



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: December 16, 2022

COUNCIL DISTRICT: 2

**SUBJECT: SPECIAL USE PERMIT AND DETERMINATION OF PUBLIC
CONVENIENCE FOR CERTAIN REAL PROPERTY LOCATED AT 430
BLOSSOM HILL ROAD**

RECOMMENDATION

The Planning Commission voted 9-0-1 (Commissioner Garcia absent) to recommend that the City Council take all of the following actions:

1. Consider the exemption in accordance with the California Environmental Quality Act.
2. Adopt a resolution approving, subject to conditions, a Special Use 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 commercial building on an approximately 0.74-gross acre site at 430 Blossom Hill Road (Smart & Final).

OUTCOME

If the City Council approves all the actions listed above, the applicant would be able to request an Alcohol Beverage Control license to operate an existing retail establishment with the off-sale of alcohol, which includes a full range of alcoholic beverages, in an existing full-service grocery store.

BACKGROUND

On December 7, 2022, the Planning Commission considered the proposed Special Use Permit and Determination of Public Convenience or Necessity.

There were no members of the public who spoke on this item when Chair Oliverio asked for speakers.

Commissioner Ornelas-Wise stated that the project provides a good replacement to what is existing. The commissioner highlighted general safety concerns and asked the applicant if there will be security guards on-site. The applicant, Jeffrey Kim of Art Rodriguez Associates, stated that security guards are not in the tenant's operations plan but that the other proposed security measures are sufficient. The commissioner asked staff if there is access from the rear of the building to the rear yards of the adjacent residences. Staff responded that there is an existing fence along the shared property line that restricts access from the building to adjacent properties.

Commissioner Young stated that the previous tenant, Lucky Supermarket, also sold alcohol. The commissioner stated that the site has been vacant for six months and as a result, the center is blighted. Commissioner Young stated that he usually defers to the Police Department, but in this case, a good project is proposed.

Commissioner Young made a motion to approve the recommendation. Commissioner Lardinois seconded the motion. The motion passed 9-0-1 (Commissioner Garcia absent).

ANALYSIS

Analysis of the issues regarding the proposed Special Use Permit and Determination of Public Convenience or Necessity, including General Plan conformance and the proposed resolution, are contained in the attached Planning Commission Staff Report. The legal nonconforming use of off-sale of alcoholic beverages is allowed with a Special Use Permit and Determination of Public Convenience or Necessity. The project is consistent with all relevant General Plan policies, development standards of the zoning ordinance, and City Council Policies. The San José Police Department reviewed the application because the site has more off-sale licenses than authorized by the Department of Alcohol Beverage Control based on population and the area has crime higher than 20% of the city average is opposed to the project. However, staff recommendation based on the proposal for a full-service grocery store, distance to other off-sale locations, and location along a commercial corridor, is recommending approval. While the Planning Commission cannot make all of the required findings for a Determination of Public Convenience or Necessity, the City Council is able to make the findings that there are significant and overriding public benefits of the proposed project.

CONCLUSION

The Planning Commission's motion to recommend that the City Council adopt a resolution approving the Special Use Permit and Determination of Public Convenience or Necessity for the subject property was approved by 9-0-1 (Commissioner Garcia absent).

EVALUATION AND FOLLOW-UP

If the Special Use Permit and Determination of Public Convenience or Necessity are approved, the applicant would be able to request approval from the Department of Alcohol Beverage Control for the off-sale of alcohol (Type 21 full range of alcoholic beverages) and operate a retail establishment with the off-sale of a full range of alcoholic beverages in an existing full-service grocery store.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more of Climate Smart San José's mobility goals. The project would reduce Vehicle Miles Traveled by providing a more convenient shopping experience in a growth area within the Blossom Hill Road/Snell Avenue Urban Village. The closest grocery store to the project site is 0.85 miles away.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the project. A notice of 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. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public. This memorandum will be posted on the City's Council Agenda website for the January 10, 2023 City Council Meeting.

