



COUNCIL AGENDA: 05/10/22

FILE: 22-661

ITEM: 10.1(a)

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 4, 2022

COUNCIL DISTRICT: 5

SUBJECT: FILE NO. CP21-012--CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW OFF-SALE ALCOHOL (TYPE 21 ALCOHOL BEVERAGE CONTROL (ABC) LICENSE – FULL RANGE OF ALCOHOLIC BEVERAGES) AT AN EXISTING 124,320-SQUARE FOOT RETAIL STORE (TARGET) ON AN APPROXIMATELY 11.5-GROSS ACRE SITE LOCATED ON THE NORTHEAST CORNER OF NORTH CAPITOL AVENUE AND MCKEE ROAD (450 NORTH CAPITOL AVENUE).

RECOMMENDATION

The Planning Commission voted 10-0-1 (Torrens Absent) to recommend that the City Council take the following action:

Adopt a Resolution approving, subject to conditions, a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 ABC License – Full Range of Alcoholic Beverages) at an existing 124,320-square foot retail store (Target) on an approximately 11.5-gross acre site.

OUTCOME

If the City Council approves the actions listed above as recommended by the Planning Commission, the applicant will be able sell a full range of alcoholic beverages for off-site consumption in conjunction with a Type 21 ABC License at an existing 124,320-square foot retail store (Target) on an approximately 11.5-gross acre site.

BACKGROUND

On April 27, 2022, the Planning Commission held a Public Hearing to consider the California Environmental Quality Act (CEQA) exemption, Conditional Use Permit, and Determination of

Public Convenience or Necessity. This item remained on the Planning Commission's Consent Calendar. No members of the public requested to speak on this item and there was no discussion by the Commissioners. Commissioner Montanez made a motion to approve the recommendation. Commissioner Caballero seconded the motion. The motion passed unanimously 10-0-1 (Torrens absent). The Planning Commission recommended that the City Council approve the Conditional Use Permit and Determination of Public Convenience or Necessity.

ANALYSIS

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

CONCLUSION

In summary, the project was heard at the April 27, 2022 Planning Commission Meeting. The motion to recommend Council approval of the project passed (10-0-1). Commissioners Torrens was absent. As discussed in the attached staff report, the project is consistent with the Envision San José 2040 General Plan, the Zoning Code, City Council policies for public outreach, and the requirements of CEQA. Should the City Council approve the Conditional Use Permit and Determination of Public Convenience or Necessity, the applicant would be allowed to sell a full range of alcoholic beverages for off-site consumption in conjunction with a Type 21 ABC License at an existing 124,320-square foot retail store (Target) on an approximately 11.5-gross acre site. The applicant could proceed to the California Department of Alcoholic Beverage Control (ABC) with an application for a Type 21 License.

EVALUATION AND FOLLOW UP

Should the City Council approve the Conditional Use Permit and Determination of Public Convenience or Necessity, the applicant would be allowed to sell a full range of alcoholic beverages for off-site consumption in conjunction with a Type 21 ABC License at an existing 124,320-square foot retail store (Target) on an approximately 11.5-gross acre site located at 450 North Capitol Avenue. The applicant could proceed to the ABC with an application for a Type 21 License.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy, whereby the project is considered a large development proposal. Following City Council Policy 6-30, the applicant posted the on-site sign to inform the neighborhood of the proposed project. 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 been available to respond to questions from the public.

COORDINATION

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

CLIMATE SMART SAN JOSÉ

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

CEQA

Under the provisions of Section 15301(a) for Existing Facilities of the State Guidelines for Implementation of 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 modifications or expansion to the footprint of the existing retail building.

The project would allow off-sale alcohol at a retail store. The project would 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 above sections, the activity is not anticipated to have a significant effect on the environment. Therefore, a CEQA exemption can be issued under Section 15301(a) for Existing Facilities.

/s/
CHRISTOPHER BURTON, Secretary
Planning Commission

For questions, please contact Deputy Director for Planning, Robert Manford, at (408) 535-7900.

