

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. 12/08/04 Item #: 4.

File Number
PD03-038

Application Type
Appeal of Planned Development Permit

Council District
9

Planning Area
Cambrian/Pioneer

Assessor's Parcel Number(s)
442-44-018,-019,-020,-022,-023 and 447-05-002,-006
through -010

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Mike Enderby

Location: Area encompassed by Meridian Avenue, Hillsdale Avenue, Foxworthy Avenue & Yucca Avenue in addition to area located at the west side of Meridian Avenue opposite Koch Lane (Hacienda Gardens Shopping Center).

Gross Acreage: 20.6 Net Acreage: 20.6 Net Density: 25 DU/AC

Existing Zoning: A(PD) Planned Development Existing Use: Neighborhood Retail Center (238,000 square feet)

Proposed Zoning: No Change **Proposed Use:** Remodeled Neighborhood Retail Center (168,184 square feet) and up to 299 Multi-family residential units

GENERAL PLAN

Completed by: ME

Land Use/Transportation Diagram Designation: Mixed Use with No Underlying Designation

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: ME

North: Single-family detached residential R-1-8 Residence

East: Single-family attached/detached residential & Commercial uses R-1-8 Residence, R-2 Residence, CP-Commercial Pedestrian, CO-Office

South: Multi-family residential CO- Office

West:: Single-family detached residential R-1-8 Residence

ENVIRONMENTAL STATUS

Completed by: ME

Environmental Impact Report found complete
 Negative Declaration circulated on May 21, 2002
 Negative Declaration adopted

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: ME

Annexation Title: Meridian #22 & South Willow Glen #10

Date: 12/23/60 & 7/17/52

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Uphold Director's Decision to Approve Date: _____
Permit
 Approval with Conditions
 Denial

Approved by: _____
 Action
 Recommendation

APPLICANT/DEVELOPER

OWNER

Mark Tersini Garrett Rajkovich
Hacienda Gardens, LLC 6475 Camden Avenue #202
21710 Steven Creek Blvd. #200 San Jose, CA 95120
Cupertino, CA 95114

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: ME

Department of Public Works

See attached memorandums

Other Departments and Agencies

N/A

GENERAL CORRESPONDENCE

See attached letters of Appeal including: 1) Joe Pottgieser, 2) Mark Thomas, 3) Thrifty-Payless Inc. (Rite Aid) , 4) HomeTown Buffet, Inc., 5) Cardinal Coffee Shops & Lounges, Inc.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On June 27, 2003, the applicant, Hacienda Gardens, LLC, filed a Planned Development Permit to implement the Planned Development Zoning (file no. PDC02-053) approved by the City Council on December 2, 2002. The Director of Planning approved the subject Planned Development Permit on November 5, 2004. The Planned Development Permit as approved would allow 168,184 square feet of retail commercial uses and 299 multi-family residential units on two contiguous sites totaling 20.6 gross acres.

Subsequent to the Director's decision to approve the Planned Development Permit, five (5) separate appeals were filed within the prescribed 10 day appeal period. Appeals were received from: 1) Joe Pottgieser, an adjacent resident on Yucca Avenue, 2) Mark Thomas, an adjacent resident on Yucca Avenue, 3) Thrifty-Payless Inc. (Rite Aid) an existing commercial tenant, 4) HomeTown Buffet, Inc. an existing commercial tenant, and 5) Cardinal Coffee Shops & Lounges, Inc. an existing commercial tenant. See analysis for discussion regarding key concerns raised by the above noted appellants.

The project area encompasses the Hacienda Gardens Shopping Center that spans portions of two contiguous blocks that are bisected by Foxworthy Avenue. The shopping center was originally built in the early 1960's. A few of the tenant spaces have been individually remodeled or expanded within the last 10-20 years, but the center has never undergone a comprehensive remodel.

The southerly portion of the project is bounded by four streets; Meridian Avenue, Hillsdale Avenue, Yucca Avenue and Foxworthy Avenue. The proposed project includes all areas within this block except the parcels occupied by the 7/11 store on the corner of Foxworthy and Yucca Avenue and the Chevron gas station at the corner of Foxworthy and Meridian Avenue which have separate ownership. This area of the site currently includes a large grocery store (Albertson's), a drug store (Rite Aid), and several restaurants and smaller retail tenants. The center is generally oriented towards Meridian Avenue with buildings set back from the street behind a large parking.

Adjacent land uses surrounding the southerly portion of the site consist of two-story apartment buildings to the south across Hillsdale Avenue, and single-family detached houses across Yucca Avenue to the west and across Meridian Avenue to the east. A gas station (Rotten Robbie) and a grocery store (PW Super), which are not part of the Hacienda Gardens Shopping Center, are located across Foxworthy Avenue to the north.

The proposed project also includes property to the north of Foxworthy Avenue and the previously described area. This northern portion of the project encompasses all of the existing contiguous commercial establishments on the west side of Meridian Avenue except the PW Super and the Rotten Robbie gas station parcels.

The existing uses included within this area currently include the Bank of America building, Marie Callender's Restaurant and other tenant spaces located at the rear including, the Challenger School facility. The project also includes the site occupied by the McDonald's Restaurant. The northerly area of the project, as described above, borders single-family detached houses to the north and west and Commercial uses and duplexes across Meridian Avenue to the east.

In 2001, the subject property was the subject of two very controversial General Plan Amendments—one for each of the areas (see General Plan Conformance section of this report). The amendments were approved by the City Council which enabled the consideration for the inclusion of residential uses.

Project Description

The two existing site areas as described above, which comprise the Hacienda Gardens Shopping Center in its entirety, include 238,000 square feet of existing commercial tenant space. Under the approved Planned Development Rezoning and proposed Planned Development Permit, many of these existing buildings would either be demolished, rebuilt or remodeled. Based on the approved zoning, the overall size of the shopping center is to be reduced in size and would be limited to a maximum of 179,000 square feet of commercial space. The subject Planned Development Permit would limit the size of the commercial development to 168,184 square feet. The Planned Development permit would allow a total of 299 new multi-family attached (apartment) units to be built.

South Area. The majority of the commercial uses (about 159,000 square feet) are proposed on the south block with much of it in the form of new pad buildings located next to the Meridian Avenue and/or Foxworthy frontages. One of these new structures will include a new drive-through restaurant. The existing anchor tenant spaces within the southern area are proposed to be retained. A new traffic signal is proposed on Meridian Avenue between the existing intersections at Foxworthy and Hillsdale.

The project also proposes 55 multi-family attached apartment units on this block which will be oriented toward Yucca Avenue at Hillsdale Avenue. The residential component for this block would be configured with a mix of two and three story building elements placed on a podium structure with a partially below grade common parking garage.

North Area. All buildings, except for the Bank of America, are proposed to be demolished. New mixed-use buildings (first floor commercial, second floor residential) are proposed along most of the Meridian Avenue frontage. These will generally match the setbacks and development pattern of the existing Bank of America building. The mixed-use building will transition to an all residential building along the Meridian frontage in the area closer to the adjacent houses to the north. The

balance of the property will be developed exclusively with multi-family residential structures. A total of 244 units are proposed for the north area.

