

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. 05-11-05 Item No.

File Number
CP04-095

Application Type
Conditional Use Permit

Council District
7

Planning Area
South

Assessor's Parcel Number(s)
499-36-059

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Lori Moniz

Location: Northwest corner of East Capitol Expressway and McLaughlin Avenue (1091 East Capitol Expressway)

Gross Acreage: 0.53

Net Acreage: 0.53

Net Density: N/A

Existing Zoning: CN Commercial Neighborhood

Existing Use: 24 hour self service gasoline station

Proposed Zoning: No Change

Proposed Use: New 24 hour self service gasoline station

GENERAL PLAN

Completed by: LM

Land Use/Transportation Diagram Designation
Neighborhood/Community Commercial

Project Conformance:
 Yes [] No
[] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: LM

North: Commercial

CN Commercial Neighborhood

East: Single-family residential

R-1-8 Residence

South: Single-family residential

R-1-8 Residence

West: Commercial

CN Commercial Neighborhood

ENVIRONMENTAL STATUS

Completed by: LM

[] Environmental Impact Report Resolution No. 65459
[] Negative Declaration

Exempt
[] Environmental Review Incomplete

FILE HISTORY

Completed by: LM

Annexation Title: Evergreen No. 68

Date: July 10, 1961

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
[] Approval with Conditions

Date: _____

Approved by: _____
 Action
[] Recommendation

OWNER	OWNER	OWNER	OWNER	DEVELOPER	CONTACT
Namimatsu Family Trust 14523 Sobey Road Saratoga, CA 95070	Inouye Family Trust 1378 Glacier Drive San Jose, CA 95118	Matsumoto Family Trust 4380 Silva Avenue San Jose, CA 95118	Kanda Family Trust 596 Trumbull Ct. Sunnyvale, CA 94087	Palisades Gas & Wash 30101 Agoura Ct. #200 Agoura Hills, CA 91301	Mark McIvain 5921 Folsom Blvd Sacramento, CA 95819

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LM

Department of Public Works

See attached memorandum from the City of San Jose Public Works Department.

Other Departments and Agencies

See attached memorandum from the City of San José Fire Department.

GENERAL CORRESPONDENCE

None Received.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Palisades Gas & Wash, is requesting a Conditional Use Permit to allow the demolition of an existing gas station and the construction of a new gas station facility with 24 hour operation comprised of a 886 square foot pay booth/sales building and a 4,184 square foot canopy covering new gasoline dispensers on a 0.53 gross acre site. The project site is located in the CN Commercial Neighborhood Zoning District. The existing gasoline station was permitted under the previous A(PD) Planned Development Zoning designation of the site. The site currently contains a self-service gasoline station with five fuel dispensers and a pay kiosk with a large canopy structure and legal nonconforming status relative to the 24 hour operation. The Zoning Ordinance requires a Conditional Use Permit for a gas station in the CN Commercial Neighborhood Zoning District and for the operation of a business between the hours of midnight and 6:00 a.m. The demolition of the existing use and reconstruction of the same use in a different configuration does not continue any legal nonconforming rights.

The previous A(PD) Planned Development Zoning of the site was approved in 1976 (File no. PDC76-008). The site-specific zoning allowed a gas station/car wash as a permitted use with no limitation on hours of operation. A Planned Development Permit was issued (File no. PD78-086) for the construction of the existing gas station. This project, however, did not elect to incorporate a carwash. Since the project site was rezoned to a standard commercial zoning district (CN Commercial Neighborhood) in 2003, expansion or replacement of the gas station requires a Conditional Use Permit rather than a Planned Development Permit.

Adjacent uses include single-family residential uses across the streets to the south and east. An existing commercial shopping center wraps around the subject site to the north and west.

Project Description

The project proposes to demolish an existing gas station and construct an 886 square foot pay booth building and 4,184 square foot canopy area with nine fuel dispensers and 4 parking spaces. The applicant proposes to continue operating the gasoline station 24 hours per day. This project does not include a carwash or vehicle repair facility.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15302(b) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be 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, in that the proposed project consists of replacement of an existing commercial structure with a new structure of substantially the same size, purpose, and capacity which will be located on the same site as the structure replaced.

