



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** August 30, 2019

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**COUNCIL DISTRICT: 6**

**SUBJECT: FILE NOS. PDC17-047 and PD18-015. PLANNED DEVELOPMENT ZONING FROM THE CP COMMERCIAL PEDESTRIAN ZONING DISTRICT TO A CP(PD) COMMERCIAL PEDESTRIAN PLANNED DEVELOPMENT ZONING DISTRICT. PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF APPROXIMATELY 76,894 SQUARE FEET OF EXISTING COMMERCIAL BUILDINGS, AND THE CONSTRUCTION OF AN APPROXIMATELY 200,000-SQUARE FOOT COMMERCIAL BUILDING, 590 RESIDENTIAL UNITS, AN ALTERNATIVE PARKING ARRANGEMENT (TANDEM PARKING), AND THE REMOVAL OF 17 ON-SITE ORDINANCE SIZE TREES, ONE ON-SITE NON-ORDINANCE SIZE TREE, AND THREE ORDINANCE SIZE STREET TREES, ON AN APPROXIMATELY 6.98-GROSS ACRE SITE LOCATED AT THE NORTHEAST CORNER OF SOUTH BASCOM AVENUE AND SOUTHWEST EXPRESSWAY (1330, 1388, AND 1410 SOUTH BASCOM AVENUE; APNS: 282-26-007, 282-26-011, AND 282-26-012).**

## **RECOMMENDATION**

The Planning Commission voted 6-0-0 to recommend that the City Council:

- a. Adopt a resolution adopting the South Bascom Gateway Station Project Mitigated Negative Declaration (MND), for which an Initial Study was prepared, and adopting a Mitigation Monitoring and Reporting Program, all in accordance with the California Environmental Quality Act, as amended (CEQA);
- b. Approve an ordinance rezoning (File No. PDC17-047) an approximately 6.98-gross acre site generally located on the northeast corner of South Bascom Avenue and Southwest Expressway (1330, 1388, and 1410 South Bascom Avenue; APNs: 282-26-007, 282-26-011, and 282-26-012) from the CP Commercial Pedestrian Zoning District to the CP(PD) Planned Development Zoning District;
- c. Adopt a resolution approving a Planned Development Permit (File No. PD18-015), subject to conditions, to allow the demolition of approximately 76,894 square feet of existing commercial buildings, and the construction of an approximately 200,000-square foot commercial building, 590 residential units, an alternative parking arrangement (tandem parking), and the removal of 17 on-site ordinance size trees, one on-site non-ordinance size tree, and three ordinance size street trees.

## **OUTCOME**

Should the City Council adopt the resolution adopting the Mitigated Negative Declaration and approve the Planned Development Rezoning and Planned Development Permit, the applicant will be allowed to file for subsequent Public Works clearances and Building Permits.

Should the City Council decide not to adopt the resolution adopting the Mitigated Negative Declaration and deny the Planned Development Rezoning and Planned Development Permit, the applicant will not be able to move forward in filing for subsequent Public Works clearances and Building Permits and the project could not be constructed.

## **EXECUTIVE SUMMARY**

On August 14, 2019, the Planning Commission voted 6-0-0 to recommend that the City Council adopt a resolution adopting the South Bascom Gateway Station Project Mitigated Negative Declaration (MND) and making certain findings concerning mitigation measures, and adopting a Mitigation, Monitoring and Reporting Program, all in accordance with CEQA; approve an ordinance rezoning the project site from CP Commercial Pedestrian to CP(PD) Planned Development Zoning District and a Planned Development Permit to allow the demolition of approximately 76,894 square feet of existing commercial buildings, and the construction of an approximately 200,000-square foot commercial building, 590 residential units, an alternative parking arrangement (tandem parking), and the removal of 17 on-site ordinance size trees, one on-site non-ordinance size tree, and three ordinance size street trees.

