

SPECIAL USE PERMIT

FILE NO. SP12-028

LOCATION OF PROPERTY Located on the east side of Lookout Bend, approximately 590 feet southerly of Leyland Park Drive (6728 Lookout Bend)

ZONING DISTRICT R-1-8 Single-Family Residence

GENERAL PLAN DESIGNATION Residential Neighborhood

PROPOSED USE Special Use Permit to allow two retaining walls greater than two feet in height on a 0.83 gross acre site.

ENVIRONMENTAL STATUS Exempt

OWNER Earle Schweizer

ADDRESS 6728 Lookout Bend
San José, CA 95120

FACTS

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

1. This site has a designation of Residential Neighborhood in the adopted San José 2040 General Plan.
2. The subject site is located in the R-1-8 Single-Family Residence Zoning District.
3. The subject site is developed with one single-family detached residence.
4. This Special Use Permit is for the construction of a two new retaining walls to create a 25 foot wide lawn area. Both walls are proposed at 5 feet in height. The project area is proposed approximately 90 feet from the rear (eastern) property line and approximately 5 feet from the side (southern) property line.
5. The subject site is approximately 0.83 acres in size and is slopes downward from the house to the rear property line.
6. Under the provisions of Section 20.30.500 of the San José Municipal Code (SJMC), retaining walls over two feet in height may be built only after obtaining a Special Use Permit.
7. The proposed retaining walls are 5 feet in height and will retain a cut slope.
8. The retaining walls will create a small flat rear yard adjacent to the house.
9. The retaining walls will be constructed of color impregnated concrete with color to match adjacent dirt. It will also be covered with vines.
10. A building permit is required for the proposed retaining wall.

11. A Geologic Hazard Clearance and grading permit is required from the Department of Public Works prior to approval of a building permit.
12. The surrounding area is characterized by single-family detached residences to the north, south, and west. A golf course is located to the east of the subject property.
13. 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 2040 General Plan in that the retaining wall does 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 conforms to the Residential Design Guidelines.
4. 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 as e 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 two new retaining walls, each five (5) feet in height on an existing single-family residential lot.

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 walls 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.
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. **Conformance with Plans.** Construction and development shall conform to the approved Special Use Permit plans entitled, "Schweizer Residence Backyard Remodel, 6728 Lookout Bend, San José, CA" stamped "Received" on November 2, 2012, 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).
5. **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.
6. **Exterior Alterations.** No exterior alterations to the structure may be implemented unless and until this Special Use Permit is released to the Building Division.
7. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department and is subject to the following requirements to the satisfaction of the Director of Public Works:
 - a. *Geologic Hazard Clearance and Grading Permit.* A Geologic Hazard Clearance and a grading permit are required prior to the issuance of Public Works Clearance. An erosion control plan may be required with the grading application.

8. **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.
9. **Construction Hours.** Construction shall be limited to the hours of 7:00am to 7:00pm Monday through Friday for any onsite or offsite 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 9:00am and 6:00pm.
10. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.

APPROVED and issued this **30th** day of **November 2011**.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Deputy