



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Chris Burton

**SUBJECT:** See Below

**DATE:** February 14, 2025

**COUNCIL DISTRICT:** 3

**SUBJECT: PD24-016 & ER24-208 - Planned Development Permit and Determination of Public Convenience or Necessity for Certain Real Property Located at 1610 McKee Road**

## **RECOMMENDATION**

On February 12, 2025, the Planning Commission voted 6-1-2 (Bhandal opposed; Bickford and Oliverio absent) to recommend that the City Council take all of the the following actions:

1. Consider a categorical exemption in accordance with CEQA Guidelines Section 15270 for Projects Which Are Disapproved; and
2. Adopt a Resolution denying a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 – full range of alcoholic beverages) at an existing approximately 2,376-square-foot tenant space on an approximately 0.93-gross-acre site.

## **SUMMARY AND OUTCOME**

If the City Council adopts the actions listed above as recommended by the Planning Commission, the applicant would not be allowed to sell beer, wine, and distilled spirits for off-site consumption in conjunction with a California Department of Alcoholic Beverage Control (ABC) Type 21 License at an existing approximately 2,376-square-foot tenant space (proposed as 101 Mini Market and Krispy Krunchy Chicken) on an approximately 0.93-gross acre site located at 1610 McKee Road.

## **BACKGROUND**

On February 12, 2025, the Planning Commission held a public hearing to consider the exemption from CEQA, the Planned Development Permit, and the Determination of Public Convenience or Necessity. An overview of the public hearing is provided below.

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Commissioner Young made a motion to recommend the denial of the Planned Development Permit and the Determination of Public Convenience or Necessity to the City Council. Commissioner Lardinois seconded the motion. The motion passed 6-1-2 (Bhandal opposed; Bickford and Oliverio absent).

## **ANALYSIS**

Analysis of the proposed CEQA clearance, Planned Development Permit, and Determination of Public Convenience or Necessity, including conformance with the General Plan, Municipal Code, and City Council Policies, are contained in the attached staff report to the Planning Commission.

### *Climate Smart San José Analysis*

The recommendation to deny the project does not affect the Climate Smart San José goals.

## **EVALUATION AND FOLLOW-UP**

Should the City Council adopt the resolution denying the Planned Development Permit and Determination of Public Convenience or Necessity, the applicant would not be allowed to sell beer, wine, and distilled spirits for off-site consumption in conjunction with a California Department of Alcoholic Beverage Control (ABC) Type 21 License.

## **COORDINATION**

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

## **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the City Council hearing scheduled for February 25, 2025.

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. An on-site sign has been posted on the Project frontage since October 17, 2024. Staff received one letter of opposition to the off-sale alcohol proposal. Staff also received a list of signatures from members of the public who support the project from the applicant. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the Project site and posted on the

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

### **COMMISSION RECOMMENDATION AND INPUT**

The project was heard at the Planning Commission hearing on February 12, 2025, on the Public Hearing portion of the agenda, as follows:

#### *Staff Presentation*

Cameron Gee, staff planner, provided an oral presentation on the proposed project, which included an overview of the applicant's proposal to sell beer, wine, and distilled spirits for off-site consumption. He stated that the proposal was found to be inconsistent with the General Plan and findings for issuing a Determination of Public Convenience or Necessity.

#### *Applicant Presentation*

Jesse Powar, the applicant's representative for the proposed convenience store, stated that he first reached out to the previous Council District 3 office and the San José Police Department and received support from both. He stated that he then proceeded with the Planned Development Permit application and received support from the Planning Division.

Jesse stated that later, during the application process, staff informed him that the Planning Division was no longer recommending approval of the Planned Development Permit application.

Jesse stated that he was shocked by this recommendation, considering the amount of time and money invested into the convenience store and the effort he put into establishing relationships with the community and elected officials. He stated that he would not have gone forward with the application if the Planning Division did not support the project.

Jesse explained his reasoning for wanting to open the convenience store, stating that the store would help pay for his children's tuition. The convenience store, which would be his second store, would also make his business more competitive with larger retail business chains. He stated that the new convenience store would fill a currently vacant tenant space, create jobs, and increase pedestrian activity in the surrounding neighborhood shopping center.

Jesse stated that the entrance to the nearby elementary school, Anne Darling Elementary, is located over 1,000 feet from the entrance to the proposed convenience store. He also stated that the school is a closed campus. He compared the project site's proximity to the school with the existing Lucky 7 Supermarket, which also sells alcohol, located at the corner of North 33<sup>rd</sup> Street and McKee Road.

Jesse then stated that some of the surrounding retail stores with active off-sale licenses do not sell alcohol.

### *Public Hearing*

Chair Tordillos opened the public comment portion of the agenda. Three members of the public spoke. The comments of the speakers are summarized below:

- A representative of the Plata Arroyo neighborhood association and Little Portugal East stated that these two neighborhood groups oppose the project. He stated that the project would not benefit the community and that there is an overconcentration of alcohol in the area. He also stated that several groups agree with the neighborhood groups' opposition, including current Council District 3, 5, and Mayor's offices, the San José Unified School District Trustee for Anne Darling Elementary School, the Little Portugal neighborhood association, and the San José Police Department Deputy Chief.
- The owner of Lucky 7 Supermarket stated that she opposes the project, citing safety concerns related to more alcohol sales near Anne Darling Elementary School.
- A nearby resident stated that she supports the project.

Chair Tordillos closed the public comment portion of the agenda and invited the applicant to respond to comments or provide any closing statements.

Jesse continued his presentation, stating that two of the off-sale establishments in the census tract are located along Alum Rock Avenue in a different geographic area. He also stated that the existing off-sale establishments in the census tract sell only beer and wine. Jesse referenced other businesses in the area that do not utilize their off-sale alcohol license.

Jesse stated that denial of the Planned Development Permit would put the convenience store at a competitive disadvantage with other businesses that sell alcohol. He closed his presentation by stating that the convenience store would support seven new jobs and would be committed to maintaining compliance with all local, state, and federal regulations. He then thanked the Planning Division staff and the Commissioners for their time and consideration.

### *Commissioner Discussion*

Commissioner Young asked the applicant if anything was preventing him from opening the convenience store without selling alcohol. Jesse responded by stating that alcohol sales would increase the number of customers and help with the sales of other grocery items. Commissioner Young rephrased his question and asked the applicant if it was economically infeasible to open the convenience store without selling alcohol. Jesse agreed.