## **BACKGROUND**

On August 14, 2019, the Planning Commission held a public hearing to consider the Mitigated Negative Declaration, Planned Development Rezoning, and Planned Development Permit. The item was on the public hearing portion of the agenda. Eight members of the public spoke on the project.

### **Staff Presentation**

Staff gave an overview of the project description and its conformance to General Plan Policy IP-5.10 (Signature Projects). The project is located within the adopted South Bascom (North) Urban Village Plan with a General Plan Land Use/Transportation Diagram designation of Urban Village Commercial. The project includes two buildings in a horizontal mix of uses, with one approximately 200,000-square foot office building, one 590-unit residential building, and a privately-owned and maintained, but publicly-accessible plaza of approximately 42,000 square feet. Staff provided responses to two emails from Commissioners.

- A Commissioner asked how the project is grandfathered under the Signature Project Policy. Staff explained that the project was submitted and initial fees were paid prior to the adoption of the South Bascom (North) Urban Village Plan (adopted May 8, 2018). The project is considered a Signature Project as the project was filed under the General Plan Signature Project Policy LU-5.10 prior to the formal adoption of the Urban Village Plan.
- A Commissioner asked if the minimum commercial requirement was satisfied. Staff explained that the minimum commercial requirement is 200,000 square feet, which includes replacing the existing commercial square footage consisting of approximately 77,000-square feet and more than the project's "fair share" of the South Bascom (North) Urban Village growth capacity.
- A Commissioner asked if the roof line was varied and not flat. Staff stated that the roof line on the project is varied by massing breaks, an articulation of form, and material contrast to present a gateway corner as described in the Village Plan. The stepping back of the upper floors help create contrast and a strong demarcation of the massing. The contemporary architectural style provides a unique contribution to the area, which results in a clean, simple roof line.
- A Commissioner asked for clarification on the standard tree removal condition. Staff explained that the applicant is required to plant 70 trees and will plant 245 trees on the project site. The project is exceeding the tree replacement requirement by 175 trees.
- Staff provided responses to two letters received from the public: One commenter requested that the applicant build affordable housing on site instead of paying the in-lieu fee. Another letter asked that the community be advised of the required in-lieu fees and that the units should be built in the project's surrounding neighborhood. Staff explained the City cannot legally require an applicant to build affordable housing on the project site. After the adoption of the inclusionary housing ordinance, the ordinance was challenged in Court. As part of its reasoning in favor of the City, the courts emphasized that the in-lieu fee option created an option for the project applicant and, therefore, it was not taking of property within the City's police powers to implement the inclusionary housing ordinance. The Housing Department's inclusionary housing ordinance does not currently have provisions to require in-lieu fees collected be spent near the project site. Rather, the fees collected can be used citywide. The Housing Department is looking into developing a dispersion policy which would potentially provide guidance on where the funds should be spent.
- One commenter requested that the project build retail to further activate the public plaza and serve the community. Staff explained that the Signature Project Policy does not require specifically retail to be built for the project; instead, the Policy requires that a minimum of 200,000 square feet of commercial (not specified as retail only) be built. This project site is one of the entire urban village, which when taken in that context, is one component of a complete community. The project provides a large employment base that is not always present with traditional retail uses. Furthermore, the office and residential buildings will have their lobbies, cafés, business center, and/or office space fronting the plaza.

