

PLANNING COMMISSION MINUTES OF JANUARY 12, 2009

2008-0936 – Bergman Companies [Applicant] **De Anza Square** [Owner]: Application for a Use Permit to allow a grocery store (Fresh & Easy) in a 7.2-acre shopping center, within in an existing retail space greater than 10,000 square feet. The property is located at **1356 S. Mary Avenue** (near W Fremont Ave at De Anza Square Shopping Center) in a C-1 (Neighborhood Business) Zoning District. (Mitigated Negative Declaration) (APN: 323-01-019) NC

Gerri Caruso, Principal Planner, presented the staff report. Ms. Caruso said that staff has provided a letter on the dais this evening from a member of the public concerned about the proposed hours which include a midnight closing. Ms. Caruso explained that earlier today staff received preliminary information that the applicant may have intended to ask for a continuance this evening and have since decided to move forward with the public hearing. She said in the brief time that staff thought the item was to be continued, that staff informed a member of the public that the item would not be on the agenda tonight. She said the member of the public expressed his concern about this site and that the previous grocery store had exterior air conditioning equipment that made a significant amount of noise. Ms. Caruso confirmed that all of the air conditioning equipment in this proposal is contained in the interior of the building. She said staff is recommending approval of the project subject to the conditions of approval in Attachment B of the staff report.

Comm. Hungerford confirmed with staff that one of the conditions addresses the pop-up roof feature as staff thinks the roof feature is too prominent or too high. **Trudi Ryan**, Planning Officer, said that staff would like the applicant to continue to work with staff on a design that integrates better with the architecture of the building.

Comm. Klein referred to Attachment D, page 3 and discussed with staff the parking and shading goals for this lot with staff commenting that the overall numbers of parking spaces are shared between the tenants. Ms. Ryan said that the number of parking spaces at this shopping center is less than what the current code would require and the parking lot shading less than current code requires. She said that she does not know how many parking spaces would be lost if spaces were used to provide 50% of the required shading. She said that the reason this project is subject to a Use Permit is because of the amount of time it has been vacant. She said had the site had been in continuous operation the City review would be only a staff level review of architecture. Comm. Klein asked about the configuration of the loading docks and whether additional parking could be added in the rear of the building. Staff said that trucks need the area along the fence to allow space for the trucks to maneuver. Comm. Klein commented that he was hoping to have a few more trees added.

Chair Rowe referred to page 7 of the report regarding deliveries and confirmed with staff that the intent is that deliveries are concluded by 10 p.m. Chair Rowe referred to page 10 of the report and discussed with staff that the compact parking spaces are proposed to be re-striped in front of the tenant buildings.

Chair Rowe opened the public hearing.

John Vidovich, owner of the site and representative for the applicant, confirmed there was a call about possibly requesting a continuance of this hearing. He said this grocery store has been vacant for about six years and he and the community would like to see this project go forward. He referred to Attachment B, page 1, condition 1.D which limits the Use Permit to one year and requested a five-year permit due to the economy. He referred to condition 1.G and said the applicant does not plan on having outside merchandise and requested that this requirement be removed. He said if they do change their plans that a merchandise plan would be submitted at that time. He referred to condition 2.A which addresses the addition of a second eastbound left-turn lane and said he just wanted to make it clear that the developer and owner are being told they do not have to pay for the lane. He referred to condition 4 regarding the roof forms and said there has been a lot of conversation between the applicant and the architect. He provided some additional materials to show the proposed marquee-type sign, which is part of Fresh and Easy's image. He said the marquee is very important to the applicant. He asked the Commission to consider approving the marquee and not require that it be redesigned, which could kill the deal. He confirmed that they do not intend to change the fences. He referred to condition 7.B regarding decorative pervious pavers and asked if this wording could be changed to require some other material than individual pavers. He addressed Comm. Klein's question about parking and referred to condition 10 stating that they added parking in the back of store and that they would prefer that it not be labeled as employee parking, which would be an operational issue. He stated that this site needs a grocery store and would like the maximum consideration that the Commission can give regarding the marquee.

Comm. McKenna discussed with Mr. Vidovich when Albertsons closed at this site.

Chair Rowe closed the public hearing.