HONORABLE MAYOR AND CITY COUNCIL

May 4, 2022

Subject: File No. CP21-012

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Attachments: Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION

FROM: Chris Burton

SUBJECT: CP21-012

DATE: April 27, 2022

COUNCIL DISTRICT: 5

Applicant	Target Corporation
Type of Permit	Conditional Use Permit and Determination of Public Convenience or Necessity
Proposed Land Uses	Off-Sale of Alcohol (Type 21 ABC License)
Additional Policy Review Items	Determination of Public Convenience or Necessity
Project Planner	Alec Atienza
CEQA Clearance	Exemption per CEQA Guidelines Section 15301(a) Existing Facilities

RECOMMENDATION

Staff recommends that the Planning Commission recommend the City Council take all of the following actions:

1. Consider the exemption in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15301(a) for Existing Facilities.
2. Adopt a resolution approving, subject to conditions, a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (Type 21 ABC License – Full Range of Alcoholic Beverages) at an existing 124,320-square foot retail store (Target) on an approximately 11.5-gross acre site.

PROPERTY INFORMATION

Location	Northeast corner of North Capitol Avenue and McKee Road (450 North Capitol Avenue)
Assessor Parcel No.	592-19-006
General Plan	Regional Commercial
Growth Area	North Capitol Avenue/McKee Road Urban Village
Zoning	CG Commercial General
Historic Resource	No
Annexation Date	December 9, 1968 (McKee No_51)
Council District	5
Acreage	11.5 gross acres
Proposed Density	Not Applicable

PROJECT SETTING AND BACKGROUND

The subject site is located on the northeast corner of North Capitol Avenue and McKee Road (See Figure 1). The subject site is currently developed with an existing approximately 124,320-square foot retail store (Target) on an approximately 11.5-gross acre site. The existing Target is located within the larger Capitol Square Mall.

The site is accessed by three driveways along North Capitol Avenue, and two driveways from McKee Road. The site is surrounded by single-family residences to the north, a middle school (William Sheppard Middle School) to the east, a Mobile Home Park across North Capitol Avenue to the west, and a commercial shopping center to the south.

