

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113

Hearing Date/Agenda Number
P.C. 04-25-07 Item # 3.f.

File Number
CP 06-043

Application Type
Conditional Use Permit

Council District
4

Planning Area
Berryessa

Assessor's Parcel Number
237-31-012

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Chris Burton

Location: Southwest corner of Atteberry Lane and Seareel Lane

Gross Acreage: 0.66

Net Acreage: 0.66

Net Density: N/A

Existing Zoning: IP-Industrial Park

Existing Use: Vacant industrial building

Proposed Zoning: No Change

Proposed Use: Indoor Recreation

GENERAL PLAN

Land Use/Transportation Diagram Designation
Industrial Park with Mixed Industrial Overlay

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

North: Industrial Park Office/Warehouse

IP Industrial Park Zoning District

East: Industrial Park Office/Warehouse

IP Industrial Park Zoning District

West: Industrial Park Office/Warehouse

IP Industrial Park Zoning District

South: Industrial Park Office/Warehouse

IP Industrial Park Zoning District

ENVIRONMENTAL STATUS

Environmental Impact Report found complete
 Negative Declaration circulated on 11/15/06
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Annexation Title: Orchard No. 89

Date: November 04, 1980

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date:

Approved by: _____
 Action
 Recommendation

OWNER/APPLICANT

DEVELOPER

The Brinx Family Trust
attn: Harry Brinx
16127 Greenwood Lane
Los Gatos, CA 95030

Nor Cal Elite All-Stars
Attn: Donna Mills
14920 Bonner Court
Morgan Hill, CA 95037

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Chris Burton

Fire

See attached memorandum.

Building

See attached memorandum.

OTHER CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On July 11, 2006, the property developer, Nor Cal Elite All-Stars, submitted an application for a Conditional Use Permit to allow an indoor recreation use within a 10,775 square foot tenant space located in an existing industrial building. A Conditional Use Permit is required for indoor recreation uses in the IP-Industrial Park Zoning District with a Mixed Industrial Overlay General Plan Designation. The use of the building for training sessions for the athletes has been ongoing without approval of a Conditional Use Permit, and the facility is the subject of a Code Enforcement Case requiring a CUP be secured to continue operation.

The site is currently developed with an industrial building that was approved in 1981 (File No. H81-059). The Mixed Industrial Overlay is a requirement for the approval of an indoor recreation use in an industrial zoning district. Surrounding land uses include industrial park office buildings to the north, east, south and west. The industrial uses immediately adjacent to the building are primarily office in character.

Project Description

This Permit would allow an indoor recreation facility to train and condition athletes for the sport of cheerleading. Normal practice sessions would be held on Mondays and Wednesdays from 5 pm to midnight. This would be comprised of Junior Team training from 5pm to 7:30pm, Senior Team training from 7:30 to 10pm and College Team training from 9:30 to midnight. Additional practices would be held on Saturdays for Youth Team training from 9:30am to 11am, Senior Coed Team training 11am to 2pm and an Open Gym forum 2pm to 5pm. Generally, two to five coaches work with each team at practice sessions and at least one administrative staff member is on site.

ENVIRONMENTAL REVIEW

A Hazardous Materials inventory was prepared for the project to address potential impacts caused by the storage or use of hazardous materials on adjacent properties within a half mile radius. This inventory has been used in conjunction with a previous Risk Assessment completed as part of environmental clearance for the previous approval of a project of similar nature in the area and involving sensitive receptors. Analysis completed as part of the Environmental Clearance for Bible Way Church Christian Center (File No. CP06-040) which included the Water Pollution Control Plant (WPCP) approximately 3 miles to the north, recommended that the project be required to submit an Emergency and Protective Action Plan (to address emergency response planning) coordinated with local emergency officials, including the City's Fire and Police Departments. That Report has been reviewed by the City of San Jose Fire Department, which concurred with the conclusions in the analysis.

Based on the above analysis, staff has added a condition to the draft permit requiring the preparation of an Emergency Preparedness Plan prior to the facility obtaining a Certificate of Occupancy, and has concluded that the proposed project is appropriate for this site and compatible with existing uses within the surrounding neighborhood.

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, 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 use does not represent an increase in intensity.

15301. Existing Facilities Class 1 consists of 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. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

GENERAL PLAN CONFORMANCE

The project site is designated Industrial Park with the Mixed Industrial Overlay on the General Plan Land Use Diagram.

