

.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 06/22/05 Item No.:

File Number
CP05-004

Application Type
Conditional Use Permit

Council District
3

Planning Area SNI
Central Washington

Assessor's Parcel Number(s)
434-06-064

STAFF REPORT

PROJECT DESCRIPTION

Completed by: F. Lee Butler

Location: Southwest corner of Willow Street and Almaden Avenue

Gross Acreage: 0.3

Net Acreage: 0.3

Net Density: n/a

Existing Zoning: CP Commercial
Pedestrian

Existing Use: Grocery Store

Proposed Zoning: No change

Proposed Use: Conditional Use Permit to allow an outdoor vertical cardboard baler that exceeds as-of-right Zoning Ordinance noise standards and is located within 150 feet of residentially zoned property.

GENERAL PLAN

Completed by: FLB

Land Use/Transportation Diagram Designation
Medium High Density Residential (12-25 du/ac)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: FLB

North: Commercial

CP Commercial Pedestrian

East: Commercial

CP Commercial Pedestrian

South: Residential

CP Commercial Pedestrian

West: Commercial

CP Commercial Pedestrian

ENVIRONMENTAL STATUS

Completed by: FLB

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

Exempt
 Environmental Review Incomplete
 Addendum to EIR

FILE HISTORY

Completed by: FLB

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____

Action
 Recommendation

OWNER	CONTACT	
Alfredo Montoya 1070 Commercial St., Ste. 103 San Jose, CA 95112	Marissa Garcia 1070 Commercial St., Ste. 103 San Jose, CA 95112	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: FLB

Department of Public Works

- No comments.

Other Departments and Agencies

- None received.

GENERAL CORRESPONDENCE

- None.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Alfredo Montoya, is requesting a Conditional Use Permit (CUP) to allow an existing vertical cardboard baler in the parking lot of the Supermercado Mexico grocery store located at the southwest corner of Willow St. and Almaden Ave. The baler would exceed as-of-right maximum noise standards per Title 20, which states that a commercial use adjacent to property used or zoned for residential use shall not exceed 55 dBA at the residential property line. Per Section 20.40.600 (B) (2) of the San Jose Municipal Code, noise levels may not exceed noise standards except upon issuance of and in compliance with a Conditional Use Permit. Additionally, outdoor uses within 150 feet of residentially zoned property is subject to a Conditional Use Permit. The supermarket use is permitted by right in the CP Commercial Pedestrian Zoning District.

The subject site is located within in the CP Commercial Pedestrian Zoning District. It is located within the Willow Street Neighborhood Business District, and the Washington Strong Neighborhoods Initiative area. The site is generally flat and is bordered by commercial uses to the north, west, and east. A residential use borders the site to the south. No exterior modifications are proposed to the existing building.

Project Description

The vertical cardboard baler currently exists at the southwest corner of the site adjacent to the trash enclosure. It was installed without the benefit of permits. The noise level produced during the baler's operation varies from approximately 72-76 dBA at the nearest residential property line to the south. Each operation lasts approximately 45 seconds, and the total duration of each use is three to five minutes. The baler itself is 6 feet 6 inches long by 3 feet 7 inches wide and has a central shaft that extends to just over 12 feet in height. The baler is used for compaction of cardboard boxes.

GENERAL PLAN CONFORMANCE

The General Plan Land Use Designation for the site is Medium High Density Residential (12-25 du/ac). The San José General Plan Land Use/ Transportation Diagram text states that “.since parcels of two acres and less in size may be too small to be separately identified on a map of the scale of the official Land Use/Transportation Diagram, any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of how it is designated.” The site is less than two acres and the existing use as a retail grocery store is not affected by this application, therefore, the project is deemed to be in conformance with the General Plan. Furthermore, the site is in the Willow Street Neighborhood Business District. Neighborhood Business Districts seek “to preserve, enhance, and revitalize San Jose’s older neighborhood serving commercial areas.” The existing grocery store is a vibrant use and helps promote the Neighborhood Business District designation by occupying older commercial space and by attracting other businesses and pedestrian activity to the area.

ENVIRONMENTAL REVIEW

The Director of Planning, Building, and Code Enforcement has determined that the proposed project is exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines. Section 15301 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. No expansion of the existing use is proposed with this application, therefore, it is exempt per this Section.

ANALYSIS

The primary issues evaluated for this proposal were alternative locations and noise impacts. The analysis of each of these issues is discussed below.