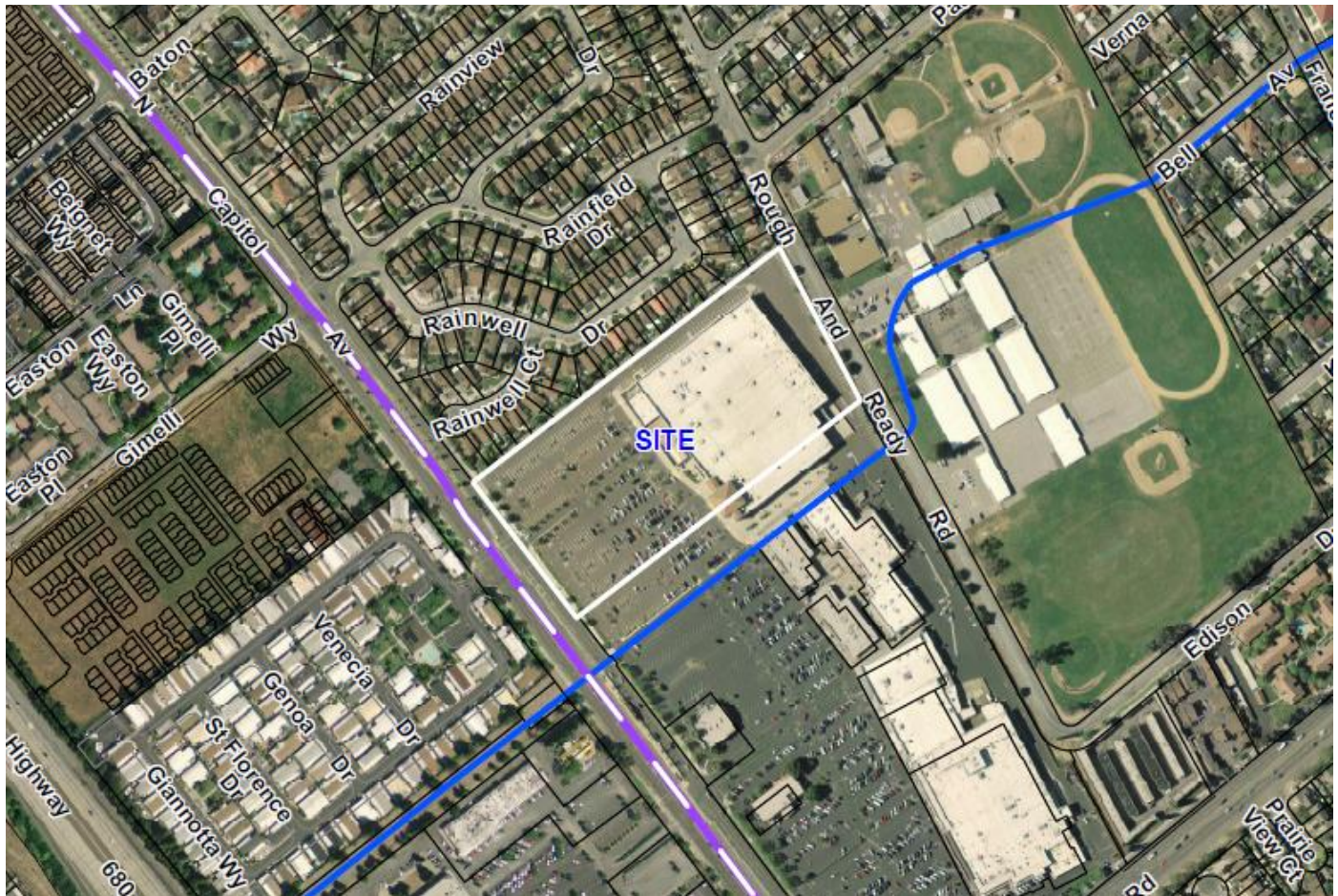


Figure 1 Aerial Map

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Residential Neighborhood	A(PD) (File No. PDC79-027)	Single-family residences
South	Regional Commercial	CG	Shopping Center
East	Public/Quasi-Public	R-1-8	William Shephard Middle School
West	Neighborhood/Community Commercial	A(PD) (File No. PDC73-126)	N. Capitol Avenue, Mobile Home Park

On May 25, 2021, the applicant's representative, Beth Aboulafia with Hinman and Carmichael, LLP, submitted applications for a Conditional Use Permit and Determination of Public Convenience or Necessity (PCN) to allow the off-sale full range of alcoholic beverages at an existing approximately 124,320-square foot retail store (Target) on an approximately 11.5-gross acre site.

In conjunction with the Conditional Use Permit and Determination of Public Convenience or Necessity, the off-sale alcohol use requires issuance of a State Alcoholic Beverage Control (ABC) License Type 21. A Type 21 license allows for the sale of a full range of alcoholic beverages for consumption off the premises where items are sold. Off-sale alcohol sales would be incidental to the retail store, which is a permitted use in the CG Commercial General Zoning District. Approximately 434 square feet of the 79,716 square foot sales floor area would be dedicated to beer and wine sales (0.5% of the total sales floor area). Alcohol sales hours would coincide with the retail store hours (typically 8:00 am to 11:00 pm Monday through Saturday and 8:00 am to 10:00 pm on Sunday). Floor plans for the project delineate the locations of the off-sale alcohol sales area (See Exhibit A).

The subject site is located in what is classified as an over-concentrated Census Tract (Census Tract 5038.04). Pursuant to California Business and Professions Code (BPC) Section 23958.4, the ratio of off-sale retail licenses to population in the census tract in which the applicant premises is located, exceeds the ratio of off-sale licenses to population in the County as a whole. The number of off-sale establishments authorized in the census tract is two, per California ABC. There are currently three off-sale establishments operating within the census tract. Therefore, a Determination of Public Convenience or Necessity is required to be issued to process the application.

As stated in the attached Police Department Memorandum (Exhibit C), dated June 1, 2021, the site is not located in an area of high crime. The Police Department is neutral to the issuance of a Conditional Use Permit and Determination of Public Convenience or Necessity for off-sale of alcohol at the subject site. The addition of off-sale alcohol at this location would not create more than four off-sale establishments within a 1,000-foot radius of the exterior of the building. The nearest off-sale establishments are Cardenas Market, located approximately 900 feet to the south and 4 Less Mini Mart, located approximately 900 feet to the southwest. The site is located within 150 feet of a residentially zoned property (north) and is located within 500 feet of a school (east). The nearest residentially zoned property is a single-family neighborhood adjacent to the subject property to the north. The nearest school (William Sheppard Middle School) is located adjacent to the subject property to the east.

