

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

Hearing Date/Agenda Number  
P.C. 4-26-06 Item No. 4.d.

File Number  
CP06-008

Application Type  
Conditional Use Permit

Council District  
6

Planning Area  
Willow Glen

Assessor's Parcel Number(s)  
282-10-031

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Erin L. Morris

Location: Southwest corner of Bascom Avenue and Lindaire Avenue (975 South Bascom Avenue)

Gross Acreage:  
0.25

Net Acreage:  
0.25

Net Density: N/A

Existing Zoning: CN Commercial Neighborhood Existing Use: Commercial building

Proposed Zoning: No change

Proposed Use: Sale of alcoholic beverages for off-site consumption

### GENERAL PLAN

Land Use/Transportation Diagram Designation

General Commercial

Project Conformance:

Yes  No

See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

North: Commercial and single-family residences

CP Commercial Pedestrian and Unincorporated County

East: Commercial

CG Commercial General

South: Commercial

CN Commercial Neighborhood

West: Single-family residences

Unincorporated County

### ENVIRONMENTAL STATUS

Environmental Impact Report found complete  
 Negative Declaration circulated on March 22, 2006  
 Negative Declaration adopted on

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Annexation Title: Hamilton No. 7-A

Date: December 14, 1956

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

Date: April 14, 2006

Approved by: \_\_\_\_\_

Action  
 Recommendation

### OWNER

Anthony Piazza  
Piazza Family Limited Partnership  
P.O. Box 295  
Santa Clara, CA 95052

### DEVELOPER

Jaswant Singh Hothi  
Balwinder Kaur Hothi  
975 S. Bascom Avenue  
San Jose, CA 95128

### CONTACT PERSON

Rick Cole  
Liquor License Services LTD  
1060 Minnesota Avenue  
San Jose, CA 95125

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: ELM

**Department of Public Works**

None received.

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**Other Departments and Agencies**

See attached memoranda from the Fire Department and the Police Department.

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**GENERAL CORRESPONDENCE**

See attached correspondence from Dan Flees dated February 7, 2006; Ken Yeager dated February 7, 2006; Tony Filice dated February 7, 2006; Teresa Faz dated February 8, 2006; Mary Rimovsky dated February 8, 2006; Al Roth dated February 9, 2006; Rebecca Stamm dated February 9, 2006; Michael LaRocca dated February 17, 2006; John Cook dated February 18, 2006; Marie Nessler dated February 20, 2006; Janet Bird dated February 21, 2006; Charles and MaryAnne Salsberry dated February 21, 2006; Ken Yeager dated February 24, 2006; Louis Piro dated April 11, 2006; petition signed by 67 residents

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Anthony Piazza, on behalf of Jaswant Singh Hothi and Balwinder Kaur Hothi, is requesting a Conditional Use Permit to allow the sale of alcoholic beverages for off-site consumption at a convenience market in a 1,600 gross square-foot retail space located in an existing 5,330 gross square foot existing commercial shopping center on the southwest corner of Bascom and Lindaire Avenues. The Zoning Ordinance requires a Conditional Use Permit for off-sale of alcoholic beverages in the CN Commercial Neighborhood Zoning District.

The existing multi-tenant building in which the convenience market (Sherman Oaks Market) is proposed includes an office and other retail uses. Commercial uses surround the site to the north, east and south, and single-family residential uses are located to the west and north. The subject building faces Bascom Avenue, a major arterial. A new library and community center are proposed on the opposite side of Bascom Avenue, approximately 400 feet to the south. This community center will be the first full service community center in the area.

The subject commercial building is located approximately 16 feet from the westerly property line adjoining single-family residential uses. Parking is provided along the northern side of the building; the five parking spaces are accessed from Lindaire Avenue. A trash compactor, trash container, and miscellaneous debris are stored near the northwest corner of the site adjacent to the single-family residence and the public sidewalk. The gated area behind the building and adjacent to the residences is also used for outdoor storage. A 6-foot tall wood fence separates the subject property from the adjacent single-family residence; the fence height is reduced to 3 feet along the property line adjoining the front yard of the adjacent single-family residence.

The project developer operated a convenience market, Gateway Food and Liquor, at a site less than 500 feet south of the subject property. The developer indicated that the store is now closed and that the store would be renamed "Sherman Oaks Market" and relocated to the subject site.

### **Permit History**

The subject commercial building, located at the eastern edge of a 1950s single-family residential neighborhood, was constructed in 1958 prior to current parking requirements, and the site has been used for commercial purposes since that time. On December 17, 1993, the property owner obtained approval for site and façade improvements, including installation of additional parking perpendicular to Bascom Avenue, but the Site Development Permit (City File Number H93-068) was not implemented and has since expired. On February 1, 2006, the property owner filed the subject Conditional Use Permit application and a Liquor License Exception Permit (City File Number ABC06-005). City staff, in coordination with the Police Department and the State Department of Alcoholic Beverage Control, determined that the Liquor License Exception Permit was unnecessary because the subject census tract is not "unduly concentrated."