COORDINATION

This project was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

On December 7, 2022, the Planning Commission considered the proposed Special Use Permit and Determination of Public Convenience or Necessity. The Planning Commission voted 9-0-1 (Commissioner Garcia absent) to recommend that the City Council adopt a resolution approving the Special Use Permit and Determination of Public Convenience or Necessity.

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CEQA

Under the provisions of Section 15301 for Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 1 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 would allow off-sale alcohol at an existing full service grocery store. The project would include interior modifications to allow for the space to be configured for the new tenant. 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 California Environmental Quality Act exemption can be issued under Section 15301(a) for Existing Facilities.

/s/

Christopher Burton, Secretary
Planning Commission

Attachment: Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION
SUBJECT: SP22-023

FROM: Christopher Burton
DATE: December 7, 2022

COUNCIL DISTRICT: 2

Type of Permit	Special Use Permit (File No. SP22-023)
Demolition	N/A
Proposed Land Use	Off-sale of beer, wine, and liquor at new grocery store
New Residential Units	None
New Square Footage	None
Additional Policy Review Items	Determination of Public Convenience or Necessity
Tree Removals	None
Project Planner	Jonathan Fox
CEQA Clearance	Exemption per CEQA Guidelines Section 15301(a): Class 1 for Existing Facilities

RECOMMENDATION

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

1. Consider a categorical exemption in accordance with CEQA Guidelines Section 15303 for Existing Facilities; and
2. Recommend that the City Council adopt a resolution, subject to conditions, approving a Special Use Permit and Determination of Public Convenience or Necessity to reinstate a legal nonconforming use for off-sale of alcohol (Type 21 ABC License – full range of alcoholic beverages) at an existing commercial building on an approximately 0.74-gross acre site.

PROPERTY INFORMATION

Location	South side of Blossom Hill Road east of Snell Avenue (430 Blossom Hill Road)
Assessor Parcel No.	692-26-044
General Plan	Neighborhood / Community Commercial
Growth Area	Blossom Hill Road / Snell Avenue Urban Village
Zoning District	CP Commercial Pedestrian
Historic Resource	No
Annexation Date	11/29/1959

Council District	2
Acreage	0.74
Proposed Density	Not Applicable

PROJECT SETTING AND BACKGROUND

As shown on the attached Aerial Map ([Exhibit A](#)), the proposed project is located on an approximately 0.74-acre lot located on the south side of Blossom Hill Road east of Snell Avenue. The proposed project site is surrounded by commercial and residential uses, as shown in the table below.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Neighborhood / Community Commercial	CN Commercial Neighborhood	Commercial
South	Residential Neighborhood	R-1-8 Single-Family Residential	Residential
East	Neighborhood / Community Commercial	CP Commercial Pedestrian	Commercial
West	Neighborhood / Community Commercial	CP Commercial Pedestrian	Commercial

On August 10, 2022, the applicant, Art Rodriguez Associates on behalf of Smart & Final Stores LLC, submitted a Special Use Permit application (File No. SP22-023) to reinstate a legal nonconforming use for off-sale of alcohol (Type 21 ABC License – full range of alcoholic beverages) at an existing commercial building at 430 Blossom Hill Road. The site was previously occupied by Lucky, a full-service grocery store with an approved Type 21 ABC License. Smart & Final, the current tenant, is required to obtain a Special Use Permit to reinstate a legal nonconforming use which has ceased for more than six months. The project requires Findings of Public Convenience or Necessity because the project site is in an area with above average crime statistics and approval of the project would result in area with an over-concentration of off-sale establishments.

As stated in the attached Police Department Memorandum, September 7, 2022, the Police Department is opposed to the off-sale of alcohol at this site. In a 12-month period, San Jose Police Beat Y3 reported a 20% Above Average crime statistics compared to the City Average. Additionally, the census tract allows a maximum of three ABC licenses for the off-sale of alcohol. Currently there are four existing off-sale alcohol licenses and approval of the subject application would result in five licenses. There is currently one off-sale use within 1,000 feet of the subject site. As previously mentioned, the subject site is currently located in an over-concentrated census tract (5120.29). As the subject site is also located within 150 feet of a residentially zoned property, a Determination of Public Convenience or Necessity for the off-sale of alcohol may only be approved by City Council. Staff is recommending approval based on the off-sale located being located in a full-service grocery store and for the reasons outlines in the analysis below.