While the Planning Commission cannot make all of the required findings for the Determination of Public Convenience or Necessity, as discussed in further detail below, there are significant and overriding benefits by the project use. Off-sale alcohol would be appurtenant to a larger existing retail use.

Approximately 0.5% of the sales floor area would be dedicated to the off-sale of alcohol. The remainder of the approximately 79,716-square foot sales floor area would be dedicated to sales of items typical of a large retail/grocery store.

The use would be oriented in a manner that would not be a detriment to the adjacent uses including the residences to the north and school to the east. There is no pedestrian or vehicular access to the site from either the adjacent residences or the school. Therefore, staff recommends that the Planning Commission recommend that the City Council issue a Conditional Use Permit and Determination of Public Convenience or Necessity and make the findings for an Overriding Public Benefit specified herein.

ANALYSIS

The proposed Conditional Use Permit and Determination of Public Convenience or Necessity are analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. Zoning Ordinance
3. Conditional Use Permit Findings
4. Determination of Public Convenience or Necessity (PCN) Findings
5. California Environmental Quality Act (CEQA)

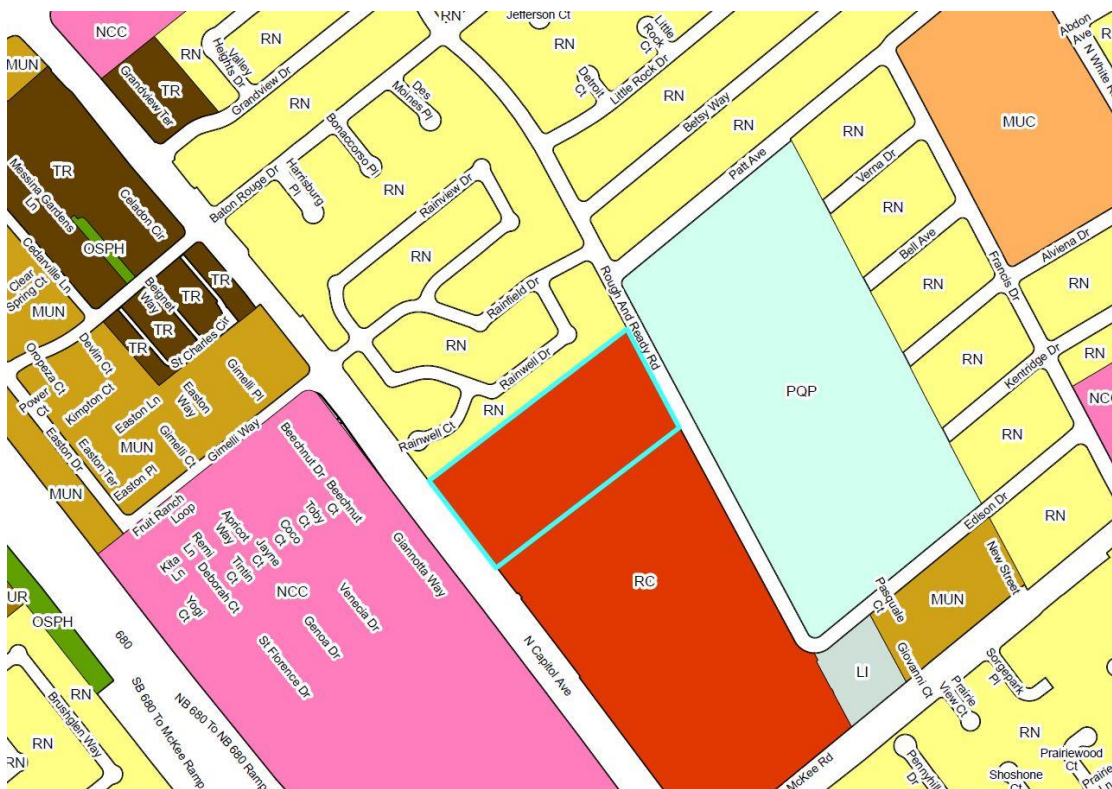


Figure 2 General Plan Land Use Designation

Envision San José 2040 General Plan Conformance

Land Use Designation

As shown in the above General Plan Map (Figure 3), the project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Regional Commercial. These commercial areas attract customers from a regional area and play an important fiscal and economic role for the City. This designation is applied primarily to existing regional shopping centers, though sometimes it may reflect the cumulative attraction of a regional center and one or more nearby community or specialty commercial centers, or two or more community or specialty centers in close proximity whose combined