



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 22, 2021

COUNCIL DISTRICT: 3

SUBJECT: FILE NO. PDC15-067: PLANNED DEVELOPMENT REZONING FROM THE CG COMMERCIAL GENERAL ZONING DISTRICT AND LI LIGHT INDUSTRIAL ZONING DISTRICT TO THE CP(PD) PLANNED DEVELOPMENT ZONING DISTRICT FOR A MIXED-USE DEVELOPMENT WITH A MINIMUM OF 60,331 SQUARE FEET OF COMMERCIAL AND UP TO 408 RESIDENTIAL UNITS ON A 2.77 GROSS-ACRE SITE LOCATED AT 1260 E. SANTA CLARA STREET.

STAFF RECOMMENDATION

1. Adopt a resolution adopting the Empire Lumber Mixed-Use Mitigated Negative Declaration, for which an Initial Study was prepared, and associated Mitigation Monitoring and Reporting Plan, all in accordance with the California Environmental Quality Act (CEQA), as amended.
2. Approve an ordinance of the City of San José rezoning certain real properties situated on the south side of East Santa Clara Street, east of South 26th Street and north of Shortridge Avenue (1260 East Santa Clara Street) (APNs 467-33-001, 467-33-002, 467-33-003, 467-33-004, 467-33-006, 467-33-007, and 467-33-008) from CG Commercial General Zoning District and LI Light Industrial Zoning District to CP(PD) Planned Development Zoning District on a 2.77 gross-acre site.

PLANNING COMMISSION RECOMMENDATION

Commissioner Young made a motion to approve staff's recommendation, and Commissioner Oliverio seconded. The motion passed (8-0-3; Bonilla, Torrens, and Ornelas-Wise absent).

OUTCOME

Should the Council accept the staff and Planning Commission recommendation, then the actions listed above will occur and the proposed Planned Development Zoning from the CG Commercial Zoning District and the LI Light Industrial Zoning District to the CP(PD) Planned Development Zoning District will be approved, allowing the applicant to submit a subsequent Planned Development Permit for a project meeting the requirements of the PD zoning district.

BACKGROUND

The Planning Commission held a public hearing on November 17, 2021, to consider the proposed Planned Development Rezoning from the CG Commercial Zoning District and the LI Light Industrial Zoning District to the CP(PD) Planned Development Zoning District.

Planning Project Manager Jennifer Piozet gave a presentation regarding the proposed Planned Development Rezoning to the Planning Commission. Ms. Piozet stated that there was only a planned development zoning on file, and not a development project. She further stated that the subsequent development project will be required to comply with the Roosevelt Park Urban Village Plan. The Environmental Project Manager, Thai-Chau Le, then gave a presentation on the CEQA clearance and analysis. She stated that the Initial Study/Mitigated Negative Declaration (IS/MND) circulated for public comments from December 18, 2020 to January 13, 2021. Ms. Le further stated that Adams Broadwell Joseph and Cardozo, on behalf of Silicon Valley Residents for Responsible Development, submitted a letter at 1:07 p.m. on the day of the Planning Commission hearing and that the comment letter was submitted outside of the public circulation period pursuant to CEQA. Ms. Le stated that on November 3, 2021, the commenter requested information pertaining to this project under the California Public Records Act. She stated that the commenter incorrectly claimed that the request was for information pertaining to all the documents referenced and incorporated by reference in the environmental analysis. Rather, the request was for all information including plans and applications for the project. Because the project application was submitted in 2015, the City requested an extension of time to adequately provide all the information requested by the commenter including older site plans that do not reflect the current proposal, previously circulated environmental documents that are not the subject of this action, and all of the other requested documents. Ms. Le reiterated that the IS/MND public review period ended in mid-January 2021, and there was no request from the commenter for any related documents about this project until November 3, 2021. Therefore, the commenter did not request and was not awaiting any documents from the City that would have prevented them from providing comments during the public circulation timeframe of December 18, 2020 to January 13, 2021. Furthermore, Ms. Le stated that the information provided to the commenter about the environmental documents is untimely because it is outside of the public comment period under CEQA.

Ms. Le also stated that staff reviewed the comment letter submitted by Adams Broadwell on November 17, 2021, and coordinated with the environmental consultants. Staff concluded that the analysis in the IS/MND is adequate as the City completed the analysis for operation and construction impacts for air quality, greenhouse gas, and noise in accordance with General Plan policies, guidance from the Air District, and the applicable thresholds of significance. Furthermore, she stated that the comments do not present new information that would change the findings of the circulated documents. Ms. Piozet concluded staff's presentation with staff's recommendation that the Planning Commission adopt a resolution adopting the Empire Lumber Mixed-Use Mitigated Negative Declaration, and adopt an ordinance rezoning the proposed Planned Development Rezoning from CG and LI to CP(PD) Planned Development Zoning.

