

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  
10/26/05

File Number  
CPA02-047-02

Application Type  
Conditional Use Permit Amendment

Council District  
8

Planning Area  
Evergreen

Assessor's Parcel Number(s)  
49104007

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Reena V. Mathew

Location: located the north side of Eastridge Loop Road, approximately 350 feet west of Capitol Expressway

Gross Acreage: .17

Net Acreage: N/A

Net Density: N/A

Existing Zoning: CG-Commercial  
General

Existing Use: Eastridge Mall parking lot

Proposed Zoning: same

Proposed Use: New pad building for restaurant and bar

### GENERAL PLAN

Completed by: RVM

Regional Commercial

Land Use/Transportation Diagram Designation  
CG-Commercial General

Project Conformance:  
 Yes  No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: RVM

North: retail-shopping mall

CG Commercial General

East: single-family residences

R-1-8 Residence

South: retail-shopping mall

CG Commercial General

West: retail-shopping mall

CG Commercial General

### ENVIRONMENTAL STATUS

Completed by: RVM

Environmental Impact Report found complete August 13, 2003

Negative Declaration circulated on

Negative Declaration adopted on

Exempt

Environmental Review Incomplete

### FILE HISTORY

Completed by: RVM

Annexation Title: Amos\_19

Date: 11/2/71

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval

Approval with Conditions

Denial

Uphold Director's Decision

Date:

Approved by: \_\_\_\_\_

Action

Recommendation

### APPLICANT/OWNER/DEVELOPER

Robert Macias  
RHL Design Group  
3001 Douglas Blvd #210  
Roseville, CA 95661

Eastridge Mall Shopping Center  
General Growth Properties Incorporated  
2200 Eastridge Loop Suite 2062  
San Jose, CA 95122

**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: RVM

**Department of Public Works**

None

**Other Departments and Agencies**

Police

**GENERAL CORRESPONDENCE**

None

**ANALYSIS AND RECOMMENDATIONS****BACKGROUND**

The applicant, RHL Design Group, is requesting a Conditional Use Permit (CUP) to allow the construction of a new 7,102 square foot pad building at Eastridge Mall for a Macaroni Grill restaurant with full service bar. The subject site is located within the CG Commercial General zoning district. The Zoning Ordinance requires a CUP for drinking establishments in the CG Commercial General zoning district. The subject site has been previously approved for a 7,102 square foot pad building, through CP02-04. The architectural design was not part of the previous CUP and is subject to review and approval through a development permit amendment. The Eastridge Mall is nearing completion of a substantial renovation project that focused on the south side of the mall.

This project is one of two proposals at Eastridge Mall for a new freestanding full service restaurant that also includes a drinking establishment as part of the establishment. The other proposed establishment, Chili's (File no. CPA02-047-01) is proposed approximately 900 feet west of the subject facility. Both projects have been agendaized for consideration by the Planning Commission at the same hearing.

The larger Eastridge shopping mall is on the southeast corner of the intersection of Tully and Quimby Roads. The vacant pad area for the proposed project is located on the north side of Eastridge Loop Road, approximately 350 feet west of Capitol Expressway along the east side of the Eastridge Shopping Center site. The site is surrounded to the north, south, and west by parking and a mixture of retail uses associated with the shopping mall. Directly to the east of the project site, across Capitol Expressway, is a single-family residential development.

**Project Description**

The original Conditional Use Permit CP02-047 for the Eastridge Mall renovation project had determined that two pad buildings were to be located in the general vicinity of the project site. The site layout for the subject pad building precludes locating two pad buildings in this area. The property owner, General Growth Properties, was made aware of this. As a result, the square

footage that would have been utilized for a second pad building on the project site shall be reserved for the potential development of pad buildings elsewhere on the mall site.

The proposed single-tenant building would have a restaurant and stand alone bar, in which customers could purchase alcoholic drinks independent of purchasing food from the restaurant. No off-sale of alcohol is proposed as part of the project. The proposed building exterior has a stone and stucco façade painted a mixture red, green, and neutral colors. The landscaping plan includes shrubs and trees surrounding the building

## **ENVIRONMENTAL REVIEW**

The environmental impacts of this project were addressed by a Final EIR entitled “The Eastridge Mall Redevelopment Project” and adopted by City Council Resolution #03-072 on August 13, 2003

## **GENERAL PLAN CONFORMANCE**

The proposed use of restaurant and bar is consistent with the San Jose General Plan Land Use/Transportation Diagram designation of Regional Commercial in that a wide variety of retail and commercial uses are allowed under that designation.

Until recent years, General Plan Amendment proposals in the Evergreen area have often included limitations on the amount of new retail construction allowed within the area to better enable the success of the Evergreen Village Center commercial development. This development was the key element of the Evergreen Specific Plan (ESP) approved in 1991 which also included the development of 2,996 residential units. While a handful of new retail centers have been developed within the last decade, a significant amount of upscale housing has been built within ESP and surrounding area. This has led to an increasing desire and demand on the part of the community to encourage the development of quality, family oriented sit-down restaurants in the Evergreen area. This was an issue that was voiced repeatedly at community meetings for a variety of projects. The lack of any new quality restaurant proposals was such a significant issue for years that requirements for the inclusion of such a specific use had been included by the City as a requirement for Planned Development Zonings at the Beshoff Motors site and at the Evergreen Village Center, and as part of the Eastridge Mall renovation.

