

SITE DEVELOPMENT PERMIT

FILE NO. H12-014

LOCATION OF PROPERTY Southwest corner of Saratoga Avenue and Kiely Boulevard (403 Saratoga Ave)

ZONING DISTRICT CN Commercial Neighborhood Zoning District

GENERAL PLAN DESIGNATION Neighborhood/Community Commercial

PROPOSED USE Site Development Permit to demolish existing automotive body, paint and interior repair building (Jiffy Lube) and construction of a 7,772 square foot retail structure on a 0.69 acre site.

ENVIRONMENTAL STATUS CEQA Exempt per Section 15332 (Infill Development)

OWNER/ADDRESS Michael A Lopina Trustee et al
360 Kiely Boulevard Suite. 220
San Jose, CA 95129

CONTACT PERSON/ADDRESS Don Imwalle
Imwalle Properties
115 S. Market Street Suite 190
San Jose, CA 95113

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Neighborhood/Community Commercial on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The site is zoned CN Commercial Neighborhood Zoning District as a result of a conventional rezoning change from a previous zoning designation of CG Commercial General Zoning District, which went to council on the 27th of November of 2012.
3. The subject site is approximately 0.69 gross acres.
4. The Site Development Permit will allow the demolition of the existing oil change facility and the rebuild of 7,772 square feet of retail.
5. The subject site is located at a major intersection of Saratoga Avenue and Kiely Boulevard and is currently occupied by a one story oil change facility, which was built in 1990.
6. The subject site is located adjacent to the Lion Food Center and across from a wide variety of related retail, commercial and auto related land uses.
7. The subject site is comprised of one parcel 296-40-007 with frontages on Saratoga Avenue and Kiely Boulevard.

8. The subject site has a total number of 42 parking spaces. Seventeen (17) spaces along the rows along the west property line with additional nine (9) parking space provided on the western portion of the proposed building. Nine (9) compact parking spaces are provided on the south property line adjacent to the Lion Food Center property with an additional seven (7) compact spaces across along the southern portion of the proposed building. Two (2) handicapped parking spaces are provided near the main entrances to the proposed building.
9. The subject site is presently accessed by vehicular traffic on driveways located on the northern portion of the subject site at Kiely Boulevard and on the southern portion of the property at Saratoga Avenue. The site plan indicates plans to continue using the existing driveways.
10. The applicant has not been successful in negotiating the continued use of a shared access easement and does not have legal access into the property at this time. The applicant has provided an alternate site plan showing cross access with the Lion Food Center property.
11. This proposed development is subject to the City of San Jose Commercial Design Guidelines.
12. The City of San Jose has requested an irrevocable offer for a cross access easement access so that parking areas between the subject site and the Lion Food Center property can be linked in the future.
13. There are no trees proposed to be removed as a part of this project.

FINDINGS

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

1. The interrelationship between the orientation, location and elevations of the proposed retail building are mutually compatible and aesthetically harmonious in that:
 - a. Sufficient space will be provided on site to allow for smooth circulation and minimal interference with other uses.
 - b. Parking spaces are conveniently located in relation to the uses they support.
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.
 - a. The use of the site will not interfere with the use of adjacent properties since sufficient buffering between uses will be provided.
 - b. The privacy of adjacent sites will be protected by adequate screening and the proposed project does not impact the neighbors.
3. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain the appearance of the neighborhood.
4. Traffic access, pedestrian access and parking are adequate in that:
 - a. The number, size and access of parking spaces comply with the requirements of the Zoning Ordinance.
 - b. Sufficient driveway curb cuts will be provided on site to provide access to the site without interfering with off-site circulation.

