associated with such uses as the HP Pavilion and San Jose State University and continues to be an effective parking management tool for neighborhoods experiencing large-scale parking overflows. Due to program guidelines that recommend a minimum number of participating households (generally 150 households), this program is not available to individual or several residential streets experiencing limited parking overflow from commercial uses, such as appears to be occurring on Martin Avenue.

2. Traffic

The protestant provides no facts or analysis based on facts to refute the City staff's traffic analysis as described in the Initial Study and there is no substantial evidence of a significant traffic impact. The City's Department of Public Works has analyzed the proposed project and determined that it conforms to the City's Transportation Level of Service Policy (Council Policy 5-3) and would not result in a significant traffic impact. The anticipated intensification of existing uses (conversion from office or retail to restaurant/food and beverage service uses) is not expected to result in significant new peak hour traffic generation, both because it is expected to be limited in scope and because of the characteristics of restaurant/beverage service trips.

While trips associated with office and industrial uses are destination trips, restaurant/beverage service uses are characterized by a high percentage of capture (trips that are already on the network). New restaurant uses in the NBDs would result in a percentage of capture trips in the range of 25 to 75 percent of all trips associated with these uses. This means that a significant portion of the traffic associated with a change in use from office or retail to restaurant would consist of trips already on the network. Table 2 (see attached) shows the peak hour trip increase expected to occur under the most intense scenario, with 5 percent of the existing ground floor area in all of the Neighborhood Business Districts converted to restaurant uses. This analysis shows minimal increases in traffic during the p.m. peak hour. This additional traffic would result in immeasurable changes to the signalized intersections most affected by this change in parking requirements.

The signalized intersection of Martin Avenue and The Alameda/Race Street is currently operating at level of service (LOS) "C" in the p.m. peak hour, an acceptable level of service based on the City's LOS Policy. With the addition of the 20 p.m. peak hour trips projected to result from this ordinance within The Alameda NBD, this intersection would remain at acceptable LOS C. Based on this analysis, staff concludes that the project conforms to the City's LOS Policy and would not result in a significant traffic impact. An incremental, perceptible increase in traffic on this street, or other residential streets near NBDs, is not evidence of a significant impact. Traffic volumes are not expected to inhibit residential driveway egress.

3. Air Quality

The City of San Jose uses the threshold of significance established by the Bay Area Air Quality Management District (BAAQMD) to assess air quality impacts. Based on this threshold, projects

that generate fewer than 2,000 vehicle trips per day are not considered major air pollutant contributors and do not require a technical air quality study. The traffic generation analysis prepared by the Public Works Department indicates that average daily traffic associated with the proposal totals 1,620 trips citywide, well below the BAAQMD threshold for preparation of an air quality analysis; consequently, the Initial Study concludes that the project will not result in a significant air quality impact. These 1,620 daily trips would be distributed across the eight participating NBDs, and there is no substantial evidence in the ND protest or elsewhere in the record that these additional trips spread amongst the eight NBDs, some of which would be driving along residential streets (including Martin Ave), would exceed BAAQMD air quality standards.

4. *Noise*

Based on the traffic generation analysis prepared by the Public Works Department, worst-case traffic expected to result from this proposed ordinance is anticipated to be less than 2 percent of existing traffic currently generated by the Neighborhood Business Districts (NBD). This increase is well below the doubling of existing traffic on the NBD commercial streets, as well as Martin Avenue, or any other residential street, necessary to result in a noise increase perceptible to the human ear. The Initial Study correctly concludes that the proposed ordinance would not result in a significant impact relative to traffic noise. The protestant has not provided any substantial evidence to the contrary demonstrating a violation of applicable CEQA noise standards.

Comments Received on November 21, 2006:

The comments included in the attached communication from Marc Morris, dated November 21, 2006, are summarized below with staff responses following:

Comment 1. *A Risky Experiment:* This comment indicates that the ordinance represents a radical change in parking requirements that is likely to result in spillover parking in residential neighborhoods and that mitigation should be in place before implementation of significant changes to current parking requirements.

Staff Response: See responses above regarding potential parking, traffic, air quality and noise impacts of the proposed ordinance. The proposed ordinance would not result in any significant impacts, therefore there is no need for mitigation prior to its implementation.

Comment 2. *A Misguided Solution:* This comment specifies that adequate parking is needed for a successful business district and concludes that the ordinance will stimulate parking demand but does not reduce demand, protect existing parking, encourage more effective use of existing parking or encourage expansion of the existing parking base. The comment recommends consideration of alternative ordinance provisions.

Staff Response: The comment raises concerns regarding the proposed ordinance and suggests alternative ordinance provisions, but does not raise new issues regarding the potential environmental impacts of the proposed ordinance.

Comment 3. A Flawed Public Process: This comment raises concern regarding the level of public outreach for the proposed ordinance.

Staff Response: See the staff memorandum of November 8, 2006 for a description of the public outreach conducted for the proposed ordinance. The comment does not raise concerns regarding the ordinance's potential environmental impacts.

CONCLUSION

The Initial Study correctly identifies that the proposed ordinance would not result in a significant adverse environmental impact and that mitigation is not required pursuant to the requirements of the California Environmental Quality Act. The protest comments do not present substantial evidence of a "fair argument" (according to CEQA Guidelines Sections 15064, 15070 and 15369.5) that the project may result in significant environmental impacts according to the CEQA Guidelines and the City's thresholds of significance. Therefore, as described in the responses above, the Negative Declaration meets the requirements of CEQA, and an EIR is not required.

Although the alternative proposals raised in the protest comments do not invalidate the conclusions of the Initial Study or the Negative Declaration, they will be considered by the Planning Commission and City Council as part of their deliberations on the proposed ordinance. The alternatives raised by Mr. Morris were not addressed in this Negative Declaration and may require additional environmental review.

RECIRCULATION OF A NEGATIVE DECLARATION PRIOR TO ADOPTION

The CEQA Guidelines (Section 15073.5) state that a lead agency is required to re-circulate a Negative Declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. As used in this section, a "substantial revision" of the negative declaration means:

- 1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance; or
- 2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

Recirculation is not required under the following circumstances:

- 1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.
- 2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable which are not new avoidable significant effects.
- 3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

- 4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

The comments protesting the adoption of the Negative Declaration does not require “substantial revision” of the Negative Declaration, as defined above. The comments do not require recirculation of the Negative Declaration because none of the comments discussed above: identifies a new avoidable, significant effect; provides evidence that the project would result in any impact of greater severity than already identified in the Initial Study; or determines that proposed mitigation measures will not reduce potential environmental effects to a less than significant level. For these reasons, the Negative Declaration, as currently written, satisfies the requirements of CEQA and does not require recirculation.

ALTERNATIVE ACTION

The alternatives available to the Planning Commission are to (1) uphold the Negative Declaration for the proposed project; (2) order revision, and if required, recirculation of the Negative Declaration; or (3) require the preparation of an EIR.

RECOMMENDATION

The Director of Planning, Building & Code Enforcement recommends that the Planning Commission uphold the Negative Declaration prepared for the proposed project.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Attachments:

Table 1. Neighborhood Business District Public Lots and On-street Parking Spaces
Table 2. Neighborhood Business District Transportation Levels of Service
Negative Declaration Protest, dated November 15, 2006 and Comments dated November 21, 2006
Draft Negative Declaration, File PP06-172
Initial Study, File PP06-172