The applicant's representative, Erik Shoennauer, addressed comments from the public received prior to the public hearing and explained that the Planned Development Zoning's development standards are the subject of the hearing and that there is not a development project on file. Mr. Schoennauer responded that the development standards require viewsheds to be conducted when a development project is submitted to ensure that neighborhood views of the Five Wounds Portuguese National Church are maintained and that the specific viewsheds were requested by the neighbors. He also stated that the development standards require Mediterranean-style architecture for both the plaza and street-facing façades.

Public Testimony

Eight members of the public spoke to express their concerns.

Eugene Bradley from the Silicon Valley Transit Users stated that public transportation could mitigate traffic and parking concerns. He asked if staff had heard of Valley Transit Authority (VTA). He encouraged that the mitigation measures should include information about existing public transportation stops and routes.

The next public speaker, Ryan Jones, from Local 393 stated concerns related to the CEQA determination with car trips and increased noise. He had asked the City to conduct a "real" Environmental Impact Report (EIR) for the project.

The third public speaker, Eric Valentine from Local 393, asked the Planning Commission to consider the environmental impact of the project and requested an EIR.

The fourth speaker, Aiden Marshal, from Silicon Valley Residents for Responsible Development stated that the City needs to prepare an EIR. He then stated that an EIR must be prepared when there are significant impacts. His organization's noise expert determined the mitigation measures of the Mitigated Negative Declaration will not be effective. Also, the City did not conduct a health risk analysis. Diesel emissions will exceed the Bay Area standard of 10 in one million, meaning the project may have a significant environmental impact.

The fifth speaker, Edwin Lopez Silva from Local 104, stated his concerns with the unknown environmental impacts of the project. He had requested the City prepare an EIR.

The sixth speaker, Mike Soderburg from Preservation Action Council of San Jose, does not disagree with the visualization viewpoints identified in the Roosevelt Park Urban Village Plan, but expressed that an EIR would be useful. He wanted the historic impacts evaluated with the project, particularly with the church interface.

The seventh speaker, Davide Veiera, agreed with the comments related to noise and pollution, stating that the noise from Highway 101 and East Santa Clara Street is bad enough. He expressed that residents should not have to raise their voices to be heard from their backyards. He anticipated that the quality of life will go down if the project is not adequately parked. Mr. Veiera stated that the development is inconsistent with the General Plan and the Roosevelt Park Urban Village Plan with respect to the trail interface, clarifying that the drawings shared with the public are not compatible with the Urban Village Plan or the neighborhood. This inconsistency should be enough to deny the rezoning.

The final speaker, Brian Porse, a Local 393 plumber, asked the Planning Commission to prepare an EIR before the rezoning moved forward. He expressed concerns about climate issues, noise, and air pollution.

The applicant's representative, Mr. Schoennauer, responded to public comments, specifically comments related to the development standards and the trail. With regards to the parking, this project, like any project in the city, must meet the parking standards. On page 3 of the Development Standards, it is stated that the parking ordinance of the City must be followed for the future project. With regards to the desires for an EIR, all of the technical studies were prepared by the City and are in the Planning Commission packet. With regard to the union members and their legal counsel, the applicant stated that Adams Broadwell has repeatedly, over 24 times on various projects, submitted a 100-page letter the day of the hearing to get the Planning Commission to "act as their pawns."

In addition to his prior comments, Mr. Schoennauer stated that the development standards are consistent with the urban village plan because they are taken verbatim from the plan. He also stated that the project renderings complained of by commenters are merely architectural massing studies and do not reflect the final project, and further noted that the heading on the development standards specifically states that the approval does not approve any of the pictures and only approves the words of the development standards. Mr. Schoennauer also noted that the traffic study for the CEQA document shows adequate parking and traffic controls.

Planning Commission Discussion

Commissioner Oliverio asked what general good practices should a project have when located near a future transit station. Ms. Piozet stated that this project is the type of project the City wants to see near a future BART station. Commissioner Oliverio further stated that the heights and intensity are not intense enough given the proximity of the station. Staff stated that the City is looking at the collective Five Wounds Plans with VTA to increase the intensities to support the future BART station.

Commissioner Lardinois asked staff to explain why a Mitigated Negative Declaration (MND) was pursued. Environmental Planner Thai-Chau Le stated that the Initial Study for the rezoning would not be any different for an EIR than for the MND because both evaluate all of the major CEQA resource areas. An EIR would evaluate potential project alternatives if there were identified significant and unavoidable impacts, which the MND does not. Because project impacts could be mitigated to a level of less than significant, there were no significant and unavoidable impacts associated with this project so preparation of an EIR was not required. The IS/MND analyzed the project's proximity to the church and if there were any impacts to its integrity. The IS/MND concluded that there are no impacts to the church. The impacts complained of result from temporary construction, but are reduced to a level of not significant because of the conditions and measures that are required to reduce those impacts to a less than significant level, consistent with the Envision San Jose General Plan 2040. Furthermore, the IS/MND analyzed the project's greenhouse gas emissions based on the 2030 statewide standards. Staff reiterated that there are air quality analyses on the operation of the site and the potential air pollutant impacts, consistent with the Air District's standards and guidance in the IS/MND. Furthermore, Staff looked at the comment letter received today, and the letter's analysis concluded that some of the modelings to refute the analysis identified in the IS/MND may have been overstated and estimated and does not reflect the proposed project.

