

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  
12/08/04,  
3.d.

File Number  
CP 04-061

Application Type  
Conditional Use Permit

Council District  
5

Planning Area  
Alum Rock

Assessor's Parcel Number(s)  
601-10-071

### PROJECT DESCRIPTION

Completed by: Sanhita Mallick

Location: Southwest corner of Alum Rock Avenue and Manning Avenue

Gross Acreage: 0.27

Net Acreage: 0.27

Net Density: N/A

Existing Zoning: CP Commercial Pedestrian District

Existing Use: Retail (Grocery/Food)

Proposed Zoning: None

Proposed Use: Grocery and deli with outdoor kitchen and dining.

### GENERAL PLAN

Completed by: SM

Land Use/Transportation Diagram Designation  
General Commercial with Neighborhood Business District Overlay

Project Conformance:  
 Yes  No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: SM

North: Public Parking

CP - Commercial Pedestrian District

East: Single Family Detached Residence

R-1-8 Single Family Residence District /Unincorporated

South: Single Family Detached Residence , Retail Commercial

Unincorporated, CP – Commercial Pedestrian District

West: Retail

CP - Commercial Pedestrian District

Completed by: SM

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

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Completed by: SM

Annexation Title: Alum Rock No\_3-A

Date: October 30, 1958

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

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

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

OWNER	APPLICANT/DEVELOPER	CONTACT
AB Village Properties 11311 Enchanto Vista Ave San Jose CA 95127	Rogelio Ruiz AB Village Properties 11311 Enchanto Vista Ave San Jose CA 95127	Rogelio Ruiz AB Village Properties 11311 Enchanto Vista Ave San Jose CA 95127

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: SM

Department of Public Works

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

Other Departments and Agencies

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

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**GENERAL CORRESPONDENCE**

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**ANALYSIS AND RECOMMENDATIONS****BACKGROUND**

The applicant is requesting a Conditional Use Permit to allow an outdoor barbecue and dining facility within 150 feet of residentially-zoned property and minor building and site improvements in conjunction with a proposed grocery store and delicatessen. The subject site is located on the southwest corner of Alum Rock and Manning Avenues on a 0.27 gross acres.

The project site is located in the CP Commercial Pedestrian zoning district. Grocery stores and public eating establishments are permitted uses in this zoning district. In addition to the grocery store, the project proposes outdoor dining. The parcel is within 150 feet from detached single-family residences located on Manning Avenue. Pursuant to 20.40.520 of Zoning Ordinance, outdoor sales and storage of food and merchandise within 150 Feet of residentially-zoned property are only permitted with a Conditional Use Permit.

The project site is situated within Alum Rock Village Parking Management Zone established by Ordinance No. 26325 adopted by the City Council of San Jose. Per section 20.90.810, parcels within Alum Rock Village Parking Management Zone are exempt from parking requirements for street level uses. No on-site parking is proposed as part of the project.

This application does not include the approval of the sale of alcohol for on-site or off-site consumption (off-sale).

**Site and Surrounding Uses.**

The subject site is located at the edge of a CP Commercial Pedestrian zoning district. Across Manning Avenue on the east side of the site are single-family residences. Retail stores on south and east sides surround the site across Alum Rock Avenue, and there is a surface parking lot on the north side of the site. Alum Rock branch of San Jose Public Library and James Lick High School are located a block away from the site, at the southeast and southwest corner of Alum Rock Avenue and White Road intersection, respectively.

The site currently contains a vacant building. The proposed project will significantly improve the existing condition of the site and will help in revitalizing the street corner. The proposed changes to the building and proposed landscaping improvements along Manning Avenue will create interesting streetscape for pedestrians as well as automobile users. The outdoor dining and barbecue will provide

outside activities at street level, which will add to the vitality and activity of the Neighborhood Business District.



**AERIAL PHOTOGRAPH SHOWING THE SITE (MARKED WITH CROSS-HATCH)  
AND SURROUNDING BUILDINGS**

### Project Description

The proposed grocery store and deli would occupy 4,450 square-feet of the existing building. There will be two covered entryways to the grocery store, one from the Alum Rock Avenue side and the other from the City of San Jose owned surface parking lot to the rear of the building. The grocery is proposed to operate between 8.00 A.M. to 8.00 P.M. Monday through Saturday, and from 9.00 AM to 7.00 PM on Sundays.

The outdoor area on the north side and on the east side (on Manning Avenue) will be converted to a 1,900 square-foot outdoor dining area. A portable charcoal barbecue grill will be used to cook in the outdoor dining area on the Manning Avenue side. Dining in the outdoor dining area will operate until 8.00 PM Monday through Saturday, and until 7.00 PM on Sunday. The outdoor barbeque may be used on the Manning Avenue side between 11.00 A.M. and 5.00 P.M..

Palm trees and low lying plants in new concrete and tile planters are proposed for the outdoor dining area on the Manning Avenue side, as well as for the outdoor dining area at the rear of the site.