drawing power is of a regional scale. This designation supports a very wide range of commercial uses, which may develop at a wide range of densities. Large shopping malls, and large or specialty commercial centers that draw customers from the greater regional area are appropriate in this designation along with office uses ranging in intensity up to a Floor Area Ratio (FAR) of 12.0. Alcohol sales would be incidental to the full-sale retail and grocery store, which is a consistent use with the General Plan Land Use Designation of Regional Commercial.

General Plan Policies

The project conforms to the following key 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.

Land Use Policy LU-5.1: In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services.

Land Use Policy LU-5.10: In 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: The project is consistent with the Regional Commercial General Plan designation and would allow off-sale alcohol at an existing retail store which provides a wide range of goods and groceries. Target is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, and meat, as well as alcohol. Alcohol sales would be incidental to the larger retail use and would occupy 434 square feet (0.5%) of the larger 79,716-square foot sales floor area. The store would provide an additional retail option for neighborhood residents in addition to employing approximately 180 to 220 employees.

Zoning Ordinance Conformance

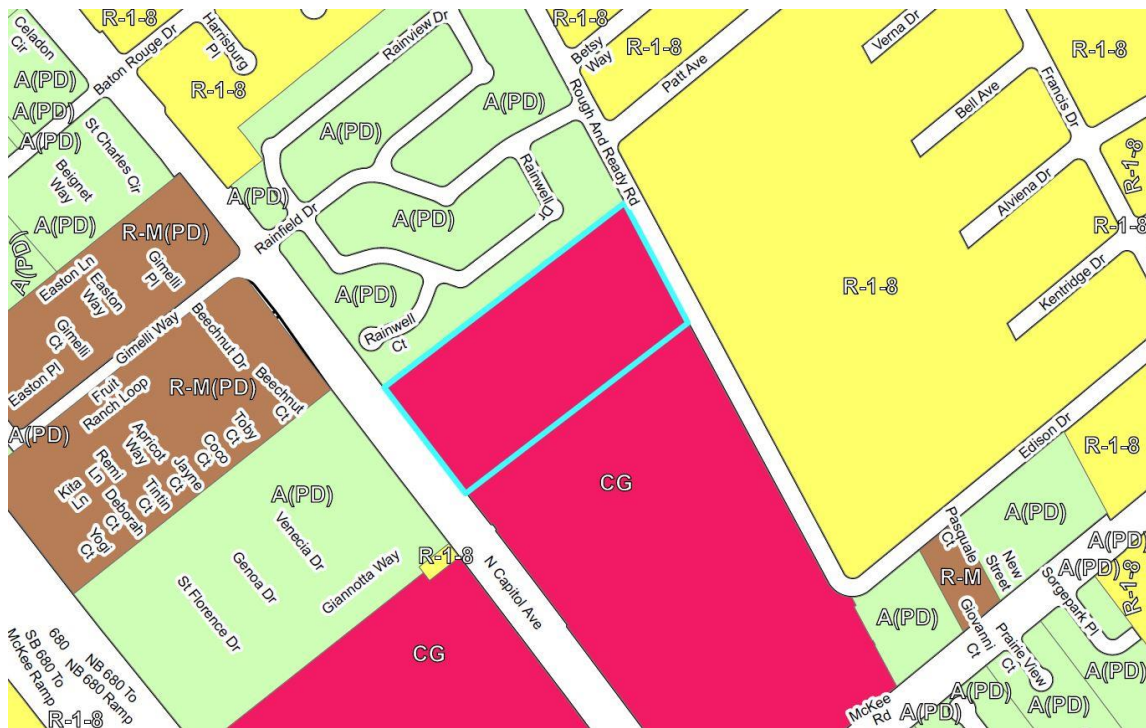


Figure 3 Zoning Map

Land Uses

The existing building conforms to the development standards set forth in the CG Commercial Neighborhood Zoning District. The CG Zoning District is intended to support pedestrian-oriented retail activity at a scale compatible with surrounding residential neighborhoods. A retail store is a permitted use in the CG Zoning District. No additional development permit is required for the occupation of the retail space. Pursuant to [Section 20.40.100](#) of the Zoning Code, the off-sale of alcoholic beverages requires a Conditional Use Permit in this zoning district.

