

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. 4/11/2005 Item .

File Number
CP05-007

Application Type
Conditional Use Permit

Council District: 7

Planning Area
South San Jose

Assessor's Parcel Number(s)
497-27-016

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Rebekah Lynn Ross

Location: West side of Senter Road, approximately 430 feet south of Lewis Road

Gross Acreage: .40

Net Acreage: .40

Net Density: N/A

Existing Zoning: CN Commercial Neighborhood

Existing Use: Retail commercial center (currently under construction)

Proposed Zoning: No change

Proposed Use: Billiards Establishment

GENERAL PLAN

Completed by: RLR

Land Use/Transportation Diagram Designation
Neighborhood/Community Commercial

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Rebekah Ross

North: Commercial

CP Commercial Pedestrian

East: Single-family residential

R-2 Residence District

South: Single-family residential

A(PD) Planned Development

West: Single-family residential

R-1-8 Residence District

ENVIRONMENTAL STATUS

Completed by: RLR

Environmental Impact Report found complete
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: RLR

Annexation Title: Franklin No. 1

Date: 09/25/1968

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT/OWNER

Hung Nguyen
22195 Rae Lane
Cupertino, CA 95014

Department of Public Works

See attached memo.

Other Departments and Agencies

See attached memorandums from the Fire Department

GENERAL CORRESPONDENCE

None

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Hung Nguyen, is proposing to allow a billiards establishment within a tenant space of a new retail building that is currently under construction. A Poolroom/Billiards Establishment requires a Conditional Use permit as per Table 20-90 of the Zoning Ordinance. The proposed 5,335 square foot retail building was recently approved under Site Development permit application H03-044 and had been designed to accommodate approximately six small retail uses. The proposed billiards establishment would be located near the rear of the building and would occupy 1,773 square feet. The billiards establishment as proposed would accommodate seven pool tables. The proposed use would be open within the normal operating times as allowed by the Zoning Ordinance for typical retail uses. This proposal does not include a restaurant or drinking establishment.

Surrounding land uses include a church across Senter Road to the east and single-family detached residences to the south and west. A commercial use exists to the north. The other uses proposed for this retail building have not been finalized.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15303 (New Construction or Conversion of Small Structures), of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project has been found to be exempt from the environmental review requirements of Title 21 of the San José Municipal, implementing the California Environmental Quality Act of 1970, as amended.

GENERAL PLAN CONFORMANCE

The proposed project conforms to the General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. The primary intent of this designation is to encourage development in

the form of shopping centers, as a group of commercial establishments planned and developed as a unit and in related size and type of shops to the trade area it serves. Typical uses in the Neighborhood/Community Commercial designated areas are neighborhood serving retail and service establishments. A small billiards hall or poolroom of the scale that is proposed is a neighborhood-service establishment.

ANALYSIS

The key issue that has been considered as part of this proposal is neighborhood compatibility.

Neighborhood Compatibility

This site was approved for retail development in December 2003. All issues pertaining to traffic circulation and potential uses were addressed in the approved Site Development Permit. Access to the commercial center is off of Senter Road away from the residential uses. The building has been set back 10 feet from all property lines, and a six foot concrete block wall is required to be constructed along the property lines between the commercial center and adjacent residential prior to occupancy of the building. All uses will be conducted inside. The approved parking lot design includes shielded lights so that all light will be reflected away from any residential uses and will provide sufficient lighting to enable adequate surveillance by patrons and public safety personnel. The applicant proposed hours of operation of 9:00 a.m. until Midnight seven days a week. These operating hours are within the as-of-right hours of operation for all retail uses which might otherwise occupy the building.

Adequate on-site parking will be provided. The parking requirement identified in the Zoning Ordinance for billiards establishments are the same as for a retail establishments, one parking space for every 200 square feet of net floor space. No alcohol beverage service is proposed at this time. Any such future request would be subject to a Conditional Use Permit/Amendment. Since this is a new use and there has been no established record of incidents associated with a billiard hall in this area, staff is recommending a two (2) year time limit on this permit to enable the City to revisit the use question when there will be more information related to whether or not the specific use in this location has negatively impacted the community.

In accordance with Municipal Code Title 6, Chapter 6.56 (Pool and Billiards), no more than 25 billiard halls/poolrooms can operate in the City of San Jose at any one time. According the City of San Jose's Police Department, there are nine (9) such billiard halls that are legally operating at this time. If this application is approved, this will be the tenth such operating poolroom within the city limits. Should the Planning Commission approve this application, the operator will be required to comply with all the requirements of Title 6 of the San Jose Municipal Code related to 'Pool and Billiards'.

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. 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 interested 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 Neighborhood Community/Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CN- Commercial Neighborhood Zoning District.
3. The project has been found to be exempt from CEQA environmental review and will have no potentially significant effect on the environment.
4. This permit would allow for up to seven (7) pool tables in the billiard hall.
5. The proposed use will be located in a new retail building that was approved with a Site Development Permit (File no. H03-044).
6. This permit includes no physical changes or improvements to the exterior of the building of site.
7. The parking is adequate for the proposed use and for future retail uses on the site.
8. No alcohol or live entertainment is proposed at this time.
9. This project does not propose any outdoor dining areas.
10. This project will operate within the City's standard allowable hours of operation.
11. This use is subject to a subsequent Police Permit.

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

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth 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. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted.
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. **Criminal Activity.** The leaseholder/manager of the billiard hall shall immediately report any on-site criminal activity to the San Jose Police Department. Failure to report any such activity may result in the revocation of this Conditional Use permit.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Hours of Operation.** The hours of operation shall be from 9:00 a.m. until Midnight, Monday through Sunday.
5. **Minors, Age Sixteen and Under.** Minors of the age of sixteen years and/or younger will not be permitted on the site after 10:00 p.m. unless they are accompanied by a parent or legal guardian.
6. **Alcohol, Gambling and Entertainment.** This permit does not allow the sale or consumption of alcohol, gambling or other forms of live entertainment. A separate Conditional Use permit will have to be obtained if any of the aforementioned activities are proposed for the site.
7. **Lighting.** Any new lighting fixtures on the site will be arranged and shielded so that all light will be reflected away from any residential uses.
8. **Private Rooms.** No private billiards rooms are allowed.
9. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set as set forth in H03-044.
10. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
11. **Conformance with Plans.** Construction and development shall conform to approved Site Development permit H03-044 and development plans entitled, "Senter Road Plaza," dated 7/23/03.
12. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
13. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-08261) to the satisfaction of the Director of Public Works:
 - a. **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.
14. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP05-007 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. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms 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.
15. **Fire Requirements.** The Fire Department’s review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and public safety shall be verified by the Fire Department during the Building Permit process.
- a. This permit is approved for access and fire flow only.
 - b. Submit drawing to Building/Fire dept. for construction permits. Contact Captain Steve Padilla, San Jose Fire Department, at (408) 277-8781, to obtain Fire Department permits for “permitted occupancies”, if applicable.
16. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, structures, fencing, and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment 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. **Time Limit.** This Conditional Use Permit expires and has no further force or effect two (2) years from the date of its approval. Please note that this conditional use permit has been granted for a period of two (2) years only. You are being specifically and separately advised of this time limitation so that you will

consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

3. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal Conditional Use Permit application. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
4. **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.