A perimeter driveway with carports and open parking will be placed alongside the north and west property lines adjacent to the existing houses. The new units will generally be configured in buildings containing about 24-30 units each. Buildings in closer relative proximity to the existing adjacent single-family houses will include 2 & 3 story elements, while buildings located near the center of the complex will be made up exclusively of three story elements. Surface parking will provide the majority of the project's required parking except one of the rear structures will provide parking within a below grade parking garage.

Establishment and Role of the Neighborhood Advisory Committee

Unique to the review of the previously approved Planned Development Rezoning was the formation of a City Council appointed Neighborhood Advisory Committee (NAC) which was actively involved with the City and developer in helping to shape the design of the project proposal. The committee was formed at the beginning of the Planned Development Rezoning stage to assist in the review and development of specific project plans to help ensure that the subsequent project proposal sensitively interfaces with the surrounding neighborhood and addresses other issues noted above.

The committee has worked with the City and developer in a very positive and productive manner during the rezoning process and was very successful in facilitating many positive improvements with the project. The NAC did not have a formal role during the Planned Development Permit stage, however many of the committee members maintained an active interest and provided input throughout the process.

GENERAL PLAN CONFORMANCE

In 2001, the property owner obtained a General Plan Amendment (File #GP01-09-002, GP01-09-003 & GP01-T-18) from Neighborhood Community Commercial to Mixed Use with no underlying designation. Under this designation, as described in more detail within Appendix F of the General Plan (MU #13 & 14), the use mix includes a total of 2.45 acres on the southern area and 9.5 acres on the northern to be developed consistent with the Medium High Density Residential (12-25 DU/AC) land use designation. Together, this area could yield between 144 and 299 for the entire project.

Under the specific City Council direction set forth under the approval of these amendments, the intensity of commercial use for the areas allow for up to 9,000 square feet on the southern portion of the site and up to 88,000 square feet on the northern portion of the site.

The proposed project for a total of approximately 179,000 square feet conforms to the General Plan Land Use/Transportation Diagram designation as approved for this project site. Under this project, the residential building potential will be fully maximized.

The proposed project furthers overall objectives of the General Plan in several regards. Infill housing opportunities are being maximized to further the City's smart growth objectives. In accordance with the General Plan's urban design policies, the existing adjacent residential

neighborhood will be better protected and buffered from non-residential uses by the replacement of close proximity, older commercial uses with new residential uses of appropriate scale and landscaped setbacks. The General Plan also encourages the upgrading, beautifying and revitalizing of older commercial centers.

ENVIRONMENTAL REVIEW

Environmental Clearance for this project is covered by the Mitigated Negative Declaration that was issued for the Planned Development Rezoning. The key issues addressed included the potential impacts of traffic on the level of service (LOS) and noise generated by the proposed project. Other issues that were also addressed included an analysis of potential soils contamination from the previous gas station site across from the northerly terminus of Yucca Avenue and loss of trees. The staff report prepared at the rezoning provided a thorough discussion of these issues.

Given that traffic concerns were the only potential “environmental-related” issue raised as part of the appeals that were filed, this section of the report will forego a discussion related to non-traffic environmental issues. Information regarding other environmental issues can be obtained by reviewing the staff report that was prepared for the Planned Development Rezoning (file no PDC02-053) which can be accessed by the Department’s website at www.sanjoseca.gov/planning/sjplan. (refer to Planning Commission Agenda of October 23, 2002).

Traffic

A traffic report was prepared by Pang & Associates, the traffic consultant, which analyzed the impacts of the proposal in accordance with the City’s Level of Service (LOS) policy. Prior to the preparation of the study, the consultant met with the City’s Public Works staff to define the scope of review for the report. In accordance with direction by the City, the consultant was asked to analyze 14 area intersections that were determined to have potential impacts with the proposed development. The report also addressed the potential new signal warrant on Meridian Avenue located equidistant between Hillsdale and Foxworthy Avenues.

Although not required as part of the CEQA level analysis, the traffic report analyzed three specific traffic calming or operational improvements at the request of the City and the Neighborhood Advisory Committee (NAC). These included the possible installation of a raised traffic channelization barriers or “porkchop” islands to preclude left turn movements from Meridian Avenue to 1) Koch Lane and 2) Lama Way. Both of these streets aligned opposite key entrances to the shopping center. These islands would also prohibit left turn movements from these existing residential streets on to Meridian.

The report was reviewed by City Staff from the Departments of Public Works, Transportation and Planning, Building and Code Enforcement. Additionally, this report was discussed in great detail by the traffic consultant and City Staff with the NAC. The report concluded that the proposed project conformed to the City’s LOS policy and therefore no mitigation to existing intersections was required. The report also concluded that a new signal was warranted at the project entrance on Meridian Avenue opposite Lama Way. The inclusion of this new signal was taken into consideration when determining the project’s overall traffic impacts and conformance with the City’s Level of Service Policy. Although the signal is not specifically needed to facilitate better

vehicular flows on Meridian Avenue, particularly during the peak traffic periods, it was deemed necessary in order to effectively facilitate the egress demands from the shopping center. The new traffic signal will be appropriately synchronized with the two nearby signals on Meridian Avenue at Foxworthy Avenue and at Hillsdale Avenue.

In accordance with the traffic consultants conclusions, the City staff does not feel that the operational improvements for new porkchop islands at Lama Way and Koch Lane, as well as a stop sign or traffic signal at Foxworthy and Yucca as previously discussed are appropriate as requirements for this project. While there may be some merit to these improvements, the traffic report does not justify the imposition of such improvements at this time. This project is required to provide a \$10,000. contribution to re-evaluate actual traffic operations after the project is complete. If at such time such operational circumstances might appear to warrant such improvements, the City should initiate the appropriate neighborhood outreach as part of localized traffic calming program for further evaluation and then provide the appropriate remedies.

ANALYSIS

Of the five appeals that were filed, two are from adjacent property owners who reside on Yucca Avenue facing the backside of the existing shopping center. The other three appeals are from tenants who lease commercial property within existing shopping center (south area).

Upon making a decision to approve or deny a Planned Development Permit, the Director of Planning is obligated to make certain findings as noted in this report and prescribed by the Zoning Ordinance. Most significantly, a determination is to be made about conformance of the project to the approved Planned Development Zoning (file no. PDC02-053). The Planned Development Rezoning was recommended for approval by the Planning Commission at a public hearing held on October 23, 2002. Subsequent to that hearing, the City Council approved the rezoning on December 3, 2002.

The Planned Development Rezoning is a "custom" development plan for the site which establishes a number of building and use parameters for the subject property to encourage the implementation of the General Plan and site-specific land use designation amendments. The zoning sets forth a variety of basic development standards including, but not limited to, the number of residential units to be built on the property, the amount of commercial square footage, setbacks, height requirements, parking standards and allowed uses. Additionally, the PD zoning imposes appropriate environmental mitigation measures given the scope of the proposal.