Vice Chair Cantrell asked staff why the applicant believed the Planned Development Permit would be approved. Staff responded that at the time the first review letter was sent to the applicant, staff had not yet received confirmation from the San José Police Department that the project site is located within an overconcentrated census tract. By being in an overconcentrated census tract, additional findings for the Determination of Public Convenience or Necessity are introduced to the project. Staff stated that not all findings could be met, which is a requirement for recommending approval of the project.

Vice Chair Cantrell also asked staff about the applicant's statement that there are unused off-sale licenses within the area. Staff responded that while there may be businesses that currently do not utilize their off-sale license, the Determination of Public Convenience or Necessity findings consider the number of off-sale licenses issued in the census tract and whether the number of licenses results in overconcentration.

Vice Chair Cantrell then asked staff if they were amenable to allowing the applicant to sell only beer and wine at the convenience store. Staff responded that this was not considered. John Tu, staff planner, stated that the San José Municipal Code does not differentiate between the sale of only beer and wine and the sale of a full range of alcoholic beverages.

Vice Chair Cantrell asked the applicant if they reached out to the community about selling only beer and wine. Jesse responded by stating that the primary concern in the community was the project site's proximity to Anne Darling Elementary school. He received signatures of support from surrounding residents throughout the application process.

Vice Chair Cantrell asked staff to clarify if the Determination of Public Convenience or Necessity finding for proximity to the elementary school is measured using the distance between building entrances. Staff responded by stating that the finding measures the distance between property lines.

Commissioner Lardinois stated that the Commissioners should consider the staff's recommendation for denial.

Commissioner Young supported Commissioner Lardinois' comment and stated that the overconcentration of off-sale licenses and the project site's proximity to the elementary school are concerning. He referenced a previous off-sale establishment proposal near a school that went before the Planning Commission and was denied by the City Council. Commissioner Young made a motion to approve the staff's recommendation to deny the project. Commissioner Lardinois seconded the motion.

Chair Tordillos stated that while he supports new businesses investing in the community, he considers the staff's recommendation to deny the project. He stated that he does not believe it is the Planning Commission's role to ignore the Municipal Code guidelines for approving off-sale alcohol projects. He encouraged the applicant to reiterate his position before the City Council.

Vice Chair Cantrell stated that he generally thinks a person's right to do business in a community should override most concerns but that off-sale alcohol licenses can pose

issues. He agreed with Chair Tordillos' comment that the staff recommendation to deny the project carries meaning. He encouraged the applicant to find another path to opening his business in San José.

Chair Tordillos then called for a vote on the motion by Commissioner Young and seconded by Vice Chair Lardinois. The motion passed 6-1-2 (Bhandal opposed; Bickford and Oliverio absent).

## **CEQA**

Under the provisions of Section 15270 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. Section 15270 applies to projects which are denied, in that CEQA does not apply to projects which a public agency rejects or disapproves.

Should the City Council adopt a resolution approving the project, under the provisions of Section 15301(a) for Existing Facilities 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 Zoning Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 1 Categorical Exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use. The project does not involve any structural modifications or expansion to the footprint of the existing building.

If approved, the project would allow off-sale alcohol within an existing commercial tenant space and include interior modifications to allow for the display of alcoholic beverages. The retail use of off-sale alcoholic beverages will be conducted wholly inside the building. Based on the discussion and findings in the sections above, the project would not significantly affect the environment. Therefore, if approved, the project is categorically exempt pursuant to CEQA Section 15301(a) for Existing Facilities.

## **PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

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/s/

CHRIS BURTON

Secretary, Planning Commission

For questions, please contact John Tu, Division Manager, at [john.tu@sanjoseca.gov](mailto:john.tu@sanjoseca.gov) or (408) 535-6818.

**ATTACHMENT:** Planning Commission Staff Report



# Memorandum

**TO:** PLANNING COMMISSION  
**SUBJECT:** File Nos. PD24-016 & ER24-208

**FROM:** Christopher Burton  
**DATE:** February 12, 2025

**COUNCIL DISTRICT: 3**

<b>Type of Permit</b>	Planned Development Permit and Determination of Public Convenience or Necessity
<b>Proposed Land Use</b>	Alcohol, off-sale (full range of alcoholic beverages)
<b>New Residential Units</b>	N/A
<b>New Square Footage</b>	N/A
<b>Additional Policy Review Items</b>	Determination of Public Convenience or Necessity
<b>Demolition</b>	N/A
<b>Tree Removals</b>	N/A
<b>Project Planner</b>	Cameron Gee
<b>CEQA Clearance</b>	Exemption per CEQA Guidelines Section 15270 for Projects Which Are Disapproved
<b>CEQA Planner</b>	Cameron Gee

**RECOMMENDATION**

Staff recommends that the Planning Commission recommend that City Council:

1. Consider the exemption in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15270 for Projects Which Are Disapproved; and
2. Adopt a Resolution denying a Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 – full range of alcoholic beverages) at an existing approximately 2,376-square-foot tenant space on an approximately 0.93-gross-acre site.

**PROPERTY INFORMATION**

<b>Location</b>	Southerly corner of the intersection of McKee Road and North 34 <sup>th</sup> Street (1610 McKee Road)
<b>Assessor Parcel No. (APN)</b>	481-03-084
<b>General Plan</b>	Neighborhood/Community Commercial
<b>Growth Area</b>	N/A
<b>Zoning</b>	A(PD) Planned Development (File No. PDC99-064)
<b>Historic Resource</b>	No
<b>Annexation Date</b>	December 1, 1911 (East San José)



<b>Council District</b>	3
<b>Acreage</b>	0.93 gross acres
<b>Proposed Density</b>	N/A

### PROJECT SETTING AND BACKGROUND

As shown on the attached Aerial Map (Exhibit A), the project site is an approximately 0.93-gross-acre lot located at the southerly corner of the intersection of McKee Road and North 34<sup>th</sup> Street (1610 McKee Road, APN 481-03-084). The project site is currently developed with a neighborhood shopping center. An approximately 2,376-square-foot tenant space within the shopping center would be leased as a convenience store (proposed as 101 Mini Market and Krispy Krunchy Chicken). Metro PCS currently occupies the tenant space.