Alternative Locations

Staff toured the project site on May 17, 2005 and evaluated alternative locations on both the interior and exterior of the property. The tour included inspections of both the interior and exterior of the property. Staff’s primary reason for the visit was to determine if any other areas on the site could accommodate the vertical baler that would be further from the residential properties thus reducing the potential noise impacts. No interior areas were suitable to accommodate the baler because the ground floor area and basement both have ceiling heights less than the 12-foot height of the baler. Alternative locations on the exterior of the property could only accommodate the baler with the loss of existing parking spaces. The community has indicated an interest in preserving all of the existing parking at the site, and the current location of the baler does not result in the loss of parking. Therefore, Staff concluded that the current location is the most appropriate for the baler balancing both the needs of the market and the interests of the community.

Noise Impacts

Environmental Consulting Services prepared a noise report based on the current operations of the vertical baler at the site. Their analysis (copy attached) indicates that the “noise level during each operation, approximately 45 seconds in duration, varied from 72-76 dBA, measured at the property line above the 6 foot cinder block wall.” The property to the south is a residential property, therefore the maximum noise level for a commercial use adjacent to property zoned or used for residential use is 55 dBA at that property line, per Table 20.105 of the San Jose Municipal Code. While the noise level generated from the operation of the baler is well above the maximum noise level allowed, the operation of the baler is very infrequent. From the noise report and from discussions with the Supermercado Mexico staff, the baler is typically used one or two times per day, with each time lasting three to five minutes. The overall time of noise impacts is very minimal, and Staff is recommending conditions of approval to only allow operation of the baler between the hours of 9 a.m. to 9 p.m. If operated in conformance with this permit, Staff does not believe the use will negatively impact the adjacent residential uses.

The attached noise report indicates that the noise level from the operation of the baler could be reduced by approximately 8 dBA by increasing the height of the existing 6-foot concrete block wall by two feet to a height of eight feet above grade. Staff believes that the permanent negative aesthetic impacts from the eight-foot wall would be worse the temporary noise impacts from the baler operating noise. The minimal improvement in the noise would not offset the visual impacts from the increased wall height. Therefore, staff does not recommend increasing the wall height.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. The project was announced at the June 9, 2005 Washington Area Community Coalition meeting, and the community did not express any opposition to the proposal. 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 Medium High Density Residential with a Neighborhood Business District Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is currently zoned CP Commercial Pedestrian.

3. The site is 0.3 gross acres in size.
4. The areas surrounding the site are designated either (1) Medium High Density Residential with a Neighborhood Business District Overlay or (2) General Commercial with a Neighborhood Business District Overlay on the San José 2020 General Plan Land Use/Transportation Diagram. The surrounding properties are zoned CP Commercial Pedestrian.
5. The subject site is located within in the CP Commercial Pedestrian Zoning District. It is located within the Willow Street Neighborhood Business District and within the Washington Strong Neighborhoods Initiative area. The site is generally flat and is bordered by commercial uses to the north, west, and east. A residential use/district borders the site to the south. No exterior modifications are proposed to the existing building.
6. The proposed vertical cardboard baler at the southwest corner of the site would exceed the maximum noise levels per Title 20 of the San Jose Municipal Code during its operation.
7. Per Section 20.40.600 (B) (2) of the San Jose Municipal Code, noise levels can exceed minimum standards only upon issuance of and in compliance with a Conditional Use Permit.
8. The Director of Planning, Building, and Code Enforcement has determined that the proposed project is exempt under Section 15301 of CEQA.

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 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.
3. **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.

CONCURRENT CONDITIONS

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

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Super Mercado Mexico, 204 Willow St." dated May 2, 1996, on file with the Department of Planning, Building and Code Enforcement.
2. **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, CP05-004, shall be printed on all construction plans submitted to the Building Division.
3. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
4. **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.
5. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
6. **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 damp washing as necessary 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.
7. **Hours of Baler Operation.** Hours of operation for the baler are limited to 9:00 a.m. to 9:00 p.m., seven days a week.
8. **Lighting.** This permit allows no new on-site, exterior lighting. Any exterior lighting shall be subject to approval by the Director of Planning, Building, and Code Enforcement.

9. **Changes to the Structure.** No interior or exterior modifications to the structure are approved with this permit. Any changes shown on the plans other than the vertical baler were part of a previous permit and were not reviewed as part of this approval.
10. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
11. **Parking.** No parking is to be removed as part of this proposal.

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. **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