



Memorandum

TO: THE HONORABLE MAYOR &
CITY COUNCIL

FROM: Councilmember Lan Diep

SUBJECT: CONFORMING REZONING &
CONDITIONAL USE PERMIT TO
ALLOW RELIGIOUS ASSEMBLY IN
DESIGNATED TRANSIT EMPLOYMENT
CENTER AT 2222 TRADE ZONE BLVD

DATE: 4/8/2019

Approved

Date

4/8/19

RECOMMENDATION

Accept staff recommendation with additional direction to:

1. Restrict the Conditional Use Permit allowing a religious assembly use within the designated Transit Employment Center Zoning District to a term of 10 years;
2. Require that any proposed new or expanded uses on this site require approval by the City Council; and
3. Return to Council with proposed changes to the Zoning Ordinance to better align the Transit Employment Center (TEC) Zoning District with the TEC General Plan Designation.

BACKGROUND

Templo La Hermosa (Applicant) is a church that seeks to relocate to 2222 Trade Zone Blvd. (The Site) from its current location at 56 S. Montgomery St. Applicant has agreed to sell its current site to Google for a profit. Applicant has spent at least \$300,000 preparing to purchase The Site, in anticipation of this council approving:

1. A Conforming Rezoning of The Site from Industrial Park (IP) zoning to Transit Employment Center (TEC) zoning and;
2. A Conditional Use Permit to allow for religious assembly to occur on the TEC site.

Applicant intends to use approximately two-thirds (18,480 sq ft) of a 29,193 sq ft office building as a place of worship and administrative office space, leaving the other third of the building for the present tenant to continue an existing office use. Under this proposal, the approximately two-acre site would have fewer than 50 jobs between the existing tenant and

the church, although it is located within a mile of the Milpitas BART Station and two miles of the Berryessa Transit Center. The existing single-story building can accommodate up to 100 employees and it is typical for companies in this area to operate multiple work shifts. A TEC designation encourages buildings of up to four stories. If redeveloped, this site could accommodate over 1,000 jobs. Presently, this area of North San José has seen vacancy rates drop to 2%, with a resurgence of manufacturing and heavier R&D uses.

The General Plan describes the TEC zoning designation as:

...intended for intensive industrial park and supportive commercial uses with development generally **at least four stories in height**... is suitable for development with retail and service commercial uses on the first two floors; with office, research and development or industrial use on upper floors; as well as wholly office, research and development, or other industrial park uses on all floors... [TEC] **should support more intensive, transit-oriented uses** than that typically found in the IP Industrial Park District... New development should orient buildings towards public streets and transit facilities that include features to provide an enhanced pedestrian environment. [San José Muni Code, Chapter 20.50.010, emphasis added.]

Section 20.50.010 of our municipal code contemplates that a religious assembly use may be allowed within a TEC land designation as an independent use only upon the discretionary issuance of a conditional use permit.

Per § 20.100.720 of the municipal code, this council “may issue a conditional use permit only after finding” that the conditional use does not obstruct or impede the city’s land use and development goals. There is a seven-factor test for the Council to consider. The Director of Planning has considered these seven factors on pages 8-10 of her memo and has recommended approval of Applicant’s request.

The Director of Economic Development has issued a supplemental memo raising concerns with this recommendation however, and disputes Finding 4.b of Planning’s analysis, fearing that approval of this conditional use permit would in fact impair the utility of value of the property of other persons located within the vicinity of the site.

The seven-factor test for conditional use permits laid out in our muni code is a cumulative test, not a balancing one. All findings should be made in the affirmative before a CUP is granted. Conditional use permits are granted at the discretion of the Council; they should not be expected as a right.

ARGUMENT

The issue before us forces this council to choose between two competing obligations: our duty to steward the city into a brighter future and our duty to address the immediate and pressing needs of the residents of today. North San José is the economic engine of our city. It is where the majority of our jobs are located; where about 70% of our sales-tax revenue is generated. As we confront our jobs-housing imbalance and work to reverse the flow of our residents leaving San José during the day for jobs outside our city limits, we must not undermine our designated employment growth areas, as it is these areas that will sustain our city into the future.

The Transit Employment Center (TEC) designation in our general plan is a special designation reserved for areas intended to have intensive job growth because of their proximity to transit. The designation is limited to employment centers in North San José, the Berryessa/Milpitas area, and Old Edenvale. Protecting our TEC lands for their intended purpose will go a long way towards remedying our jobs-housing imbalance. It will help bring money into our general fund. It will encourage workers to drive less, alleviating traffic and prolonging the life of our roads. It will reduce carbon emissions, helping to slow climate change. Density of jobs will also mean density of people, which will naturally attract the dining, retail, and service providers that will collectively create a sense of place and boost quality of life for all residents.

Applicant seeks to open a church on a parcel designated at a Transit Employment Center (TEC) in our General Plan. This parcel is located within walking distance of not one, but two BART stations set to open at the end of this year. Sound urban planning principles dictate that we densify development around transit hubs, encouraging mix of uses, such as jobs, housing, retail, commercial, green space, and where appropriate, religious assembly.

But in the context of San José's status as the only large city with a shrinking daytime population and our deep desire to become a city that attracts rather than loses workers during the day, it becomes abundantly clear that any use in a TEC area that does not optimize the creation of jobs will undermine our shared vision for the future.

However, our shared vision for the future is still some years away from becoming reality. The BART stations at Milpitas and Berryessa are not expected to open until the end of this year. Even after they open, it will take some years – and likely after the anticipated recession – for a new boom cycle to bring about the four-story buildings we hope to see in this TEC area. We must not allow a low-density assembly use to hinder optimal buildout on our limited TEC lands. But in the interim, as we await that buildout to happen, there is limited harm in accommodating Applicant's non-conforming use in a temporary fashion.

CONCLUSION

The Council should grant Applicant a Conditional Use Permit but limit the permit to a term of 10 years, as not to impede the vision of the General Plan for this area: a dense, jobs-rich cluster located close to public transit that will facilitate a vibrant streetscape and set the conditions for person-to-person "collisions" that will spark the next great idea to come out of Silicon Valley.

Ten years will allow Applicant's investment to grow and provide ample notice for Applicant to seek a new site as North San José begins to achieve its full potential.