

SPECIAL USE PERMIT

FILE NO.	SP06-088
LOCATION OF PROPERTY	West side of S. Thirteenth Street approximately 100 feet north of E. San Fernando Street (87 S. Thirteenth Street)
ZONING DISTRICT	R-1-8 Single Family Residence
GENERAL PLAN DESIGNATION	Medium Low Density Residential (8 DU/AC)
PROPOSED USE	Special Use Permit to allow a change in a legal non-conforming use (medical office) to a legal non- conforming use of a like nature (general office) on a 0.20 gross acre site
ENVIRONMENTAL STATUS	Exempt
OWNER ADDRESS	Mai Nguyen 87 S. Thirteenth Street San Jose CA 95112

FACTS

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

1. The existing medical office use has been established as legal non-conforming in that it was established prior to the R-1-8 Single Family Residence Zoning District being designated on the site.
2. This Special Use Permit is has been requested to change the legal non-conforming use (medical office) to another nonconforming use a like nature (general office).
3. Under the provisions of Section 15301(d) 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. This site has a designation of MLDR (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
5. The site is listed on the City of San Jose Historic Resources Inventory as an Identified Structure in the Naglee Park Conservation Area.
6. Under the provisions of Section 20.150.070 of the San José Municipal Code, a legal nonconforming use may be changed to another nonconforming use of a like nature upon issuance and compliance with a Special Use Permit.

8. Under the provisions of Section 20.90.060 of the San José Municipal Code, a minimum of one parking space is required per 250 square feet of floor area for medical office and general office uses.

FINDINGS

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

1. The proposed project conforms to the City's General Plan.
2. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.
3. The proposed project is in conformance with the California Environmental Quality Act.

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:
 - 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; in that:
2. The nonconforming use is being changed to a use of like nature; and
3. The change of a conforming use on site is compatible with any existing nonconforming use on site in terms of architecture as well as use, in that:
 - a. The minimum parking requirement for the general office use is the same as the minimum parking requirement for medical office use.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves the late night use of the subject establishment.

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 four years from and after the date of issuance hereof by said Director, if within such time period, the alterations and improvements to the site as approved on the plans, and the use has not commenced, pursuant to and in accordance with the provision of this Special Use Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/ Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of

this Permit.

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 represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of 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 Quality 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.** 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.
5. **Conformance with Plans.** Construction and development shall conform to approved plans entitled, "[REDACTED]," dated **June 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).
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. **Fire Clearance for Issuing Permits.** The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
9. **Adjustment Requirement.** The applicant shall submit and have approved a Permit Adjustment within two years after approval of this permit or said permit shall become null and void. The Permit Adjustment shall include the following items:
 - a. **Windows.** Non-compatible vinyl windows installed without benefit of permits shall be replaced with compatible wood windows in conformance with the Your Old House Design Guidelines; and
 - b. **Landscaping and Parking.** Pavement in excess of 50% of the front yard in violation of City Ordinances shall be removed and replaced with landscaping; and
 - c. **Accessory Structures.** Any and all existing or proposed accessory structures shall conform to Zoning and Building regulations.

10. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only. Contact the City Arborist at (408) 277-2756 for the designated street tree. 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 the park strip. Obtain a DOT street tree planting permit for any proposed street tree plantings.
11. **Hazardous Materials:**
 - a. Prior to the issuance of a building permit, a visual inspection, and possible sampling, will be conducted by a qualified professional, in conformance with state and local laws, to determine the presence of asbestos-containing materials and/or lead-based paint.
 - b. All potentially friable asbestos-containing materials shall be removed in accordance with National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards, contained in Title 8 of the California Code of Regulations (CCR), Section 1529, to protect workers from exposure to asbestos. Materials containing more than 1 percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations.
 - c. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code of Regulations 1532.1, including employees training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings will be disposed of at landfills that meet acceptance criteria for the waste being disposed.
 - d. Any deep excavations that would be created during site development such as the removal of basements, septic tanks, foundations, trees, should be left open for further adequate geotechnical investigation, unless their immediate backfill is necessary.
 - e. The presence of any unusual odor, or suspicious materials during demolition and/or mass grading operations should be reported immediately to the Soil Engineer, the San José Building Division, and the property owner.
 - f. Any paint containers, water sealers, basements, cement pads, appliances, trash, refused lumber, cabinets, transite pipe, abandoned septic tank, paved parking lot, utility boxes, etc. should be carefully removed offsite prior to the demolition and/or grading operations of the subject property. All of the removed items should be disposed according to local, County, and state regulations.
12. **Construction Activities.** The project developer shall implement the following measures during demolition of the existing structures and during all phases of the project to minimize short-term air quality impacts:
 - a. During demolition, dust-proof chutes will be used, whenever possible, for loading construction debris onto trucks.
 - b. During demolition, watering will be used to control dust generation during the demolition of structures and the break-up of pavement materials.
 - c. The project developer shall obtain all necessary local and State Permits.
 - d. All active construction areas shall be watered twice daily or more often if necessary, to prevent visible dust clouds. Increased watering frequency shall be required whenever wind speeds exceed 15 miles per hour.