The proposed indoor recreation use facility is consistent with the General Plan designation of *Industrial Park with Mixed Industrial Overlay*. The Plan states that areas designated with the *Mixed Industrial Overlay* may be appropriate for a mixture of primarily industrial with compatible commercial or public/quasi-public uses. The Plan also specifies that new uses that include sensitive receptors should be considered within an Overlay Area only when they are compatible and will not inhibit industrial uses. At the time of the General Plan Amendment for the Mixed Industrial Overlay, the Council considered the appropriateness of the Mixed Industrial Overlay for the area, and found that it was appropriate, given the mix of existing uses and the proximity to residential uses to the west, and therefore was not considered a "prime" industrial area and as such may be appropriate for non-industrial uses.

Based on the information provided for the project, staff believes that the proposed indoor recreation use would not inhibit surrounding industrial uses, as no mitigation measures relating to compatibility with industrial uses have been proposed, other than the requirement for an emergency preparedness plan in the extremely unlikely event of an accidental chemical release.

ANALYSIS

The key issue analyzed for the proposed project is land use compatibility and availability of off street parking.

Land Use Compatibility

Staff believes that the proposed use is compatible with the characteristics of the surrounding area and site. Existing land uses include industrial uses to the north, east, south and west. Staff has included a 5-year time limit for the Conditional Use Permit to allow review of the appropriateness of the indoor recreation in the future, if demand for industrial use of industrial buildings increases. No exterior changes to the building are

proposed at this time. The above mentioned program of events has been designed to operate outside of the normal operating hours of the existing industrial users in the area, to minimize any potential conflicts.

Given the fact that the existing surrounding industrial uses are operated within completely enclosed industrial park-style buildings, the introduction of an indoor recreation use also operating entirely within the building into this setting is not expected to negatively impact the ongoing operation of these industrial businesses.

Parking

Twenty-two full parking spaces and one disabled parking space, for a total of twenty-three spaces, are available on site. Due to the length of practice sessions, most of the athletes are dropped off at the location. Typically, Youth Team parents stay for practice sessions and an average of 40% of Senior Team members can drive. As the use has been operating in the building, it was possible to survey parking demand and usage of the parking lot empirically. The parking lot typically reaches capacity during College Team practices where most participants drive. The parking demand table below is based on average attendance at practices during a typical week and includes athletes, parents, coaches and staff.

Day of the week	Time of practice	Team	Participant athletes	Total No. of On-Site Spaces Available	Average No. of spaces used	Percentage Used
Mon & Wed	5pm-7:30pm	Junior	20	23	10	44%
Mon & Wed	7:30pm-10pm	Senior	40	23	16	70%
Mon & Wed	9:30pm-midnight	College	20	23	20	87%
Saturday	9:30am-11am	Youth	10	23	8	35%
Saturday	11am-2pm	Senior Coed	35	23	17	74%
Saturday	2pm-5pm	Open Gym	15	23	10	43%

Table 1. Program of events

The required parking ratio for indoor recreation uses as described in the Zoning Ordinance is 1 space per 80 sq. ft. of recreational area. The total parking requirement for the ±6,486 square feet of recreational space in this 10,775 square foot building would therefore be 82 parking spaces. However, the nature of the proposed training and conditioning activities requires significant clear area around the participants, resulting in a low ratio of participants to floor area. Section 20.90.220 C of the Zoning Ordinance states that a reduction in the required off-street parking for indoor recreation uses may be approved with a Development Permit, provided that such approval is based upon the findings in Subsection B of Section 20.90.200 which require:

1. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this Title;
2. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
3. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

A Condition has been included in the Draft Permit to limit the number of participants in the facility to 50 at any one time. As previously noted, the permit also contains conditions to limit operation of the facility to evenings and weekends to minimize potential conflicts with industrial uses in the area, and help ensure adequate parking is maintained for businesses during the day. Based on the nature of the use, the program of events detailed in Table 1, and the number of participants for each respective training session, as per the information provided by Nor Cal Elite All-Stars, staff recommends that the Planning Commission find that the off-street parking provided at this facility is adequate for the proposed use, as conditioned.

Conclusion

Based on the above analysis, staff concludes that, with the City Council's prior decision to approve the Mixed Industrial Overlay on the subject site, the proposed indoor recreation use is appropriate at this location and will be compatible with uses on the site and in the surrounding area, and will not inhibit the operation of nearby industrial facilities.

PUBLIC OUTREACH

A notice of the public hearing was published, posted on the City's web site and distributed to the owners and tenants of all properties located within 500 feet of the project site. A sign describing the project has been displayed at the project site. In addition, a community meeting was held on December 12, 2006. No members of the public were in attendance, and no one has since indicated any objections to the proposed project. Staff has been available to discuss the proposal with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the findings and conditions as shown in the attached draft Resolution.

Attachments:

Draft Resolution

Location Map

Fire Department Memorandum

Environmental Exemption

Hearing Notice

Plans

RESOLUTION NO.

