

SPECIAL USE PERMIT

FILE NO.	SP11-030
LOCATION OF PROPERTY	1906 Dry Creek Road
ZONING DISTRICT	R-1-8 Single-Family Residence
GENERAL PLAN DESIGNATION	Rural Residential
PROPOSED USE	Special Use Permit to legalize an existing 439 square foot accessory structure (detached garage) on a 0.55 gross acre site
ENVIRONMENTAL STATUS	Exempt
OWNER/ADDRESS	Angelo Grestoni 1906 Dry Creed Rd. San José, CA 95124

FACTS

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

1. This site has a designation of Rural Residential on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The subject site is 0.55 acres in size.
3. The subject site is a single-family residence.
4. The surrounding area is characterized by single-family residences.
5. This Special Use Permit is for the legalization of an existing 439 square foot accessory structure for use as a garage in the R-1-8 Single-Family Residence Zoning District.
6. An existing wood shed adjacent to the accessory structure is approximately 18.33 square foot and does not need a permit because it falls below the 120 square foot threshold as stated under provisions of Section 24.02.120 of the San Jose Municipal Code (SJMC).
7. The existing wood shed structure exists outside the rear yard area.
8. In addition to the subject structure, another permitted 430 square foot accessory unit already exists on the property.
9. Under the provisions of Section 20.30.500 of the San Jose Municipal Code (SJMC), the total aggregate square footage of all accessory structure(s) on any property in any R-1 Residence Zoning Districts shall not exceed six hundred fifty (650) square feet unless the owner has obtained a Special Use Permit.
10. The total combined total of the accessory units are 869 square feet and thus prompting the need to obtain a Special Use Permit.

11. Under the provision of Section 20.30.510 of the San Jose Municipal Code (SJMC), the cumulative total of the rear yard covered by any part of accessory buildings and accessory structures, built in the rear yard shall not exceed forty percent, of which accessory buildings can not exceed thirty percent.
12. The total rear yard size is approximately 3,909.9 square feet and the total combined accessory structure that is in the rear yard is approximately 858 square feet make up approximately 22% of the rear yard. 11 square feet of the subject's detach garage is not in the rear yard portion of the property and thus not calculated into the total percentage.
13. The subject accessory structure was built within the drip line of an existing 20 inch in diameter Oak tree.
14. The existing Oak tree is proposed to be preserved.
15. Applicant provided plan sets that included a tree protection plan.
16. Applicant's construction company confirmed through email that the tree protection plan was implemented during the construction process.
17. Under the provisions of Section 13.32.140 of the San Jose Municipal Code (SJMC), for the purpose of safeguarding trees during construction, conditions in this code shall apply to all such trees except for trees with a tree removal permit.
18. The accessory structure is a detached two-car garage size approximately 16 by 21 ft, with additional 17-feet, 5-inches storage shed.
19. The accessory structure has a separation of 7-feet, 6-inches from the existing residence.
20. The accessory structure is 14'-8" in height.
21. The height halfway up the slope of the pitched roof is 11 feet, 6-inches.
22. The materials for the accessory structure match those of the existing residence on the site.
23. 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 Envision San José 2040 General Plan Land Use Transportation Diagram designation of Residential Neighborhood in that the detached garage helps preserve the character of existing residential neighborhood.
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, with respect to the Special Use Permit findings (Section 20.100.820), the Director concludes and finds, based on the analysis of the above facts, that:

1. The 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 the proposed materials are compatible with the existing residence and the heights, setbacks, and visibility of the proposed structures are sufficient to minimize impacts to nearby properties; 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 Title 20, 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 of 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.

Finally, 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 900-square-foot accessory building at an exiting 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, a Building Permit has not been obtained.

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. **Conformance with Plans.** Construction and development shall conform to approved Site Development plans entitled, " Grestoni Residence, 1906 Dry Creed Rd., San José, CA" dated January 9, 2013, 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).
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. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of discovery of human remains during construction, there shall be no further excavation or disturbance of the site or nearby area reasonably suspected to overlie adjacent remains. Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reach as to the disposition of the remains pursuant to the State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
9. **Fire Department.** The applicant shall comply with Fire Department requirements at the Building Permit stage.
10. **Accessory Structure/Building Criteria.** 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 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. **Recycling.** Project demolition debris shall be properly recycled or disposed. Details on recycling construction waste are available through the Construction & Demolition Diversion Deposit (CDDD) incentive program at: <http://www/sjrecycles.org/business/cddd.htm>. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
13. **Tree Planting:** As the existing structure is close to an existing Oak tree which may not survive as would be the case without the subject structure, the applicant shall plant two at a minimum 24-inch box native Oak Tree on the property.

APPROVED and issued this 2nd day of February 2013.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Deputy

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