Development Standards

The project conforms with all setback and height requirements of the CG Zoning District pursuant to [Section 20.40.200](#) of the Zoning Code. As previously discussed, the approximately 124,320-square foot retail store is an existing building. The setbacks and height would not be altered by this Conditional Use Permit. No exterior improvements, signage, or other uses would be approved through this Conditional Use Permit.

Development Standard	Required	Existing
Front setback	15 feet	400 feet
Side, interior setback	None	60 feet (SE), 27 feet (NW)
Rear, interior setback	None	45 feet
Maximum height	65 feet	37 feet, 4 inches

Parking

The project conforms with the parking requirements of [Chapter 20.90](#) of the Zoning Code. As previously stated, there are no changes to the existing retail building. The grocery store requires 1,542 vehicle parking spaces. The project would provide 1,686 vehicle parking spaces. A Conditional Use Permit for off-sale alcohol does not trigger additional parking requirements over the primary retail use.

Use	Ratio	Required
Retail	1 per 200 sf of floor area (302,626 sf/200)	1,514 spaces
Restaurant (seating area)	1 per 40 sf (1,127 sf/40)	28 spaces
	Total Required	1,542 spaces
	Total Provided	1,686

Conditional Use Permit Findings

In order to make the Conditional Use Permit findings and recommend approval to the Planning Commission, staff must determine that:

1. The Conditional Use Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans and area development policies; and

Analysis: As explained in detail above, the project use would be consistent with and further the policies of the General Plan. The project would allow off-sale alcohol (Type 21 ABC License) at an existing retail store (Target). Target is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, and meat, as well as alcohol. Alcohol sales would be incidental to the larger retail use. The store would provide retail option for neighborhood residents in addition to employing 180 to 220 employees.

2. The Conditional Use Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: The project does not include modifications to the existing building. The existing setbacks, height, and number of parking spaces are not being altered by this Conditional Use Permit. The retail use is a permitted use in the CG Zoning District, and off-sale alcohol use would also be authorized with a Conditional Use Permit pursuant to [Table 20-90](#) of the Municipal Zoning Code. Therefore, the project would be in conformance with the requirements of the CG Zoning District with the issuance of the permit.

3. The Conditional Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project is consistent with the City's On-Site Noticing/Posting Requirements and City Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals. An on-site sign has been posted at the project frontage since August 4, 2021. The project was noticed for a radius of 500 feet.

4. The proposed use at the location requested 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 site; or
- c. Be detrimental to public health, safety or general welfare; and

Analysis: As indicated in the San José Police Department Memorandum dated June 1, 2021, the use is located in an area that is unduly concentrated with alcohol sales but is not in an area of high crime. The Police department is neutral regarding this project. Due to the concentration of alcohol sales within this census tract, a Determination of Public Convenience and Necessity is required. The sales area dedicated to off-sale alcohol sales is 434 square feet, which is approximately 0.5% of the 79,716-square foot sales floor area. The remaining sales floor area would be dedicated to the sale of retail goods and groceries. Additionally, the Operations Plan (Exhibit B), prepared by the applicant and submitted on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. A total of 7 dedicated security personnel would be present on site. Video surveillance would also be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). Therefore, the use would not be considered detrimental to the surrounding neighborhood.

5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: As discussed above, the existing retail building conforms to the development regulations, including setbacks, height, and parking for a building in the CG Zoning District. There are no modifications to the exterior of the building included in this Conditional Use Permit.

6. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
- b. By other public or private service facilities as are required.

Analysis: The subject site is adequately served by local and regional access routes, and is accessed from North Capitol Avenue and McKee Road, as indicated above. The subject site is served by VTA bus routes 64A and 64B. The McKee VTA Light Rail Station is located adjacent to the subject site to the west.

7. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The project does not involve any structural modifications to the existing retail building or its use for retail. There would be no outdoor construction activity on-site. Therefore, there would be no unacceptable negative environmental impacts related to noise, vibration, fugitive dust, drainage, storm water runoff, or odor, and the project will not have any unacceptable negative affect on adjacent properties.

Required Findings for the Off-Sale of Alcohol

A Conditional Use Permit may be issued pursuant to the applicable provisions of this title 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 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 subject site. The nearest off-sale establishments are Cardenas Market, located approximately 900 feet to the south and 4 Less Mini Mart, located approximately 900 feet to the southwest. Therefore, this finding can 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 in 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 previously stated, the 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 subject site. The nearest off-sale establishments are Cardenas Market and 4 Less Mini Mart, located approximately 900 feet from the site. As indicated in the San José Police Department Memorandum dated June 1, 2021, the use is located in an area that is unduly concentrated with alcohol sales but is not in an area of high crime. The Police department is neutral regarding this project. Additionally, the Operations Plan, prepared by the applicant and submitted on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. A total of 7 dedicated security personnel would be present on site. Video surveillance would also be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). 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 subject site would not be located within five hundred feet from a child care center, public park, social services, agency, residential care facility, residential service facility, secondary school, college or university. The project would be adjacent to both a residentially zoned property to the north and a middle school (William Sheppard Middle School to the east. However, the use would be oriented

in a manner that would not be a detriment to the adjacent uses including the residences to the north and school to the east. There is no pedestrian or vehicular access to the site from either the residences or the school. Additionally, the uses are further separated by an existing masonry wall. Therefore, this finding can be made.

Required Findings for 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 project site is located within Census Tract 5038.04. According to the Police Department Memorandum, dated June 1, 2021, the neighborhood does not report 20 percent more crimes above the city average. However, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. The allocated number of off-sale establishments in Census Tract 5038.04 is two, and currently there are three off-sale establishments. This permit would be the fourth off-sale alcohol use in the Census tract. Therefore, for the California Department of Alcoholic Beverage Control to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis of the proposal 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 San Jose Municipal Code 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
 - 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 not located within a Strong Neighborhoods Initiative (SNI) area or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. According to the Police Department Memorandum dated June 1, 2022, The Police Department stated that it is neutral to the issuance of a Conditional Use Permit for the off-sale of alcohol at the subject site. Additionally, the Operations Plan, prepared by the applicant and submitted on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. A total of 7 dedicated security personnel would be present on site. Video surveillance would also be utilized

throughout the store and the exterior of the building. Hours of alcohol sales would coincide with the typical hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). Therefore, the use 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. Therefore, this finding can 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 use would result in less than four off-sale establishments in a 1,000-foot radius. There are currently two off-sale establishments within a 1,000-foot radius (Cardenas Market and 4 Less Mini Market). Therefore, this finding can be made.

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

Analysis: The subject site would be located within five hundred feet of a school and within one hundred fifty feet of a residence. The nearest school (William Sheppard Middle School) is located approximately adjacent to the site to the east. A single-family neighborhood is located adjacent to the site to the north. Therefore, this finding cannot be made.

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

Analysis: The sales floor area of the store is approximately 79,716 square feet. The floor area dedicated to alcohol sales is approximately 434 square feet. Therefore, the percentage of alcohol sales would be approximately 0.5% of the sales floor area. 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: Target would continue to operate in an existing 124,320-square foot retail space in an existing shopping center. The project would allow off-sale alcohol (Type 21 ABC License) at an existing retail store (Target). Target is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, meat, as well as alcohol. Alcohol sales would be incidental to the larger retail use. According to the Police Department Memorandum dated June 1, 2021, the Police Department stated that it is neutral to the issuance of a Conditional Use Permit for the off-sale of alcohol at the subject site. The subject site is located in San Jose Police Beat W4. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index, thus the location is not considered unduly concentrated per B&P Section 23958.4 (a)(1). Additionally, the Operations Plan, prepared by the applicant and submitted on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering

and panhandling, and employee training for alcohol sales. A total of 7 dedicated security personnel would be present on site. Video surveillance would also be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). The use would not be detrimental to public health, safety, or welfare of persons located in the area. Therefore, 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 project would result in an overconcentration in the number of outlets for the off-premises sale of alcoholic beverages as explained above. 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 0.5% of the sales floor area would be dedicated to the off-sale of alcohol. The remainder of the approximately 79,716-square foot sales floor area would be dedicated to sales of items typical of a large retail/grocery store that provide for a more complete, convenient, and diverse shopping experience. Therefore, this finding can be made.