### **Project Description**

The applicant's stated intention is to sell beer, wine, and spirits as part of a convenience market. The retail sale of grocery items is allowed by right in the CN Commercial Neighborhood Zoning District. This Conditional Use Permit addresses the sale of alcoholic beverages. No additional building square footage is proposed. The facility is proposed to operate during normal business hours; this application does not include a request for after-midnight operation. The applicant has submitted renderings depicting minor façade improvements to the existing building.

### **PUBLIC OUTREACH**

A community meeting was held on March 20, 2006. Owners and tenants of property within a 1000-foot radius of the subject site were notified. Approximately 30 people attended the meeting. Community members expressed numerous concerns about the proposed off-sale of alcohol including concern about loitering, traffic impacts, site maintenance, limited on-site parking, and negative impacts on adjoining residential uses. Many community members indicated their familiarity with the developer's previous store, Gateway Food and Liquor, which operated one block south of the subject site, and expressed concerns about previous problems with public drunkenness, loitering, and quality and type of available merchandise. Staff has received numerous telephone calls regarding the project and many letters and e-mails (see attached), including a copy of a petition opposing the issuance of an alcoholic beverage license signed by 67 residents.

The applicant has posted a notification sign at the site in conformance with the Public Outreach Council Policy. A notice of the Planning Commission public hearing was mailed to all owners and tenants of property within a 1000-foot radius of the project site. The Planning Commission's agenda is posted on the City of San Jose's website along with this staff report. Staff has been available to answer questions and discuss the proposal with members of public.

### **ENVIRONMENTAL REVIEW**

Under the provisions of Section 15303, New Construction or Conversion of Small Structures, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated

below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The proposal involves conversion of an existing 1600 square foot vacant tenant space within an existing building to a new commercial use on an urbanized site. Approval of the project would not result in any significant environmental effects.

## **GENERAL PLAN CONFORMANCE**

The project site has a designation of General Commercial on the San José 2020 General Plan Land Use/Transportation Diagram. Commercial uses such as the proposed retail store are consistent with this designation.

## **ANALYSIS**

The key issue analyzed for the proposed project is conformance to the Zoning Ordinance regulations related to the off-sale of alcoholic beverages.

### **Zoning Code Requirements for Conditional Use Permits**

A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three special findings applicable to the off-sale of alcoholic beverages:

1. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location.

*Analysis of Required Finding.* There are no off-sale outlets within 500 feet of the subject site; however, there is an existing license for Gateway Food and Liquor, the project developer's previous store location, less than 500 feet south of the subject site. There are two existing businesses located within a 1,000 foot radius of the proposed use that provide alcoholic beverages for off-site consumption. These include two convenience stores located at 1365 South Bascom Avenue and 2169 Fruitdale Avenue. The proposed use together with existing facilities would not result in a total of more than four such establishments within a 1000-foot radius.

2. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, that the resulting excess concentration of such uses 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 area; or
  - c. Be detrimental to public health, safety or general welfare.

*Analysis of Required Finding.* As stated above, the proposed use is not located within 500 feet of another use involving the off-sale of alcoholic beverages and will not result in more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius of the proposed location; therefore, this finding is not applicable to the consideration of approval of the subject proposal.

3. For such a use at a location closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, childcare center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis of Required Finding.* The proposed use is not located within 500 feet of a childcare center, a social service agency, a residential care facility, a residential service facility, a secondary school or a college or university. The project site is located directly adjacent to residentially zoned property on Lindaire Avenue. Residents of the neighborhood have expressed concern that the use will encourage loitering and nuisance activities that will impact the residential neighborhood. While the entrance to the proposed retail space is oriented toward Bascom Avenue, the parking area serving the proposed use is within 10 feet of a single-family residence. Staff is concerned about the poor condition of the existing commercial site and about the operational concerns identified by community members based on their experience with the same business operators at a previous location within this neighborhood. The applicant has not proposed any improvements to the site or to the building that would reduce potential impacts from the proposed convenience market on adjacent residential uses. In summary, staff does not believe it is possible to find that the proposed use would not adversely affect adjacent residential uses.

### **Conclusion**

Based on the above analysis, staff concludes that the proposed use has the potential to negatively impact adjacent residential uses and that findings cannot be made to approve the subject Conditional Use Permit request.