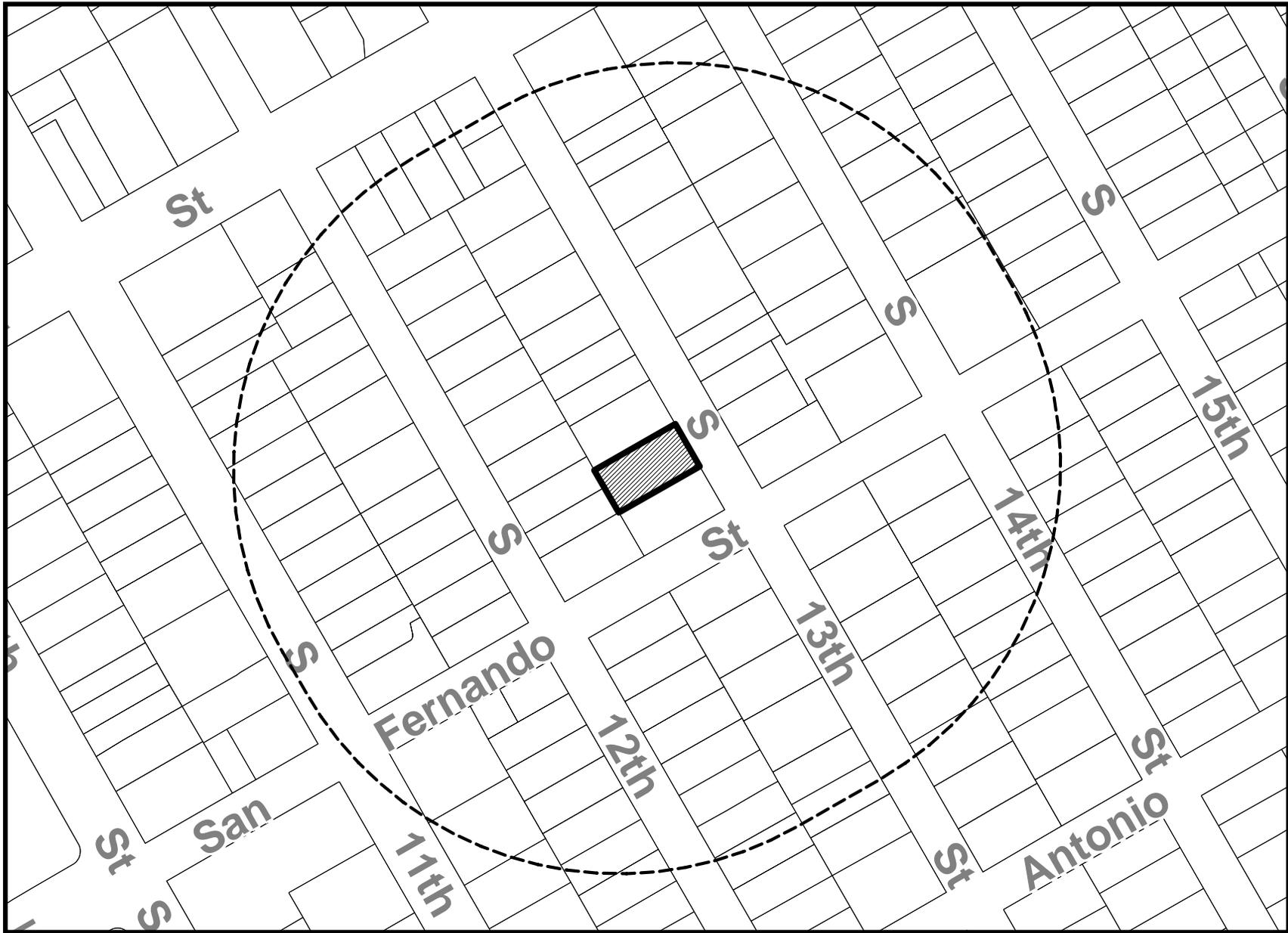
- e. Pave, apply water three times daily or more often as deemed necessary by the Directors of Planning and Public Works, or apply non-toxic soil stabilizers on all unpaved access roads, parking, and staging areas at construction sites, to prevent visible dust clouds.
 - f. Cover stockpiles of debris, soil, sand, and any other materials that can be windblown. All trucks transporting these materials shall be covered.
 - g. Damp sweep daily or more often if determined necessary by either the Director of Planning or Public Works, all paved construction areas, to keep them free from visible dust, dirt, or debris.
 - h. Subsequent to clearing, grading, or excavating, exposed portions of the site shall be watered, landscaped, treated with non-toxic soil stabilizers, or covered as soon as possible.
13. **Recycling.** Project demolition debris shall be properly recycled or disposed of. Details on recycling construction waste are available through the Construction & Demolition Diversion Deposit (CDDD) incentive program. Information available at: <http://www/sjrecycles.org/business/cddd.htm>. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
14. **Noise.** Noise-generating activities at the construction site or in areas adjacent to the construction site associated with the project in any way should be restricted to the hours of 7:00 AM and 7:00 PM, Monday through Friday. No construction activities shall occur on weekends or holidays because the project site is within 500 feet of a residential area.
15. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent 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.
16. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San Jose Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
17. **Tree Removal.** No ordinance sized trees are approved as part of the subject development.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Deputy

Cc: Trac Tran, 87 S. Thirteenth Street, San Jose CA 95112

DRAFT



Scale: 1"= 200'
Noticing Radius: 500 feet

Map Created On:

File No: SP06-088

District: 3

Quad No: 83