

## **SPECIAL USE PERMIT**

<b>FILE NO.</b>	<b>SP08-069</b>
<b>LOCATION OF PROPERTY</b>	<b>Easterly corner of Walnut Street and Seymour Street (648 Walnut Street)</b>
<b>ZONING DISTRICT</b>	<b>LI - Light Industrial</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>No Underlying Designation with Airport Approach Zone overlay</b>
<b>PROPOSED USE</b>	<b>Special Use Permit to legalize the demolition of a 1,150 square foot building removed without the benefit of permits, construction of a wall, and associated fencing on a 0.57 gross acre site</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt</b>
<b>APPLICANT / ADDRESS</b>	<b>Al Shull for Airgas 441 Hobson Street San Jose, CA 95110</b>

### **FACTS**

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

1. The subject site has no Underlying Designation with the Airport Approach Zone overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The subject site is located in the LI – Light Industrial Zoning District.
3. This Special Use Permit is to legalize the demolition of a 1,150 square foot building removed without the benefit of permits, construction of a 6 foot 8 inch CMU wall, and associated fencing at the perimeter of the property on a 0.57 gross acre site.
4. 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.
5. The proposed demolition will meet all of the development regulations set forth in the Zoning Code.
6. The subject site is used by a gas, welding and safety supply company for storage of tanks and other equipment.
7. 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.
8. The surrounding area is characterized by commercial/industrial uses to the south and west, with parkland to the north and east.

## FINDINGS

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

1. The interrelationship between the orientation, location and mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious in that:
  - a. The architectural elements of the proposed and/or existing structure(s) are integrated into a harmonious whole.
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.
3. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water run off, and odor which, even if insignificant for the purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
  - a. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is 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. The project will not have a significant adverse effect on the environment.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
5. Traffic access, pedestrian access and parking are adequate.
6. The permit, as issued, furthers the policies of the General Plan in that:
  - a. The project conforms to the General Plan Land Use/Transportation Diagram designation of no Underlying Designation with the Airport Approach Zone overlay in that it will facilitate an existing industrial use.
  - b. The project consists of an infill development that conforms to the General Plan and that furthers the General Plan's Growth Management Major Strategies.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning finds 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 said use with the uses in the surrounding areas; 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 quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

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 as the demolition has already occurred;
2. The failure to approve the permit would jeopardize public health, safety or welfare;
3. The approval of the permit would facilitate an industrial project which is compatible with the surrounding industrial neighborhood;
4. The approval of this permit would not change the supply of existing housing stock in the City of San Jose;
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 building has already been demolished.
7. The demolition of the building without an approved replacement building will not have an adverse impact on the surrounding neighborhood.

In accordance with the findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. The Director of Planning expressly declares that the Director would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**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 Site Development Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, relocation/construction of the perimeter fence 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. **Plan Revisions.** Prior to issuance of a Building Permit, the applicant shall secure an approved Permit Adjustment to the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. All adjusted items shall be implemented. Failure to secure said Permit Adjustment with the following revisions shall render this permit null and void.
  - a. Plans shall be updated to show either landscaping or perimeter fencing for the portion of property located at the corner of Walnut and Seymour Streets
6. **Conformance with Plans.** Construction and development shall conform to approved plans entitled, "Site Plan For: Airgas, 441 Hobson Street, A.P.N. 259-012-109," dated July 3, 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).
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. **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 or state laws. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
10. **Hazardous Materials Storage.** This permit does not include any approval of facilities or areas on, within, or under the site to be used for the storage of hazardous, toxic, flammable, or combustible materials, and such facilities or areas are subject to review under a separate Development Permit.