The site is bounded by a neighborhood shopping center to the northwest across McKee Road, duplex and single-family residences to the northeast across North 34<sup>th</sup> Street, a gas station to the southwest, and duplex and single-family residences to the southeast. The site is accessed by two driveways along McKee Road to the northwest. The driveways provide access to a surface parking lot shared by the shopping center.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
<b>Northwest</b>	Neighborhood/Community Commercial	CP Commercial Pedestrian	Neighborhood shopping center
<b>Northeast</b>	Neighborhood/Community Commercial and Residential Neighborhood	CP Commercial Pedestrian and R-2 Two-Family Residence	Duplex and single-family residences
<b>Southwest</b>	Neighborhood/Community Commercial	CP Commercial Pedestrian	Gas station
<b>Southeast</b>	Residential Neighborhood	R-2 Two-Family Residence	Duplex and single-family residences

On August 16, 2024, the applicant, Amritpal Kaur Powar, representing the property owner Blue Creek Properties, LLC, applied for a Planned Development Permit to allow the off-sale of alcohol (Type 21 – full range of alcoholic beverages) at an existing approximately 2,376-square-foot tenant space on an approximately 0.93-gross-acre site.

### PROJECT DESCRIPTION

As shown on the attached Floor Plan (Exhibit B), off-sale of beer, wine, and distilled spirits would occur within the existing approximately 2,376-square-foot retail space. Approximately 119 square feet (five percent of the gross floor area) would be dedicated to the sale of alcohol. Alcohol would be stored within three walk-in cooler doors and behind the register. Off-sale alcohol sales would be incidental to the proposed 101 Mini Market and Krispy Krunchy Chicken convenience store, which is a permitted use within the site's Planned Development Zoning District. The convenience store would also sell baked goods, snacks, canned goods, fresh produce, dairy, beverages, and household items.

The proposed off-sale of alcohol requires State Alcoholic Beverage Control License Type 21, which allows for the off-sale of beer, wine, and distilled spirits only for consumption off the premises where sold. Alcohol sales would occur from 7:00 a.m. to midnight, seven days a week, coinciding with 101 Mini Market and Krispy Krunchy Chicken's hours of operation. Two employees would be on site during all hours of operation.

A Determination of Public Convenience or Necessity is required for the project as the project site is located within an over-concentrated census tract (5036.01). The authorized number of allowed off-sale licenses in this census tract is one, and currently, there are five active off-sale licenses. The project would introduce a sixth off-sale license within the census tract. The site is not located within a police beat considered to be high-crime, defined as 20% above the city average. The attached Police Memorandum dated September 17, 2024 (Exhibit F) states that the Police Department is neutral to the off-sale of alcohol at this site. The Police Memorandum includes conditions of approval prohibiting exterior advertising of alcohol. The business owner would be required to post signage on the property prohibiting loitering and open alcoholic beverage containers on the premises. The business owner would also be required to remove any graffiti within 72 hours. In addition, no individual containers of beer or malt beverage products shall be sold.

The site is also located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative (SNI) area designated by the City for targeted neighborhood enhancement services or programs. The project would result in five off-sale establishments with an active license within a 1,000-foot radius of the project site. In addition, the project site is located approximately 400 feet east of Anna Darling Elementary School and approximately 70 feet west of the nearest residential properties along North 34<sup>th</sup> Street. Therefore, pursuant to [Chapter 6.84](#) of the San Jose Municipal Code, which governs Determinations of Public Convenience or Necessity for an Alcoholic Beverage Control License, the City Council shall be the final decision-maker for this off-sale alcohol proposal, considering a recommendation from the Planning Commission.

Staff recommends that the City Council deny the Planned Development Permit and Determination of Public Convenience or Necessity as the off-sale of alcohol at this site would not provide significant and overriding public benefits to an area that is overconcentrated with active off-sale licenses.

## ANALYSIS

The proposed Planned Development Permit is analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. San José Municipal Code
3. Permit Findings
4. California Environmental Quality Act (CEQA)
5. Public Outreach

### **Envision San José 2040 General Plan Land Use Conformance**

#### General Plan Land Use Designation

As shown on the attached General Plan Land Use Map (Exhibit C), the project site has an Envision San José 2040 General Plan Land Use/ Transportation Diagram designation of **Neighborhood/Community Commercial**. This designation supports a very broad range of commercial activity, including commercial

uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood / Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction.

*Analysis: The off-sale of alcohol would be incidental to a new convenience store located within an existing shopping center. The new convenience store would serve surrounding residences in the neighborhood. Therefore, the project is consistent with the Neighborhood/Community Commercial land use designation.*

#### General Plan Policy Conformance

The proposed Planned Development Permit is **consistent** with the following Envision San José 2040 General Plan policies:

Land Use and Employment Policy IE-2.6: Promote retail development to the maximum extent feasible, consistent with other General Plan goals and policies, in order to generate City revenue, create jobs, improve customer convenience, and enhance neighborhood livability.

*Analysis: The project would allow a new convenience store to sell alcohol for off-site consumption. The new convenience store would generate revenue for the City and retain existing commercial lands. Therefore, the project is consistent with this policy.*

Neighborhood Serving Commercial Policy LU-5.2: To facilitate pedestrian access to a variety of commercial establishments and services that meet the daily needs of residents and employees, locate neighborhood-serving commercial uses throughout the city, including identified growth areas and areas where there is existing or future demand for such uses.

*Analysis: The new convenience store would be located within an existing neighborhood shopping center, providing an additional neighborhood-serving commercial use for surrounding residents. Therefore, the project is consistent with this policy.*

Neighborhood Serving Commercial Policy LU-5.10: In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

*Analysis: As illustrated on the Floor Plan, the new convenience store would offer a full range of food choices, including baked goods, snacks, canned foods, fresh produce, dairy, beverages, and household items. The new convenience store would also sell Krispy Krunchy Chicken. Therefore, the project is consistent with this policy. The site is directly across the street from a significantly larger full-service grocery store (Lucky 7 Supermarket) that also sells alcohol.*

The proposed Planned Development Permit is **inconsistent** with the following Envision San José 2040 General Plan policies:

Major Strategy #11 - Design for a Healthful Community: The General Plan further supports Healthful Community regulatory land use policies, enabling the operation of farmer's markets, urban farming activities, and promoting the availability of healthful foods while limiting access to alcohol at retail locations.