ANALYSIS

The proposed Special Use Permit is analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. Zoning Ordinance Conformance
3. Special Use Permit Findings
4. Nonconforming Use Findings
5. Off-Sale Alcohol Findings
6. Determination of Public Convenience or Necessity (PCN) Findings
7. California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan Conformance

Land Use Designation

As shown in the attached General Plan Map ([Exhibit B](#)), the proposed 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 project would establish a full-service grocery store with off-sale of alcohol which provides commodities to the nearby community, and which is a commercial retail use, consistent with the use requirements. The project is therefore consistent with the land use designation.

The proposed project is also consistent with the following General Plan goal and policies:

General Plan Goal and Policies

1. Land Use Goal LU-4: Establish commercial uses that maximize revenue to the City and provide employment for its residents in order to achieve fiscal sustainability and our desired jobs per employed resident ratio.

Analysis: The current tenant, Smart & Final, is a full-service grocery store which continues a history of grocery stores at this site. The store would offer a variety of grocery products including produce, meat, frozen foods, and dairy products. The off-sale of alcohol will produce an additional revenue-generating and job-generating opportunity in association with these other products.

2. 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 and convenient multi-modal access to a full range of goods and services.

Analysis: Smart & Final continues a history of grocery stores with off-sale of alcohol at this existing commercial plaza. The grocery store would re-vitalize the existing shopping center by filling a commercial tenant vacancy and maintaining an employment use on the site. The site was vacant for more than six months and thus required the legal nonconforming status to be reinstated.

3. Land Use 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: The full-service grocery store would provide a wide range of groceries that service the daily necessities of the community. The store would offer produce, meat, frozen foods, and dairy products. The amount of floor area dedicated to the off-sale of alcohol would be minimal, less than 2% of the total sales area.

Zoning Ordinance Conformance

Land Use

As shown in the attached Zoning Map ([Exhibit C](#)), this site is in the CP Commercial Pedestrian Zoning District. Pursuant to [Section 20.40.100 and Table 20-90](#) of the Zoning Ordinance, food, beverages, and groceries are a permitted use in the CP Zoning District. However, the off-sale of alcoholic beverages requires a Conditional use Permit in this zoning district. The site was previously occupied by Lucky, a full-service grocery store with an approved Type 21 ABC License. Lucky, surrendered its Type 21 ABC license on October 6, 2021. Section 20.150.020 of the San Jose Municipal Code states that any such legal conforming use that is “discontinued or abandoned for a period of six months or more” ... “shall thereafter conform to the provisions of [Title 20], unless the nonconforming use is reinstated with issuance of a special use permit in accordance with Chapter 20.100.” The applicant only seeks to reinstate off-sale of alcohol as a legal nonconforming use through a Special Use Permit rather than apply for a Conditional Use Permit to formally approve and permit the use. The application includes documentation confirming the site has been continuously used for off-sale of alcohol since 1965 with no more than 18-month gaps between.

Development Standards

There are no exterior changes to the existing 32,350 sq. ft. commercial building proposed at this time. The existing setbacks, height, and number of parking spaces are not being altered. It is expected the tenant will apply for tenant improvements to modify the building interior to accommodate any new structural, electrical, or mechanical changes. As such, the subject Special Use Permit will not alter existing building setbacks, height, or parking.

PERMIT FINDINGS

Required Findings for Special Use Permit

Section 20.100.820 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Special Use Permit, which findings are made for the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit:

1. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and

Analysis: As described above in the General Plan Conformance section, the project would be consistent with and further the policies of the General Plan. The existing building will not change in land use as the previous and current tenants are both full-service grocery stores with off-sale of alcohol. The use would continue to adhere to the Neighborhood/Community Commercial land use designation and provide services and amenities to the surrounding neighborhood.

