



Planning Commission Staff Report

March 19, 2012
Item 3.a.

- SUBJECT:** P12-0113
- APPELLANTS:** Angela Joe-Williams and Linda Martin
- APPLICANT:** Kathy Wooley / Harrison French & Associates
- PROPERTY OWNER:** Dorothy Anderson
- PURPOSE:** Appeal of the Zoning Administrator's (in this case the Director of Community Development) approval of a Zoning Certificate to operate a supermarket as a permitted use within the hours of operation and delivery limits as set forth in the existing Conditions of Approval for PUD-84 (Ordinance Nos. 1035, 1165, and 1214 and Planning Commission Resolution 2691).
- LOCATION:** 3112 Santa Rita Road (Meadow Plaza Shopping Center)
- GENERAL PLAN:** Retail/Highway/Service Commercial; Business, Professional Office
- ZONING:** Planned Unit Development - Commercial - Office (PUD-C-O) District
- EXHIBITS:**
- A. Appeal Application dated "Received February 15, 2012"
 - B. Director of Community Development's Determination Letter dated February 2, 2012 with Applicant's Narratives
 - C. Ordinances 1035, 1165, 1215 and Resolution 2691
 - D. Location and Notification Maps
 - E. Public correspondence

BACKGROUND

On December 21, 2011, Wal-Mart Neighborhood Market submitted a revised¹ application for a supermarket at 3112 Santa Rita Road, the Meadow Plaza shopping center. The applicant proposes to occupy the existing 33,160 square-foot building with only interior tenant improvements. The applicant describes its Neighborhood Market operation as providing "a wide range of grocery, pharmaceuticals, health and wellness items, and frequently purchased

¹ The applicant's original submittal on September 12, 2011 included rooftop equipment and screening modifications requiring design review approval (assigned case P11-0764), but which was subsequently withdrawn and replaced with the more recent submittal eliminating those modifications. Therefore, no design review is required.

general merchandise consumables..." The applicant states that hours of operation would be from 6:00 a.m. to 12:00 a.m., and that delivery hours would be from 6:00 a.m. to 10:00 p.m.

After staff review for compliance with applicable regulations, the applicant was advised that its zoning application was approved, subject to appeal per section 18.44.050 (Administrative appeal procedure) of the Pleasanton Municipal Code. An appeal has been filed by the persons listed on page one of this report, claiming that the proposed Neighborhood Market does not comply with the site's planned unit development (PUD) zoning, the General Plan, or the zoning ordinance.

SITE DESCRIPTION

The Meadow Plaza shopping center is a 7.7 acre site located at the southeast corner of West Las Positas Boulevard and Santa Rita Road. The proposed Neighborhood Market would occupy the existing vacant building in the shopping center that was previously used by Nob Hill Foods.

Image 1: Aerial Image of Meadow Plaza



DISCUSSION

General Plan Land Use Designation

The site has a General Plan land use designation of Retail / Highway / Service Commercial; Business and Professional Offices; which allows retail, commercial, shopping centers, and supermarket uses. The use is a supermarket store and, therefore, is consistent with the General Plan land use designation. The supermarket would provide a grocery store for residents; which is consistent with the following General Plan Programs and Policies:

Program 2.2: Encourage the reuse of vacant and underutilized parcels and buildings within exiting urban areas.

Policy 13: Ensure that neighborhood, community, and regional commercial centers provide goods and services needed by residents and businesses of Pleasanton and its market area.

Zoning Designation

The site received planned unit development (PUD) zoning for commercial and office development (PUD-C-O) in 1982 (Ordinance 1035). Specifically "Allowed uses" include "Food markets including supermarkets, convenience markets and specialty stores."² This zoning action was subject to environmental review under the California Environmental Quality Act (CEQA) and included project conditions to mitigate any environmental impacts from the development. The development plan for the shopping center and two office buildings was approved in 1984 (Ordinance 1165), with Condition No. 8 requiring that there be "no truck deliveries to the market between the hours of 10:00 p.m. to 6:00 a.m." and Condition No. 10 requiring "That there shall be no liquor stores, fast food restaurants, electronic game arcades, convenience food stores or any all night businesses allowed in the shopping center." The City Council subsequently adopted a revised list of permitted and conditionally permitted uses for the shopping center in 1985 (Resolution 2691 approved under Ordinance 1215). This action retained "Food markets, including supermarkets, and specialty stores" as permitted uses.

