



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** October 25, 2019

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**COUNCIL DISTRICT: 9**

**SUBJECT: FILE NO. C18-018 & CP18-025. CONVENTIONAL REZONING OF AN APPROXIMATELY 4.69-GROSS ACRE SITE (A PORTION OF APN 421-20-010) GENERALLY LOCATED ON THE WEST SIDE OF UNION AVENUE, APPROXIMATELY 260 FEET NORTHERLY OF LOS GATOS-ALMADEN ROAD FROM THE R-1-8 SINGLE-FAMILY RESIDENCE DISTRICT TO THE CN COMMERCIAL NEIGHBORHOOD ZONING DISTRICT; AND A CONDITIONAL USE PERMIT TO ALLOW THE DEMOLITION OF FOUR ONE-STORY STORAGE BUILDINGS TOTALING APPROXIMATELY 19,850 SQUARE FEET, AND THE CONSTRUCTION OF A FOUR-STORY, 125,303-SQUARE FOOT, 152-UNIT ASSISTED LIVING AND MEMORY CARE FACILITY AND REMOVAL OF TWENTY ORDINANCE-SIZE TREES ON AN APPROXIMATELY 3.79-GROSS ACRE SITE LOCATED ON THE WEST SIDE OF UNION AVENUE, APPROXIMATELY 360 FEET NORTHERLY OF LOS GATOS-ALMADEN ROAD.**

## **RECOMMENDATION**

The Planning Commission voted 6-0-1 (Chair Ballard absent) to recommend that the City Council:

1. Adopt a resolution adopting the Belmont Village Union Avenue Mitigated Negative Declaration, for which an Initial Study was prepared, and adopting an associated Mitigation Monitoring and Reporting Plan, all in accordance with the California Environmental Quality Act (CEQA), as amended;
2. Adopt an ordinance rezoning an approximately 4.69-gross acre site (a portion of APN 421-20-010) generally located on the west side of Union Avenue, approximately 260 feet northerly of Los Gatos-Almaden Road from the R-1-8 Single-Family Residence District to the CN Commercial Neighborhood Zoning District; and
3. Adopt a resolution approving, subject to conditions, a Conditional Use Permit to allow the demolition of four one-story storage buildings totaling approximately 19,850 square feet, and

the construction of a four-story, 125,303-square foot, 152-unit assisted living and memory care facility and removal of twenty ordinance-size trees on an approximately 3.79-gross acre site located on the west side of Union Avenue, approximately 360 feet northerly of Los Gatos-Almaden Road.

## **OUTCOME**

Should the City Council adopt the resolution adopting the Mitigated Negative Declaration and approve the Rezoning and Conditional Use 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 Rezoning and Conditional Use 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.

## **BACKGROUND**

On October 23, 2019, the Planning Commission held a public hearing to consider the Mitigated Negative Declaration, Rezoning and the Conditional Use Permit. The item was on the public hearing portion of the agenda. Seven members of the public spoke on the project.

### **Staff Presentation**

Staff gave an overview of the project description and its conformance to General Plan Land Use Designation. The subject site has a General Plan Land Use Designation of Mixed Use Commercial and the site is surrounded by residential and commercial uses. The project proposes a four-story, 125,303-square foot, 152-unit assisted living and memory care facility. Staff stated that three community meetings were held, including two sponsored by the applicant and one sponsored by the City. Concerns regarding traffic, building height, setback, noise and privacy were raised during the community meetings. The project design has been revised to address these comments by providing substantial distance from the surrounding residential uses, incorporating building setback, breaking up the building massing with architectural projections and recessions, minimizing the window size where facing the closest residential uses (about 60 feet), proposing landscape buffers with trees at the project perimeter, and applying various colors and materials.

Staff stated that two additional comment letters were received after the staff report was posted on the City web page. One comment letter was submitted from a resident in support of the project, citing the need for elderly care services. The other comment letter was submitted by VTA recommending a bus stop at the project frontage. Staff explained that a new bus stop is not needed given that there is an existing bus stop approximately 800 feet from the project at the southeast corner of the Union Avenue and Los Gatos-Almaden Road intersection.

Staff addressed the traffic comments submitted during the environmental document circulation period, and explained a Vehicle Miles Travelled (VMT) analysis was prepared for the project, and a Local Transportation Analysis (LTA) studied intersection operations as result of the project. The project was found to have potential VMT impacts and therefore is subject to the mitigation measures listed in the permit and in the CEQA documents. Staff also stated that the Union Avenue and Los Gatos-Almaden Road intersection would not be adversely affected by the project.

Staff recommended an additional condition related to the Financing Plan and Fees be added to the resolution (Condition #40), and read the condition into the record. The purpose of this condition is to advise the applicant that the City is studying potential impact fee programs, and if any of these programs are adopted, they would apply to commercial development projects which have not yet obtained building permits.

Staff recommended that the Planning Commission recommend to the City Council to adopt the Mitigated Negative Declaration for the project, and the associated Mitigation Monitoring and Reporting Plan and approve the Conventional Rezoning and the Conditional Use Permit because the project is consistent with the General Plan, conforms to the Commercial Neighborhood Zoning District, and is consistent with the Riparian Corridor Policy and the Commercial Design Guidelines.

#### Applicant Presentation

Andy Gerber on behalf of Belmont Village, introduced Vickie Brown and Denise Coleman, representing the property owner, Union School District (USD). Ms. Brown stated that USD would retain ownership of the land and lease it to Belmont Village; that this is the best proposal for this site; and the ground lease revenue will help provide funds for the school district to provide academic programs and a living wage for school district employees.

