

SPECIAL USE PERMIT

FILE NO. SP12-039

LOCATION OF PROPERTY On the north side of Hester Avenue, approximately 50 feet northeast of Park Avenue (1387 Hester Avenue).

ZONING DISTRICT CP Commercial Pederstrian

GENERAL PLAN DESIGNATION General Commercial

PROPOSED USE Replace a 268 square foot addition at the rear of the house with a 788 square foot living addition, and legalize a 960 square foot accessory structure located at the rear of the property.

ENVIRONMENTAL STATUS Exempt

OWNER Barry Henson
1387 Hester Ave
San Jose, CA 95126

FACTS

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

1. The subject site has a designation of General Commercial in the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The subject site is located in the CP Commercial Pedestrian Zoning District.
3. The subject site is located within the Hanchett-Hester Park Conservation Area.
4. The subject site is 7,136 square feet in size, and is developed with an existing 1,220 square feet residence and a 960 square foot detached accessory structure in the rear yard.
5. A 268 square foot addition was constructed at the rear of the dwelling without benefit of building permits. The applicant proposes to demolish this addition and replace it with 788 square foot addition.
6. The 960 square foot detached garage at the rear of the property was issued a building permit in 1958 and constructed, but the building never received a final inspection.

7. Any legal nonconforming use may be expanded only upon issuance of, and in compliance with, a special use permit. Expansion includes, but is not limited to, the intensification of a use with or without an increase in floor area.
8. Where property in a nonresidential district contains a legal nonconforming residence, such use shall continue to maintain the minimal side and front set backs as if it were located in an R-1-8 residence district and shall in addition comply with all other applicable regulations and development standards for lots with a one-family dwelling.
9. The maximum square footage of a detached accessory structure is 650 square feet. The maximum square footage may be increased pursuant to a special use permit.
10. The area surrounding the subject site is characterized by restaurant/retail and single-family residences.
11. No increase in the number of residential units is proposed on this subject property.
12. The proposed 778 square foot addition to the rear of the existing dwelling will provide a 60-foot rear setback and a 5-foot and 1-inch side setback.
13. The existing detached garage was constructed with a 4-foot and 9-inch rear setback, and a 4-foot, 10-inch southern side setback, and a 5-foot northern side setback.
14. The existing, detached garage provides 2 onsite, covered parking spaces.
15. The existing detached garage is surrounded by dense trees and shrubs.
16. The architectural style, materials and details of the proposed addition are the same as the existing residence.

FINDINGS

Based on the analysis of the above facts, with respect to the expansion or enlargement of a legal nonconforming use pursuant to Zoning Ordinance Section 20.150.110, the Director of Planning finds that:

1. The proposed use may be expanded with a Special Use Permit.
2. The proposed building addition and detached accessory structure conforms to the development standards of the R-1-8 Zoning District, including height and setback restrictions.
3. The proposed addition does not allow for the expansion of a legal nonconforming uses in that the use will remain a single-family residence, and no additional units are being added to the site.
4. The proposed use does not significantly increase any identified impacts such as traffic, on-street parking or noise.
5. Under the provisions of Section 15301(e)(1) 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.

Finally, with respect to the required findings for a Special Use Permit, 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 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 the San José Municipal Code, the subject proposal to allow the expansion of the existing legal nonconforming single-family residence, with a 778 square foot addition to the rear of the structure, and the legalization of a detached 960 square foot accessory structure.

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 four 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 four-year period, the proposed construction of the addition 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. **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. A Demolition Permit shall be required.
4. **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.
5. **Conformance with Plans.** Construction and development shall conform to approved Site Development plans entitled, "Mr. & Mrs. Henson Residence 1387 Hester Ave, San Jose, CA," dated August 10, 2012, on file with the Department of Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
6. **Detached Accessory Building.** The detached accessory structure located at the rear of the property shall not contain living space, sleeping quarters, or storage space for commercial vehicles requiring additional registration fees as provided for in the state vehicle code. An "accessory building" shall be limited to two plumbing fixtures, such as sinks, bathtubs/showers, or toilets, and limited to unconditioned space as defined in Title 24 of the San Jose Municipal Code.
7. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.
8. **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 Special Use Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San José Municipal Code.
9. **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.
10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit/Demolition Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. **Construction Plans.** This permit file number, SP12-039, shall be printed on all plans submitted to the Building Division.
 - b. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
 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. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
 13. **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.
 14. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved Permit Adjustment plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced.
 15. **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.
 16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

17. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
18. **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 the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The 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 reached as to the disposition of the remains pursuant to this 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.

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

JOSEPH HORWEDEL, DIRECTOR

Planning, Building and Code Enforcement

Deputy