## **ANALYSIS**

The primary documents and policies applicable for the review and analysis of this project include the following: 1) City Council Policy 6-23 for the Evaluation of Nightclubs and Bars, 2) Commercial Design Guidelines, and 3) Zoning Ordinance. The analysis of project conformance to each of these is discussed below.

### City Council Policy 6-23: Guidelines for the Evaluation of Nightclubs and Bars

The City Council Policy, Guidelines for Evaluation of Nightclubs and Bars, was written to facilitate the evaluation process for individual permit applications by identifying the needed project characteristics that are necessary for approval of these uses.

The relevant issues to this proposal that are identified in the policy include land use compatibility and noise. The subject site is located in the Eastridge Shopping Center and is adjacent to other commercial, restaurant, and entertainment uses. These adjacent uses are similar and thus compatible with the proposed restaurant and bar.

In addition, the policy requires that new drinking establishments outside the Downtown Core should be separated a minimum of 500 feet from other such uses and existing schools. The closest drinking establishment proposed to this site is located over 900 feet away in another proposed franchise restaurant (Chili's) with stand alone bar within a pad area of the Eastridge Shopping Center. The policy indicates that new bars should not be located close to residential uses and is the case in this proposal. A large parking field and Capitol Expressway, which is an eight lane expressway at this point, separates the project site from the closes residential uses to the east.

Council Policy 6-23 also indicates that the Police Department shall evaluate all bar and nightclub proposals. The Police Department has commented to Planning that due to the nature of this type of facility which functions more as a family oriented restaurant with the drinking establishment as more of an incidental or secondary use, this proposal will not likely cause any significant safety or security issues.

#### Conformance to Commercial Design Guidelines

The Commercial Design Guidelines state that commercial buildings should be located as close to the allowable front setbacks to enhance the streetscape and provide a more active pedestrian environment. This project site is confined to the pad area that was approved in the original CP02-047, which locates the building on the northside of the Eastridge Loop Road, approximately 350 feet west of Capitol Expressway. As such, the building is oriented to the driveway entrance into the site from the Eastridge Loop Road. The placement of the pad building will help achieve the intent of the guidelines, to break up the otherwise large expanse of parking area. There is a substantial amount of parking available on this site that is more than adequate to handle the needs of the proposed facility and Eastridge Mall.

In order to and improve the streetscape, General Growth Properties Incorporated, who is the property owner of the Eastridge Shopping Center, has enhanced the landscaping plan for the planting strip along Quimby Road which will serve to reduce the dominance of the parking lot.

Architectural design details of the proposed building itself include stone and stucco façade and decorative doors to provide screening for the trash enclosure area. The design is compatible with the archiectural design that was approved for the recent mall renovation.

#### Conformance to Zoning Ordinance

The proposed project conforms to the allowable square footage, development standards, and minimum parking requirements called out in the Zoning Ordinance. The original Conditional Use Permit for the Eastridge Mall renovation project (CP02-047) approved a total of 42,490 square feet for newly constructed out parcels and non-mall store buildings. The only pad building proposals that the City has under consideration thus far is this Macaroni project, which is 7,102 square feet, and the proposed Chili's(CPA02-047-01), which is 6,050 square feet. The sum of both projects is substantially under the allowable square footage approved through the

original CUP. The project conforms to all the development standards of the Commercial General Zoning District.

The original Conditional Use Permit for the Eastridge Mall renovation took into consideration the parking necessities of this pad building in conjunction with the total parking demand for the entire shopping center. The zoning ordinance requires neighborhood shopping centers (shopping centers with 100,000 square feet or greater) to provide 1 parking stall per 225 square feet of net floor area. Applying this calculation to the entire Eastridge Mall site, a minimum of 6,186 parking spaces must be provided to be in conformance to the Zoning Ordinance. The original conditional use permit, which took into consideration this pad building's square footage, approved a total of 7,400 parking spaces. As a result, there is ample parking to meet the parking requirements in the Zoning Ordinance for this pad building.

### **Conclusion**

The proposed project will provide a quality family oriented restaurant in the Evergreen area, a use which has been highly sought after by the community for over a decade. The nature of this use, which will include a drinking establishment component, is not deemed to be problematic by the Police Department. The project design compliments the larger Mall architecture and the parking provisions exceed that required by the Zoning Code.

### **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 Regional Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The project site is a 0.17 gross-acre site in the CG Commercial General Zoning District.
3. The project site is part of the larger Eastridge Mall site and is currently developed for parking.
4. The subject site has been previously approved for a 7,102 square foot retail pad building, through CP02-047.
5. The proposed project consists of a public eating and drinking establishment.

