



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: See Below

DATE: August 25, 2025

Approved

Date:

8/26/2025

COUNCIL DISTRICT: 6

SUBJECT: H24-046 & ER24-195 - Administrative Hearing on the Appeal of the Planning Director's Approval of a Site Development Permit Located at 1301 West San Carlos Street

RECOMMENDATION

- (a) Conduct an Administrative Hearing to consider the appeal of the Planning Director's approval of a Site Development Permit to allow the construction of a one-story, approximately 5,139-square-foot quick-service restaurant with an outdoor patio and the removal of 20 ordinance-size trees on an approximately 1.09-gross-acre site, located on the northwest corner of Race Street and West San Carlos Street (1301 West San Carlos Street and 255-263 Race Street).
- (b) Adopt a resolution denying the environmental appeal and upholding the Planning Director's reliance on the Categorical Exemption under Section 15332 of the CEQA Guidelines for the 1301 West San Carlos Street Chick-fil-A Project in accordance with CEQA, as amended, and finding that the:
 - (1) City Council has independently reviewed and analyzed the Categorical Exemption for the 1301 West San Carlos Street Chick-fil-A Project and related administrative records related to Site Development Permit No. H24-046;
 - (2) Categorical Exemption for the 1301 West San Carlos Street Chick-fil-A Project was prepared and completed in full compliance with the CEQA, as amended, together with state and local implementation guidelines;
 - (3) Reliance on the Categorical Exemption for the 1301 West San Carlos Street Chick-fil-A Project reflects the independent judgment and analysis of the City of San José, as the lead agency for the Project; and

- (4) Preparation of an Environmental Impact Report or Mitigated Negative Declaration/Negative Declaration is not required because the appeal does not raise any issues that would disqualify the project from a Categorical Exemption under Section 15332 of the CEQA Guidelines.
- (c) Adopt a resolution approving the permit appeal and approving, subject to conditions, a modified Site Development Permit removing Condition 6 and allowing the construction of a one-story, approximately 5,139-square-foot quick-service restaurant with an outdoor patio through the demolition of an approximately 3,817-square-foot commercial building and the removal of 20 ordinance-size trees on an approximately 1.09-gross-acre site, located on the northwest corner of Race Street and West San Carlos Street (1301 West San Carlos Street and 255-263 Race Street).

SUMMARY AND OUTCOME

The hearing before the City Council is a de novo hearing pursuant to [Section 20.100.280](#) of the Zoning Code. This means that the City Council considers the request anew, along with the staff report, comments from the appellant and applicant, and other information as part of the administrative record, and must make the required findings to grant the permit or determine whether the required findings cannot be met and deny the permit and/or the environmental exemption.

Staff recommends that the City Council approve the permit appeal, but deny the environmental appeal, thus upholding the use of the Categorical Exemption (Class 32, In-fill) and removing Condition No. 6 associated with approval of the Site Development Permit. These actions will allow the project applicant to demolish the existing approximately 3,817-square-foot commercial building and remove 20 ordinance-size trees to construct a new approximately 5,139-square-foot quick-service restaurant with an outdoor patio at 1301 West San Carlos Street and 255-263 Race Street.

Upholding the Planning Director's decision and denying the appeals would require the owner/applicant to retain on-site the existing approximately 3,817-square-foot commercial building, contrary to the proposed project and site circulation to support a one-tenant quick-service restaurant facility. The applicant would need to apply for a Site Development Permit Amendment to change the site plan for adequate circulation for both structures.

Upholding only the environmental appeal would void the Planning Director's CEQA determination and the Site Development Permit and would trigger additional environmental review.

Additionally, as this is a de novo hearing, the City Council can also choose to deny the Site Development Permit outright, which would prevent the project applicant from proceeding with the project.

BACKGROUND

Site Location

The project site is located on the northwest corner of the intersection of West San Carlos Street and Race Street (1301 West San Carlos Street and 255-263 Race Street). There are three parcels on the site; the northernmost parcel is currently occupied by an approximately 3,817-square-foot commercial building with a restaurant and a hair salon. The other two parcels are vacant. The site is surrounded by commercial uses (auto sales) and single-family residential to the west, a multifamily dwelling to the north, commercial (auto sales, florist, and bicycle shop) and single-family residential to the east across Race Street, and a supermarket to the south across West San Carlos Street.

Proposed Project

The subject Site Development Permit application was filed on July 26, 2024, by 4G Development & Consulting (Hudson Brooks), on behalf of the site owner, The Zotta Family Trust. The Site Development Permit proposed by the applicant is to demolish the existing commercial building and remove 20 trees to construct a new approximately 5,139-square-foot quick-service restaurant with an outdoor dining patio.

The project, as proposed by the applicant and recommended for approval by staff, complies with all use regulations, development standards, transportation demand management, bicycle and two-wheeled motorized vehicle parking, outdoor dining patio, and screening requirements as analyzed in the attached proposed City Council Resolution (Exhibit A).