Unlike a property with a conventional zoning designation (non-Planned Development), a Planned Development Zoning establishes a land use plan and conceptual site plan which identify the locations for new buildings and other physical attributes of the site layout such as the parking configuration and landscaped areas. Conceptual architecture is also approved to establish a quality benchmark for the development.

The Planned Development Permit, which is reviewed and analyzed subsequent to the approval of a Planned Development Rezoning, is intended to further refine elements and details of land use plan, conceptual site and architectural plans. In this instance, the previously approved Planned Development Zoning was highly scrutinized throughout the process by the Neighborhood Action

Committee (NAC) review process and two formal public hearings that occurred prior to approval. Consequently, this PD Zoning established a comparatively high-level of project design refinement as compared to most other Planned Development Zonings in San Jose.

The analysis section of this report provides a discussion on key elements raised in the letters of appeal from the following parties: 1) Joe Pottgieser, 2) Mark Thomas, 3) Thrifty-Payless Inc. (Rite Aid), 4) HomeTown Buffet, Inc., and 5) Cardinal Coffee Shops & Lounges, Inc.

Issues Raised by Mr. Joe Pottgieser

Mr. Pottgieser participated in the public hearing processes for the General Plan Amendment, Planned Development Rezoning and subject Planned Development Permit. Many of the issues he raised in his appeal were addressed and considered, albeit perhaps not to his satisfaction, at the Planned Development Zoning stage. In weighing positive and negative implications of his suggested recommendations, the Planning Commission and City Council decided not to include several of them as conditions of the zoning because they were either irrelevant to the project or contrary to the benefit of other objectives to the proposal. Many of the issues that he raises in his appeal (see attached letter) and as paraphrased below are the same as those previously identified.

Adequacy of street width for Yucca Avenue. This street, comprised of a 60' right-of-way width and a 36' curb to curb dimension is already fully improved. This street provides direct access to 16 houses, the loading activities of the existing Hacienda Gardens Shopping Center and indirect or secondary access to other streets and houses which are primarily served via collector or arterial streets such as Foxworthy and Hillside Avenues. The matter of further street width improvements is a standard issue that is addressed and decided upon at the Planned Development Rezoning stage. The City's Department of Public Works had concluded that Yucca Avenue was sufficient as built to accommodate traffic associated with the proposed project. Streets that are widened beyond what is necessary tend to promote higher vehicle speeds and are deemed undesirable within existing neighborhoods. To the extent that repairs of the street including curb, gutter sidewalks and parkstrip landscaping are needed, such improvement will be provided by the developer as required by the City's Department of Public Works.

Parking. The establishment of parking requirements is decided at the Planned Development Zoning stage. This issue was discussed in detail during the rezoning process. Mr. Pottgieser advocates that a parking requirement be imposed based on the theoretical maximum occupancy of dwelling units established by the state housing codes. This project complies with the standards adopted in the City's Residential Design Guidelines as do other projects approved in the City. These parking standards have shown, through periodic surveys, to be reflective of the parking demand for projects in the City of San Jose based on the car ownership, transportation patterns and demographic circumstances. During the rezoning process, as an additional gesture of good faith towards existing residents on Yucca Avenue, the City Council decided to include a project condition to allow residents of the proposed apartments to be able to utilize the parking areas for the commercial component of the project for overflow parking purposes if necessary. As discussed below, this is evidently a concern of a few existing commercial tenants within the shopping center who would like to reserve or preserve the commercial parking areas for their customers only. The concession to

allow overflow parking was not done to compensate for a relaxed parking standard for the residential project. So, there is no deficiency as the appellant suggests.

Concern about potential fuel leaks at Chevron Station. This issue was also raised at the rezoning stage. The Chevron site is not part of the project. There were no known issue associated with such problems. To the extent that this is ever a problem in the future, it will be the responsibility of Chevron rather than the owners of the Hacienda Gardens Shopping Center to provide remediation in accordance with standards set forth by the City and or other governmental agencies as appropriate.

Desire to employ union construction workers and/or companies. This is not an appropriate condition for a Planned Development Permit to be imposed by the Planning Director. The City certainly expects that all construction and demolition work comply with applicable codes and regulations.

Use of existing shopping center for purposes of providing permitted overflow parking and auto repair by residents of Hillsdale House Apartments (across Hillsdale Avenue). The City is not aware of agreements between the shopping center owner and adjoining apartment complex management. Auto repair in the parking lot is not permitted under the approved Planned Development zoning nor was it allowed under the previous conventional zoning designation. The proposed project is not obliged to provide parking for the benefit of the existing off-site apartment complex.

Desire to require 24 hour security. The Police Department has not indicated that this should be a requirement of the new project. The city cannot impose such a requirement on the existing facility.

Adequacy of project driveways/curbcuts on Yucca Avenue to support the new residential development. The proposed project provides two driveways to serve the residential development along Yucca Avenue. One of these will serve the underground parking garage while the other provides access to a small surface parking area. Based on the City's experience with other podium-style residential structures, the number of units served and the configuration of the proposed buildings, staff feels that the number of driveways for the residential component of the project is adequate. The addition of new driveways would be detrimental to the design of the project in that it would result in a reduction in the amount of landscaping in the front setback area and eliminate curbside parking opportunities. The residential project will have good access for police and fire protection from the public street and from the rear via the shopping center parking lot.

Provisions to allow the Mariposa Bus Company to park and service vehicles within the existing shopping center parking areas. The Planned Development Zoning does not allow this activity. Also, the previous conventional zoning designation did not allow such uses.

Traffic issues. These issues were analyzed and discussed at length at the rezoning stage. This was a primary concern of the neighborhood as articulated by the NAC. Traffic issues related to level-of-service (LOS) issues were addressed as required in order to find the rezoning in compliance with the requirements of CEQA. Such findings were made and a Mitigated Negative Declaration was granted. The traffic analysis was very comprehensive and also addressed operational issues

associated with the new development as it related to ingress/egress from the shopping center and new residential components of the project.

Contrary to conditions set forth in the Planned Development Zoning, Mr. Pottgeiser takes issue with the concept of addressing traffic calming or cut-through traffic issues subsequent to the construction of the project. The City's Department of Transportation acknowledges that cut-through traffic already occurs on Yucca Avenue and that this is not solely an impact caused by patrons associated with the existing Hacienda Gardens Shopping Center. Further it is recognized in general that traffic patterns within a neighborhood that would result from any moderate or large development are not 100% predicable. Therefore it is more practical to address these relatively more nominal traffic impacts after a project is built. This will provide certainty that any improvements installed such as traffic barriers, diverters and/or stop signs are placed only where they are truly needed.