2. The Special 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 propose modifications to the existing building exterior. The existing setbacks, height, and number of parking spaces are not being altered by this Special Use Permit. The existing retail use is allowed in the Commercial Pedestrian Zoning District, and legal nonconforming off-sale alcohol use may be reinstated with a Special Use Permit pursuant to [Section 20.150.110](#) of the Municipal Zoning Code. Therefore, the project would be in conformance with the requirements of the of the Commercial Pedestrian Zoning District.

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

Analysis: Per City Council Development Policy 6-30, an on-site sign describing the project has been installed on the project site since October 25, 2022 and notices for the public hearing were mailed to property owners and tenants within a radius of 500 feet of the project site, which is consistent with the City Council Policy.

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: The project consists of the reinstatement of the legal nonconforming status of an existing full-service grocery store with an ancillary off-sale alcohol use and minor interior tenant improvements. The project will not affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area, impair the utility or value of property or other persons located in the vicinity of the site or be detrimental to the public health, safety, or general welfare. The previous and current tenant will have substantially similar operational characteristics.

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 the use with existing and planned uses in the surrounding area; and

Analysis: The project involves the reinstatement of a legal nonconforming use and does not require any site improvements. The previous and current tenant will have substantially similar operational characteristics and thus the project will not require additional yards, walls, fences, parking and loading, landscaping, or other development features.

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 property is served by Blossom Hill Road, a public street, and all necessary public and private utilities and services. The continued use of the site as a full-service grocery store with ancillary off-sale of alcohol will not increase demand for public or private facilities.

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 environmental impacts of the project are analyzed above. The project is categorically exempt under CEQA Guidelines Section 15301(a).

Required Findings for Reinstatement of Nonconforming Use. Section 20.150.110 of the San José Municipal Code require the Director, or Planning Commission, on appeal, to issue a Special Use Permit for a nonconforming use if the following findings can be made:

1. In the case of an application for a Special Use Permit for reinstatement of a legal nonconforming use:
 - a. No more than eighteen (18) months has elapsed between the date the date the application for the special use permit was filed and found complete; and
 - b. The conversion to a conforming use would create undue hardship under the particular circumstances presented.
 - c. The finding required by subsection a above does not need to be made for reinstatement of residential legal nonconforming uses or the residential mixed use residential/commercial legal nonconforming uses.

Analysis: The off-sale of alcoholic beverages requires a Conditional Use Permit in the CP – Commercial Pedestrian Zoning District. However, the application includes documentation confirming the site has been continuously used for off-sale of alcoholic beverages in conjunction with a grocery store since at least 1965 with no more than eighteen (18) month gaps. This permit affirms the legal nonconforming status of the off-sale use.

2. In addition to the findings required by Subsection a, no Special Use permit shall be issued, pursuant to this part, unless it is found that:
 - a. The permit will not impair the character and integrity of the neighborhood; and
 - b. The permit will not impair the utility or value of adjacent property or the general welfare of the neighborhood; and
 - c. The permit is not detrimental to the public peace, health, safety, morals or welfare.

Analysis: The project consists of the reinstatement of the legal nonconforming status of an existing full-service grocery store with an ancillary off-sale alcohol use and minor interior tenant improvements. The project will not affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area, impair the utility or value of property or other persons located in the vicinity of the site or be detrimental to the public health, safety, or general welfare because the previous and current tenant will have substantially similar operational characteristics. Notably, the site has been used for off-sale of alcoholic beverages since at least 1965.

Required Findings for the Off-Sale of Alcohol

Per Section 20.80.900 of the San José Municipal Code, a Conditional Use Permit may be issued pursuant to the applicable provisions of Title 20 for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable. As discussed earlier, the Special Use Permit serves as the Conditional Use Permit for instating a legal nonconforming use.