On June 11, 2025, the Hearing Officer at the Director's Hearing approved the project, but with a condition to retain the existing commercial building (Condition 6), which has since been proven infeasible through the appeal and additional documentation submitted by the owner/appellant. However, the decision by the Hearing Officer did not factor in whether the applicant was amenable to this condition, and did not factor in all information to make the findings for the demolition permit. Hence, staff recommends approving the original project.

Director's Hearing Summary

At the June 11, 2025 [Director's Hearing](#), the Hearing Officer considered the Site Development Permit and associated CEQA Categorical Exemption, on behalf of the Director of Planning, Building, and Code Enforcement. The public hearing included a staff presentation, applicant's presentation, public comments, questions, and ended with a decision from the Hearing Officer to approve the project with the addition of Condition 6 and other conditions related to design.

Six commenters spoke against the project, and a representative of the site's owner also spoke to note that the existing tenants were aware of pending redevelopment proposals since 2020.

The majority of written public comments received prior to the Director's Hearing (Exhibit B) and the six commenters at the hearing were against the project, partially based on purported inconsistency with the Urban Village Plan and their desire to see a higher-density mixed-use development at this site. At the meeting, the commenters spoke regarding:

- Inconsistency of proposed structure with the Urban Village Plan;
- Business displacement (national versus local business);
- Car-centric and non-pedestrian-oriented use, including the amount of parking; and
- Building design and pedestrian/bicycle safety concerns.

The Hearing Officer carefully reviewed public comment and applicant testimony, raising questions about the necessity of demolishing the existing commercial building, parking demand, pedestrian orientation, driveway circulation, and overall consistency with the Urban Village Plan. While the applicant and property owner emphasized the infeasibility of reusing the 1950s-era building and the need for dual driveways to accommodate service vehicles, the Hearing Officer noted that no substantive evaluation had been conducted to determine whether rehabilitation or partial retention of the existing building could occur. The Hearing Officer also discussed walkability and design features, directing that the building's entry vestibule be shifted closer to West San Carlos Street to create a stronger street presence and requiring transparent windows along both West San Carlos Street and Race Street.

During deliberation, the Hearing Officer found the project generally consistent with the Urban Village Plan due to its street-facing building, rear parking, outdoor seating, and public art elements. However, the Hearing Officer concluded that the applicant had not met the San José Municipal Code criteria justifying demolition of the existing structure, as no compelling evidence was presented that rehabilitation or adaptive reuse was infeasible. Accordingly, the Hearing Officer approved the Site Development Permit allowing construction of the new restaurant and patio, removal of ordinance-size trees, and design adjustments to enhance street engagement, but prohibiting demolition of the

existing commercial building. The permit was conditioned (Condition 6) to require retention of the building and potential site redesign to accommodate both structures, including possible parking reductions and circulation changes.

At the Director's Hearing, the Hearing Officer also found the project to be categorically exempt from CEQA under the provisions of Section 15332 of the CEQA Guidelines for In-Fill Development Projects. To qualify for this exemption, the following findings were made.

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare, or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

Project Appeals

Two appeals were filed for the project, one appealing the Hearing Officer's action on the discretionary Site Development Permit, and another appeal relating to the environmental determination. Projects with environmental appeals are heard by the City Council.

The appeal of the Environmental Determination (Exhibit C) was filed on June 16, 2025, by Joshua Safran, the counsel of record for The Zotta Family Trust, owner of the subject parcel. This meets the appeal period set forth in [Section 21.04.140.E.1.a](#), which states that an appeal must be received no later than the third business day following an action taken on the environmental determination as part of a public hearing. Monday, June 16 is the third business day after the public hearing held on Wednesday, June 11. The environmental appeal states that the project was modified by the Hearing Officer to create a new project not covered by the approved Categorical Exemption through a condition not linked to a legitimate public purpose, inconsistent with the San José Municipal Code, and frustrating fundamental due process. While [Section 21.04.140.E.3](#) states that issues must be raised previously, either orally or in writing, to a decision-making body or prior to a public hearing, the format of the Director's Hearing did not allow the appellant to make the relevant argument before the Hearing Officer announced their decision. Accordingly, the City of San José (City) accepted this environmental appeal.

The appeal of the Site Development Permit (Exhibit D), and specifically Condition 6, was filed on June 30, 2025, also from Mr. Safran, an eligible appellant under [Section 20.100.230.A](#). This meets the appeal period set forth in [Section 20.100.240](#) (permit mailed to the applicant on June 18, 2025; the 10th day is June 28, 2025, which being a Saturday, pushed the appeal period to the next business day, June 30). The appeal requested that Condition 6 be vacated because it makes the project legally and practically infeasible, is not linked to a legitimate public purpose, is unsupported by proper findings, renders the permit approval legally illusory, creates a new project not covered by the Categorical Exemption, and frustrates fundamental due process and is inconsistent with the San José Municipal Code.

ANALYSIS

Project Appeal

The permit appeal (Exhibit D) states six concerns in regard to Condition 6, requiring the retention of the existing commercial building.

1. Condition 6 Is a Poison Pill that Sabotages the Project by Making it Legally and Practically Infeasible;
2. Condition 6 Is Not Linked to a Legitimate Public Purpose;
3. Condition 6 Is Unsupported by Proper Findings;
4. Condition 6 Improperly Renders the Permit Approval Legally Illusory;
5. Condition 6 Impermissibly Creates a New Project not Covered by the Categorical Exemption; and
6. Imposition of Condition 6 Frustrates Fundamental Due Process and Is Inconsistent with the City's Own Code.