As required in the Planned Development Zoning, the Permit includes a requirement for the developer to pay \$10,000 towards a post-construction traffic study to evaluate the appropriateness of traffic calming improvements. This includes, but is not limited to, the consideration of pork chop islands installed at Meridian Avenue/Lama Way and Meridian Avenue/Koch Lane. The City, in turn, would be responsible for the construction or installation of any recommended improvements.

Concerns raised related to truck parking access and curbside parking duration limitations on Yucca Avenue are best addressed as part of the post-construction traffic calming study.

Issues Raised by Mr. Mark Thomas

Mr. Thomas, who resides on Yucca Avenue, identified a number of concerns with the project some of which are different from those raised by Mr. Pottgieser.

Duration of Construction. A concern was raised that the permit does not set forth a deadline for completion of the project. While the City would like to see the existing shopping center renovated as quickly as possible, conditions are included in the PD Permit that require the issuance of a building permit and commencement of construction within 30 months of the approval of the project. This is a standard condition that is imposed on all development permits for projects on city-wide basis. This timeframe is deemed reasonable in that it allows the developer to prepare more detailed construction-level plans required for the Building Permit. Further, this deadline allows the City, should a new permit be required, to reconsider permit conditions related to a project after such a period since changes in circumstances may warrant the inclusion of additional conditions or project modifications.

Once a Building Permit is issued, the developer is required to make on-going progress in construction by means of obtaining inspections in intervals not exceeding six (6) months. Failure to comply will result in expiration of the Building Permit.

Impacts on residents of potential construction entrance on Yucca Avenue. This project does not preclude the use of Yucca Avenue for construction access. This permit however includes a number of conditions to minimize impacts. See Conditions #11,13, 28 & 29 in the PD Permit.

Parking and traffic. See response to similar issue identified by Mr. Pottgieser.

Effect on adjacent property values as a result of project proposal for rental units proposed rather than ownership units. The proposed project conforms to the approved Planned Development Rezoning which designated the subject area for multi-family residential units. The City's Residential Design Guidelines, which provide the basis for reviewing and assessing the quality of residential project, do not differentiate or allow a lesser quality design for rental units as opposed to for sale or ownership units. Mr. Pottgieser has not provided any evidence to substantiate his claim that the development of rental units would diminish the value of his property. It should be noted that the project does not preclude the developer the opportunity to subsequently file a condominium map should it be desired.

Issues Raised by HomeTown Buffet, Inc.

Deterioration of the existing shopping center. HomeTown Buffet has expressed concern that the shopping center is experiencing on-going deteriorated due to lack of proper maintenance by the management of the center. The situation has become especially significant in the last two years. It is somewhat understandable that the property owner might be inclined to minimize his maintenance costs of the existing center in light of the pending proposal to substantially renovate and remodel the center. In the past year an half since the PD Permit has been on file, the applicant was relatively slow to make progress on the application and for many months has requested that the project be placed on hold to allow him to resolve tenant lease issues. The details of this were not provided to the City.

Staff shares the concern raised by HomeTown Buffet and the other two tenants which filed appeals, in part, for the same reason. Due in part the lack of progress several months ago, the City's Code Enforcement Division has an active Code Compliance case on this matter and is working to address the blighted situation.

Non-compliance with tenant's lease agreements to maintain clear visibility of the subject tenant space. The City does not play a role in enforcing private lease agreements between tenants and their landlords nor does the City need to make decisions reflective of such private agreements. The language of existing leases that may be inconsistent with City codes and policies as described below should not preclude the ability of a property owner to secure entitlements to modify his/her property. It is the responsibility of the private parties to address issues related to the private agreements.

As indicated before, the subject PD Permit, as approved by the Director of Planning is consistent with the Planned Development Rezoning and the related conceptual site plan which was approved by the City Council in 2002. The project as approved would allow the construction of three pad buildings along the front setback line which would hinder the continuous visibility from vehicles traveling along Meridian Avenue. The HomeTown Buffet as currently situated near the back of the center behind an expansive parking lot approximately 300 feet from the street. The subject tenant space would still be visible between the proposed pad buildings. HomeTown Buffet would be directly line-up with the project's new primary, signalized driveway entrance. Ample advertising

space will exist on proposed freestanding signs that will, upon the discretion of the landlord, offer additional identification opportunities.

The decision to approved the original Planned Development Zoning with a site design that included pad buildings placed in front of much of center was for several reasons: 1) The placement of pad buildings close to the street is strongly encourage by the City's Commercial Design Guidelines to establish an attractive architectural presence along the street, and 2) to reduce the visibility of overly large expanses of parking lots. The key objective of the project as approved was to create a revitalized, attractive shopping center that would promote successful retail business and restaurants. The City has numerous examples of successful retail centers which were built and/or renovated to include pad buildings in front of anchor or other tenant spaces.

Non-compliance with tenant's lease agreements to preserve and/or not diminish existing parking areas. This project will reduce the size of the almost four (4) acre parking lot along Meridian Avenue shared by existing tenants of the center which for decades has been substantially underutilized. The amount of parking provided with this project conforms to the requirements of the Zoning Ordinance. The Zoning Ordinance requires 1 space for every 225 square feet of net floor area for shopping centers which exceed 100,000 total square feet. Again, this also conforms to the approved Planned Development Zoning.

Unlike retail development of the 1960's, more stringent regulations have been recently imposed by the Bay Area Regional Water Quality Control board to address storm water runoff quality created by large parking lots. There are many ways to address this, but for starters, one of the keys is to limit the amount of parking to just that which is needed and/or required.

Issues Raised by Thrifty-Payless Inc. (Rite Aid)

Rite Aid is one of the anchor tenants within the existing shopping center. Many of the issues raised by Thrifty-Payless, Inc. (Rite Aid) are the same or similar to those raised by representatives of HomeTown Buffet.

Concerns related to visibility of existing tenant space, reduction in amount of parking and use of parking as overflow for adjoining residential component. See response to comments identified above in section related to concerns raised by Hometown Buffet.

Reduction in the size of parking stalls. The City's Zoning Ordinance provides developers options related to size of parking spaces:

- 1) All parking spaces shall be 8.5'x17' (uniform), or
- 2) A combination of 9'x 18' (standard) and 8'x 16' (compact spaces) shall be provided.

The number of compact spaces may exceed 40 percent of the total number of parking spaces. The developer may choose either of the parking space options noted above and would typically choose the option that would provides the greatest number of spaces and provide for the maximization of building square footage. Depending on the unique site constraints of a property, the developer may decide to choose one option over another.

This project was originally built with all standard (9' x 18') parking spaces. In this case, the developer has elected to use the uniform parking space sizes of (8.5' x 17') for the entire project. While the proposal would, in fact, allow smaller parking spaces than currently exists, the proposal conforms to the requirements of the Zoning Ordinance.

Concerns related to increased landscape maintenance costs. The existing landscaping of this shopping center is substandard as compared to recent projects. This project will substantially improve the amount and quality of landscaping in accordance with other shopping centers approved or remodeled within the last decade. While, the approvals did not attempt to calculate the cost of landscape maintenance under this proposal it is likely that such costs will be higher than those currently experienced.