6. A Conditional Use Permit is required for drinking establishment uses in the CG Commercial General Zoning District.
7. The proposed project is subject to City Council Policy 6-23: Guidelines for the Evaluation of Nightclubs and Bars
8. The proposed facility does not propose the off-sale of alcohol.
9. The proposed project is subject to the Commercial Design Guidelines
10. The proposed architecture is compatible with the architectural design that was approved for the recent mall renovation, CP02-047.
11. The placement of the proposed building helps to anchor the street entrance to the project and helps to break up the visual impact of the large continuous parking lot.
12. The uses surrounding the site include commercial and retail uses to the north, south, and west, and Capitol Expressway separates residential uses to the east.
13. Council Policy 6-23 specifies that the Chief of Police evaluate all bar and nightclub proposals and recommend conditions necessary to ensure the safety of patrons and citizens.
14. The Chief of Police has evaluated the project and has indicated that this proposal will not likely cause any significant safety or security issues.
15. The closest drinking establishment proposed to this site is located over 900 feet away in another pad building proposed at the Eastridge Mall site.
16. There are no school uses in the immediate vicinity.
17. The environmental impacts of this project were addressed by a Final EIR entitled, " Eastridge Mall Redevelopment Project," and findings were adopted by City Council Resolution No. 03-072 on August 13, 2003.

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 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 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 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. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
3. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Macaroni Grill Site Improvement Plans" dated October 17, 2005, on file with the Department of Planning, Building and Code Enforcement.
4. **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 (File no. 3-02202) to the satisfaction of the Director of Public Works:
  - a. *Grading/Geology.*

- i. A grading permit is 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.
    - ii. The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.
  - b. *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.
  - c. *Municipal Water.* In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Tim Town at (408) 277-3671 for further information
  - d. *Street Improvements.* Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project. Improvement of the public streets shall be to the satisfaction of the Director of Public Works.
5. **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.* The permit file number, CPA02-047-02, 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. 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 with 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.
6. **Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property.
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. Trash areas shall be maintained in a manner to discourage illegal dumping.

The applicant shall ensure that there are provisions for frequent trash pick-ups as needed to avoid overflow.

8. **Roof Equipment.** All roof equipment shall be screened from view.
9. **Utilities.** All new on-site telephone, electrical and other overhead service facilities shall be placed underground.
10. **Sign Approval.** No signs are approved at this time. A subsequent Sign Permit Adjustment will be required for all future signage.
11. **Colors and Materials.** All building colors and materials are to be reviewed to satisfaction of the Director of Planning during the review of the applicable required permit.
12. **Fire Department Requirements.** The San José Fire Department has reviewed the plans as submitted with the following requirements to be met to the satisfaction of the Fire Chief:
  - b) *Fire Flow.* Required fire flow for the site is 2,000 G.P.M. or as otherwise approved in writing by the Fire Chief.
  - c) *Fire Hydrants and Driveways.* Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Division of the Fire Department (408) 277-5357. All existing and new fire hydrants shall be at least 10 feet from all driveways. All structures shall be located wholly within 450-foot (road distance) of an accessible standard street hydrant.
  - d) *Fire Alarm System.* Any assembly use type occupancy with an occupant load of 300 or more shall be provided with an approved fire alarm system per the Uniform Building and Fire Code, 1994 edition. All buildings classified as an A2.1 occupancy shall be provided with an approved fire alarm system. An area separation shall not define separate buildings as per UFC 1007.2.1.2, 1994 edition. Voice communication and public-address systems shall also be provided with an approved emergency power source.
  - e) *Fire Extinguishing System(s).* All buildings shall be provided with an approved automatic fire extinguishing system(s) as per the adopted San José Municipal Code. Systems serving more than 100 sprinklers shall be supervised by a remote alarm system. All alternate means of protection shall be reviewed by the Fire Department. Alter the sprinkler system as needed by new partitions, floors and ceilings. Plans and a permit application shall be submitted to the San José Fire Department's Bureau of Fire Prevention for review and approval before altering the system. A separate inspection will be required before the final fire inspection can be scheduled. Call (408) 277-4656 for more information.
  - f) *Facilities for Emergency Vehicle Access.* Roads and/or driveways shall have a minimum clear width of 20 feet. Minimum turning radius shall be 30 feet inside and 50 feet outside. A bulb or hammerhead turn-around shall be provided at the end of all dead-end driveways over 150 feet in length. Minimum vertical clearance shall be 14 feet. All interior ingress and egress median dividers shall be recessed a minimum of 20 feet for emergency vehicle accessibility per the adopted Fire Code.

- g) *Exit Doors.* All required exit doors shall be provided with approved panic hardware in accordance with Section 2501.8.2 of the Uniform Fire Code.
  - h) *Fire Lanes.* Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided.
  - i) *Street Numbers.* Street numbers shall be visible day and night from the nearest street, either by means of illumination or by the use of reflective materials.
13. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
14. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
15. **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.
16. **Hours of Operation.** The hours of operation shall be limited between 6:00AM and midnight.
17. **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.
18. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.

## 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 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 in accordance with Title 20 to extend the validity of this Permit for a period of up to but not exceeding one (1) year; provided, however, that no more than two (2) such term extensions are approved. The Permit Adjustment must be approved prior to the expiration of this Permit.

3. **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