Staff has included the referenced Ordinances and Resolution as Exhibit C for the Commission's reference.

Scope of Appeal

The appeal questions the determination that the Neighborhood Market complies with the zoning code and General Plan, and the issuance of a zoning certificate.³

Permitted Use

A permitted use is one that has been pre-determined to be appropriate for a zoning district or specific property. In this case, "Food markets including supermarkets ..." were adopted as permitted uses for this shopping center by Ordinances No. 1035 and 1215. Permitted uses are effectively ministerial (a matter of right) if the proposed permitted use meets the definition in the zoning code, if a definition exists, (or determined to be similar enough to another permitted use)⁴ and is permitted in the zoning district. This is a check list type of review:

² Under PUD regulations, permitted uses and conditionally uses may be determined by the Planning Commission and City Council. See Pleasanton Municipal Code (PMC) §18.68.030.

³ The code requires a zoning certificate "[t]o ensure that each new or expanded use of a structure or site ... complies with all applicable provisions ..." of the Zoning Code. (PMC §18.12.050.A) The appeal was made pursuant to the administrative appeal procedures in Chapter 18.144 of the PMC.

⁴ For uses that are not specifically defined, Chapter 18.128 (Determination as to Uses Not Listed) provides a process for the zoning administrator to either make a determination based on the unlisted use's similarity to other listed uses, or to refer the matter to the Planning Commission for its determination.

Application	Zoning Requirement	
Supermarket with range of grocery, pharmaceuticals, health & wellness items and general merchandise consumables	Food markets, including supermarkets ⁵ , as well as drug stores and pharmacies are permitted uses (Ordinance 1215)	√
Hours of operation 6:00 a.m. to 12:00 a.m.	No all night businesses (Ordinance 1165, Condition No. 10)	√
Delivery hours 6:00 a.m. to 10:00 p.m.	No truck deliveries between 10:00 p.m. and 6:00 a.m. (Ordinance 1165, Condition No. 8)	√

As a check list ministerial review, permitted uses are not subject to evaluation under the California Environmental Quality Act (CEQA), which only applies to discretionary decisions.⁶ When the site was originally zoned to PUD, it was subject to environmental review, and many mitigations were imposed based on the highest use of the site given the approved permitted uses.⁷

PUBLIC NOTICE AND COMMENTS

Notice of this appeal was sent to surrounding property owners and tenants within a 1,000-foot radius of the site, published in a newspaper of general circulation, and posted on the City website prior to this hearing (please refer to Exhibit D for the location and notification maps). Numerous comments have been received on issues outside of the scope of this appeal of a ministerial determination that the Neighborhood Market is a supermarket allowed as a permitted use on this PUD zoned site; but are nevertheless attached as Exhibit E so that interested persons know that their concerns were heard.

RECOMMENDATION

Staff recommends that the Planning Commission deny the appeal, thereby upholding the Director of Community Development's determination that the Neighborhood Market is a supermarket permitted use allowed by the PUD, consistent with General Plan Land Use policies and programs, that the proposed hours of operation and delivery limits are consistent with existing zoning approvals, and that the operation without modification to the site, building exterior, or parking lot is a properly issued zoning certificate.

Staff Planner: Natalie Amos, Associate Planner, 925.931.5613, email: namos@cityofpleasantonca.gov

⁵ While "supermarkets" are not specifically defined in the code, Planning staff has applied the definition of a self-service retail store selling mainly groceries, as well as other household items, and may have a pharmacy; this definition has been applied to the relatively recent 99 Ranch Market, Fresh & Easy and Safeway supermarkets.

⁶ Discretionary projects are those that require the exercise of judgment or deliberation, as opposed to merely determining whether there has been compliance with applicable laws and regulations. Title 14 Cal. Code Regulations (CCR) §15357. "Ministerial projects" involve a governmental decision requiring little or no personal judgment by the public official and are exempt from CEQA. Public Resources Code §21080(b)(1); 14 CCR §15369.

⁷ The CEQA document adopted with Ordinance 1035 included mitigations such as: turn lane on West Las Positas (#16); medians in Santa Rita Rd. (#4), fencing for neighbors (#8, 10, 14), etc.