Location of trash enclosure along the frontage. This project will maintain a trash enclosure along Hillsdale Avenue behind the existing Rite Aid store as it presently exists. While not ideal in some respects, it will help to conceal the existing loading area for the store. Other trash enclosure are provided throughout the center and have been placed to minimize their overall visibility from the street as much as possible.

Signage. As is typical with other approvals for the architectural upgrade to existing out-dated shopping centers, signage is updated as well to be more in keeping with the new design and to bring signage into compliance with current sign regulations. This project, as noted in condition #51 through 53 of the proposed permit, will provide for the modification of legal non-conforming signs as well as other new signs. The total size of these signs are collectively larger than would be allowed if this proposal was to conform to the strict requirement of Title 23. However, the Director at his discretion has allowed the retention of legal non-conforming signs through relocation and replacement. As a result, there are better than usual opportunities for tenant identification signage.

Security concerns. The appeal letter did not adequately clarify the nature of security issues that are or would be problematic. This proposal, as with all other development applications, was reviewed by the Police Department. This proposed project design will eliminate the existing semi-open corridor with its limited visibility from the street and parking areas that currently raises some of the security concerns. The Police Department did not identify any significant concerns with the proposed project. This project will provide appropriate parking lot and walkway lighting in accordance with City standards.

Traffic issues. See previous comments under issues identified by Mr Pottgieser.

Issues Raised by Cardinal Coffee Shops and Lounges, Inc.

The Cardinal Coffee Shop is another existing commercial tenant that filed an appeal based, in part on similar ground to those already discussed above.

Issues with adjacent Chevron Gas Station. See previous comments under section that addresses issues raised by Mr. Pottgieser.

Clarification on the number of drive-thru uses. The approved Planned Development Zoning allows one drive-through use only. The proposed PD Permit identifies an area for such use at a new pad

building nearest the project entrance at Meridian Avenue opposite of Lama Way. The proposed project would not allow the re-institution of a drive-through teller window use at the existing Bank of America.

Violation of lease agreements that would result from proposed project. See previous comments under section that addresses issues raised by HomeTown Buffet.

Deterioration of the existing shopping center. See previous comments under section that addresses issues raised by HomeTown Buffet.

Duration of Construction and impacts to commercial tenants that remain open. See previous comments under section that addresses issues raised by Mr. Thomas. Additionally, it is understood that there may be some amount of inconvenience to existing tenants that remain open during construction. Planned Development Permits do not typically address the myriad of construction staging details that would be necessary to fully avoid impacts. It will be important for the tenant, landlord and construction contractor to work together during this process to better avoid such problems. There are a number of conditions included in the permit that address construction impacts to the surrounding neighborhood.

The applicant has proposed to build this project in two phases. The first phase would include all elements shown on the plans except: 1) residential component next to Yucca Avenue, 2) expansion of Albertson's, 3) new shops facing Hillsdale Avenue, and 3) development of the drive-through restaurant pad and the adjacent pad building. These elements excepted from the first phase would presumably happen with the second phase.

Issues related to PD Permit for a subsequent adjustment. The appellant has expressed concerns related to the requirement for the applicant to address eight (8) specific small design details through the approval of a subsequent permit adjustment. The concerns relate to the uncertainty about how these items will be resolved and the lack of public process.

The nature of the action items noted are typical of numerous adjustments that are reviewed by staff each year. In staff's opinion, the issues are well defined and expectations are clear with regard to the design requirements that must be addressed in order to secure an approval. These issues have also been discussed at length with the applicant and his consultant team.

Normally, staff would have preferred that these items be addressed on the subject plans prior to the hearing. This applicant was either not able to logistically make the changes in a timely manner and/or was unwilling to make the changes. Planning staff has conditioned this approval in order to gain compliance with relevant codes and design policies. The creation of this condition requires that the items noted be addressed to the satisfaction of the Director of Planning. More specifically, the requested changes become mandated and are no longer open to negotiation by the developer. The use of this condition, in some ways, allows a project to move forward without delay through the process, including an appeal process if necessary in order to get resolution on the various issues. The City is very much interested in facilitating the timely renovation of this shopping center. As previously indicated, this project has already experienced months of delays as a result of the applicant's earlier request to put the project "on hold".

Conclusion

With respect to the issues raised by the commercial tenants related to their leases, the City is not involved with the enforcement of private lease agreements nor is it bound by any such agreements in making land use decisions. With respect to the other issues raised in all other appeals, staff, through the discussion in this report has indicated that all areas of concern have been adequately addressed through the design of the project as well as conditions placed on it in the permit. The proposed mixed-use development has been reviewed and developed consistent with all applicable codes regulations and guidelines site for by the City Council and administered by the Director of Planning. The Director of Planning must review the proposal against the applicable land use regulations, in the case the PD Zoning. The proposed PD Permit conforms in all respects to the PD Zoning. Therefore, staff is recommending that the Planning Commission uphold the Director's approval of the Planned Development as conditioned.

PUBLIC OUTREACH

Notices for the public hearing of this appeal was distributed to the owners and tenants of all properties located within 1,000 feet of the project site in conformance with the City's Public Outreach Policy. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with interested members of the public.

RECOMMENDATION

Planning staff recommends that the Planning Commission uphold the Director's decision to approve the subject Planned Development 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. The project area encompasses the Hacienda Gardens Shopping Center that spans portions of two contiguous blocks that are bisected by Foxworthy Avenue.
2. The shopping center was originally built in the early 1960's.
3. A few of the tenant spaces have been individually remodeled or expanded within the last 10-20 years, but the center has never been comprehensively remodeled.
4. Adjacent land uses surrounding the southerly portion of the site consist of two-story apartment units to the south across Hillsdale Avenue, single-family detached houses across Yucca Avenue to the west and across Meridian Avenue to the east. A gas station (Rotten Robbie) and a grocery store (PW Super), which are not part of the Hacienda Gardens Shopping Center, are located across Foxworthy Avenue to the north.

