

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 1/26/05 Item: 3.e.

File Number
CP04-105

Application Type
Conditional Use Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
259-25-038

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Lesley Xavier

Location: Northeast corner of West Julian and Montgomery Streets

Gross Acreage: 0.11 Net Acreage: 0.11 Net Density: n/a

Existing Zoning: HI - Heavy Industrial District Existing Use: General Lighting Service, Inc. offices.

Proposed Zoning: No change Proposed Use: Conditional Use Permit to allow a 650 square foot take-out eating establishment in an existing industrial building.

GENERAL PLAN

Completed by: LX

Land Use/Transportation Diagram Designation
Combined Industrial/Commercial

Project Conformance:
 Yes No

SURROUNDING LAND USES AND ZONING

Completed by: LX

North: Heavy Industrial HI - Heavy Industrial

East: Heavy Industrial HI - Heavy Industrial

South: Heavy Industrial HI - Heavy Industrial

West: Heavy Industrial HI - Heavy Industrial

ENVIRONMENTAL STATUS

Completed by: LX

Environmental Impact Report adopted
 Negative Declaration circulated on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: LX

Annexation Title: Stockton District

Date: July 01, 1924

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial

Date: 1-26-05

Approved by: _____
 Action
 Recommendation

CONTACT/APPLICANT/OWNER

Angelo Segretto
25 Blake Lane
Scotts Valley, CA 95066

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LX

Department of Public Works

- See attached.

Other Departments and Agencies

- Environmental Services Department (ESD) and San Jose Fire Department. (See Attached)

GENERAL CORRESPONDENCE

- None.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Angelo Segretto, is requesting a Conditional Use Permit (CUP) to allow a 650 square foot take-out eating establishment in an existing industrial building, on a 0.11 gross acre site. The subject site is located at the northeast corner of Julian and Montgomery Streets in the HI Heavy Industrial Zoning District. The site is also located within the Julian/Stockton Redevelopment Project Area in the Downtown Frame Area. The Zoning Ordinance requires a CUP for public eating establishments in the HI District.

Site Conditions and Context

The subject site is located in an existing industrial office building located at 549 West Julian Street. The offices of General Lighting Service, Inc. currently occupy the building. This company will be remaining in the building, but will be vacating 650 square feet of its current space to allow for the take-out restaurant.

The subject site is surrounded by various uses including, a used building materials company to the north, the Santa Clara County Housing Authority offices to the east, an emergency residential shelter and the San Jose Area parking lot to the south, and a vacant lot, single-family house, and construction company to the west.



Project Description

The proposed use is a take-out restaurant with two incidental tables and four chairs. The primary use will be to provide take-out deli food service for the surrounding industrial businesses. The applicant intends that the use will cater mostly to lunch hour customers. The establishment proposes to be open from 7:00 a.m. to 5:00 p.m. seven days a week.

GENERAL PLAN CONFORMANCE

The subject site is designated Combined Industrial/Commercial on the San José General Plan Land Use/Transportation Diagram. This category of use is designed to allow development containing a mixture of compatible commercial and industrial uses. The existing and proposed use of the industrial building is consistent with the Combined Industrial/Commercial designation in that compatible commercial development is an intended land use under this designation, and a take-out eating establishment is a commercial use that would serve industrial uses in the area.

ENVIRONMENTAL REVIEW

The Director of Planning, Building, and Code Enforcement has determined that this project is exempt from environmental review requirements under Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act (CEQA). Pursuant to Section 15301(a) of the CEQA Guidelines, permitting of existing private facilities involving negligible or no expansion of use is exempt from environmental review. The proposed project qualifies for this exemption in that the project involves the permitting of a use within an existing building involving negligible or no expansion of use.

ANALYSIS

The primary issues analyzed are consistency with the San Jose Municipal Code Title 20 - Zoning Ordinance including parking and land use compatibility.

Per Section 20.50.100 of the Zoning Ordinance, a Conditional Use Permit is required in order to locate a public eating establishment in the HI Heavy Industrial Zoning District. Public eating establishments are also limited to 650 square feet in size in the HI District. The proposed take-out eating establishment is proposed to be 650 square feet in size. Therefore, the proposed project is in conformance with the Zoning Ordinance.

Parking

The Zoning Ordinance requires one space per 75 square feet of floor area open to the public for take-out eating establishments, and one space per 250 square feet of net floor area for office uses. The take-out eating establishment has 225 square feet of floor area open to the public and the office use is 1,225 square feet. Therefore, the site requires three parking space for the take-out use, and five parking spaces for the office use for a total of 8 parking spaces.