A loading area is proposed along Manning Avenue on the northeast side of the site. The loading dock is proposed to be screened by a 7-foot high masonry wall on the Manning Avenue side. Access to the loading area will be provided through a two-leaf, rolling gate. The loading area will be operated in a

manner so as to be compatible with residences directly across Manning Avenue. The proposed permit includes a condition limiting the use of the outdoor loading area to between 8.00 AM to 6.00 PM.

A trash/recycling bin enclosure is proposed at the north side of the site on Manning Avenue. The trash enclosure will have solid walls and roof and solid metal gates with openings on top and bottom to minimize air borne odor and litter. A decorative trellis will be provided over the solid roof. The outer wall of the enclosure facing Manning Avenue will be faced with colored tiles that match the overall design scheme.

## **ENVIRONMENTAL REVIEW**

Under the provisions of Section **15332** of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that:

1. It is consistent with General Plan 2020 and with Zoning Ordinance or Title 20 of Municipal Code of the City of San Jose.
2. The proposed development occurs within city limits on a project site of 0.27 acres, which is substantially surrounded by urban uses.
3. The project site has no value as habitat for endangered, rare or threatened species.
4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
5. The site can be adequately served by all required utilities and public services.

## **GENERAL PLAN CONFORMANCE**

The subject site is designated General Commercial with Neighborhood Business District (NBD) Overlay on the San José 2020 General Plan Land Use/Transportation Diagram. The NBD overlay designation seeks to preserve, enhance and revitalize San José's older neighborhood serving commercial areas. Façade improvements and business development are indicated as some of the tools for achieving this goal.

The site falls within Alum Rock Avenue Neighborhood Business District. The Alum Rock Avenue Revitalization Strategy was prepared by the Redevelopment Agency for this NBD. The goal of the Redevelopment Project was to enhance the economic vitality of the Business District. The proposed project conforms to the General Plan in that the proposed activity on the site is grocery store and associated deli, which will provide community focus and identity through the delivery of goods and services in the neighborhood and will serve as a focus for neighborhood activity. The proposed outdoor dining will be designed and operated in a way that will not adversely impact adjoining uses.

The project fulfils the goals of the Alum Rock Avenue Revitalization Strategy in that it will enhance the economic vitality of the Business District by increasing money spent in the neighborhood, increasing the number of jobs in the neighborhood and improving the attractiveness and quality of the neighborhood.

## **ANALYSIS**

The project was analyzed to determine its conformance to the Zoning Ordinance and the Commercial Design Guidelines, adopted by the Planning Commission on May 1988.

### **Conformance to the Zoning Ordinance**

The parcel on which the project is proposed is located in CP Commercial Pedestrian district. Grocery and public eating establishments are permitted uses in this zoning district. In addition, the project proposes outdoor cooking and dining. The parcel is within 150 feet from surrounding single-family detached residences. Pursuant to 20.40.520 of Zoning Ordinance, outdoor sales and storage of food and merchandise within 150 Feet of residentially zoned property is permitted with a Conditional Use Permit.

The outdoor dining area proposed on the Manning Avenue side of the site is separated from the residences on the east of the site by an approximately 50-foot wide street right-of-way. The outdoor dining area proposed at the rear of the site is separated from the adjacent residences by the City's public parking lot, which is approximately 90 feet wide. Dining activities in the outdoor areas will operate only until 8.00 PM from Mondays through Saturdays, and only until 7.00 PM on Sundays, and are incidental to the operation of the grocery store. No music or speakers will be allowed in the outdoor eating area. The activities in these areas will be operated in a manner to be compatible with the residential uses on Manning Avenue.

### **Conformance to the Commercial Design Guidelines**

The project is designed to conform to the Commercial Design Guidelines. However, physical constraints of the site due to size and location, and existing conditions such as the location of existing trash enclosures and loading areas put some limitations on the achievement of design goals of the Guidelines.

The Commercial Design Guidelines specify that storage of garbage/trash bins should be done in a manner that does not create problems for adjacent properties and that trash enclosures should be located away from residential uses. The existing trash enclosure is located on Manning Avenue which is separated by the residential properties across Manning Avenue by 50 feet. A solid roof and solid metal doors are proposed for the trash enclosure to minimize air-borne odor and litter. The access to the trash enclosure is through the designated loading area. The Design guidelines further specify that trash enclosures should be architecturally compatible with the project design. The wall of the trash enclosure along Manning Avenue is faced with tiles that match the overall architectural scheme of the elevation and blend with the building. A trellis is provided on top of the solid roof as an additional architectural element to upgrade the facade.