Staff has carefully reviewed the appeal and the additional technical evidence provided. While staff finds that most of the appellant's legal and procedural arguments do not warrant removal of Condition 6, the new information under Appeal Point 1 does demonstrate that retention of the existing commercial building would make the project legally and practically infeasible. Specifically, the appellant has included information from Kimley-Horn (Jennifer Kirby), engineers for the project, finding that the retention of the existing building would render the project physically infeasible, in that the condition would restrict ingress and egress from the site, make truck maneuverability impractical due to insufficient turn radii, and make on-site stormwater treatment infeasible. Therefore, the appellants argue that the Hearing Officer's imposition of Condition 6 renders the project infeasible, in which case the demolition criteria would be met, as the existing building could not be reused or rehabilitated in the context of the approval of new development on the site.

With this information, staff concludes that the required demolition findings can be made, and the Hearing Officer's rationale for denying demolition no longer applies. The

appellant refuted the permit finding that the Hearing Officer used to deny the demolition of the existing building (Part 6 of the demolition criteria – “Rehabilitation or reuse of the existing Building would not be feasible”). As this was first revealed during the decision portion of the hearing, the applicant was not asked to agree to the Condition and was not given an opportunity to refute the Hearing Officer’s findings.

With the information provided within the appeal, staff finds that Part 6 of the demolition criteria can be met, and as staff found the previous project in compliance with the required permit findings, is therefore recommending that the appeal be granted and Condition 6 be removed at the request of the owner/appellant, with associated changes to the permit and conditions.

Environmental Appeal

The environmental appeal states three main concerns with regard to Condition 6:

1. The Condition Impermissibly Creates a New Project not Covered by the Categorical Exemption;
2. The Condition Is Not Linked to a Legitimate Public Purpose; and
3. The Condition Is Inconsistent with the City’s Code and Frustrates Fundamental Due Process.

Staff recommends denial of the environmental (CEQA) appeal because the project continues to qualify for a Class 32 Categorical Exemption regardless of whether Condition 6 (retention of the existing building) is upheld or removed. The condition did not create a “new project,” as CEQA evaluates the whole of the action and the exemption already accounted for demolition and construction impacts. Retaining the building would potentially reduce demolition-related impacts such as noise, dust, and debris, and thus would not require additional environmental review. The project still meets all Class 32 criteria, and no evidence has been presented of unusual circumstances that would create significant environmental effects.

Furthermore, Condition 6 was imposed as a discretionary policy measure, not as a CEQA mitigation requirement, and therefore does not affect the validity of the exemption. The City’s CEQA process was legally sufficient, with proper noticing and findings for utilizing the Class 32 Categorical Exemption. Because the categorical exemption remains valid and the appeal does not demonstrate any CEQA violation, staff recommends that City Council deny the environmental appeal.

EVALUATION AND FOLLOW-UP

The City Council is the final decision-making body for this Site Development Permit and the Environmental Determination for this project.

If the City Council approves the staff recommendation to deny the environmental appeal for the Categorical Exemption, and upholds the project appeal and strikes Condition 6 from the Site Development Permit approved at the Director's Hearing, then the applicant may proceed with the acquisition of necessary permits to demolish the existing commercial building on the site, and implement the required conditions of approval to complete the 1301 West San Carlos Chick-fil-A Project.

Any other City Council actions would make the current proposal infeasible and result in the applicant being required to either obtain a Site Development Permit Amendment or to obtain a new Site Development Permit and/or environmental clearance for a different project.

COORDINATION

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

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the September 16, 2025 City Council meeting.

Additionally, staff followed [Council Policy 6-30: Public Outreach Policy](#) to inform the public of the proposed project. On-site signs have been posted on the project frontages since December 9, 2024. A community meeting for the project was held via video conference on March 27, 2025. 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's website. The staff report is also posted on the City's website, and staff has been available to respond to questions from the public.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Categorically Exempt pursuant to CEQA Guidelines Section 15332 for In-fill Development Projects.

HONORABLE MAYOR AND CITY COUNCIL

August 25, 2025

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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.

/s/

CHRISTOPHER BURTON, Director
Planning, Building, and Code Enforcement

For questions on the permit appeal, please contact John Tu, Division Manager, Planning, Building, and Code Enforcement at john.tu@sanjoseca.gov or (408) 535-6818. For questions on the environmental appeal, please contact David Keyon, Principal Planner, Planning, Building, and Code Enforcement at david.keyon@sanjoseca.gov or (408) 535-7898.

ATTACHMENTS

Exhibit A: Proposed City Council Resolution (Staff Recommendation)

Exhibit B: Project Correspondence Received Prior to Director's Hearing

Exhibit C: Environmental Appeal Application

Exhibit D: Permit Appeal Application

Exhibit E: 1301 West San Carlos Chick-fil-A Project Categorical Exemption
Memorandum

Exhibit F: Permit Approved at Director's Hearing