The proposed site plan provides eight on-site parking spaces. In addition, street parking along the site and along adjacent properties could also provide parking for the low-intensity office and take-out eating establishment uses. The site also has safe pedestrian access on attached sidewalks. Therefore, the number of spaces provided on site (eight) combined with adjacent on-street parking is sufficient to meet the number of spaces required by the Zoning Ordinance.

Land Use Compatibility

The proposed take-out eating establishment is compatible with industrial and office uses in the surrounding area because it would serve those surrounding uses. As stated above in the Site

Conditions and Context section, a mix of uses surrounds the site including office, industrial, and residential. The proposed take-out use would be small and cater mostly to lunchtime customers from the businesses in the surrounding area. Therefore, staff believes the take-out eating establishment use would be incidental to, and in support of, the surrounding industrial and office uses.

Signage

As a part of this CUP, two attached signs are proposed for approval. The Sign Ordinance allows one attached sign per occupancy frontage. It requires that the aggregate sign area of all attached signs in the HI Heavy Industrial Zoning District not exceed one square foot for each linear foot of occupancy frontage. The site has two occupancy frontages of 50 feet and 35 feet for a total of 85 linear feet. The proposed signs conform to the Sign Ordinance in that one sign is proposed on each occupancy frontage, and one sign is 50 square feet and one sign is 20 square feet for a total of 70 square feet. Therefore, the proposed signage conforms to the Sign Ordinance.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

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

1. This site has a designation of Combined Industrial/Commercial Area on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is zoned currently zoned HI Heavy Industrial.
3. The site is 0.11 gross acres in size.
4. The site consists of a two tenant industrial office buildings, and the subject tenant space in the building is 650 square feet.
5. The area immediately surrounding the site is designated Combined Industrial/Commercial on the San José 2020 General Plan Land Use/Transportation Diagram and is located in the Heavy Industrial Zoning District.
6. Uses surrounding the site include industrial to the north, office to the east, a residential shelter and parking to the south, and vacant land and a single-family residence to the west.

7. The proposed project consists of a 650 square foot take-out eating establishment.
8. Per Section 20.50.100 of the Zoning Ordinance, a Conditional Use Permit is required in order to locate a public eating establishment in the HI Heavy Industrial Zoning District. Public eating establishments are also limited to 650 square feet in size in the HI District. The proposed take-out eating establishment is proposed to be 650 square feet in size. Therefore, the proposed project is in conformance with the Zoning Ordinance.
9. A Conditional Use Permit is required to allow the take-out eating establishment in the HI Heavy Industrial Zoning District.
10. Under Section 20.90.60 of the Zoning Ordinance 8 parking space are required to serve the proposed uses of the site.
11. The proposed site plan provides eight on-site parking spaces.
12. The Sign Ordinance allows one attached sign per occupancy frontage. It requires that the aggregate sign area of all attached signs in the HI Heavy Industrial Zoning District not exceed one square foot for each linear foot of occupancy frontage. The site has two occupancy frontages of 50 feet and 35 feet for a total of 85 linear feet. The proposed signs conform to the Sign Ordinance in that one sign is proposed on each occupancy frontage, and one sign is 50 square feet and one sign is 20 square feet for a total of 70 square feet. Therefore, the proposed signage conforms to the Sign Ordinance.
13. Under the provisions of Section 15301(a) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is 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.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project complies with all applicable provisions of the Sign Ordinance.
4. The proposed project is in compliance with the California Environmental Quality Act.

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 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 facilities as are required.

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 and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Site Plan 549 W. Julian" dated December 21, 2004, on file with the Department of Planning, Building and Code Enforcement.
3. **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, CP04-105, shall be printed on all construction plans submitted to the Building Division.
4. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.

CONCURRENT CONDITIONS

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

1. **Hours of Operation.** 7:00 am to 5:00 pm seven days a week.
2. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Noise.** The sound level generated on this site shall not exceed 55 dBA DNL at any property line adjacent to a property used for residential purposes and shall not exceed 60 dBA DNL at any adjacent property line of property used for commercial purposes.
4. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
5. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
 - b. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
6. **Refuse.** All trash areas shall be covered and maintained in an orderly state. No outdoor storage is allowed/permitted unless designated on approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
7. **Alcohol Sales.** The on-sale or off-sale of alcohol is not permitted.
8. **Lighting.** This permit allows no new on-site lighting.
9. **Sign Design.** Sign design and location, as delineated on the approved plan set, are hereby approved and constitute the project's entire sign program.

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 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 in accordance with Title 20. 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 Part 3, Chapter 20.44, 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.