The Commercial Design Guidelines also specify that loading areas should be designed to avoid becoming a nuisance to surrounding properties. Due to site constraints and existing conditions, only limited amount of visual screening can be provided for the existing loading area along Manning Avenue. A 7-foot high masonry separates the existing loading area from the residences on Manning Avenue. However, the proposed permit includes restricted hours of operation for the loading area to minimize inconvenience to the residents. A decorative tubular steel gate and tile work on the wall will integrate the loading area architecturally with the overall design scheme of the building.

The Commercial Design Guidelines specify that lighting levels should be sufficient for the safety of the occupants and visitors but should not cause inconvenience to the residents of adjacent properties. New light fixtures placed on the Manning Avenue side of the building wall face downwards so as to minimize glare to the residences across the street. Consistent with the Guidelines, the maximum height of light fixtures is set at 8 feet due to proximity to residential area. Levels of illumination on Manning Avenue side will be kept limited to the minimum levels necessary to provide public safety.

## **PUBLIC OUTREACH**

Notices to the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to answer questions on the project from 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 General Commercial with a Neighborhood Business District Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The site is currently zoned CP Commercial Pedestrian.
3. The site is 0.27 gross acres in size.
4. The proposed grocery store and delicatessen would occupy 4,450 square-feet that would be used for storage and merchandising area. The outdoor area at the rear side and on the east side (Manning Avenue side) will be converted to a 1,900 square-foot outdoor dining area with barbecue facility. A trash/recycling bin enclosure and a loading area are proposed on the north side of the site.
5. The areas surrounding the site are designated as General Commercial or Medium-Low Density Residential (8 DU/AC) on the San José 2020 General Plan Land Use/Transportation Diagram.
6. There is a surface parking lot for public use owned by the City of San Jose on the north side of the site.
7. The proposed project consists of site improvements to an existing retail building, an outdoor food storage, sales and dining area, a grocery store and a deli.
8. A portable charcoal barbecue grill will be used to cook in the outdoor dining area on the Manning Avenue side of the site between 11.00 A.M. and 5.00 P.M. only.
9. The outdoor uses are within 150 feet of residentially-zoned properties.
10. A Conditional Use Permit is required to allow the outdoor use within 150 feet of residentially-zoned property.

11. The outdoor dining area is separated from the residential lots across Manning Avenue by the 50-foot wide public right-of-way, and from residential uses to the north side by the 90-foot wide public parking lot.
12. The grocery store is proposed to operate between 8.00 AM to 8.00 PM Monday through Saturday, and between 9.00 AM to 7.00 PM on Sundays.
13. Dining in the outdoor dining areas may operate until 8.00 PM on Monday through Saturday, and until 7.00 PM on Sunday.
14. A loading area is proposed along Manning Avenue on the north side of the site.
15. A 7-foot high masonry wall screens the loading area from Manning Avenue.
16. The loading area will be used only between 8 A.M. to 6.00 PM.
17. The project site falls within Alum Rock Village Parking Management Zone established by Ordinance No. 26325 adopted by the City Council of San Jose.
18. According to section 20.90.810, parcels within Alum Rock Village Parking Management Zone are exempt from parking requirements for street level. No on-site parking is proposed as part of the project.
19. Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

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. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit. Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Additional Permits.** Obtain all applicable permits required per the San José Municipal Code including but not limited to required permits from the Health Department.

### 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; "La Bodega Family Market and Deli" dated 24<sup>th</sup> November 2004, 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: Construction Plans. This permit file number, CP04-061, 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. **Hours of Construction Activity.** No construction activity shall occur before 7.00 A.M. or after 7.00 P.M. on Mondays through Fridays or at anytime during Saturdays and Sundays.
5. **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.
6. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
7. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
  - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
  - b. Mechanical equipment used for outside maintenance, including blowers and street sweepers shall not be used between 10:00 P.M. and 6:00 A.M. daily.
  - c. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
8. **Hours of Operation of Outdoor uses.** Outdoor cooking on Manning Avenue side outdoor area may operate between 11.00 A.M. and 5.00 P.M. only. All other outdoor uses will cease at 8.00 P.M. on Monday through Saturday and at 7.00 P.M. on Sunday.
9. **Hours of Use of Loading Area.** The use of the loading area will be restricted to the hours of 8 A.M. to 6.00 P.M.
10. **Alcohol Sales.** No sales of alcoholic beverages are permitted as part of this permit. Sales of alcoholic beverages shall be subject to further permit.
11. **Music.** No music or other speakers shall be provided in the outdoor dining area on the Manning Avenue side at any time.
12. **Lighting.** Lighting should be provided as per the development plan entitled; "La Bodega Family Market and Deli" dated 24<sup>th</sup> November 2004, on file with the Department of Planning, Building and Code Enforcement. Any new exterior lighting shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
13. **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.
14. **Seating Location.** No seating should be placed on the public right-of-way at any point of time.

15. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.

### 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 five (5) years from the date of this Permit.

*Please note that this Conditional Use Permit has been granted for a period of 5 year(s) 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

Attachments:

*Plan Set*

Memo from Fire Department

Memo from Public Works Department