*Analysis: The new convenience store would be located along McKee Road, where there are several existing retail establishments authorized to sell alcohol for off-site consumption. The new convenience store would be the fifth off-sale establishment within a 1,000-foot radius of the site. The project would not limit the surrounding neighborhood's access to alcohol, given the number of existing establishments near the project site. Therefore, the project is inconsistent with this major strategy.*

## **San José Municipal Code Conformance**

### Use Regulations

The project site is located within the **A(PD) Planned Development Zoning District (File No. PDC99-064)**. This Planned Development Zoning District allows permitted uses of the C-1 Commercial District, in effect when the Planned Development Zoning District was approved on February 1, 2000. Retail uses are permitted within the C-1 Commercial District. Off-sale of alcohol is allowed with the issuance of a Conditional Use Permit. Pursuant to [Section 20.100.910.A](#), a Planned Development Permit is required for the off-sale of alcohol, instead of a Conditional Use Permit, as the site is located within a Planned Development Zoning District.

### Development Standards

The off-sale of alcohol at this site is consistent with the development standards of the A(PD) Planned Development Zoning District (File No. PDC99-064), as the project does not include modifications to the exterior of the convenience store. The table below outlines the Planned Development Zoning District's development standards:

<b>Development Standard</b>	<b>Requirement</b>	<b>Provided (Existing Building)</b>
Adjacent to McKee Road	15 feet minimum	15 feet
Adjacent to 34 <sup>th</sup> Street	14 feet minimum	14 feet
Adjacent to residential	18 feet minimum	18 feet
Adjacent to gas station	5 feet minimum	189 feet, 11 inches
Building height	1 story 30 feet maximum	26 feet, 6 inches

*Analysis: As shown in the table above, the new convenience store would remain consistent with the development standards of the Planned Development Zoning District.*

### Parking

Pursuant to the Planned Development Zoning District, 50 vehicle parking spaces are required within the neighborhood shopping center.

*Analysis: The site currently has 50 vehicle parking spaces, meeting the requirement. The project does not increase or decrease the number of vehicle parking spaces on site.*

### Noise

The C-1 Commercial District does not contain noise standards. All activity related to the off-sale of alcoholic beverages would take place indoors and any construction for the project would consist solely of interior improvements.

## Permit Findings

### Planned Development Permit Findings

To make the Planned Development Permit findings pursuant to San José Municipal Code [Section 20.100.940](#), and recommend approval to the City Council, the Planning Commission must determine that:

1. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan; and

*Analysis: The project is consistent with the General Plan land use designation of Neighborhood/Community Commercial, which supports neighborhood-serving retail. As explained in the General Plan Policy Conformance section, the project is consistent with General Plan policies regarding retail development. The off-sale of alcohol at the new convenience store would provide an additional revenue-generating opportunity for the City while providing the benefit of a neighborhood-serving commercial use for surrounding residents who may purchase alcohol along with a full range of other food and grocery items sold. However, the project is inconsistent with Major Strategy #11, which supports healthful communities by limiting the availability of alcohol.*

2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property; and

*Analysis: The project conforms with the Use Regulations and Development Standards of the General Development Plan for the Planned Development Zoning District (File No. PDC99-064). The project is consistent with all required setbacks, heights, parking, and noise requirements of the Planned Development Zoning District. The project would not modify the exterior of the existing building.*

3. The Planned Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: [Council Policy 6-30: Public Outreach Policy](#) was implemented in order to inform the public of the project. An on-site sign has been posted on the project frontage since October 17, 2024. As of the date this staff report was published, staff received one letter of opposition to the off-sale alcohol proposal (Exhibit H). Staff also received from the applicant a list of signatures from members of the public who support the project (Exhibit J). A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the [City website](#). Staff has also been available to respond to questions from the public.*

4. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures, and other uses on-site are appropriate, compatible, and aesthetically harmonious; and

*Analysis: The project would not alter the exterior of the existing commercial building. The new convenience store would continue to be compatible with the rest of the neighborhood shopping center.*

5. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, 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.

*Analysis: The off-sale of alcohol within the new convenience store would only result in interior modifications and tenant improvements for the storage of alcohol. As a result, environmental impacts related to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor would not occur. Therefore, the project will not have an unacceptable negative effect on adjacent properties. The project is categorically exempt from further environmental review pursuant to CEQA Section 15270 for Projects Which Are Disapproved.*

#### Required Findings for the Off-Sale of Alcohol

A Planned Development Permit may be issued pursuant to the applicable provisions of [Chapter 20.80, Part 11](#) for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable:

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

*Analysis: The new convenience store would be located approximately 230 feet from the nearest use involving off-sale of alcoholic beverages (Lucky 7 Supermarket). In addition, there are four off-sale alcohol establishments located within a 1,000-foot radius from the new convenience store (Lucky 7 Supermarket, Gas & Shop, Quality Produce, and 7 Eleven). The new convenience store would result in a total of five off-sale establishments within this 1,000-foot radius. Therefore, this finding **cannot** be made.*

2. For such use at a location closer than five hundred feet from any other use involving the off-sale of alcoholic beverages, situated 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 establishments that provide alcoholic beverages for off-site consumption within a one-thousand-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: As stated above in finding (1), there are four off-sale establishments located within a 1,000-foot radius of the project site. The new convenience store would be the fifth off-sale establishment. The Police Memorandum dated September 17, 2024 states that the Police Department is neutral to the off-sale of alcohol at this site. The Police Memorandum includes conditions of approval, prohibiting exterior advertising of alcohol. The business owner would be required to post signage on the property prohibiting loitering and open alcoholic beverage containers on the premises. The business owner would also be required to remove any graffiti within 72 hours. In addition, no individual containers of beer or malt beverage products shall be sold. The Operations Plan (Exhibit G) prepared by the applicant states that security cameras would be installed inside and outside of the store, with footage being stored for up to 180 days. In addition, employees would follow trash management and graffiti prevention practices to keep the site clean. As such, the new convenience store would not adversely affect the peace,*

*health, safety, morals, or welfare, impair the utility or value of property, or be detrimental to public health, safety, or general welfare. Therefore, this finding **can** be made.*

