

SPECIAL USE PERMIT

FILE NO. SP11-007

LOCATION OF PROPERTY East side of Ruby Avenue, approximately 770 feet northerly of the Murillo Avenue/Tully Road intersection. (2438 Ruby Avenue)

ZONING DISTRICT R-1-2 Single-Family Residence

GENERAL PLAN DESIGNATION Very Low Density Residential (2 DU/AC)

PROPOSED USE Demolition and construction of a 167 square foot pool house and 1,248 square foot workshop at an existing single-family residence on a 2.097 gross acre site.

ENVIRONMENTAL STATUS Exempt

OWNER Binh N. Nguyen, Trustee & Et Al

ADDRESS P.O. Box 9367
Stockton, CA 95208

FACTS

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

1. This site has a designation of Low Density Residential (5 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The subject site is located in the R-1-2 Single-Family Residence Zoning District.
3. The subject site is 2.097 acres in size and is sloped from the east down to the west.
4. The surrounding area is characterized by single-family detached residences to the north, south east, and west.
5. This Special Use Permit is for the demolition and construction of a 167 square foot pool house and 1,248 square foot workshop at an existing single-family residence.
6. Under the provisions of Section 20.30.500 of the San Jose Municipal Code (SJMC), accessory structures over 650 square feet in size may be built only upon issuance of a Special Use Permit.
7. The subject site is developed with one single-family detached residence. The site has two existing accessory structures, (1) a 1,248 square foot workshop, and (2) a 167 square foot pool house, both of which are in disrepair.
8. This project proposes to demolish and rebuild the existing accessory structures.
9. The proposed new pool house is located in the northern half of the property and is 32 feet from the northern property line and 96 feet from the eastern property line. The new workshop is located in the southern half of the property and 64 feet from the southern property line and 21 feet from the eastern property line.

10. The materials for the proposed accessory structure are stucco and tile roofing, which match those of the residence.
11. Under the provisions of Section 15303(e) of CEQA, this project is exempt from the environment review requirements of Title 21 of the San José Municipal Code implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

FINDINGS

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

1. The proposed project is consistent with the San José 2020 General Plan Land Use Transportation Diagram in that the accessory structures do not impact the existing residential density and the existing single-family residential use of the site is consistent with the subject land use designation.
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.

Finally, the Director of Planning concludes and finds, based on the analysis of the above facts and findings, 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; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Part 7 of Chapter 20.100 of the San José Municipal Code, the subject proposal to allow the construction of a new retaining wall, five feet in height at an existing single-family residence.