1. For such use at a location closer than 500 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 closest location with off-sale alcohol is the Downer Square Bottle Shop at 402 Blossom Hill Road, which is approximately 315 feet away from the project site and the only location within 1,000 feet of the project site. 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 discussed above, there is one existing establishment within 1,000 feet of the project site that provides alcoholic beverages for off-site consumption. Therefore, the use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the project site. In a memorandum dated September 7, 2022, the San José Police Department ("SJPD") stated that it is opposed to the issuance of a Special Use Permit to continue the legal nonconforming off-sale of alcohol at the subject site. SJPD believes issuance of the license would add to an undue concentration of ABC licenses in an area over the 20% crime index compared to the City average. However, the site is located along a major commercial throughfare and adjacent to major highways which is more likely to have higher report crime. The site is currently vacant and subject to blight and other crime. With additional renovations

*and land use, the project would add value and increase the overall activity and safety of the area. Additionally, the applicant's Operations Plan (Attachment I) includes provisions for Licensee Education on Alcohol and Drugs (LEAD) employee training and surveillance camera systems (48 interior cameras and 4 exterior cameras). As a result, issuance of a license would not be detrimental to public health, safety, or welfare of persons located in the area, nor increase the severity of existing law enforcement or public nuisance problems in the area. 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 use would be located less than 500 feet from a school, day care center, public park, social services agency, or residential care/service facility. Specifically, the use would be located less than 150 feet from residentially zoned properties to the south and east. However, there is a fence separating and limiting access from Downer Square plaza to the rear yards of the adjacent residences. There are 13 residences within 150 feet of the project site and 5 within 100 feet. Therefore, this finding **cannot** 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 5120.29. According to the SJPd Memorandum, dated September 7, 2022, the neighborhood reports 20% greater crimes above the city average. Additionally, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. Therefore, for ABC to be able to issue a license for this off-sale use the City must grant a PCN. 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 the San José Municipal Code 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.B](#)):

- a. The proposed use is not located within a Strong Neighborhoods Initiative ("SNI") 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 not located within an SNI or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. According to the SJPd Memorandum, SJPd stated that it is opposed to the issuance of a Special Use Permit to continue the legal nonconforming off-sale of alcohol at the subject site. SJPd claims issuance of the license would add to an undue concentration of ABC licenses in an area over the 20% crime index compared to the City average. However, the project would not present a significant adverse impact as the proposed ABC license is to replace a recently surrendered license at the same location. Furthermore, the site is located along a major commercial thoroughfare and adjacent to major highways which is more likely to have higher report crime. The site is currently vacant and subject to blight and other crime, with the additional renovations and land use, the site would add value and increase the overall activity and safety of the area. Additionally, the applicant's Operations Plan includes provisions for Licensee Education on Alcohol and Drugs (LEAD) employee training and surveillance camera systems (48 interior cameras and 4 exterior cameras). The project would not present a significant adverse impact as the proposed ABC license is to replace a recently surrendered license at the same location. As a result, issuance of a license would not be detrimental to public health, safety, or welfare of persons located in the area, nor increase the severity of existing law enforcement or public nuisance problems in the area. Therefore, this finding can be made.

3. 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 is currently one off-sale establishment within a 1,000-foot radius at 402 Blossom Hill Road. Therefore, this finding can be made.

4. 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 use would be located less than 500 feet from a school, day care center, public park, social services agency, or residential care/service facility. Specifically, the use would be located less than 150 feet from residentially zoned properties to the south and east. However, there is a fence separating and limiting access from Downer Square plaza to the rear yards of the adjacent residences. There are thirteen residences within 150 feet of the project site and five within 100 feet. Therefore, this finding cannot be made.

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

Analysis: The existing commercial building is 32,350 square feet. The proposed sales floor area of the new grocery store is 25,165 square feet. The floor area dedicated to alcohol sales is 460 square feet or

1.83% of the total sales floor area. Therefore, the percentage of alcohol sales does not represent a majority of the sales floor area. Therefore, this finding can be made.