After the applicant and property owner spoke, Vice Chair Griswold asked what alternative proposals for the property were considered by USD. Ms. Brown responded that four other proposals were considered, including a retail pharmacy with a drive-through and high-density housing. USD did not believe those were a good fit for the community. Ms. Coleman responded that the project is supported by the Teacher's Union. Belmont Village would offer space in the community room of the project for School District meetings.

Mr. Gerber stated that Belmont Village held a total of four community meetings, including one community meeting prior to development application submittal, and three community meetings thereafter; and the project has been modified to address the community comments and concerns. Commissioner Yesney stated that the project proposes more parking spaces than required and asked if the applicant would be amenable to converting some of the parking spaces along the riparian corridor to landscaping if in the future the applicant finds that additional parking is not necessary.

Mr. Gerber responded affirmatively and stated that the proposed number of parking spaces meets the City's minimum parking requirements and is overparked in response to community's concerns about spillover parking into the neighborhood. Commissioner Yesney then requested a permit condition be added for the future conversion of excessive parking spaces to landscaping.

Commissioner Oliverio asked if the proposed structure on the public land would be taxable. Mr. Gerber responded that it would be taxable.

Commissioner Bonilla asked what outreach USD did leading up to the selection of a project, such as with the PTA. Ms. Coleman responded that they did extensive neighborhood outreach prior to selecting a project, including holding special meetings, and sending flyers and postcards to homes and residents within 1,000 feet of the project site.

### Public Comments

Vice Chair Griswold opened the public comment portion of the agenda.

- A member of the public stated that he supports the project because an assisted living facility would be a great asset to the community.
- Denise Coleman from USD stated that USD is underfunded, and USD staff is not compensated enough to live in the area. She stated the proposed project is the best among the four proposals that USD received, and the project would help USD retain their staff. Ms. Coleman also stated that Belmont Village had been responsive to community concerns and had modified the project to address community concerns.
- A member of the public expressed his concerns about building height and privacy and stated that there are other ways to fund USD such as obtaining funds from the City to develop a park on the project site. Vice Chair Griswold asked about the ongoing source of revenue for the District if a park were developed at the site. He responded that there could be other contributors to fund the park, such as development impact fees.
- Rita Sohal, Assistant Superintendent for USD, stated that the site is underutilized, and USD has been looking at different ways for local funding. She stated the project will create an amenity for the community and generate funding to support staff and students.
- A member of the public stated that he did not know about the project until he received the postcard for the hearing about four weeks ago. He stated that he visited 20 random homes in the neighborhood and found out that those residents were against the project. Of the 20 homes, three did not know about the project until four weeks ago and one did not hear about the project at all. He concluded the majority of the community would not want the project built. He stated that he is opposed to the project due to its scale. He also questioned the accuracy of the traffic study and requested more time for community input on the project.
- A member of the public stated that the driveway for the project poses a danger to his house. He also stated that the site should become a City park in accordance with the Naylor Act, Section C, and the City has the funds to develop a park in this Council District. He wanted to know why USD is not supporting the development of a City park at this site and said this could be a liability to the City of San Jose.
- A member of the public stated that he fully supports the project. He said that the neighbors' concerns about the project are valid, but the proposal needs to be balanced with the goals of

the City's General Plan and Housing Element. He said that given the housing crisis, this building should not be four stories but should be ten stories.

The architect for the project responded to the height and mass concerns and stated that the building has been set back from the residential uses and the creek as much as possible and the proposed front setback along Union Avenue exceeds minimum setback requirement. The project also steps back the building masses to create three-story heights to the north and the west ends of the building and creates a much better scale and highly articulated building.

#### Planning Commission Discussion and Staff and Applicant's Responses

Staff from Public Works responded to the driveway location concern and stated that the driveway location and size meet the City's design requirements and standards.

Commissioner Oliverio made a motion to approve staff's recommendation and to incorporate Commissioner Yesney's condition regarding the potential future conversion of the parking area to landscaping. Commissioner Bonilla seconded the motion. Commissioner Oliverio commented that the staff report is sufficient, and he supports the project because the City has a great need for projects allowing seniors to age in place.

Commissioner Yesney commented on the building design and stated that the architect has done a creative job of varying the building massing and she believes that the project would become an attractive asset and provide a residential choice for seniors.

Vice Chair Griswold asked staff if there is a significant cost to include a bus stop at the project frontage. Staff could not speak to the cost, but stated that pursuant to the operational analysis, there is no nexus between the project and the new bus stop requested by VTA, especially when there is an existing bus stop within 800 feet of the project site. Commissioner Allen asked about the process if a new bus stop were to be a permit condition. Staff responded that additional analysis and coordination with VTA would be needed.

The Planning Commission voted 6-0-1 (Chair Ballard absent), to recommend approval of the project to the City Council.

#### ANALYSIS

A complete analysis of the Rezoning and Conditional Use Permit, including conformance with the California Environmental Quality Act, General Plan, Municipal Code, City Council Policies, and Commercial 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 the ordinance of the City of San José rezoning the project site to CN Commercial Neighborhood are adopted, along with approving the Conditional Use Permit, the project would be able to proceed with an application for Public Works clearances and Building Permits to allow construction.

If the resolution adopting the Mitigated Negative Declaration and an ordinance of the City of San José rezoning the project site to CN Commercial Neighborhood and the Conditional Use 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**

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A sign describing the project was posted on the project site on August 9, 2018. A community meeting was held on May 20, 2019. Both the community meeting notice and notice of the public hearings were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. In addition, a City website was created for the project. The website includes the project information, architectural plans and the project contact. Staff have been available to answer questions from the public, and met with community members as requested to discuss their concerns and questions.

## **COORDINATION**

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

## **CEQA**

A Mitigated Negative Declaration (MND) was prepared for the Belmont Village Union Avenue 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.

Attachment: [Planning Commission Staff Report](#)