GENERAL PLAN CONFORMANCE

The subject site is designated Neighborhood/Community Commercial on the San José 2020 General Plan Land Use/Transportation Diagram. Neighborhood/Community Commercial applies primarily to shopping centers of a neighborhood or community scale. The CN Commercial Neighborhood Zoning District conforms to this General Plan designation. The proposed gasoline service station facility is considered a neighborhood serving commercial use in conformance with the General Plan. The proposed project is also in conformance with the commercial land use policies in that the City encourages the upgrading, beautifying and revitalization of existing commercial uses.

ANALYSIS

The project was analyzed to determine its conformance to: 1) the Zoning Ordinance, and 2) the Commercial Design Guidelines.

Conformance to the Zoning Ordinance

The site on which the project is proposed is located in CN Commercial Neighborhood Zoning District. Pursuant to 20.40.100 of Zoning Ordinance, a gasoline station is allowed in a CN Commercial Neighborhood Zoning District with a Conditional Use Permit. Retail sales of food and grocery items are not allowed in conjunction with the sale of gasoline. This limitation does not apply to the retail sale of prepackaged soft drinks, cigarettes, and snack foods from automatic vending machines. While the proposed structure appears to have about 330 square feet of sales floor area, such sales must be limited to food and grocery items from automatic vending machines as mentioned above, and other merchandise. This permit includes a condition to include such restrictions.

The project proposes to provide four (4) parking spaces to satisfy the parking requirements of the Zoning Ordinance. Gas stations are required to provide 1 parking space per employee plus 1 per water and pump services plus 1 space for an information stop. The structural improvements proposed as part of this project conform to the setback regulations of the CN Commercial Neighborhood Zoning District.

Conformance to the Commercial Design Guidelines

The project is designed to conform to the Commercial Design Guidelines. According to the Commercial Design Guidelines, the site should be well designed to accommodate all the necessary

circulation patterns for gas trucks, pump island vehicle stacking and those for the general retail activities. Landscaped areas have been maximized to the extent possible. Driveway cuts should be limited to one or two per street. The project proposes to construct a new pay booth and canopy with nine new fuel dispensers. The proposed site plan accommodates the circulation of cars using the gasoline dispensers. The project proposes landscaped areas that will enhance the appearance of the site.

The Commercial Design Guidelines recommend that all structures on the site should be architecturally consistent. The proposed structure will use roofing material and wall textures to match with the adjacent building at the shopping center.

The Commercial Design Guidelines also recommend that all building elevations facing public streets should be architecturally detailed to contribute a positive presence to the street. The project proposes to replace the existing street-facing bare walls of the service building with transparent large glass windows, which will be a positive change in the appearance of the building. Building materials proposed for the project have the appearance of substance and permanency, thereby conforming to the Commercial Design Guidelines. Public restrooms will be available at the proposed pay booth building.

PUBLIC OUTREACH

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the subject site as well as published in the San Jose Post Record. The Planning Commission and City Council agendas are posted on the City of San Jose website with copies of the staff report and City Council memo. Staff has been available to answer questions on the project from the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approves 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 Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The site is currently zoned CN Commercial Neighborhood.
3. The site is 0.53 gross acres in size.
4. The proposed project consists of the construction of an 886 square foot pay booth building, 4,184 square foot canopy area and nine new fuel pump dispensers at an existing self-service gasoline station, demolition of the existing buildings on the site, provision of 4 parking spaces and other related site improvements.
5. The gasoline service station currently has five fuel pump dispensers.

6. A Conditional Use Permit is required to allow gasoline stations in a CN Commercial Neighborhood zoning district and for uses operating between midnight and 6:00 a.m.
7. The gasoline service station currently operates 24-hours a day as a legal non-conforming use.
8. With the proposed four (4) parking spaces, the site will satisfy parking requirements according to section 20.90.060 of the Zoning Ordinance.
9. The proposed project includes approximately 330 square feet of retail floor area.
10. The Zoning Ordinance pursuant to section 20.80.550 prohibits the sales of food, grocery items and alcoholic beverages at gas stations. This limitation does not apply to the retail sale of prepackaged soft drinks, cigarettes, and snack foods from automatic vending machines.
11. Under the provisions of Section 15302(b) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be 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.
12. The City's Department of Public Works has analyzed the proposed project and determined that it would be in conformance with the City's Transportation Level of Service Policy (Council Policy 5-3) and would not create a significant traffic impact.