- One commenter expressed concerns that the plaza space will not be activated due to the placement of the above-ground parking next to the plaza. Staff explained that the parking facing the plaza is screened with decorative, undulating panels. It is not feasible to completely shield all of the office parking as there is no traditional “back” for the property, making every building edge visible. The applicant is providing two levels of underground parking and it is impractical to provide more. Also, the screening is further enhanced with landscaping to reduce the visual impact. Additionally, the residential building facing the plaza provides “eyes on the plaza” through the strategic placement of balconies.
- A commenter wanted more details concerning the sustainability measures to be used by the project. Staff explained that the project will comply with the Building Code and Green Building Ordinance.
- A commenter expressed concern about the large amount of parking spaces even though the project is next to a light rail station. Staff explained that the number of parking spaces provided is based upon the compromise between the public, City staff, and the applicant, providing enough parking to ensure the uses are leasable and addressing community concerns surrounding parking issues in the neighborhood. Staff encouraged the project to reduce parking numbers as much as feasible, and the project provided an 18% parking reduction for the residential building and a 12% reduction for the commercial building, for a cumulative reduction of 15%.
- A commenter expressed concerns about how the tandem parking will be managed. Staff explained that the tandem parking will be managed by the applicant, likely renting the spaces to the same unit (commonly called “bundled parking”).
- A commenter had concerns about the Bascom and Southwest Expressway intersection. Staff responded that this intersection is part of the Bascom Avenue Complete Streets effort underway in partnership with the Valley Transportation Authority (VTA), City of San José, City of Campbell, and City of Los Gatos, under which improvements will be made to this intersection as part of the corridor update.
- A commenter wanted to ensure that the plaza remains open to the general public in the same manner a public park is accessible while recognizing the opportunity for enhancing access to public transit. Staff clarified that the publicly-accessible plaza will have requirements mandating it be maintain open to all 24/7, including: a public access easement recorded against the property; liability insurance maintained by the owner for the life of the project; a notice of the requirement of insurance recorded against the property; and a covenant of easement to allow shared access.
- A commenter stated that park in-lieu fees need to be spent in or adjacent to the Urban Village. Staff explained that the Parks Department has a requirement to spend the collected fees either within the same council district (where they would work with the council office to find a location) or used to acquire land for recreational proposes (i.e., trails, parks, community centers, etc.) and/or build new improvements or fund repairs or renovations to existing recreational facilities within three miles of the project.

Commissioner Oliverio asked for clarification on what ensures the commercial component of the project will be built. Staff stated that there is a development standard which states the commercial must be built either before or concurrently with the residential.

### Applicant Presentation

The applicant gave a brief presentation about the project and thanked the community for their involvement and participation. The applicant also discussed the community benefits associated with the project, including an employment center, multimodal connections, open spaces, and incorporating the daylight plane into the project design as a voluntary measure.

### Public Comments

Chair Ballard opened the public comment portion of the agenda.

Alex Shoor stated that the developer had not made any improvements to the project to respond to Catalyze SV's comments. He questioned the validity of the project satisfying the Signature Project General Plan Policy.

Andrea Kyle mentioned Catalyze SV's lack of participation in the community meetings. She was overall very impressed with the developer team and City staff. She stated her concern related to the lack of parking, as not everyone can take mass transit to get to destinations.

Karen Gaoust (community supervisor at VTA) stated that VTA does not support San José's quiet zone within this area and feels that it is most effective to blow the train horn. VTA believes that the quiet zone requirement creates an unsafe situation and should not be pursued for renewal by the City (renewed every five years by the Department of Transportation).

Charles Wagner shared concern regarding the building height as it related to the current urban landscape. He further stated that the parking problem in the neighborhood will worsen because of the project. Mr. Wagner also spoke about the Bascom/880 interchange traffic concerns.

Sylvia Carol stated her concern related to the lack of affordable housing on-site.

Jake Tonkel stated his support for Catalyze SV's comments. He was also concerned about the lack of on-site affordable housing and height of the buildings.

Larry Snider stated his concern related to the proposed traffic signal on Pamlar Avenue. He would like the new proposed traffic signal to only allow right and left turn movements and to not allow vehicles to drive straight into the neighborhood.

Randy Kinman expressed her support for the project. She further stated that retail was not requested throughout the process and any new retail would need to move to an adjacent retail site. She stood against any reduction in parking.

The Commission asked Ms. Kinman about the fear associated with parking, specifically the spillover parking. Ms. Kinman brought up spillover parking issues associated with the Fruitdale Station project.

Chair Ballard closed the public hearing and invited the applicant to respond to public comments.