6. 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. However, the geographic concentration of sites providing off-sale alcohol in the census tract is unusually configured as a majority of the off-sale licenses are concentrated at the opposite end of the census tract. Based on a California Alcoholic Beverage Control report for Census tract 5120.29, there are 4 existing businesses that have off-sale alcohol licenses (Type 20 or 21). The allowed number of off-sale licenses in the census tract is 3. The closest off-sale business is located approximately 250 feet to the northeast of the subject site and offers the sale of alcohol as the primary service. The remaining three off-sale businesses (a liquor store, gas station, and small neighborhood grocery store) are all located approximately 1.4 miles from the subject site, along Cottle Road. Therefore, this finding can 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 project site is within the Blossom Hill Road / Snell Avenue Urban Village, which is part of the General Plan's leading strategy to focus residential and commercial development near existing and proposed transit opportunities. Furthermore, the project site is within an important existing commercial plaza in close proximity to the Blossom Hill and Snell VTA light rail stations. The grocery store would re-vitalize the existing shopping center by filling a commercial tenant vacancy and maintaining an employment use on the site. The project would not present a significant adverse impact as the proposed ABC license is to replace a recently surrendered license at the same location. Therefore, the addition of off-sale alcohol use at the existing grocery store would not present a significant adverse impact on public health or safety. 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 census tract in which the project is located has a higher population density in relation to other census tracts in the city and is located in an already over-concentrated area. 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: Less than 2% of the sales floor area would be dedicated to the off-sale of alcohol. The remainder of the sales floor area would be dedicated to sales of items typical of a full-service grocery store. Furthermore, the off-sale of alcohol at this location would provide a more complete and convenient shopping experience to patrons seeking to obtain day-to-day commodities at a single location. Therefore, this finding can be made.

Given the above-stated analyses, the third finding for the PCN cannot be made by the Planning Commission for the off-sale of alcohol because the project site is located within 150 feet of a residentially zoned property. However, the Planning Commission can make two of the four findings. Moreover, the Commission can make findings 5.a, 5.b and 5.d of the additional findings for a PCN. While the Planning Commission cannot make all of the required findings for the PCN, there are significant and overriding benefits by the use, as it would further activate an existing commercial area and provide new amenities to the existing and proposed population and job growth in the surrounding area.

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 José 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.

Notwithstanding the foregoing provisions and requirements contained 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:

1. Makes a determination that not all of the required findings set forth in Subsection B. can be made; and

Analysis: The third finding for the PCN cannot be made by the Planning Commission for the off-sale of alcohol because the subject site is located within 150 feet of a residentially zoned property. However, the Planning Commission can make three of the four findings. Specifically, the Commission can make findings 5.a, 5.b and 5.d of the additional findings for a PCN.

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

Analysis: The project site is within the Blossom Hill Road / Snell Avenue Urban Village which is part of the General Plan's leading strategy to focus residential and commercial development near existing and proposed transit opportunities. Considering the site is in a growth area, the City expects the area to densify, thus benefiting from additional commercial options. Furthermore, the project site is within an important existing commercial plaza in close proximity to the Blossom Hill and Snell VTA light rail stations. The project is consistent with the General Plan and conforms to the City's development standards set forth in the CP Commercial Pedestrian Zoning District. As stated above, the alcohol sales area would represent less than 2% of the total sales area of the store and would not be a primary use of the building. While the Planning Commission cannot make all of the required findings for the PCN, there are significant and overriding benefits by the project use, as it would further activate an existing commercial area and continue to provide amenities to the existing and future residents in the surrounding area. Smart & Final will expand upon the operational characteristics of previous tenants by providing employee training and enhanced security measures.

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 commercial building.

The project would allow off-sale alcohol at a retail store (grocery store). The retail sale of off-sale alcoholic beverages will be conducted wholly inside the building and result in negligible or no expansion of the existing grocery store use. 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 proposed 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: Jonathan Fox

Approved by: /s/ Robert Manford, Deputy Director for Christopher Burton, Planning Director

ATTACHMENTS:	
Exhibit A:	Aerial Map
Exhibit B:	General Plan Map
Exhibit C:	Zoning District Map
Exhibit D:	Alcohol Radius Map
Exhibit E:	Draft Resolution
Exhibit F:	Notice of Environmental Exemption
Exhibit G:	Police Memo
Exhibit H:	Special Use Permit Plan Set
Exhibit I:	Operations Plan
Exhibit J:	Sensitive Use and Census Tract Exhibits

