

SPECIAL USE PERMIT

FILE NO.	SP09-055
LOCATION OF PROPERTY	370 and 380 S. Kiely Blvd.
ZONING DISTRICT	CP Pedestrian Commercial and CG General Commercial Zoning Districts
GENERAL PLAN DESIGNATION	General Commercial
PROPOSED USE	Special Use Permit for the demolition of a vacant restaurant building and the conversion of another adjacent restaurant building to automobile sales office use, and the operation of a new and used car lot on a 3.16 gross acre site
ENVIRONMENTAL STATUS	Exempt
APPLICANT / ADDRESS	Steve Cornelius 4202 Stevens Creek Blvd San Jose, CA 95129

FACTS

The Director of Planning finds that the following are the relevant facts regarding this proposed project:

1. This Special Use Permit is for the demolition of an existing restaurant building located at 370 Kiely Blvd.
2. A second restaurant building located at 380 Kiely Blvd will be remodeled for vehicles sales and display area.
3. Under the provisions of Section 15301 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 Code, implementing the California Environmental Quality Act of 1970, as amended.
4. The subject site is located in the CP Pedestrian Commercial and CG General Commercial Zoning Districts.
5. The subject site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
6. Under the provisions of Section 20.80.440 B of the San José Municipal Code, a Special Use Permit is required for the demolition of a building which would not otherwise require a development permit pursuant to the requirements of Chapter 20.80.
7. The subject site is 3.16 gross acres in size.
8. The proposed demolition will meet all of the development regulations set forth in the Zoning Code.

9. The surrounding area is characterized by commercial uses.

FINDINGS

The Director of Planning has considered all of the following criteria in evaluating the proposed demolition.

1. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition because the restaurant is no longer in use.
2. The failure to approve the permit would jeopardize public health, safety or welfare.
3. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
4. The approval of the permit will maintain the supply of existing housing stock in the City of San José.
5. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible. The subject site is not of historic value.
6. Rehabilitation or reuse of the existing building would not be feasible, as the owner would like to use the parcel for the outdoor display of automobiles.
7. The demolition of the restaurant building without a replacement building will not have an adverse impact on the surrounding neighborhood, as the land will be used to display automobiles.

Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:

1. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.
2. The proposed project is in conformance with the California Environmental Quality Act.
3. The benefits of permitting the demolition, removal or relocating of subject structure outweigh the impacts of the demolition, removal or relocation.

Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:

1. The proposed use at the location requested will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or impair the utility or value of property of other persons located in the vicinity of the site; or be detrimental to public health, safety, or general welfare in that the proposed demolition will ultimately facilitate a project that is compatible with the surrounding area.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Section 20.80.440 B & Chapter 20.100 of the San José Municipal Code, the demolition of the subject structure.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:

- a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Special Use Permit shall automatically expire 24 months from and after the date of issuance hereof by said Director if within such 24 month period demolition of the structure has not commenced, pursuant to and in accordance with the provisions of this Special Use Permit. The date of issuance is the date this permit is approved by the Director of Planning.
 3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
 4. **Building Permit/Certificate of Occupancy.** If applicable, procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
 5. **Conformance with Plans.** Demolition shall conform to approved plans entitled, "Special Use Permit, File No. SP09-053," dated November 18, 2009, and on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
 6. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.
 7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
 8. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
 9. **Demolition and Construction Hours.** Demolition and Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Saturday construction is allowed between the hours of 9:00 a.m. and 5:00 p.m. for permitted work that is inaudible to existing residential uses.
 10. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff in the Environmental Services Department can provide assistance on how to recycle debris, including information on haulers and processors. Go to

<http://www.sjrecycles.org/business/cddd.htm> for more information.