3. For such use at a location closer than five hundred 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 one hundred fifty 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, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis: The site is located approximately 400 feet easterly of Anne Darling Elementary School, which is situated opposite the intersection of McKee Road and North 33<sup>rd</sup> Street. The site is also located approximately 70 feet westerly of residential properties along North 34<sup>th</sup> Street. The existing entrance to the commercial building is oriented to the west, which faces away from the residential properties along North 34<sup>th</sup> Street. In addition, the entrance, pick-up, and drop-off area at Anne Darling School is located on the opposite end of the property, approximately 1,000 feet from the new convenience store. The portion of Anne Darling Elementary School located within 500 feet of the new convenience store location is occupied by a parking lot for the school. Due to the orientation of the existing commercial building facing away from residential properties and the location of Anne Darling Elementary School's entrance being more than 500 feet from the site, the off-sale of alcohol at this location would not adversely affect the elementary school or nearby residential properties. Therefore, this finding **can** be made.*

#### Determination of Public Convenience or Necessity

Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area," unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity, or PCN). An "undue concentration" is defined as follows:

1. The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or
2. The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

*Analysis: The site is located within Census Tract 5036.01 and San José Police Beat M3. According to the Police Department Memorandum dated September 17, 2024, the reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20 percent crime index. However, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. As stated in the Police Department Memorandum, one off-sale location is authorized to this census tract based on its population. There are currently five off-sale establishments with an active license (Lucky 7 Supermarket, Gas & Shop, Quality Produce, 7-Eleven, and Trade Rite Market). Four establishments have an active Type 20 license and one establishment has an active Type 21 license. For the California Department of Alcoholic Beverage Control to be able to issue a license for this off-sale alcohol use, the City must grant a Determination of Public Convenience or Necessity. The analysis of the project is based on the required findings identified in [Title 6](#) of the San José Municipal Code and is described below.*

[Chapter 6.84](#) of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that the Planning Commission may issue a PCN only after first making all of the findings specified below (see [Section 6.84.030](#)):

1. The proposed use is not located within a Strong Neighborhoods Initiative or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined based upon quantifiable information that the proposed use:
  - a. Would be detrimental to the public health, safety, or welfare of persons located in the area; or
  - b. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The project site is located within the Five Wounds/Brookwood Terrace Strong Neighborhood Initiative (SNI) area designated by the City for targeted neighborhood enhancement services or programs. The Police Department Memorandum states that the Police Department is neutral to the off-sale alcohol proposal at this location. The site is not located within a police beat that is over 20 percent of the crime index. In addition, a crime analysis identified that a majority of the calls for service within 1,000 feet of the site between August 20, 2023 and August 20, 2024 were traffic-related (208 out of 349 calls). As stated in the Operations Plan, the off-sale of alcohol would be limited to the hours of 7:00 a.m. to 12:00 a.m. midnight. In addition, the implementation of security cameras, trash management, and graffiti prevention practices would help prevent additional service calls. Therefore, the off-sale of alcohol would not be detrimental to public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area. However, because the subject site is located within an SNI area, this finding **cannot** be made.*

2. The proposed use would not lead to the grouping of more than four off-premises sale of alcoholic beverage uses within a one-thousand-foot radius from the exterior of the building containing the proposed use; and

*Analysis: The off-sale of alcohol at this location would lead to the grouping of more than four off-sale establishments within a 1,000-foot radius of the new convenience store. A total of five off-sale establishments would be located within this radius. Therefore, this finding **cannot** be made.*

3. The proposed use would not be located within five hundred feet of a school, daycare center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

*Analysis: The new convenience store is located approximately 400 feet east of Anna Darling Elementary School and approximately 70 feet west of residential properties along North 34<sup>th</sup> Street. Therefore, this finding **cannot** be made.*

4. Alcoholic beverage sales would not represent a majority of the proposed use; and

*Analysis: Approximately 119 square feet of the 2,376-square-foot tenant space (five percent) would be used for alcohol sales. Alcohol would be stored within three walk-in cooler doors and behind the register. This would not represent a majority of the new convenience store use. Therefore, this finding **can** be made.*



5. At least one of the following additional findings:

- a. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

*Analysis: The census tract is not unusually configured in shape. Therefore, this finding **cannot** be made.*

- b. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or

*Analysis: The off-sale of alcohol would occur within the proposed 101 Mini Market and Krispy Krunchy Chicken tenant space of the existing commercial building. The new convenience store would provide the surrounding neighborhood with access to a variety of grocery and household items. The project would allow the convenience store to complement its products with alcohol sales for off-site consumption. The Police Department is neutral to the off-sale of alcohol at this location. The Operations Plan includes provisions for trash and graffiti removal, the installation of security cameras inside and outside of the convenience store, and employee training for alcohol sales. Therefore, off-sale of alcohol would not significantly impact public health or safety, and this finding **can** be made.*

- c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or

*Analysis: The off-sale of alcohol at the new convenience store would contribute to an over-concentration in the number of off-sale establishments in the census tract area, as there are currently five active off-sale licenses. The census tract's population allows for one active off-sale licenses. Therefore, this finding **cannot** be made.*

- d. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*Analysis: Approximately 119 square feet of the 2,376-square-foot tenant space (five percent) would be used for alcohol sales. Alcohol would be stored within three walk-in cooler doors and behind the register. The remainder of the floor area would be dedicated to the sales of grocery items such as baked goods, snacks, canned foods, fresh produce, dairy, beverages, and household items. The new convenience store would also sell Krispy Krunchy Chicken. Therefore, this finding **can** be made.*

In the event the Planning Commission determines that it cannot make one or more of the required findings 1-4 listed above, the Planning Commission shall make a recommendation to the City Council as to whether the City Council should make a determination for the proposed use, pursuant to [Section 6.84.030.D](#).

*Analysis: Findings (1), (2), and (3) above for the issuance of a Determination of Public Convenience or Necessity **cannot** be made by the Planning Commission. Therefore, the Planning Commission shall make a recommendation to the City Council for the off-sale alcohol proposal.*

The City Council may issue a determination in connection with an application for a license from the California department of alcoholic beverage control for the off-premises sale of alcoholic beverages where the city council does all of the following:

- a. Makes a determination that not all of the required findings set forth in findings 1-4 and 5.a-d listed above can be made; and

*Analysis: Finding (1) for the issuance of a Determination of Public Convenience or Necessity **cannot** be made because the project site is located within an SNI area. Finding (2) **cannot** be made because the project would result in five off-sale establishments within a 1,000-foot radius of the site. Finding (3) **cannot** be made because the site is located within 500 feet of a school and within 150 feet of a residential property. Finding (5.a) **cannot** be made because the census tract is not unusually configured in shape. Finding (5.c) **cannot** be made because the site is located within an overconcentrated census tract. The Planning Commission **can** make findings (4), (5.b), and (5.d).*

- b. Identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use.