Owner:	Applicant:	Applicant's Representative:
Downer Square LLC 591 W Hamilton Avenue STE 100 Campbell, CA 95008	Dee Ann Anderson Smart & Final Stores LLC 600 Citadel Drive Commerce, CA 90040	Art Rodriguez Associates 444 E Huntington Drive, STE 208 Arcadia, CA 91006

Exhibit A: Aerial Map



Exhibit B: General Plan Map

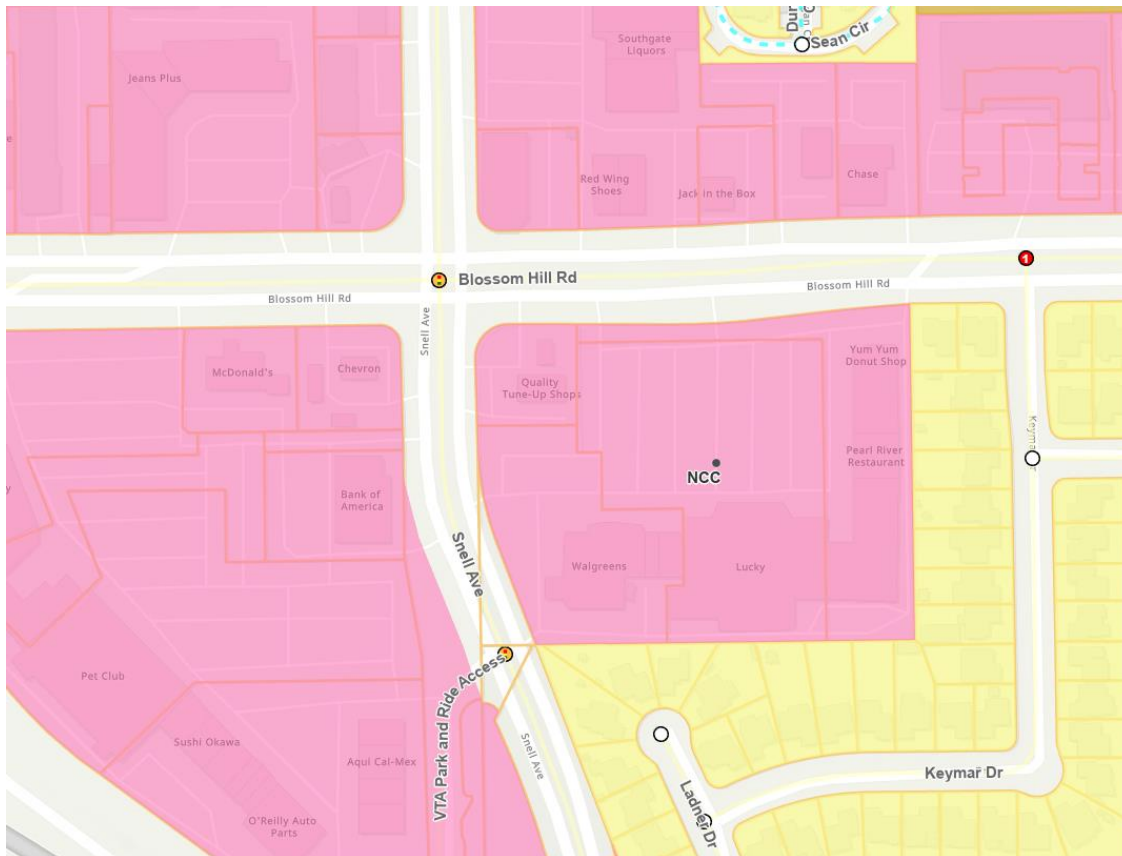
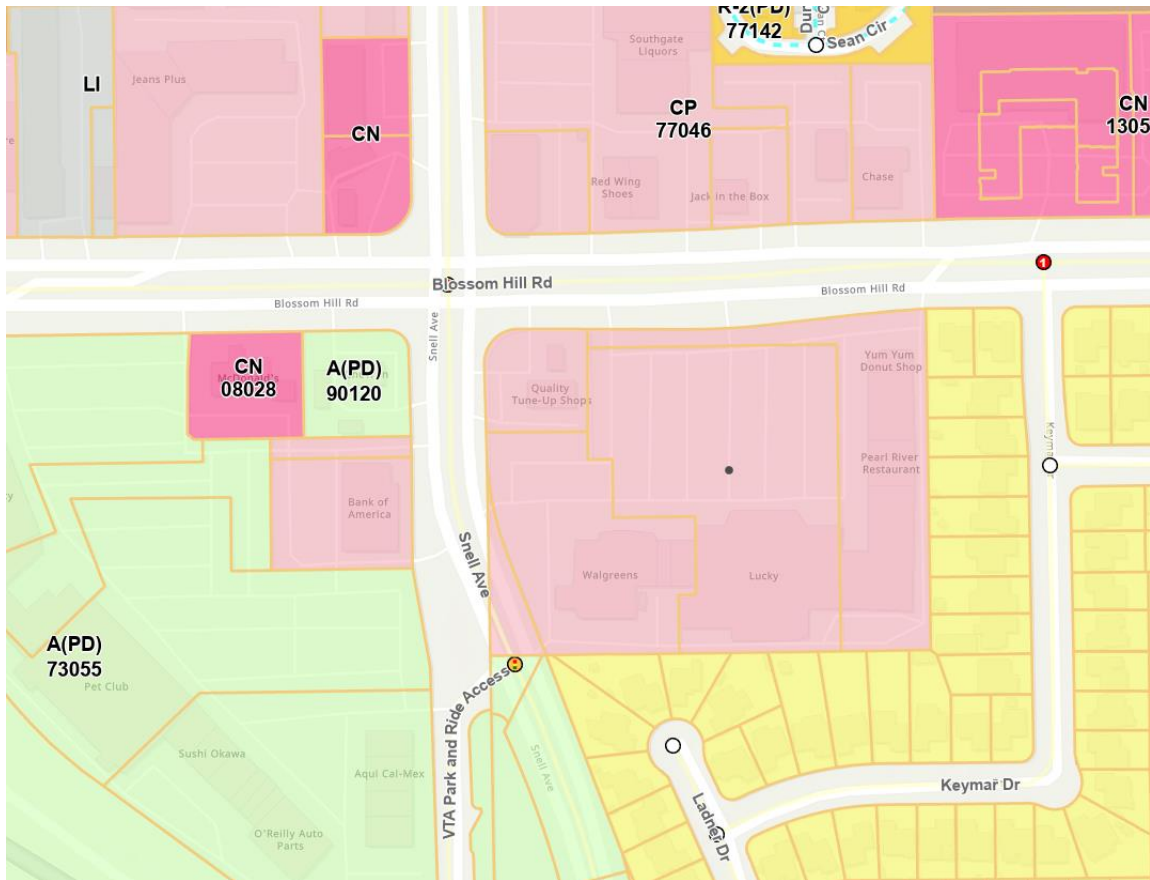


Exhibit C: Zoning District Map



This aerial map illustrates the project area and its surroundings. The proposed site is highlighted with a red hatched pattern and a blue outline, labeled "SITE". The map shows various streets including Gluffrida Ave, Snell Ave, Blossom Hill Rd, and NB 85. Several parcels are identified with green numbers: 5120.23, 5120.26, 5120.27, 5120.29, 5120.45, 5120.37, and 5120.38. The map also shows the location of the project relative to the VTA Park and Ride Access and the Hill Ramp. The surrounding area includes residential streets and commercial developments.

SP22-023

Links to Attachment E-J

Click on the title to view document

Exhibit E: Draft Resolution
Exhibit F: Notice of Environmental Exemption
Exhibit G: Police Memo
Exhibit H: Special Use Permit Plan Set
Exhibit I: Operations Plan
Exhibit J: Sensitive Use and Census Tract Exhibits