### **RECOMMENDATION**

The Planning staff recommends that the Planning Commission deny 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 the proposed project:

1. The Zoning Ordinance requires a Conditional Use Permit for off-sale of alcoholic beverages in the CN Commercial Neighborhood Zoning District.
2. Commercial uses surround the site to the north, east and south, and single-family residential uses are located to the west and north. The subject building faces Bascom Avenue, a major arterial.

3. A new library and community center are proposed on the opposite side of Bascom Avenue, approximately 400 feet to the south. This community center will be the first full service community center in the area.
4. The subject commercial building is located approximately 16 feet from the westerly property line adjoining single-family residential uses.
5. Parking is provided along the northern side of the building; the five parking spaces are accessed from Lindaire Avenue.
6. A trash compactor, trash container, and miscellaneous debris are stored near the northwest corner of the site adjacent to the single-family residence and the public sidewalk. The gated area behind the building and adjacent to the residences is also used for outdoor storage.
7. A 6-foot tall wood fence separates the subject property from the adjacent single-family residence; the fence height is reduced to 3 feet along the property line adjoining the front yard of the adjacent single-family residence.
8. The subject commercial building, located at the eastern edge of a 1950s single-family residential neighborhood, was constructed in 1958 prior to current parking requirements, and the site has been used for commercial purposes since that time.
9. On December 17, 1993, the property owner obtained approval for site and façade improvements, including installation of additional parking perpendicular to Bascom Avenue, but the Site Development Permit (City File Number H93-068) was not implemented and has since expired.
10. On February 1, 2006, the property owner filed the subject Conditional Use Permit application and a Liquor License Exception Permit (City File Number ABC06-005). City staff, in coordination with the Police Department and the State Department of Alcoholic Beverage Control, determined that the Liquor License Exception Permit was unnecessary because the subject census tract is not “unduly concentrated.”
11. The applicant’s stated intention is to sell beer, wine, and spirits as part of a convenience market. The retail sale of grocery items is allowed by right in the CN Commercial Neighborhood Zoning District.
12. No additional building square footage is proposed. The facility is proposed to operate during normal business hours; this application does not include a request for after-midnight operation. The applicant has submitted renderings depicting minor façade improvements to the existing building.
13. Under the provisions of Section 15303, New Construction or Conversion of Small Structures, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The proposal

involves conversion of an existing 1,600 square foot vacant tenant space within an existing building to a new commercial use on an urbanized site.

14. The project site has a designation of General Commercial on the San José 2020 General Plan Land Use/Transportation Diagram. Commercial uses such as the proposed retail store are consistent with this designation.
15. A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three special findings applicable to the off-sale of alcoholic beverages:
  - a. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location.
  - b. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, that the resulting excess concentration of such uses will not:
    - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
    - ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
    - iii. Be detrimental to public health, safety or general welfare.
  - c. For such a use at a location closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, childcare center, public park, social service agency, residential care facility, residential service facility and/or school use.
16. There are no off-sale outlets within 500 feet of the subject site; however, there is an existing license for Gateway Food and Liquor, the project developer's previous store location, less than 500 feet south of the subject site.
17. There are two existing businesses located within a 1,000-foot radius of the proposed use that provide alcoholic beverages for off-site consumption. These include two convenience stores located at 1365 South Bascom Avenue and 2169 Fruitdale Avenue.

18. The proposed use together with existing facilities would not result in a total of more than four such establishments within a 1000-foot radius.
19. The proposed use is not located within 500 feet of a childcare center, a social service agency, a residential care facility, a residential service facility, a secondary school or a college or university.
20. The project site is located directly adjacent to residentially zoned property on Lindaire Avenue. Residents of the neighborhood have expressed concern that the use will encourage loitering and nuisance activities that will impact the residential neighborhood.
21. While the entrance to the proposed retail space is oriented toward Bascom Avenue, the parking area serving the proposed use is within 10 feet of a single-family residence.

Based on the above stated facts, the Planning Commission finds:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram land use designation of General Commercial.
2. The building in which the proposed use is to be located *is* situated and oriented in such a manner that it **may** adversely affect such residential use.
3. The proposed project does not comply with all applicable provisions of the Zoning Ordinance in that the proposal is **not** consistent the required findings for the off-sale of alcohol.
4. For a use located closer than one hundred fifty (150) feet from any residentially zoned property, the proposed use is **not** situated and oriented in such a manner that would not adversely affect such residential use.

Finally, based on the above-stated findings, the Planning Commission concludes and finds that:

1. The proposed use at the location requested will:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility of value of the property of other persons located within 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, loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the surrounding area.
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and

- b. By other public or private service facilities as are required.

**Based on the above findings, this project is hereby denied.**

Attachments:

Location Map

Map of Alcohol Licenses

Public Correspondence

City Correspondence

Statement of Exemption

Other Exhibits

Proposed Plan Set