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

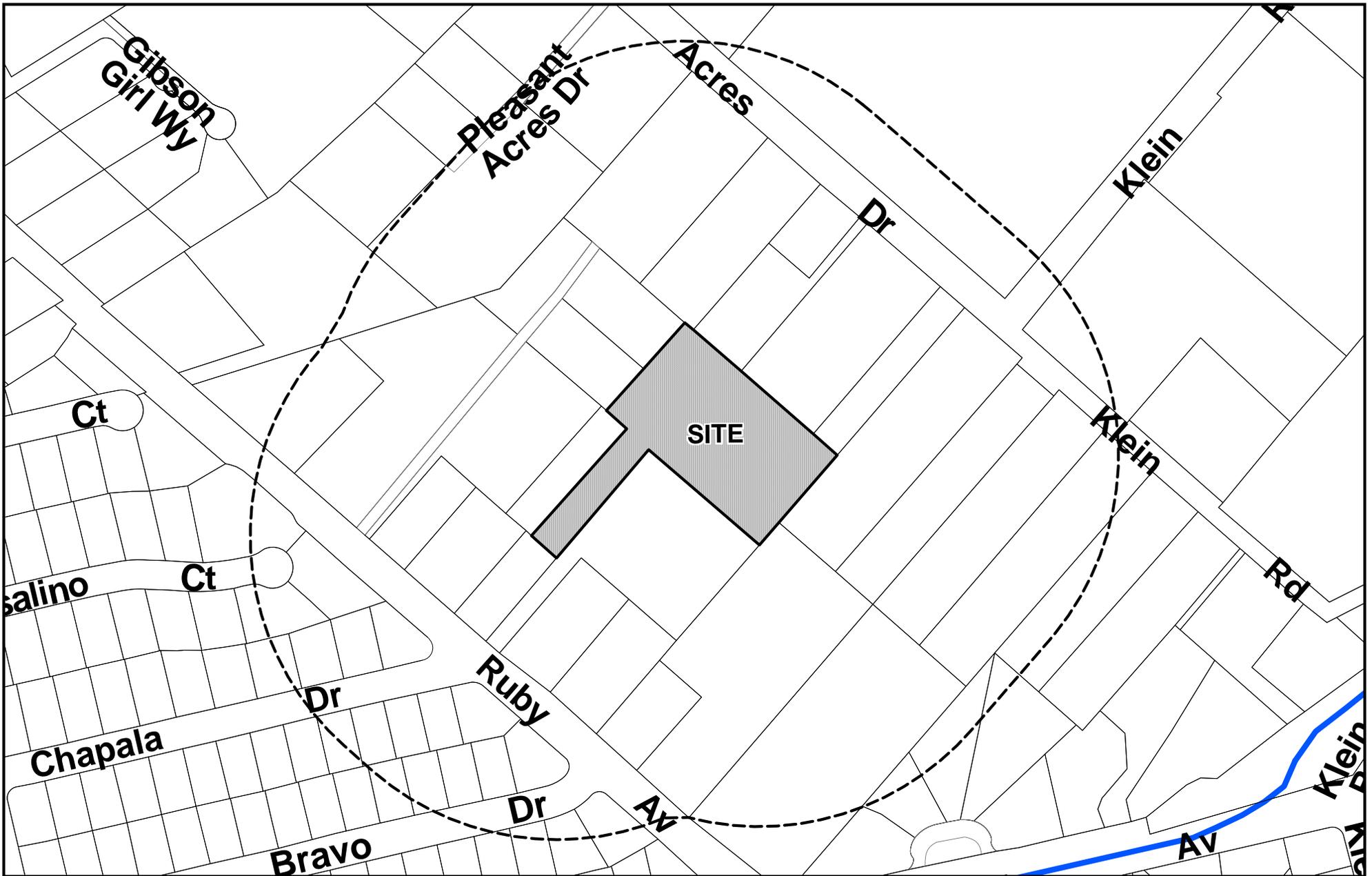
- b. Agreement of the applicant to be bound by, to comply with, and do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such permit.
2. **Permit Expiration.** This Special Use Permit shall automatically expire 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 construction of the retaining wall has not commenced, pursuant to and in accordance with the provisions of this Special Use Permit. 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 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.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
5. **Exterior Alterations.** No exterior alterations to the structure may be implemented unless and until this Special Use Permit is released to the Building Division.
6. **Conformance with Plans.** Construction and development shall conform to approved Site Development plans entitled, "Nguyen Workshop & Pool House, Binh Nguyen and Hong Ngan T. Nguyen, 2438 Ruby Avenue, San Jose, CA 95148," dated January 1, 2011, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
7. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.
8. **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.
9. **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. Interior work not audible at the property line is permitted on Saturday and Sunday between the hours of 9:00 a.m. and 6:00 p.m.
10. **Accessory Structures.** All accessory structures and/or buildings on the site shall conform in every respect to the definitions of accessory structures and accessory buildings found in Sections 20.200.020 and 20.200.030 of the San Jose Municipal Code. Accessory buildings shall be limited to a maximum of two plumbing connections and shall not contain conditioned space, living space, or sleeping quarters.
11. **Building Materials.** All new materials and colors for the proposed accessory structures/buildings are to be as shown in the approved plan set. New materials are to match those of the existing single-family residence.

12. **Geologic Hazard Clearance.** A Geologic Hazard Clearance is required prior to any application for building permits or a grading permit. A geologic/geotechnical report addressing the potential hazard of earthquake induced landsliding and other geologic hazards must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a Geologic Hazard Clearance. The report should be consistent with State guidelines for the preparation of engineering geologic and seismic hazard reports (CGS Note 44 and Special Publication 117A).
13. **Public Works Clearance for Building Permit:** 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. **Grading/Geology:**
- 1) 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.
 - 2) A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit.
 - 3) The Project site is within the State of California Seismic Hazard Zone. A Geologic Hazard Clearance is required.
- b. **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.
- c. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- 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.

APPROVED and issued this 20th day of April, 2011.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Deputy



File No: SP11-007

District: 8

Noticing Radius: 500 Feet



Prepared by the Department of Planning,
Building and Code Enforcement
02/02/2011