*Analysis: Findings (1), (2), (3), (5.a), and (5.c) for the Determination of Public Convenience or Necessity cannot be made. While the new convenience store would offer a full range of food choices and would not significantly impact public health and safety through the implementation of security measures and frequent site maintenance, the off-sale of alcohol at the site would not provide significant and overriding public benefits. The project site is located along McKee Road where several active off-sale licenses have been issued. The project would result in a fifth off-sale establishment within a 1,000-foot radius of the site. In addition, the project site's census tract is overconcentrated with five active off-sale licenses; one off-sale license is authorized. The project would provide an additional neighborhood-serving commercial use for surrounding residents, with a full range of food choices. However, the proposed use does not include significant site improvements and has not shown how it will differentiate itself from the existing off-sale establishments nearby. Given the proposed use's proximity to existing off-sale establishments (including directly across the street from a full-service grocery store) and because the census tract is overconcentrated with active off-sale licenses, the off-sale of alcohol at this site would not provide significant and overriding public benefits. Therefore, staff recommends that the City Council deny the Planned Development Permit for off-sale alcohol and Determination of Public Convenience or Necessity.*

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Under the provisions of Section 15270 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. Section 15270 applies to projects which are denied, in that CEQA does not apply to projects which a public agency rejects or disapproves.

#### **PUBLIC OUTREACH**

Staff followed [Council Policy 6-30: Public Outreach Policy](#) in order to inform the public of the proposed project. An on-site sign has been posted on the project frontage since October 17, 2024. As of the date this staff report was published, staff received one letter of opposition to the off-sale alcohol proposal (Exhibit H). Staff also received from the applicant a list of signatures from members of the public who support the project (Exhibit J). A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

**project Manager:** Cameron Gee

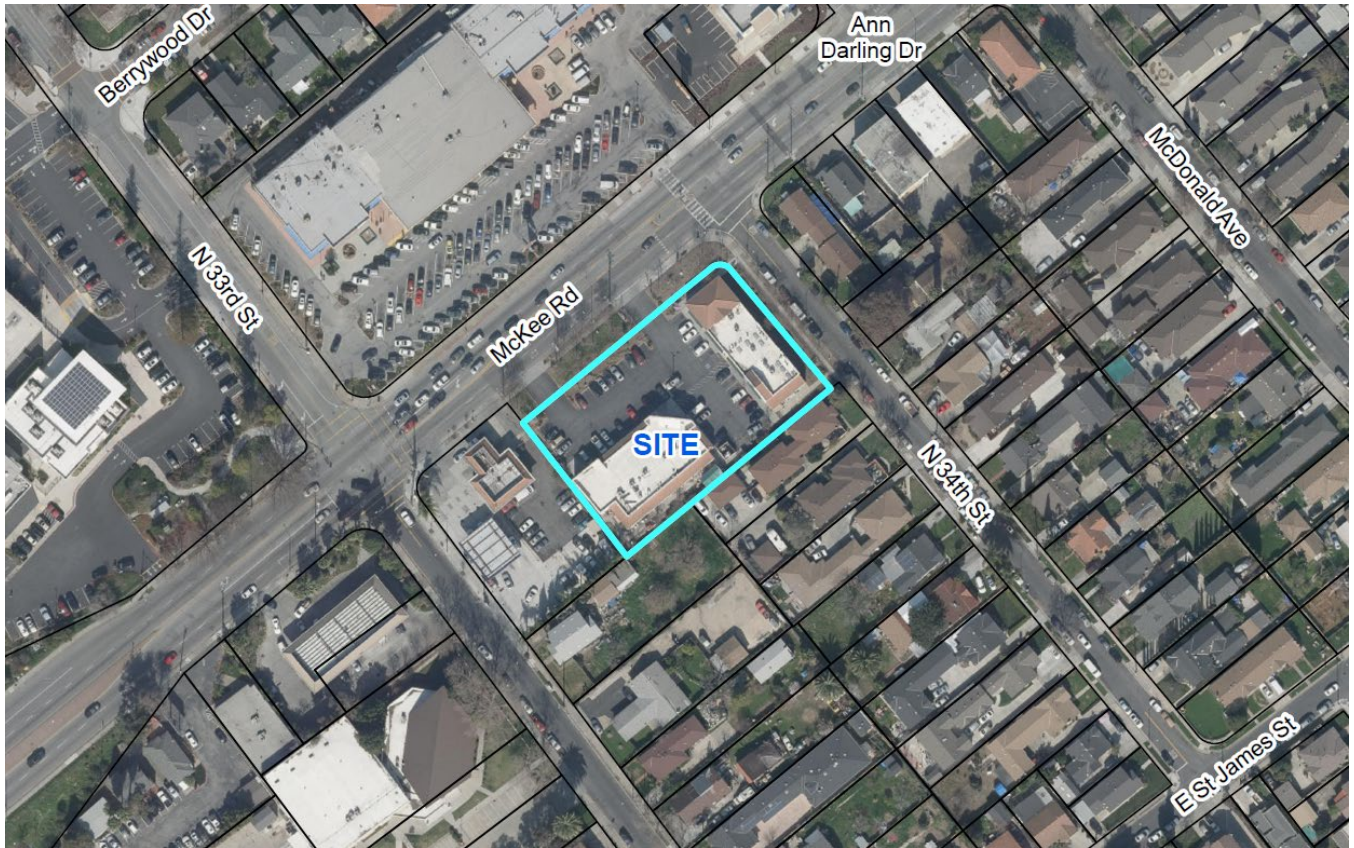
**Approved by:** /s/ John Tu, Division Manager for Christopher Burton, Planning, Building & Code Enforcement Director.