5. In 2001, the City Council approved General Plan Amendments (File #GP01-09-002, GP01-09-003 & GP01-T-18) from Neighborhood Community Commercial to Mixed Use with no underlying designation as defined under Appendix F of the General Plan (MU #13 & 14). Under this designation a total of 2.45 acres on the southern area and 9.5 acres on the northern areas are to be developed consisted with the Medium High Density Residential (12-25 DU/AC) land use designation. Together, this area could yield up to 299 residential units for the entire project. Under the specific City Council direction set forth under the approval of these amendments, a commercial area expansion of up to 9,000 square feet could be allowed on the south portion of the site and up to 88,000 square feet (total) of commercial uses could be allowed on the north portion of the site.
6. On December 2, 2002 a Planned Development Zoning (file no. PDC02-053) was approved by the City Council.
7. On June 27, 2003, the applicant, Hacienda Gardens, LLC, filed a Planned Development Permit to implement the Planned Development Zoning (file no. PDC02-053).
8. The Director of Planning approved the subject Planned Development Permit on November 5, 2004.
9. The Planned Development Permit as proposed would allow 168,184 square feet of retail commercial uses and 299 multi-family attached residential units on 20.6 gross acres.
10. The proposed permit would facilitate the renovation and remodel of the existing shopping center including architecture and project landscaping.
11. The existing shopping center is blighted due to poor maintenance.
12. The project is subject to the Commercial Design Guidelines and standards set forth in the approved Planned Development Rezoning.
13. The proposed permit would allow the construction of three (3) new pads building along the edge of the front setback along Meridian Avenue consistent with the conceptual site plan approved with the Planned Development Rezoning.
14. The Commercial Design Guidelines recommend the placement of pad buildings close to the street to establish an attractive architectural presence along the street and reduce the visibility of overly large expanses of parking lots.
15. Parking for the project is provided at a ratio consistent with those identified on the approved General Development Plan which refer to the standards contained in Title 20 (the Zoning Ordinance).

16. The proposed project would allow the continued operation for the off-sale of alcoholic beverages for the Rite Aid and Albertson's facilities.
17. This project proposes to remove several trees in order to facilitate the grading and placement of new structures in accordance with the approved General Development Plan.
18. Subsequent to the Director's decision to approve the Planned Development Permit, five (5) separate appeals were filed within the prescribed 10 day appeal period. Appeals were received from: 1) Joe Pottgieser, an adjacent resident on Yucca Avenue, 2) Mark Thomas, adjacent resident on Yucca Avenue, 3) Thrifty-Payless Inc. (Rite Aid) an existing commercial tenant, 4) HomeTown Buffet, Inc. an existing commercial tenant, and 5) Cardinal Coffee Shops & Lounges, Inc. an existing commercial tenant.

FINDINGS

1. The Planned Development Permit, as issued, furthers the policies of the General Plan in that:
 - a. The zoning for the property is consistent with the General Plan land use designations of Mixed Use with no underlying designation as described under Appendix F of the General Plan (MU #13 & 14)
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
 - a. The proposed development conforms to the development standards and regulations of the approved General Development Plan.
3. The interrelationship between the orientation, location, and mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious in that:
 - a. The exterior wall and roof materials of the proposed structure(s) match or are compatible in terms of color and texture.
 - b. The architectural elements of the proposed and/or existing structure(s) are integrated into a harmonious whole.
 - c. The proposed and/or existing structure(s) are comparable in terms of mass, scale and height.
 - d. Sufficient open space separates all structure(s) and uses.
 - e. Parking spaces are conveniently located in relation to the uses they support.

- f. The proposed number and size of parking spaces complies with the requirements of the approved Planned Development Zoning.
 - g. Substantial landscaping will be added to the site and an adequate automatic irrigation system will be provided to support this landscaping.
4. The environmental impacts of the project including, but not limited to, noise, vibration, dust, drainage, erosion, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. The environmental impacts of this project were addressed by a Mitigated Negative Declaration adopted on October 15, 2002 for the previously approved Planned Development Zoning (File No. PDC02-053). The major environmental issues addressed were air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, noise, and transportation/traffic. The Mitigated Negative Declaration included appropriate mitigation to reduce these potential environmental impacts to less than significant levels.
 - b. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.
 5. Under the provisions of Section 20.80.440(A) of the San José Municipal Code, except as specifically exempted by Section 20.80.450, no demolition permit or removal permit shall be issued unless and until a Development Permit which specifically approves such demolition or removal has been issued and has become effective pursuant to the provisions of Chapter 20.100.
 - a. The Director of Planning has considered all of the following criteria in evaluating the proposed demolition.
 - 1) The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
 - 2) The failure to approve the permit would jeopardize public health, safety or welfare.
 - 3) Both inventoried and non-inventoried buildings, sites and districts of historical significance should not be negatively impacted.
 - 4) Rehabilitation or reuse of the existing building(s) would not be feasible.
 - 5) The approval of the demolition of the building(s) should facilitate a project,

which is compatible with the surrounding neighborhood.

6. Pursuant to Section 20.80.900 of the Zoning Ordinance, criteria for approval of facilities engaging in the off-sale of alcoholic beverages, the proposed permit is found to conform in that:
 - a. The proposed uses would not contribute to an excess concentration of establishments that sell alcoholic beverages.
 - b. The proposed off-sale establishments for approval under this permit are for the same existing uses that were legally permitted prior to approval of the current Planned Development Zoning.
7. This Permit allows for the removal of ordinance size trees on the subject property as shown on the subject plan set. The trees affected are of a size, type and condition, and in such a location in such surroundings, that its removal would not significantly frustrate the purposes of the chapter as set forth in Section 13.32.010 of the City of San José Municipal Code.
 - a. The location of the trees with respect to the proposed improvement unreasonably restricts the economic development of the parcel in question
 - b. The trees will be replaced in accordance with the City's standard mitigation policies.
8. This project will be required to contribute toward, or physically construct a landscaped median island across the project street frontage(s). The construction or contribution amount for future island construction shall be determined by the Director of Public Works.
 - a. The purpose of this improvement or in-lieu fee for landscaping is to promote the goals and policies of the General Plan of creating a positive community image by developing a network of landscaped thoroughfares, and to promote traffic safety by providing appropriate separation of traffic and control turning movements.
 - b. The fee will be used to construct median islands, landscaping, irrigation, and necessary improvements to control and facilitate turning movements within the public right-of-way.
 - c. There is a reasonable relationship between use of the fee and the type of development project upon which the fee is imposed in that the subject project will be viewed by substantial numbers of the traveling public since it is located on a non-residential street carrying high volumes of traffic or will by its nature attract high volumes of traffic.
 - d. There is a reasonable relationship between the need for the landscaped median island and the type of development project upon which the fee is imposed in that the

subject project and median islands are located on a major thoroughfare street carrying high volumes of traffic and will, therefore, be viewed by substantial numbers of traveling public, and restrictions of turning movements and channelization of vehicular traffic on the thoroughfare is required for traffic safety as a result of the project.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Section 20.80.440 (B) of the San José Municipal Code, the demolition of the subject structure.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Permit Adjustment Required.** Within 90 days of the issuance of this permit, and prior to issuance of other Planning Permits and/or Building Permits for the subject site the developer shall secure and agree to implement a Permit Adjustment addressing the items noted below to the satisfaction of the Director of Planning. This permit shall become null and void if said Adjustment is not secured within the timeframe stated.
 - a. *Parking.* Based on the square footage of retail identified on the plans there is a parking deficiency. The site and building plans shall be modified to provide additional parking and/or reduce the square footage to lessen the number of parking spaces required in accordance with the Zoning Ordinance and the approved General Development Plan.
 - b. *Monument Signs.* The developer shall provide revised details for the detached signs in accordance with condition No. 48 as noted below. Further, the proposed monument signs shall be modified to include a substantial base of at least 18” around which low shrubs and groundcover shall be planted.
 - c. *Carport Design.* The developer shall provide a design for the revised carport to include a combination of sloped roof with the addition of flat, “trellis like” extensions on the ends. The sloped roof elements shall encompass no more than six (6) cars per structure and the flat roof elements shall encompass no more than an additional two (2) cars per structure.
 - d. *Colors and Materials.* Provide building colors and materials exhibit for residential and commercial components of project.
 - e. *Roof Materials (South Block).* The residential and commercial roof materials should match. Alternatively the residential component can include a mix of two complimentary roof materials of similar color or shade, one of which must be the same as the commercial component.
 - f. *Small Parking Lot.* The small parking lot adjacent to the existing 7/Eleven shall be modified to remove the parking space that backs into the main drive-aisle off of