Planning Commission Discussion and Staff Responses

The applicant stated that the parking numbers were increased since the last community meeting. He stated the need to balance the City's goal to reduce parking, the residents' concerns related to lack of parking, and the applicant's own goals. The applicant stated that the project comprised of approximately 80% of studios and one bedroom units and they generally have a lower need for parking.

Commission Yesney stated a desire to review a rendering in which it showcases that the roofline is not flat. The architect explained that while the roof is flat, the articulation provides visual interest reducing the flat effect. Commissioner Yesney expressed that the architecture is pleasing and the building is well articulated.

Commissioner Leyba expressed his delight for the project's voluntary compliance with the daylight plane policy. Commissioner Leyba also had a question related to tandem parking spaces. The applicant stated that the tandem parking is typically given to the two and three bedroom units and that the 56 tandem parking spaces are appropriate. Commissioner Leyba wanted to clarify if the parking spaces were proposed to be unbundled or bundled. The applicant stated that it has not been decided. Commissioner Leyba asked if the applicant's other project (The Revere) charged for parking, and the applicant explained that the cost of parking will be built into the rent.

Commissioner Leyba brought up a community concern related to the number of driveways. The applicant stated that their traffic consultant based the number of driveways on the number of vehicles coming in and off the site during peak hours. The traffic consultant determined two driveways were necessary for the residential use based on traffic counts and a certain safe distance should be implemented between the two driveways. Commissioner Leyba asked if Ecopasses were part of the project. The applicant stated that Ecopasses have not been programmed in.

Commissioner Griswold asked about the sharing of parking between the residential and office components of the project. The applicant stated that sharing of parking between the uses received heavy pushback from the commercial tenant due to security concerns. The applicant brought up the example of eBay placing a fence around the property due to security concerns. Commissioner Griswold asked about the feasibility about converting the parking spaces into other uses in the future. The applicant stated the possibility of converting the top floor of the parking garage into another use in the future, but does not have information as to how or what the parking spaces will be converted into. Commissioner Griswold asked why affordable housing is not part of the project. The applicant stated that the expense associated with building affordable housing is approximately double than the in-lieu fee. The applicant also stated the requirement to build the office building and housing at the same time results in higher risk, which results in the infeasibility of incorporating affordable housing on-site.

Commissioner Griswold asked if the project would be in a net zero if they built and subsidized the affordable housing units. The applicant stated that it is a net negative to build affordable housing. Commissioner Griswold expressed concerns regarding bird safe design. The architect stated that it highly depends on the site's proximity to a sanctuary and the Bay. Commissioner

Griswold asked whether the architect would consider changing the glass to help with bird safe design. The applicant stated they would look into it if it becomes an issue.

Commissioner Oliverio asked about the project's approximate construction cost. The applicant stated it is an approximately half a billion-dollar project.

Commissioner Yesney asked if the noise study was based upon noise levels now with the quiet zone implemented or if the study was based on single event noise. Staff stated that the interior noise level should not exceed 45 dB and this would be confirmed through an acoustic study done prior to building permit issuance.

Commissioner Ballard requested staff to describe the community outreach and engagement process. Staff referenced the City Council Policy 6-30 on Public Outreach. Staff stated that Signature Projects require two community meetings and they are noticed at 1,000 feet. Staff also stated that there is an email distribution list for interested parties. Furthermore, staff stated that a project webpage was created for the project and social media outlets were also used to notify interested stakeholders. Staff also stated that additional meetings were held because the project was in tandem with the Urban Village planning.

Commissioner Ballard questioned why a Transportation Demand Management (TDM) plan was not required as part of the project. Staff explained that pursuant to the Zoning Code a parking reduction over 20% would require a TDM plan, and the project averages a 15% parking reduction. Commissioner Ballard then asked the developer if there is voluntary interest in including a TDM plan as part of the project. The applicant stated that it depends on market conditions during construction.

Commissioner Ballard referenced the VTA letter and wanted to clarify whether the VTA was asking for wayfinding signage to the Light Rail Station. Staff stated that the project is conditioned to provide wayfinding signage in the plaza. Staff had also stated the importance from the community and staff for a line of sight from Bascom Avenue.