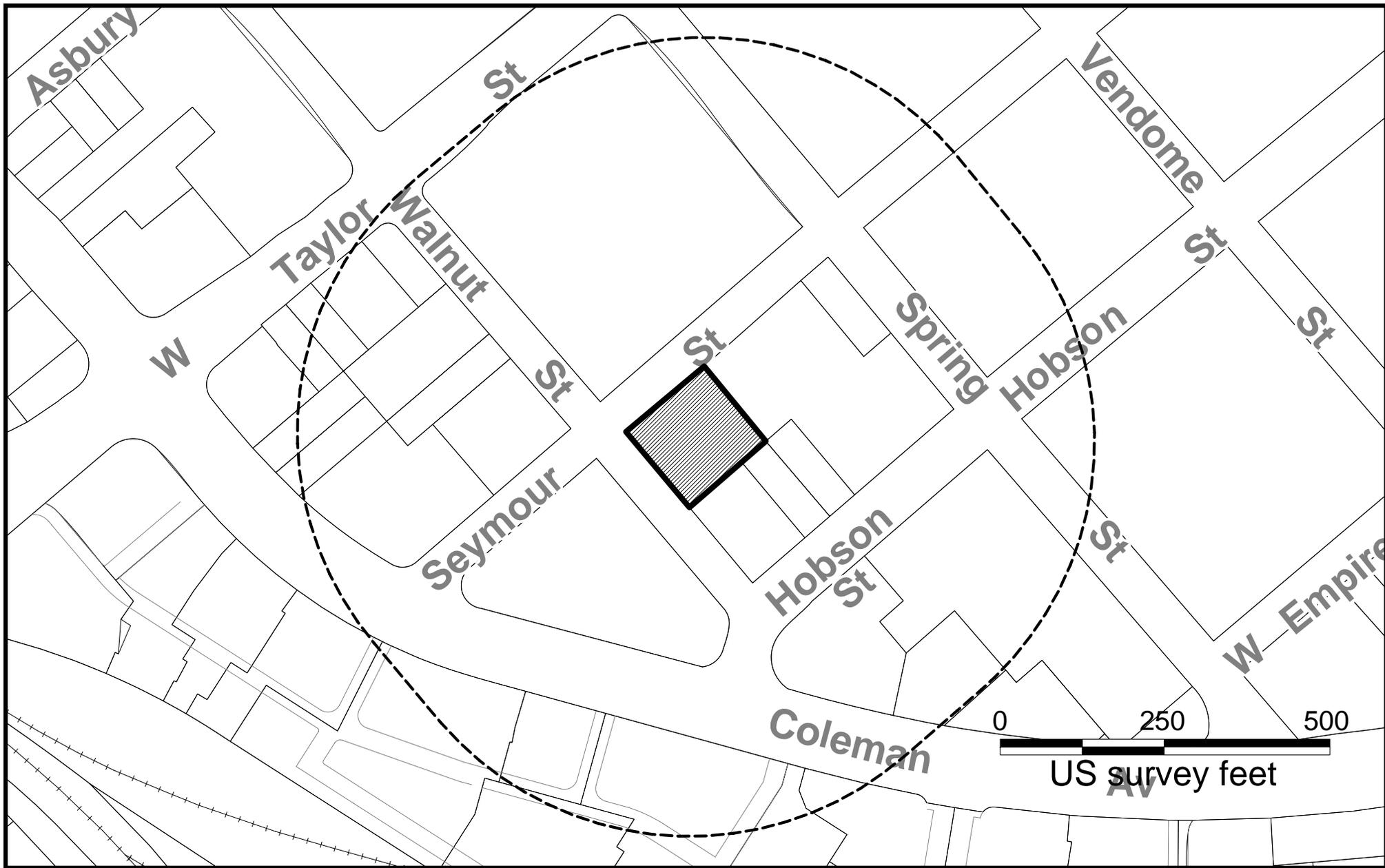
11. **Outside Storage.** All outdoor storage shall be behind a solid perimeter fence and shall not be visible from the public right-of-way.
12. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
13. **Release of Permit.** No demolition of the structure may be implemented unless and until this Special Use Permit is released to the Building Division.
14. **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.
15. **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.
16. **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.
17. **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. No outdoor storage is allowed/permitted. Trash areas shall be maintained in a manner to discourage illegal dumping.
18. **Removing Graffiti.** The Provider shall promptly remove all graffiti on any structure within 48 hours. In the event the Provider fails to remove all graffiti from the structure within two business days following receipt of notification from the City, the City shall have the right to remove any graffiti and the Provider shall reimburse the City for all costs incurred for the removal within 30 days of receipt of a bill for the work done.
19. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
20. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
21. **Perimeter Fencing.** All fencing shall be maintained in a vertical, solid manner.
22. **Lighting.** No additional lighting is approved at this time. All proposed lighting shall be subject to approval by the Director of Planning. All lighting on the site shall conform to the City's Outdoor Lighting Policy 4-3.

**APPROVED** and issued on this **8th day of July, 2011.**

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

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Deputy



11/24/2008

Noticing Radius: 500 feet

**File No: SP08-069**

**District: 3**

**Quad No: 67**