- Foxworthy Avenue. The entry drive off Foxworthy shall be modified to better direct traffic onto the main drive aisle.
- g. *Perimeter Wall (North Block)*. The existing masonry walls along the perimeter of the north block adjacent to the existing residential neighborhood shall be retained. Any areas of existing wood fence shall be replaced with solid masonry wall consistent in height and finish with the existing masonry walls.
- h. *Perimeter Landscaping*. The stormwater treatment notes indicate that overland water will drain from parking areas/driveways through landscaped areas prior to reaching public streets. Include a detail on the grading and drainage plan that shows how the water reaches the landscaped areas (e.g. curb breaks).
2. **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.
3. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
4. **Permit Expiration.** This Planned Development Permit shall automatically expire 30 months from and after the date of issuance hereof by said Director, if within such 30-month 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 Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
5. **Conformance with Plans.** Except as noted under condition No. 1 in this permit, construction and development shall conform to approved Planned Development plans entitled, "Specific Development Plan, Hacienda Gardens," dated June, 2003, last revised on, 2004, 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).

6. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
7. **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.
8. **Acceptance.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of Planning, Building and Code Enforcement within **60 days** from the date of issuance of permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.*
9. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
10. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.
11. **Air Quality.** During construction, the following measures shall be incorporated to mitigate any possible significant air quality impacts.
 - a. Water all active construction areas at least twice daily.
 - b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
 - c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
 - e. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
12. **Cultural Resources.** 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.

13. **Noise Mitigation.** Construction of all structures approved by this permit shall include implementation of the noise and vibration mitigation measures identified in the noise report dated September 3, 2003, prepared by Edward L. Pack and Associates, as required by the Director of Planning.
14. **Building and Property Maintenance.** The developer shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
15. **Overflow Parking.** The parking areas within the commercial component of the project on south side of Foxworthy Avenue shall be made available for use by residents and guests of the proposed adjoining residential units.
16. **Commercial Uses.** Commercial Uses are limited to the uses of the CN-Commercial Neighborhood Zoning District. Any use requiring a Conditional Use Permit in the CN-Commercial Neighborhood Zoning District requires a Planned Development Permit or Amendment. Vehicle related uses, as enumerated in Table 20-90 in Section 20.40.100 of the San Jose Municipal Code are not allowed, with the exception of the retail sale of auto parts.
17. **Drinking Establishment.** This permit allows for a drinking establishment, the Cardinal Lounge, to operate in conjunction with a public eating establishment, the Cardinal Restaurant. Alcohol service shall cease at 2:00 a.m.
18. **Entertainment Establishment.** This permit allows for an entertainment establishment at the Cardinal Lounge.
19. **Hours of Operation.** All uses shall be limited to 6:00 a.m. to 12:00 midnight unless approved with a Planned Development Permit or Amendment or as noted below:
 - Cardinal restaurant/coffee shop shall be allowed to operate 24-hours a day.
 - The nightclub/lounge portion of the Cardinal restaurant shall be limited to the hours of 11:00 a.m. to 2:00 a.m.
 - The existing Rite-Aid shall be allowed to operate 24-hours a day.
 - The existing Albertson's shall be allowed to operate 24-hours a day.
 - The drive-through use shall be limited to operating hours between 7:00 a.m. and 10:00 p.m.

20. **Loading Activities.** All loading activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
21. **Off-Sale of Alcoholic Beverages.** This permit authorizes the off-sale of alcoholic beverages at the proposed Albertson's and Rite Aide facility and successors of said tenant spaces whereby the subsequent tenant maintains a similar use as deemed by the Director of Planning.
22. **Twenty Four Hour Use Management Plan.** The applicant shall comply with the following provisions as noted below to mitigate potential impacts caused by the proposed 24-hour uses. These items shall address concerns/complaints, control of noise, litter, graffiti, and provide a protocol for interface with police to resolve potential problems with gangs, drugs, loitering, and other criminal activities.
 - a. *Litter Control.* The applicant shall control the litter emanating from the site on a daily basis as necessary for a distance of 300 feet along public streets from the site.
 - b. *Lighting.* The applicant shall provide enhanced lighting of the designated parking and use areas of the site to the satisfaction of the Director of Planning
 - c. *Exterior clean-up.* Exterior clean-up and maintenance activities including garbage pickup shall not occur later than 10:00 p.m. or prior to 7:00 a.m. when the business is located within 300 feet of residential uses.
23. **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.
24. **No Outside Storage.** No outside storage is permitted for the project.
25. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
26. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-05731) to the satisfaction of the Director of Public Works:
 - a. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b. *Geology:*
 - i. 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.
 - ii. A grading permit is required prior to the issuance of a Public Works Clearance.

- iii. 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 at (408) 277-4304 for more information concerning the requirements for obtaining this permit
 - iv. Because this project involves a land disturbance of more than one acre, 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.
- c. *Sanitary*: Submit sanitary sewer calculations at the improvement plan stage to determine the capacity of the City's sanitary system and the actual size of the pipe that connect to Meridian, Foxworthy and Yucca Avenues. Sanitary sewer main upgrade may be required.
- d. *Undergrounding*:
- i. The appropriate in lieu undergrounding fee shall be paid to the City for all frontages adjacent to Foxworthy Avenue, Hillsdale Avenue, Meridian Avenue and Yucca Avenue prior to issuance of a Public Works clearance. 100 percent of the base fee in place at the time of payment will be due. (Currently, the base fee is \$224 per linear foot of frontage and is expected to increase in the near future.)
 - ii. The Director of Public Works may, at his discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Foxworthy Avenue, Hillsdale Avenue, Meridian Avenue and Yucca Avenue. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- e. *Electrical*: Installation, relamping or relocation of electroliers may be required. The existing street lighting will be evaluated at improvement plan stage.
- f. *Street Trees*: Install street trees within the public right-of-way along the entire street frontages per City standards. Remove existing trees at back-of-walk along Yucca Avenue. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only. Contact the City Arborist at (408) 277-2756 for the designated street tree.
- g. *Street Improvements*:
- i. Install a traffic signal at the project entrance at Meridian Avenue and Lama Way and interconnect with the traffic signals along Meridian Avenue at Hillsdale Avenue and Foxworthy Avenue.