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 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.

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 and Development Exception 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. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. **Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance** for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
2. **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.

CONCURRENT CONDITIONS

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

1. **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.

2. **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.
3. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled "USA Gasoline Corporation" Dated March 1, 2004, 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 (3-04151) to the satisfaction of the Director of Public Works:
 - a. *Public Works Development Review Fee.* An additional Public Works Review Fee is due. Based on established complexity criteria, the project has been rated medium complexity. Prior to the project being cleared for the hearing and approval process, a sum of \$641 shall be paid to the Department of Public Works (Room 308).
 - b. *Minor Improvement Permit.* The public improvements conditioned as part of this permit 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 analysis was performed for this project based on 49 AM and 56 PM peak hour trips. 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/Geology.*
 - (1) 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.

- (2) 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.

- e. *Storm Water Runoff Pollution Control Measures.* This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy), which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and storm water treatment controls to minimize storm water pollutant discharges.
- 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. *Reimbursement.* The developer will be required to reimburse the City for costs advanced for the construction of street improvements along McLaughlin Avenue in accordance with City Ordinance #19663.
- h. *Street Improvements.*
 - (1) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - (2) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - (3) Improvement of the public streets shall be to the satisfaction of the Director of Public Works.
 - (4) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- i. *Electrical.* The existing electroliers will be evaluated at the street improvement plan stage and any necessary street lighting requirements will be included as part of the street improvement plans.
- j. *Street Trees.* Install street trees within the public right-of-way along the entire street frontage per City standards. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.

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.* This permit file number, CP04-095, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *American With Disabilities Act.* The applicant shall provide appropriate access as required by the American With Disabilities Act (ADA).
 - d. *Demolition Permit.* Obtainment of a demolition permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a demolition permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code. Prior to demolition of these buildings, the San Jose Fire Department would like to use this as an opportunity for training purposes. Contact the San Jose Fire Department's Training Center at (408) 277-4251.
6. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
 7. **Fire Hydrants.** The needed fire flow shall be provided from a minimum of two (2) hydrants and shall be placed apart on average 450 feet from the proposed project. Fire flow may be reduced upon construction of a four-hour wall, without openings, as per the adopted fire code. Construction of the area separation wall is subject to review by the Fire Department.
 8. **Fire Maintenance.** All Fire Department access roads, water mains, and fire hydrants shall be installed and operational during the construction in accordance with Article 87 of the Fire Code and all other applicable standards.
 9. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
 10. **Hazardous Materials.** Use or storage of hazardous materials, liquids, gases and/or chemicals will be subject to meeting the requirements of the Hazardous Materials Storage Ordinance, the Toxic Gas Ordinance, the applicable sections of the San Jose Fire Code, and the National Fire Codes. Submit names and amount of any hazardous materials, if they are to be stored or used, to the Bureau of Fire Prevention for review and approval.
 11. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise specified in writing from the Fire Department.
 12. **Hours of Construction Activity.** Construction activities shall conform to Title 20, as amended.
 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-enter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

14. **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.
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. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
17. **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 and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. Mechanical equipment used for outside maintenance, including blowers and street sweepers shall not be used between 10:00 P.M. and 6:00 A.M. daily.
 - c. 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.
18. **Sales of Food and Alcohol.** Pursuant to 20.80.550 of the Zoning Ordinance, no retail sales of alcoholic beverages or grocery or food items are permitted in a gasoline service station.
19. **Hours of Operation.** The proposed use is permitted to operate 24-hours a day, seven days a week.
20. **Sign Approval.** No new signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
21. **Lighting.** All lighting shall conform to the *City Council Policy on Outdoor Lighting on Private Development* and the *Commercial Design Guidelines*.

22. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
23. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. 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.
24. **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.
25. **Roof Equipment.** All rooftop equipment shall not be visible from public streets or neighboring properties.
26. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
27. **Colors and Materials.** All building colors and materials are to be specified on the approved plan set.
28. **Parking Surface.** The applicant shall replace, repair, and resurface all damaged and/or cracked areas of the surface parking lot.
29. **Easements.** The applicant shall obtain and maintain all necessary easements for reciprocal access and parking on the site.

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 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.
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.

Attachments:

Plan Set

Memo from Fire Department

Memo from Public Works Department