Resolution of the Planning Commission of the City of San Jose granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing an indoor recreation use, on a 0.66 gross acre site, located at the southwest corner of Atteberry Lane and Seareel Lane. (1460 Atteberry Lane)

FILE NO. CP06-043

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on July 11, 2006, an application (File No. **CP06-043**) was filed for a Conditional Use Permit for the purpose of allowing an indoor recreation use, on that certain real property (hereinafter referred to as "subject property"), situate in the IP Industrial Park Zoning District, located on at the southwest corner of Atteberry Lane and Seareel Lane; and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Nor Cal Elite, 1460 Atteberry Lane San Jose CA" last revised December 05, 2006. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the public hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

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

1. The project site is located at the southwest corner of Atteberry Lane and Seareel Lane (1460 Atteberry Lane). This Permit would allow an indoor recreation use in an existing office/industrial park building.

2. The site has a designation of Industrial Park with a Mixed Industrial Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is zoned to the IP Industrial Park Zoning District.
4. A Categorical Exemption for the project indicates there is no substantial evidence that the project will have a significant effect on the environment.
5. The subject site is surrounded by industrial uses to the north, south, east, and west. All of the industrial uses are operated within completely enclosed buildings.
6. The Zoning Ordinance requires a Conditional Use Permit for an indoor recreation use in the IP Industrial Park Zoning District, with a Mixed Industrial Overlay on the General Plan.
7. The proposed use is proposed to occur totally within the existing building, and no modifications are proposed to the exterior and the site.
8. The Zoning Code parking requirement for an indoor recreation use is one space per 80 square feet.
9. Section 20.90.220 Subsection C of the Zoning Ordinance states that a reduction in the required off-street parking for indoor recreation uses may be approved with a Development Permit provided that such approval is based upon the findings in Subsection B of Section 20.90.200.
10. A total of 23 parking spaces exist on the site. A parking analysis was prepared for the project and additional documentation was provided by the applicant to assess the average number of participants during a regular week of activities. That analysis shows that there is sufficient parking to serve the proposed use.
11. As conditioned, the project developer/facility operator will be required to obtain and fully comply with all applicable City Permits and must submit an emergency preparedness plan prior to occupancy.

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

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
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.
4. The indoor recreation use is compatible with surrounding uses.

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. Based on the information provided by the applicant, 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.
 4. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in Chapter 20.90 of the Zoning Ordinance;
 5. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building; and
 6. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

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 are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **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.
3. **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.

CONCURRENT CONDITIONS

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

1. **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.
2. **Conformance with Plans.** Development and use shall conform to the approved Conditional Use Permit plans entitled, " Nor Cal Elite, 1460 Atteberry Lane San Jose CA " dated December 05, 2006, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Operation of Facility.** This facility shall be limited to operating training and practice sessions within the hours of 5:30pm to midnight on Mondays through Fridays, and 9:30am to 5:00pm on Saturdays and Sundays. Changes to the operation of the facility as an indoor recreation use from those described in the project plans shall be subject to additional permitting, to the satisfaction of the Director of Planning.
4. **Number of Participants.** The number of participants using this facility shall be limited to 50 participants at any time, not including on-site staff.

5. **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.
6. **Noise.** The sound level generated on this site shall not exceed 60 dba DNL at any property line adjacent to a property used for commercial purposes and shall not exceed 70 dba DNL at any adjacent property line of property used for industrial purposes.
7. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
8. **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.
9. **Landscaping.** 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.
10. **Assembly Permit.** An assembly permit for the proposed use is required. Contact Captain Steve Padilla, San Jose Fire Department, at (408) 277-8781, to obtain Fire Department "Assembly Permit" after issuance of the Certificate of Occupancy.
11. **Emergency Preparedness Plan.** Prior to issuance of an Occupancy or Building Permit for the religious assembly use, the project developer shall file and receive approval of an Emergency Preparedness Plan, to the satisfaction of the City of San Jose, Fire Chief and Director of Planning. This plan shall describe evacuation procedures, the shelter-in-place program, and other procedures to follow in the event of an emergency.
12. **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, CP 06-043, shall be printed on all construction plans submitted to the Building Division.
 - b. *Construction Conformance.* A project construction conformance review by the Planning Division is required. 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 to 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.

CONDITIONS SUBSEQUENT

1. **Term Limit.** This Conditional Use Permit expires and has no further force or effect five (5) years from the date this Permit.

2. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 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.

3. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Chapter 20.100, 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.

ADOPTED and issued this 25th day of April 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

Chairperson

ATTEST:

Joseph Horwedel, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.