Principal Environmental Planner David Keyon explained why an MND was prepared instead of an EIR. David Keyon explained that if a project is not exempt from CEQA, an Initial Study is completed evaluating all of the resource areas required by CEQA. If the Initial Study shows that there are significant environmental impacts that cannot be reduced with mitigation measures, then an EIR is done. The result of the Initial Study for this project did not identify any significant unavoidable impacts, as all the impacts identified could be reduced to a less than significant level with mitigation measures. The analysis in an EIR and an Initial Study is no different, but if there are areas where an environmental impact is significant and unavoidable, an EIR will also evaluate potential project alternatives that may reduce project impacts. Because there are no significant and unavoidable impacts associated with this project, an EIR is not required.

Commissioner Lardinois asked how a project is analyzed under CEQA if it is just a rezoning application and if staff considers the most impactful use under such a rezoning request. Staff confirmed that is the case and staff analyzes the greatest potential project envelope that would be allowed by the zoning development standards and the urban village plan. If a development project came in, staff would still need to evaluate and assure that the project is within that

envelope. In closing, Commissioner Lardinois mentioned there is a good taco truck at the project site.

Commissioner Cantrell asked what the parcel used to be used for. The applicant and staff stated that it is a used car lot.

Commissioner Young stated that he is puzzled why a union would oppose a project that creates construction jobs. He felt that it is very unfortunate for the union to use this strategy considering both a used car lot and a lumber yard have more impacts than a residential project. He appreciated the comments from the residents and acknowledged that the devil is in the details. Given that the project is not at the detail stage yet, Commissioner Young stated that we desperately need housing and should approve this rezoning request.

Commissioner Caballero had a question about the community's trail concerns and keeping eyes on the trail. She expressed that there is confusion regarding why the community is concerned about this part of the proposal.

Mr. Schoennauer stated that the diagrams are capacity studies. The architect was trying to figure out what could fit on the site with the height limits. It was not about detailed architecture of where the doors and windows will be, and therefore, the capacity diagrams do not present the doors and eyes on the trail that the community is concerned with. The Zoning Development Standards and the Roosevelt Park Urban Village Plan require that the project provide eyes on the trail.

Commissioner Young made a motion to approve the staff recommendation, and Commissioner Oliverio seconded. The motion passed (8-0-3; Bonilla, Torrens, and Ornelas-Wise absent).

ANALYSIS

For a complete analysis, including the related CEQA clearance, please see the [Planning Commission Staff Report](#) (attached).

CONCLUSION

The Planning Commission voted to recommend that the City Council approve the staff's recommendation.

EVALUATION AND FOLLOW UP

If the proposed Planned Development Rezoning is approved as recommended by the Planning Commission, a subsequent development permit would need to be submitted and approved for the project to obtain Building and Public Works permits to begin construction.

CLIMATE SMART SAN JOSE

The proposed Planned Development Rezoning aligns with Climate Smart San José's overall goals by concentrating a mixed-use, high-intensity project near a future rapid public transit system (BART).

PUBLIC OUTREACH/INTEREST

To inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy, as described below.

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 and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

A summary of comments from the community meeting is summarized in the Planning Commission Staff Report.

COORDINATION

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

CEQA

A Mitigated Negative Declaration (MND) was prepared by the Director of Planning, Building, and Code Enforcement for the Empire Lumber Mixed-Use Project (PDC15-067/ER20-102) in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

The Initial Study prepared disclosed that project would have temporary construction impacts to Air Quality, Biological Resources, Hazards and Hazardous Materials, and Noise. The Initial Study and MND identified potentially mitigation measures to the mentioned resource areas to reduce potential construction impacts to less than significant levels. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) for the project.

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The Draft MND was circulated for public review for 26 days consistent with CEQA Guidelines Section 15132 starting on December 18, 2020 and ending on January 13, 2021. A majority of the concerns were about how the height of a future development under the PD Zoning would overwhelmingly obstruct views of the National Portuguese Five Wounds Church and would result in significant adverse visual aesthetic impacts.

The MND and supporting Initial Study, Responses to Comments Document, and MMRP are available on the City's website at www.sanjoseca.gov/negativedeclarations.

/s/

Christopher Burton, Secretary
Planning Commission

For questions, please contact Michael Brilliot, Deputy Director, at 408 896-0136 or michael.brilliot@sanjoseca.gov

Attachment: [Planning Commission Staff Report](#)