Comm. Klein referred to Attachment B, page 4, condition 7.B and asked staff if there was something else that could be used instead of pervious pavers and does staff have any comments about ADA (Americans with Disabilities Act) issues with pavers in this location. Ms. Ryan said some asphalt is permeable and that if the goal is to obtain some permeable spaces then possibly some of the perimeter spaces could be permeable. Comm. Klein confirmed with staff that the Use Permit would allow the applicant three years to develop the site, 2 years with the original Use Permit and an additional year extension if needed. Ms. Ryan clarified that condition 1.D refers to the expiration of the

Use Permit if the use is discontinued for a period of one year or more which would mean the site was developed and operating and then was no longer operating for a year or more. She said the discontinuance of use is the reason this project is required to go to public hearing for the Use Permit tonight as the use was discontinued for at least six years.

Comm. Travis asked staff what is the purpose of marking the parking spaces in the rear of the building for employee parking. Ms. Ryan said that it is a parking management issue and in exchange for the condition 10.C that the condition could be rephrased to have a Parking Management Plan to keep the more convenient spaces available for the patrons. Comm. Travis and staff discussed that the Commission could delete condition 10.A.a and then require a parking management plan bringing 10.C into play.

Comm. Klein asked further about staff's issue with the marquee since signs would be considered at a later date. Ms. Ryan said that staff does not have an issue with the actual sign and that the issue is with the structure that the proposed marquee is on. She said staff feels the structure is not consistent with the architecture of the building and that it is overpowering for the existing roof form. She said there have been some suggestions provided to the applicant.

Comm. Travis referred to two different color displays and discussed with staff the more accurate of the color displays. Comm. Travis confirmed with staff that the illustrations of the marquee accurately display what the marquee would look like from street level.

Chair Rowe referred to a letter from a citizen regarding a problem when tenant alarms go off at the shopping center and the owners of the site cannot be reached to shut off the alarms. Chair Rowe asked staff how this citizen could handle this issue. Ms. Ryan said that the neighbor could contact Neighborhood Preservation or the non-emergency number at Public Safety.

Comm. Travis moved for alternative 2, to adopt the Mitigated Negative Declaration and approve the Use Permit with modified conditions: to remove condition 10.A.a and place into affect 10.C requiring that a Parking Management Plan be required now rather than the future; to remove condition 1.G requiring the submission of a merchandise plan as there are no outdoor sales planned and that a merchandise plan be submitted if, in the future, the applicant would like to have outdoor sales. Comm. Klein seconded the motion. Comm. Klein offered a Friendly Amendment to amend condition 7.B replacing the language "decorative pervious pavers" with "a decorative walkway". Comm. Klein offered a Friendly Amendment to add a condition 7.G that 12 of the required parking spaces be permeable parking spaces and that the applicant work with staff to determine the location of the 12 spaces. Comm. Klein said he selected the number of 12 parking spaces as this is

equivalent to one row of parking. **The maker of the motion accepted both of Comm. Klein's Friendly Amendments.**

Comm. Travis said he is glad to see that there is finally something proposed for this site. He said there are a few issues to be looked into prior to moving in. He said he is glad to see a grocery store going in here again and that it is a new, different store from some of the regular stores in the area. He said this is a great spot and a great company and he is looking forward to this addition to the community.

Comm. Klein said he was able to make the findings for the Use Permit. He said definitely the community would like to see a grocery store at this location as the site has been vacant for many years. He said some flexibility is being given to the applicant as this is an infill spot and the density is not increasing. He said on other developments shading and parking spaces have been required on other retail when density is increasing. He said this development will bring more activity back to this shopping center which is really needed. He said he hopes the economy rebounds enough for this project to go forward. He said he thinks that with the applicant working with staff that the last of the details can be worked out. He said as much as the marquee may be an issue for the applicant that it is important how this project looks visually from the street and critical that the building fits into the community.

ACTION: Comm. Travis made a motion on 2008-0936 to adopt the Mitigated Negative Declaration and approve the Use Permit with modified conditions: to remove condition 10.A.a regarding employee parking and place into affect 10.C requiring that a Parking Management Plan be required now rather than in the future; to remove condition 1.G requiring the submission of a merchandise plan as there are no outdoor sales planned and that a merchandise plan be submitted if, in the future, the applicant would like to have outdoor sales; to amend condition 7.B replacing the language "decorative pervious pavers" with "a decorative walkway"; and to add a condition 7.G that 12 of the required parking spaces be of permeable pavers and that the applicant work with staff to determine the location of the 12 spaces. Comm. Klein seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than January 27, 2009.