

SITE DEVELOPMENT PERMIT

FILE NO.	H09-023
LOCATION OF PROPERTY	1087 Park Avenue
ZONING DISTRICT	CN Commercial Neighborhood
GENERAL PLAN DESIGNATION	General Commercial
PROPOSED USE	Site Development Permit for the construction of a new 1,500 square foot building for commercial uses on a 0.19 gross acre site.
ENVIRONMENTAL STATUS	Exempt
OWNER/ADDRESS	Tina Nguyen 2836 Broken Oak Court San Jose, CA 95148

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. The proposed Site Development Permit is for the construction of a 1,500 square foot commercial building.
2. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The subject site is zoned CN Commercial Neighborhood Zoning District.
4. The subject site is 0.19 gross acres in size.
5. The existing site had been developed with a single-family residence that burned down in 2008.
6. The proposed project would provide seven parking spaces.
7. The proposed dental office use requires five parking spaces.
8. The proposed building is 15 feet from the front property line and 91 feet from the rear property line.
9. The site is surrounded by commercial and single-family uses.

FINDINGS

1. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious, in that:
 - a. The exterior wall and roof materials of the proposed and/or existing structure(s) match or are compatible in terms of color and texture.

- b. The architectural elements of the proposed and/or existing structure(s) are integrated into a harmonious whole.
 - c. The existing structure and proposed addition are comparable in terms of mass, scale and height.
 - d. Sufficient open space separates all structure(s) and uses.
 - e. Sufficient maneuvering room will be provided on site to allow smooth circulation and minimize interference with other uses.
 - f. Parking spaces are conveniently located in relation to the uses they support.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood, in that:
 - a. The proposed project conforms to the City of San Jose's Commercial Design Guidelines.
 3. 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, in that:
 - a. Under the provisions of Section 15301(a) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), which allows for the continuing use of existing facilities, this project is found to be exempt from the environmental review requirements.
 4. Traffic access, pedestrian access and parking are adequate, in that:
 - a. The minor site change displaces a few parking spaces and the amount of parking will still exceed the requirements of the Zoning Ordinance.
 5. The Site Development Permit, as issued, furthers the policies of the General Plan, in that:
 - a. The project is consistent with the site's General Plan Land Use/Transportation Diagram designation of General Commercial.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Sections 20.80.440(B) and 20.100.600 of the San José Municipal Code, the Site Development Permit to allow the construction of 1,500 square foot building.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

This Site Development Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this permit has been recorded with the County Recorder.

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 Site Development Permit shall automatically expire two years from and after the date of approval by the Director of Planning, or by the Planning Commission on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Site Development Permit. The Director of Planning may approve a Permit Adjustment/ Amendment to extend the validity of this Permit in accordance with Title 20 of the San Jose Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** 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 José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Conformance with Plans.** Construction and development shall conform to approved Planned Development plans entitled, "Dr. Nguyen Dental Office", dated March 4, 2010, 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).
5. **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.
6. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
7. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
8. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, 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.
9. **Storm Water Management.** The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of storm water pollutants including sediments associated with construction activities. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public

Works, 200 E. Santa Clara St., San José, California 95113. The Erosion Control Plan may include BMPs as specified in ABAG's *Manual of Standards Erosion & Sediment Control Measures* for reducing impacts on the City's storm drainage system from construction activities. For additional information about the Erosion Control Plan, the NPDES permit requirements or the documents mentioned above, please call the Department of Public Works at (408) 535-8300.

10. **Public Works Clearance for Building Permit:** Prior to the issuance of a Building permit, the applicant will be required to have satisfied the following Public Works conditions.
- 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. *Transportation:* This project is exempt from the Level of Service (LOS) Policy, and no further LOS analysis is required because the project proposes 5,000 square feet of Retail use or less.
 - 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.
 - 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. *Undergrounding:* The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Park Avenue prior to issuance of a Public Works clearance. One hundred percent of the base fee in place at the time of payment will be due. Currently, the 2010 base fee is \$393 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's 20 City Average Cost Index. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
 - f. *Street Improvements:*
 - 1) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - 2) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - 3) Close unused driveway cut(s).
 - 4) Proposed driveway width to be 32' max.
 - 5) 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.
 - g. *Street Trees:*

- 1) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
- 2) Contact the City Arborist at (408) 277-2756 for the designated street tree.
- 3) 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.

11. 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, H09-023, 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).

12. Revocation, Suspension, Modification. This Site Development Permit Amendment may be revoked, suspended or modified by the Director of Planning, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Site Development Permit Amendment was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued this **24th day of March, 2010.**

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

Deputy



File No: H09-023
District: 6

Location



Prepared by the Department of Planning,
Building, and Code Enforcement
12/16/2009