- ii. Lengthen all left-turns pockets affected by project traffic as is determined at the street improvement plan stage.
 - iii. All project driveways along Meridian Avenue shall be limited to right turns only, except for the main entrance opposite of Lama Way.
 - iv. Contribute \$10,000.00 for post-project traffic evaluation.
 - v. Construct landscaped median island along project frontage on Hillsdale Avenue.
 - vi. A left turn lane shall be striped for eastbound Hillsdale Avenue at Yucca Avenue.
 - vii. A stop sign shall be placed at the residential driveway adjacent to Foxworthy Avenue.
 - viii. Remove and replace existing sidewalk along all project frontages.
 - ix. Remove and replace broken or uplifted curb and gutter along all project frontages.
 - x. The maximum width of all project driveways shall be 26', except for the main project entrance at Meridian Avenue opposite of Lama Way.
 - xi. Close unused driveway cut(s).
 - xii. Construct a modified cul-de-sac bulb at the terminus of Stacia Drive.
 - xiii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - xiv. Construction of bus pad and shelter may be required.
 - xv. 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.
- h. *Construction Agreement:* The applicant will be required to obtain a Public Works Clearance prior to the issuance of a Building Permit. The clearance will require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

27. **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. *Adjustment Required.* The developer shall secure an adjustment as noted under condition no. 1 of this permit. All construction drawings and document shall be consistent with this adjustment.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Construction Plans.* This permit file number, PD03-038, shall be printed on all construction plans submitted to the Building Division.
 - d. *Park Impact Fees.* The applicant shall provide evidence to the Chief Building Official that the applicable Park Impact Fees, pursuant to Ordinance 24172 (Chapter 14.25 of Title 14 of the San José Municipal Code), have been paid to the satisfaction of the Director of Public Works.
 - e. *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.
28. **Construction Impact Mitigation Measures.** The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City.
- a. *Construction Hours.* Construction activities shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site construction activities located within 500 feet of any residential unit.
 - b. *Construction Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
 - c. *Fencing.* Construction areas shall be enclosed by security fencing. The gates to the project site shall remain locked during all other times, except for a fifteen-minute period immediately preceding and following the above hours of construction.

- d. *Construction Employees.* Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
 - e. *Plans.* The construction hours shall be printed on all plans for the project used to construct the project.
 - f. *Mitigation Measure Disclosure.* These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors. In addition, the applicant is responsible to ensure the following occur prior to the issuance of a Building Permit for the project:
 - g. *Disturbance Coordinator.* A disturbance coordinator shall be identified by the developer for this project. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance conditions in this permit.
 - h. *Daily Log.* The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinators visits to the project if the coordinator is not solely responsible for this project site.
 - i. *Telephone Contact.* A phone with answering machine for non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.
 - j. *Signage.* The name and phone number of the disturbance coordinator, the hours of construction limitations, City File Number PD03-038, city contact and phone number (department and phone number), and shall be displayed on a weatherproof sign posted at each entrance to the project site.
29. **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.
30. **Fire Department Permit Required.** A permit must be obtained from the Building and Fire Departments. Submit three (3) sets of construction plans to the Building Department, one (1) of those sets of plans will be routed to the San José Fire Department for review and comments.
31. **Fire Flow.** Required fire flow for the site is 4,500 gpm, or as otherwise approved in writing by the Fire Chief. The needed fire flow shall be provided from a minimum of

5 hydrants and shall be spaced apart on average 250 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.

32. **Fire Department Connections.** All fire department connections shall be located within 100 feet from a standard public fire hydrant. All alternate means of protections shall be reviewed by the Fire Department. The public fire hydrant(s) shall be located on the same frontage as all fire service connections.
33. **Access Roads.** Approved access road(s) and hydrant(s) shall be provided once wood framing is available at site or provide an alternate means of water suppression subject to the approval of the Fire Department. Obtain permit and pay applicable fees prior to the installation. Contact the San José Fire Department's Fire Protection Systems Section at (408) 277-8756.
34. **Standpipes Available During Construction.** All buildings under construction, three or more stories in height, shall have at least one standpipe for use during construction. Such standpipe shall be provided with fire department hose connections. Location(s) and numbers of standpipe(s) shall be reviewed and approved by the Fire Department.
35. **Fire Extinguishing Systems.** Buildings shall be provided with automatic fire extinguishing systems. Systems serving more than 100 sprinklers shall be supervised by a remote alarm system.
36. **Automatic Fire Alarm Systems.** Group R, Division 1 occupancies shall be provided with a manual and automatic fire alarm system in apartment houses three or more stories in height or containing 16 or more dwelling units, in hotels three or more stories in height or containing 20 or more guest rooms, and in congregate residences three or more stories in height or having an occupant load of 20 or more.
37. **Fire Department Connections.** There shall be multiple fire department connections on opposite ends of each building subject to the approval of the San José Fire Department.
38. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
39. **Emergency Notification Form.** File Emergency Notification Form 200-14 with the Police Dept.
40. **Complex Map.** A complex map is recommended which incorporates an elevated view of the building and individual unit addresses. It should be illuminated during the hours of darkness and positioned in the lobby area so as to be readily readable from main pedestrian access entrance. A complex map should also be placed contiguous to

the vehicular entrance to the development where it will not cause stacking problems when being viewed.

41. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
42. **Digital Keypad.** A digital keypad entry system shall be utilized for apartment residence access, (over keycards, scanners, etc.). This type of entry allows for quick and unhampered emergency personnel access to the interior of the development in the event of a critical incident or medical emergency.
43. **Parking Structure Lighting.** Metal halide, or other bright white light source, should be utilized in the parking structure. No dark areas should exist inside the structure. It is recommended that a minimum luminance of 5 foot-candles be present in the parking structure. In addition, the interior of the parking structure should be painted a light, highly reflective color.
44. **Utility Rooms.** All storage, maintenance, and trash rooms within the parking garage should have doors which cannot be locked from the inside, and that close and lock quickly and automatically upon exit.
45. **Parking Lot Signage.** All entrances to parking areas shall be posted with appropriate signs per 22658(a) CVC, to assist in removal of vehicles at the property owners/managers request.
46. **Mechanical Equipment.** All roof equipment shall be screened from view.
47. **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.
48. **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.
49. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

50. **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.
51. **Alteration of Legal Nonconforming Signs.** Two modified legal non-conforming monument signs shall be permitted on the Meridian Avenue frontage as shown on the plans and as adjusted pursuant to condition No. 1 above.
52. **Amortization of a Legal Nonconforming Sign.** The temporary preservation of the exiting legal non-conforming freestanding sign for the Cardinal restaurant is permitted, however said sign shall be removed by July 31, 2010 or when the Cardinal Restaurant/Lounge ceases operations, whichever occurs first.

53. **New Signage.** All attached signage shown on the plans are conceptual only and shall be subject to separate review and approval to the satisfaction of the Director of Planning.

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