Commissioner Ballard expressed her desire to allow the condominium project north of the project site to have easier access to the VTA Light Rail Station and the plaza. Staff stated that there is no legal requirement to require the pedestrian access from the adjacent property onto the project site.

Commission Allen stated the price of the affordable housing in-lieu fee is not surprising and inquired whether there has been discussion on changing the policy to have more specific spending-locational requirements. Staff explained that the Housing Department is working on an Inclusive Housing Ordinance, which addresses in-lieu fees.

Commissioner Yesney made a motion to approve the project and the motion was seconded by Vice Chair Leyba. Commissioner Yesney spoke to her motion and expressed her appreciation for the architecture. Commissioner Yesney also stated that the project will be something that will be looked at with pride. Commissioner Leyba stated his appreciation and gratitude to the community members who participated in the process. Commissioner Leyba also commended the developer for voluntarily incorporating the daylight setback and stepback as part of the project.

Commissioner Allen also thanked the community for participating in the public process. He stated his desire to have a more robust community outreach process and to ask more of the developer for Signature Projects.

Chair Ballard spoke to her support and encouraged the developer to consider a TDM program. Commissioner Ballard expressed her delight in this project and amplified public speakers' comments regarding affordable housing.

Commissioner Oliverio commended staff for managing the project and their efforts in this project. Commissioner Oliverio spoke to the importance of the General Plan and the policy history that affected San José's past land use patterns, further explaining why San José is focusing growth the way it is.

Chair Ballard called on the Planning Commission for a vote and the Planning Commission voted 6-0-0.

## **ANALYSIS**

A complete analysis of the Planned Development Rezoning and Planned Development Permit, including conformance with the California Environmental Quality Act, General Plan, Commercial Design Guidelines, and Residential Design Guidelines is contained in the attached Planning Commission staff report and attachments, and the Mitigated Negative Declaration document.

## **EVALUATION AND FOLLOW UP**

If the resolution adopting the Mitigated Negative Declaration and an ordinance of the City of San José rezoning the project site to CP(PD) Planned Development Permit are adopted along with approving the Planned Development Permit, the project would be able to proceed with an application for Public Works clearances and Building Permits to allow construction activities to occur.

If the resolution adopting the Mitigated Negative Declaration, and an ordinance rezoning the project site to CP(PD) Planned Development Zoning District, and the Planned Development Permit are denied, the project will not be able to move forward with any subsequent permits and the project would not be constructed.

## **PUBLIC OUTREACH/INTEREST**

Staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site. Staff held two community meetings for the project.



The first community meeting on June 11, 2018, was to discuss the Planned Development Zoning and the second community meeting on February 11, 2019, was to discuss the Planned Development Permit. Approximately 60 community members attended the first community meeting and approximately 90 community members attended the second community meeting. Both community meetings were noticed at a 1,000-foot radius. The community shared similar ideas and concerns at both meetings, including: intensity of the proposal either too small or large, parking numbers too much or little, traffic impacts and safety issues, aesthetic/privacy concerns, inadequate parks space, glare from glass, housing affordability, height too tall, and parking placement should be underground.

Additionally, the applicant posted two on-site signs along South Bascom Avenue. These signs were updated periodically to reflect the changing project description. The staff report was posted on the City's website and a project webpage has been created. Staff has been available to respond to questions from the public.

### **COORDINATION**

Preparation of this memorandum was coordinated with the City Attorney's Office.

### **CEQA**

A Mitigated Negative Declaration (MND) was prepared for the South Bascom Gateway Station Project by the Department of Planning, Building, and Code Enforcement.

/s/  
Rosalynn Hughey, Secretary  
Planning Commission

For questions please contact Robert Manford, Deputy Director, at (408) 535-7900.

Attachments: [Planning Commission Staff Report and Attachments and Correspondence](#)