**Please click on the title of each exhibit to view the document:**

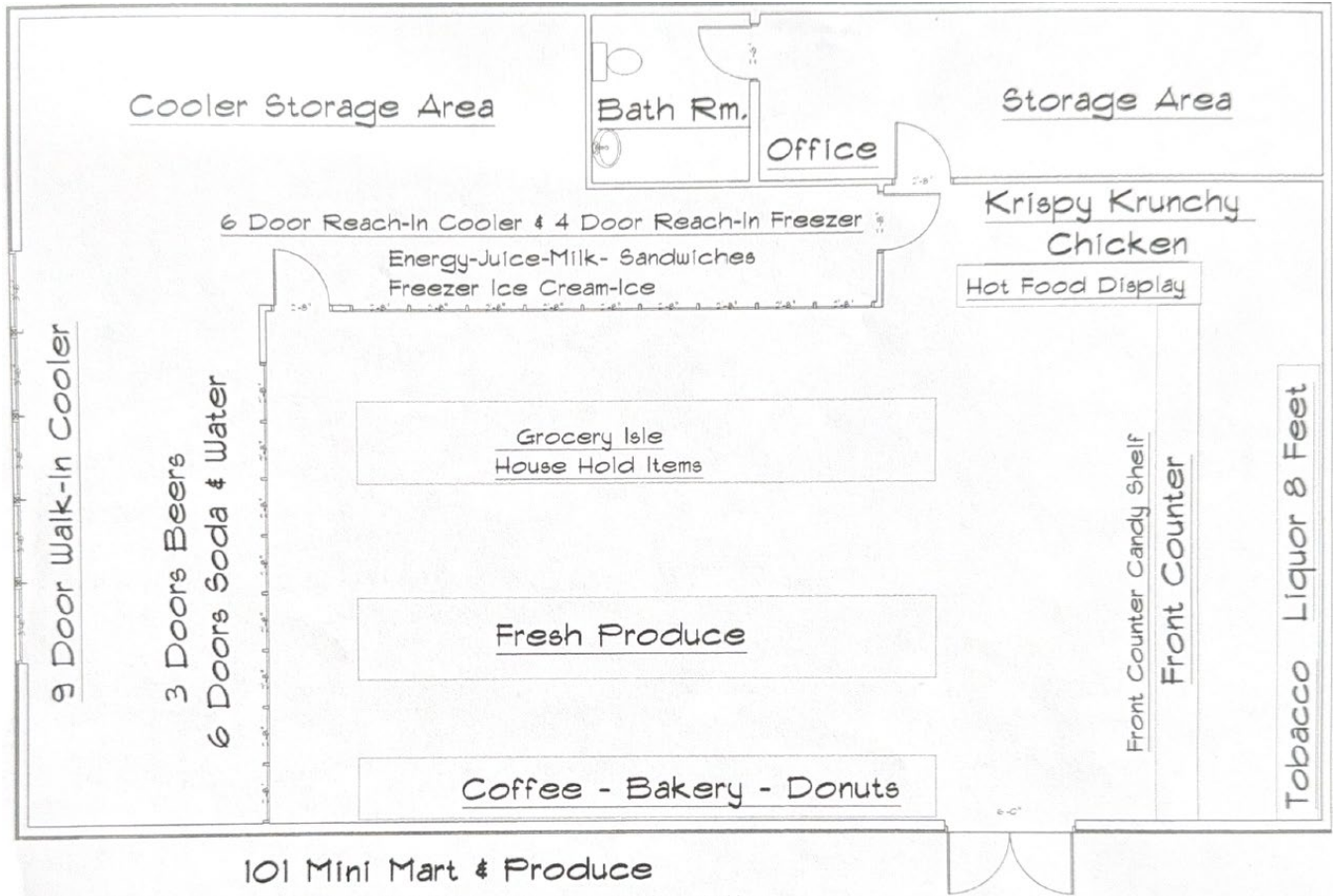
<b>ATTACHMENTS:</b>	
Exhibit A:	<a href="#">Aerial Map (Page 13)</a>
Exhibit B:	<a href="#">Floor Plan (Page 14)</a>
Exhibit C:	<a href="#">General Plan Land Use Map (Page 15)</a>
Exhibit D:	<a href="#">Zoning Map (Page 16)</a>
Exhibit E:	<a href="#">Alcohol Radius Map (Page 17)</a>
<a href="#">Exhibit F:</a>	<a href="#">Police Department Memorandum</a>
<a href="#">Exhibit G:</a>	<a href="#">Operations Plan</a>
<a href="#">Exhibit H:</a>	<a href="#">Public Correspondence</a>
<a href="#">Exhibit I:</a>	<a href="#">Draft Resolution</a>

<b>Applicant:</b>	<b>Owner:</b>
Amritpal Kaur Powar 3216 Foxboro Place San José, CA 95135	Blue Creek Properties, LLC 19231 Monte Vista Drive Saratoga, CA 95070