11. **Release of Permit.** No demolition of the structure may be implemented unless and until this Special Use Permit is released to the Building Division.
12. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during demolition, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
13. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
14. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
15. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, SP09-055, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
16. **Lighting.** No additional lighting is permitted as part of this permit. Any new lighting shall secure appropriate permits and conform to the City's Lighting Policy.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
18. **Employee Parking.** All employees are required to park on the site. If at any given time, the number of employees' increases beyond the number of provided parking spaces, the inventory car storage area will be decreased to accommodate on-site employee parking. If the number of employees does not require full usage of the employee parking lot, the provided spaces can be used for display and storage.
19. **Unloading Vehicles and Inventory.** All unloading and loading of vehicle inventory shall occur on the site **in the area designated along the curbside.** At no time shall any unloading or loading activities occur on within the public right of way.
20. **Noise.** The San José 2020 General Plan states that the City's acceptable exterior noise level is 55 dBA long term, and 60 dBA short term. The acceptable interior noise level is 45 dBA.

- a. **Public Address Systems.** The use of public address systems is not permitted. Beepers/and or personal pagers should be used in outdoor areas.
 - b. The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poor maintained engines or other components.
5. **Lighting.** The on-site lighting nearest the residential area, the employee parking lot and vehicle storage/display area will be Low Pressure Sodium (LPS). The City’s Outdoor Lighting Policy allows for non-LPS lighting at the front of the site for outdoor sales areas only. The non-LPS lighting will be fully shielded, and will be fully extinguished by 10:00 p.m. or within one hour of closing the business. If lighting needs to be used during the period the business is closed, only LPS lighting is permitted.
6. **Storm Water Stenciling.** All drain inlets shall be labeled “No Dumping-Flows to Bay.” Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
7. **Landscaping.** Planting and irrigation are to be provided, as indicated on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
8. **Tree Removals.** No trees are approved to be removed with this permit.
9. **Vehicle Test Drives.** No vehicle test drives shall occur in the residential neighborhood located to the south of the dealership site.
10. **Restrictions.** The following functions and activities are prohibited on any portion of this property, and within any building approved under this Permit.
- a. Dismantling of new and used vehicles for purposes of parts salvage
 - b. Service and/or repair activities in the outdoor areas of the project site
 - c. Automotive body work and painting
 - d. Outdoor storage of stock, equipment, materials, and refuse unless otherwise shown on the approved plan set
 - e. Public address systems of any type
19. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping. No outdoor storage is allowed/permitted unless designated on the approved plan set. Used vehicle parts, lubricating oils and greases, drums, cartons, crates, or other packing materials shall be stored either within a project structure or in a designated refuse area as shown on the approved plan set.
- Wrecked vehicles may not be stored on any portion of the subject property. Vehicles may not be stored on the property for purposes of parts salvage.
20. **Colors and Materials.** All colors and materials are to be those specified on the approved

plan set and revised plan set approved by the subsequent adjustment as noted in the above conditions.

21. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning by a Sign permit adjustment.
22. **Enclosures/Screening.** Utility Structures shall be enclosed or screened to match existing fencing, screening or landscaping.
23. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
24. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
 - a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 - b. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit.
 - c. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.
 - i. The project's Stormwater Control Plan and numeric sizing calculations are under review and this project must be in conformance with City Policy 6-29 prior to hearing.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating the all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
 - d. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits,

are due and payable.

e. **Sanitary:** This project must video tape the existing sanitary sewer lateral prior to construction.

f. **Street Improvements:**

i. Remove and replace curb, gutter, and sidewalk along project frontage.

ii. Close unused driveway cuts.

iii. Proposed driveway width to be 26'.

iv. Improvement of the public streets shall be to the satisfaction of the Director of Public Works.

v. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans. (To assist the Applicant in better understanding the potential cost implications resulting from these requirements, existing pavement conditions can be evaluated during the Planning permit review stage. The Applicant will be required to submit a plan and the applicable fees to the PW Project Engineer for processing. The plan should show all project frontages and property lines. Evaluation will require approximately 20 working days.)

g. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.

h. **Street Trees:** Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Contact the City Arborist at (408) 277-2756 for the designated street tree.

25. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a Demolition Permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.

26. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.

27. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public streets and/or private streets each working day. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

28. **Fire Clearance.** A Fire Clearance shall be obtained from Fire Chief ((408) 535-3555) prior to the issuance of a building permit.

29. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as

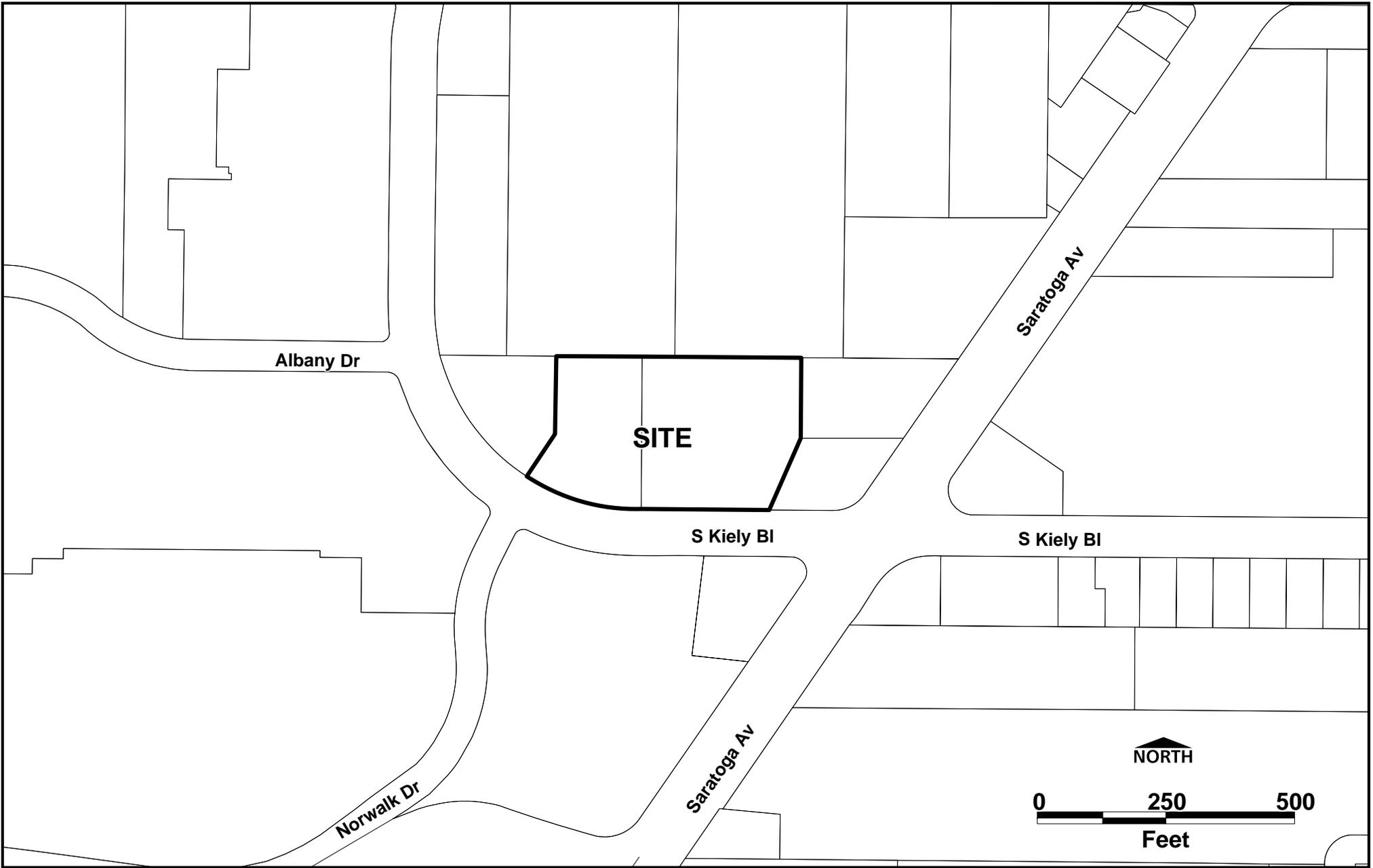
approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.

30. **Fire Flow.** Required fire flow for the site is 2,000 GMP.
31. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
32. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
33. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
34. **Roof Equipment.** All roof equipment shall be screened from view.

APPROVED and issued on this **10th day of March, 2010.**

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Deputy



Prepared by the Department of Planning,
Building and Code Enforcement

09/09/2009

LOCATION MAP

File No. SP09-055

District: 1