

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
P.C. 08/10/05 Item No. 3.c.

File Number  
CP04-114

Application Type  
Conditional Use Permit

Council District  
7

Planning Area  
South San Jose

Assessor's Parcel Number(s)  
455-24-048, 049, 057 & 066

### PROJECT DESCRIPTION

Completed by: Lori Moniz

Location: West side of Monterey Road, 100 feet southerly of Lewis Road (3382 Monterey Road)

Gross Acreage: 1.33

Net Acreage: 1.33

Net Density: N/A

Existing Zoning: CN Commercial Neighborhood

Existing Use: Wholesale Establishment

Proposed Zoning: No change

Proposed Use: Commercial with Drive through use

### GENERAL PLAN

Completed by: LM

Land Use/Transportation Diagram Designation  
Combined Industrial/Commercial

Project Conformance:  
 Yes  No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: LM

North: Industrial

LI Light Industrial

East: Industrial

LI Light Industrial

South: Industrial

HI Heavy Industrial

West: Industrial

HI Heavy Industrial

### ENVIRONMENTAL STATUS

Completed by: LM

Environmental Impact Report Use of 2020 General Plan EIR  
 Negative Declaration circulated on \_\_\_\_\_

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Completed by: LM

Annexation Title: Monterey Park No. 14-A

Date: 1/28/57

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
 Action  
 Recommendation

### OWNER/APPLICANT

Reppas & Sons  
Attn: George & Mike Reppas  
2943 Daylight Way  
San José, CA 95111-3103

### CONTACT PERSON

Kenneth Rodrigues, FAIA  
Kenneth Rodrigues & Partners, Inc.  
10 South Third Street, Suite 400  
San José, CA 95113

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: LM

**Department of Public Works**

See Attached.

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**Other Departments and Agencies**

None received.

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**GENERAL CORRESPONDENCE**

None received.

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicants, Reppas & Sons, are requesting a Conditional Use Permit to allow construction of 15,000 square feet of retail commercial buildings with a drive-through use on a 1.33 gross-acre site. The application included the request for the off-sale of alcoholic beverages; however the applicants have since modified the application to omit that portion of the request. A drive-through use in conjunction with any use in the CN Commercial Neighborhood Zoning District requires a Conditional Use Permit. The site is located within the Communications Hill Specific Plan and is surrounded by industrial uses. Monterey Road is primarily built out with commercially-oriented industrial uses where it borders Communications Hill. The site was recently rezoned from industrial designations to CN Neighborhood Commercial (C04-097) to facilitate the proposed use. The subject site is currently developed with a wholesale marine supply use.

**GENERAL PLAN CONFORMANCE**

The site is currently designated as Combined Industrial/Commercial on the General Plan Land Use/Transportation Diagram. This designation allows a mixture of compatible commercial and industrial uses. Under the Combined Industrial/Commercial land use designation, projects that consist exclusively of either commercial or industrial uses can be considered in areas that exhibit an existing mixed land use pattern. Monterey Highway is specifically identified in both the San José 2020 General Plan and the Communications Hill Specific Plan as an area suitable for a mixture of commercial and industrial uses. The uses allowed under the CN Commercial Neighborhood District are consistent with this General Plan designation and the specific plan designation of Combined Industrial/Commercial.

**ENVIRONMENTAL REVIEW**

This project has been found to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15332. Under this section, infill projects are exempt when:

- 1) The project is consistent with the applicable general plan policies as well as with the applicable zoning designation and regulations. The subject site has a General Plan Designation of Combined Industrial/Commercial. The subject site has a Zoning Designation of CN Commercial Neighborhood. Commercial uses are supported by the goals and policies of the General Plan as well as the Commercial Neighborhood zoning district.
- 2) The proposed development occurs within city limits on a project site of no more than five acres surrounding by urban uses. The subject site 1.33 acres.
- 3) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- 4) The site can be adequately served by all required utilities and public services.

## **ANALYSIS**

The proposed project was analyzed for conformance to the following: 1) Zoning Ordinance, 2) Commercial Design Guidelines, and 3) Council Policy 6-10: Drive-Through Uses.

### Zoning Ordinance

The project conforms to all relevant development standards with regard to setback and height standards for the CN Commercial Neighborhood Zoning District. Further, the project proposes a total of 85 parking spaces on the site which more than adequately complies with the applicable Zoning Ordinance parking requirements for a mix of commercial uses. Under the CN Commercial Neighborhood zoning regulations, a Conditional Use Permit is required in order for a drive through use in conjunction with a commercial establishment.

### Commercial Design Guidelines

The proposed site plan is consistent with the Commercial Design Guidelines for drive through restaurant in terms of site organization, building location and design, drive-through orientation, parking, and site circulation.