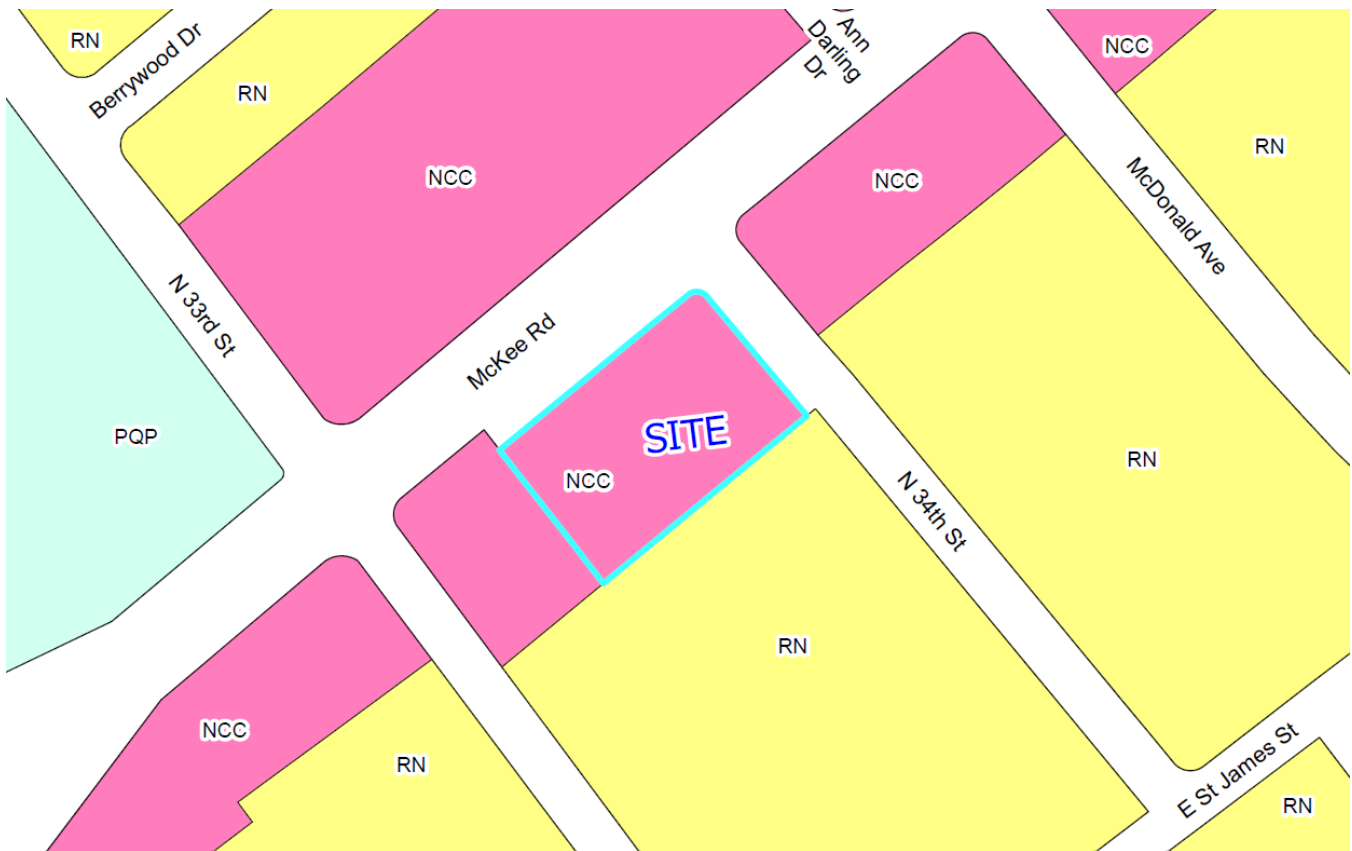
**Exhibit A: Aerial Map**



**Exhibit B: Floor Plan**



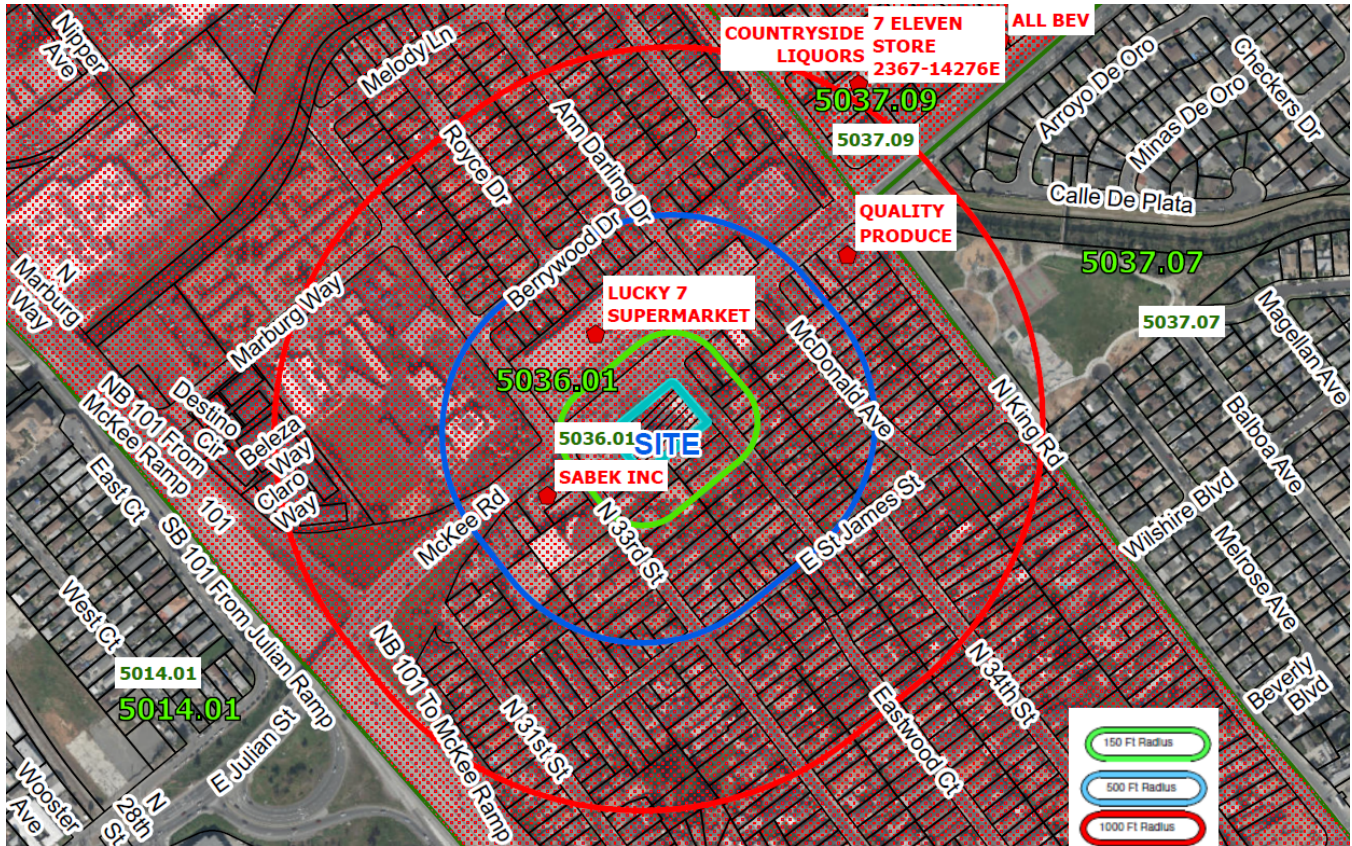
**Exhibit C: General Plan Land Use Map**



**Exhibit D: Zoning Map**



**Exhibit E: Alcohol Radius Map**



*Census tracts shaded in red are overconcentrated with active off-sale licenses.*