- c. The applicant has made an irrevocable offer to facilitate a cross access easement with the adjoining Lion Food Center property with no success.
 - d. Should cross access be facilitated in the future, access will be created with the removal of four (4) compact spaces on the project site on the south western portion of the property line adjacent to the proposed garbage enclosure. This could help access between both properties and prevent unnecessary travel into public streets for the purposes of accessing the adjacent property and therefore improve traffic and pedestrian safety.
5. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that:
- a. There is no substantial evidence that the project on the subject site will have a significant impact on the environment. Under the provisions of Section 15332 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.
6. This Site Development Permit, as issued, is consistent with the General Plan as the project conforms to the General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial allows for a wide variety of commercial activities. They include commercial uses that are neighborhood serving in scale and scope, such as retail, miscellaneous commercial services and commercial/professional office development.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. *Acceptance of Permit.* Per Section 20.100.290(B) of the San José Municipal Code, 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 (4) years from and after the date of issuance hereof by said Director, if within such four-year period, the proposed construction of building has not commenced, pursuant to and in accordance with the provisions of this Site Development 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 to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code.
3. *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.
4. *Conformance to Plans.* The development of the site shall conform to approved Site Development plans entitled “Saratoga & Kiely Retail” dated December 17, 2012, 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), with the exception of any subsequently approved changes.

5. *Revocation.* This Site Development Permit is subject to revocation for violation of any of its provisions or conditions.
6. *Discretionary Review.* The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Site Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San José Municipal Code.
7. *Cross Access Easement.* The owner/developer of the subject property shall agree to provide an irrevocable offer for an easement that allows cross access on its property for ingress and egress to the adjoining property to the south located at 471 Saratoga Avenue to the satisfaction of the Director of Planning Department. This easement shall be executed upon the approval of any development permit by the City on the adjoining properties (471 Saratoga Avenue). Should the cross access easement(s) be provided in the future parking spaces shall either be reconfigured or eliminated as determined by the Director of Planning.
8. *Construction Impact Mitigation Measures.* The applicant is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.
 - a. *Compliance.* The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
 - b. *Construction Hours.* Construction hours shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes demolition and grading activities, the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m. Construction personnel shall not arrive to the site before or remain on the site after the designated times.
 - c. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
 - d. *Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the construction start time to prevent the disruption of nearby residents.

- e. *Dust Control.* On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
9. *Public Works Clearance for Building Permits.* Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions.
- a. *Minor Improvement Permit:* The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 - b. *Grading/Geology:*
 - i. A grading permit may be required prior to 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.
 - ii. Install curb cuts near Kiely Boulevard driveway. Exact locations will be determined in the grading plan review stage.
 - iii. All on-site storm drainage conveyance facilities and earth retaining structures shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2010 California Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.
 - 1) The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - 2) Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - c. *Transportation:* An in-house traffic distribution has been performed for this project based on 28 PM peak hour trips (highest peak hour scenario). We conclude that the subject property will be in conformance with the City of San Jose Transportation level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
 - d. *Street Improvements:*
 - i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - ii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - e. *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.

f. *Electrical:*

- i. Existing electroliers along project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- iii. Provide clearance for electrical equipment from driveways, and relocated driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas.

g. *Street Trees:*

- i. The locations of street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
- ii. Contact the City Arborist at (408) 794-1901 for the designated street tree.
- iii. Install street trees within the 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 cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings.
- iv. Replace any missing street trees in empty tree wells along Kiely Boulevard and Saratoga Avenue and match existing trees per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Obtain a DOT street tree planting permit for any proposed street tree plantings.

10. *Building Department Requirements.* Prior to the issuance of a Building Permit as needed, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit File Number, H12-014, shall be printed on all construction plans submitted to the Building Division.
11. *Fire Clearance for Issuing Permits.* Compliance with all applicable fire and building codes shall be verified by the Fire Department during the Building Permit process.
12. *Landscaping.* Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. 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.
13. *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 José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
14. *Certification.* Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

15. *Building and Property Maintenance.* The owner shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
16. *Outside Storage.* No outside storage is permitted for this project.
17. *Anti-Litter.* The site and surrounding area shall be maintained free of litter, refuse, and debris.
18. *Anti-Graffiti.* The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
19. *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. Trash areas shall be maintained in a manner to discourage illegal dumping.

APPROVED and issued on this **8th** day of February, 2013.

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

Deputy