If the Planning Commission cannot make one or more of the first four findings (items 1 through 4) listed above, then the Planning Commission is required by San Jose Municipal Code [Section 6.84.030.D](#) to make a recommendation to the City Council as to whether the Council should make a determination for the proposed use.

Analysis: Given the above-state analysis, the third finding for the issuance of a Determination of Public Convenience or Necessity cannot be made for the off-sale of alcohol because the project site is located within 500 feet of a school and within 150 feet of a residentially zoned property. Therefore, City Council approval is required for the proposed use. The Planning Commission must make a recommendation on the proposed use to the City Council and 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 it can make a determination that not all of the required findings can be made, and when the Council identifies that a significant and overriding public benefit or benefits will be provided by the proposed use. The Council can identify and find that significant and overriding public benefit will be provided by the proposed use.

Notwithstanding the foregoing provisions and requirements contained in Subsection D. above, 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 Subsection B. can be made; and

Analysis: Given the above-stated analysis, the third finding for the Determination of Public Convenience or Necessity cannot be made by the Planning Commission for the off-sale of alcohol because the subject site is located within 500 feet of a school and within 150 feet of a residentially zoned property. However, the Planning Commission can make three of the four findings. Moreover, the Commission can make findings 5.b and 5.d of the additional findings.

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

Analysis: While the Planning Commission cannot make all of the required findings for the Determination of Public Convenience or Necessity, there are significant and overriding benefits by the project use. Off-sale alcohol would be appurtenant to a larger existing retail use that provides a complete, convenient, and diverse shopping experience for the community. Approximately 0.5% of the sales floor area would be dedicated to the off-sale of alcohol. The remainder of the approximately 79,716-square foot sales floor area would be dedicated to sales of items typical of a large retail/grocery store.

The use would be oriented in a manner that would not be a detriment to the adjacent uses including the residences to the north and school to the east. There is no pedestrian or vehicular access to the site from either the residences or the school. Additionally, the uses are further separated by a masonry wall and intervening development. Additionally, the Operations Plan, prepared by the applicant and submitted on May 24, 2021, provides provisions for trash and graffiti removal, security and safety, loitering and panhandling, and employee training for alcohol sales. A total of 7 dedicated security personnel would be present on site. Video surveillance would also be utilized throughout the store and the exterior of the building. Hours of alcohol sales would coincide with hours of operation of the store (8:00 am to 11:00 pm Monday through Sunday and 8:00 am to 10:00 pm on Sunday). These mitigating factors will be included in the permit as conditions of approval and will be monitored and enforced by the City. Finally, the proposed off-sale alcohol use would further activate an existing commercial area and provide additional retail options to the existing and future residents in the surrounding area.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 modifications or expansion to the footprint of the existing retail building.

The project would allow off-sale alcohol at a retail store. The project would 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 above sections, the activity is not anticipated to have a significant effect on the environment. Therefore, a CEQA exemption can be issued under Section 15301(a) for Existing Facilities.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. 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. An on-site sign has been posted on the project frontage since August 4, 2021. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Alec Atienza**Approved by:** /s/ Robert Manford, Deputy Director, for Chris Burton, Director of PBCE**ATTACHMENTS**

Exhibit A: Plan Set

Exhibit B: Operations Plan

Exhibit C: Police Memo

Exhibit D: Draft Resolution

Exhibit E: Project Narrative

Owner:	Applicant:	Applicant's Representative:
Janine Borwn-Wiese Assistan Treasurer Target Corporation 33 South 6 th St, CC-1128 Minneapolis, MN 55402	Target Corporation 33 South 6 th St, CC-1128 Minneapolis, MN 55402	Beth Aboulafia Hinman & Carmichael LLP 260 California St., Suite 700 San Francisco, CA 94111

CP21-012

Links to Attachments A-E

Click on the title to view document

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