Consistent with the Commercial Design Guidelines, the building with the drive through use is proposed close to the street to establish good street presence and to help break up the expanse of parking area along Monterey Road. An 8 vehicle stacking area is proposed for the drive-through lane, which complies with the guidelines.

The proposed drive-through restaurant provides a good architectural design compared to typical designs of the past. The drive-through lane, which by operational function, must “hug” the edge of the building somewhat limits the architectural opportunities to articulate the side of the building next to the pick-up window. As with a few other recently approved drive-through restaurant buildings, the greater use of architecturally integrated overhead roof canopies and abutting trellises, such as proposed, has dramatically improved the overall quality of the architecture.

*Council Policy 6-10: Drive-Through Uses*

The proposed drive-through is consistent with key elements of the City Council Policy for Drive-Through Uses. The drive-through stacking lane provides adequate capacity for up to 8 cars, which meets the recommendations in the Policy. To the degree that overflow might occur on occasion, such stacking would not impact driveways adjacent to the public right-of-way.

The policy recommends that all drive-through uses should be 200 feet or more from immediately adjacent or directly opposite residentially used, zoned or General Plan designated properties. This project complies with this policy in that the closest residential property is located over 800 feet away from the site across Monterey Highway. The intent of the policy is to provide adequate distance or buffer between the residential use and a drive through use in order to minimize noise impacts.

**RECOMMENDATION**

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

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

1. This site has a designation of Combined Industrial/Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The project site is located on a 1.33 -gross-acre parcel in the CN Commercial Neighborhood Zoning District.
3. The project site is currently developed with a marine supply use.
4. The project site as proposed includes 85 parking spaces.
5. The project proposes construction of 15,000 square feet of commercial uses including a drive through use.
6. The proposed drive-through lane provides stacking for up to 8 vehicles.
7. The proposed drive through use is located over 800 feet from the closest residential use across Monterey Highway.
8. The proposed project has is Exempt from the requirements of CEQA.

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

1. The proposed project is consistent with the site's designation of Combined Industrial/Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram

of the City of San José.

2. The proposed project complies with applicable provisions of the Zoning Ordinance.
3. The proposed project conforms to the Commercial Design Guidelines.
4. The proposed project conforms to the City Council Policy for Drive-Through Uses.
5. 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. As conditioned, 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 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 should be submitted to the Director of Planning within 30 days of approval of this permit, but must be prior to issuance of a Building Permit. Submittal of the recording fee less than a 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. **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.
3. **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.

4. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Monterey Road/Pullman Way Retail Center" dated December 2004, last revised August 2005, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
5. **No Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
6. **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. Trash areas shall be maintained in a manner to discourage illegal dumping.
7. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
8. **Fire Flow.** The needed fire flow, 3,000 G.P.M, shall be provided from a minimum of 3 hydrants and shall be spaced 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(s) is subject to review by the Fire Department.
9. **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. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - b. *Construction Plans.* This permit file number, CP04-114, shall be printed on all construction plans submitted to the Building Division.
10. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, and is subject to the following requirements to the satisfaction of the Director of Public Works:
  - a. *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.

- b. *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) If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation for more information concerning the requirements for obtaining this permit.
  - 3) Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - 4) A soils report addressing the potential hazard of liquefaction must be submitted to and accepted by the City Engineering Geologist prior to the issuance of a Public Works Clearance or a grading permit.
- c. *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.
- d. *Reimbursement.* The developer will be required to reimburse the City for costs advanced for the construction of street improvements along Monterey Road in accordance with City Ordinance #19663.
- e. *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 curb, gutter, and sidewalk along project frontage.
  - 3) Close unused driveway cut(s).
  - 4) Proposed driveway width to be 26'.
  - 5) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - 6) 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.

f. *Complexity Surcharge (In-Fill)*. Based on established criteria, the public improvements associated with this project have been rated medium complexity. An additional surcharge of 25% will be added to the Engineering & Inspection (E&I) fee collected at the street improvement stage.

g. *Electrical*.

1) Installation/relocation/relamping of electrolier(s) may be required. The existing lighting will be evaluated at improvement plan stage.

2) Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas.

h. *Landscape*.

1) Install street trees within the public right-of-way along the entire street frontage per City standards.

2) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.

3) Contact the City Arborist for the designated street tree.

11. **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.

12. **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.

13. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
14. **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.
15. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
16. **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 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.
17. **Lighting.** All new outdoor lighting on the site shall conform to the City's Outdoor Lighting Policy and shall use low-pressure sodium (LPS) lighting fixtures.
18. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
20. **Amplified Sound.** No amplified sound shall be audible from adjacent properties. All outdoor speakers for the drive-thru shall be kept at a level as not to be audible from adjacent properties. No outdoor paging systems are to be installed.
21. **Mechanical Equipment.** All roof equipment shall be screened from view.
22. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings 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 to extend the validity of this Permit for a period of up to two years. 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.