

## SPECIAL USE PERMIT

<b>FILE NO.</b>	<b>SP13-003</b>
<b>LOCATION OF PROPERTY</b>	<b>East side of South First Street, approximately 200 feet northerly of San Salvador Street (374 South First Street)</b>
<b>ZONING DISTRICT</b>	<b>DC Downtown Primary Commercial</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Downtown</b>
<b>PROPOSED USE</b>	<b>A Special Use Permit to reinstate legal non-conforming status for an existing bar on a 0.1 gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt</b>
<b>OWNER/ADDRESS</b>	<b>MJ Turco Trust P O Box 2437 San Jose CA 95109</b>

### FACTS

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

1. This subject site has a designation of Downtown on the adopted San José 2040 General Plan Land Use/Transportation Diagram.
2. The project site is located in the DC Downtown Primary Commercial Zoning District.
3. The subject site is 0.10 gross acres in size.
4. A mix of retail, public eating, drinking and entertainment uses within the South First Area District surrounds the property.
5. The subject property is located in a multi-tenant two-story building on the east side of South First Street; and within an existing tenant space of approximately 5,570 square foot that includes first and mezzanine floors.
6. Uses surrounding the site include entertainment uses to the north, restaurant and bar uses to the south and west across South First Street; and parking lot uses to the east.
7. Under the provisions of Section 20.30.500 of the San Jose Municipal Code, a Special Use Permit shall be required for reinstatement of a legal non-conforming use if no more than eighteen (18) months has elapsed between the date the legal nonconforming use was first discontinued or abandoned and the date the application for the Special Use Permit was filed and found complete.

8. No physical expansion, exterior and interior alterations are proposed.
9. The subject site accommodates an eating and drinking establishment (Café Stritch) with hours of operation from 8:00 a.m. to 12:00 midnight.
10. The previous tenant on the subject site, Eulipia, an eating and drinking establishment, ceased operation in March 2012 after approximately 35 years of operation.
11. This Special Use Permit shall reinstate the legal nonconforming use to allow operation of a drinking establishment in conjunction with an eating establishment (Café Stritch) at the subject site within eighteen (18) months after the termination of the previous restaurant use (Eulipia).
12. The Zoning Ordinance does not require parking for a public eating or drinking establishment in the Downtown Primary Commercial District.
13. 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.

## **FINDINGS**

Based on the analysis of the above facts, with respect to the reinstatement of the legal non-conforming use pursuant to Zoning Ordinance Section 20.150.110 (A.1), the Director of Planning finds that:

1. No more than eighteen (18) months has elapsed between the date the legal nonconforming use was first discontinued or abandoned and the date the application for the Special Use Permit was filed and found complete.
2. The conversion to a conforming use would create undue hardship under the particular circumstances presented.

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 non-conforming duplex unit with a five hundred (500) square foot addition to the rear of the 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 use 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 to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Use Cessation.** If the use authorized under this permit once commenced within the timeframe of Condition #2 above, and then subsequently discontinued or abandoned for 12 or more months, thereafter, this Special Use Permit is expired and will no longer be in effect per Section 20.10.830(B).
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.** Any development shall conform to approved plans entitled, "374 South First Street, San Jose, California," dated January 10, 2013, on file with the Department of Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, and Chapter 17.04).

6. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.
7. **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.
8. **Building Permit.** The applicant shall comply with Building Department requirements for interior or exterior alterations to the structure, as may be needed. No alterations to the structure may be implemented unless and until this Special Use Permit is released to the Building Division.
9. **Fire Safety.** Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department.
10. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.
11. **Lighting.** On-site, exterior lighting, shall be as shown on the approved plans and shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
12. **Outside Storage.** Unless specifically identified on an approved site plan, no outside storage is permitted for the project.
13. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
14. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
15. **Building and Property Maintenance.** The permittee 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. **Refuse.** All trash areas shall be shall be maintained in a manner to discourage illegal dumping.
17. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning through a Sign Permit Adjustment.
18. **Hours of Operation.** All uses shall be limited to operation hours between 6:00 a.m. to 12:00 midnight unless other hours of operation are approved by the Director of Planning through the Conditional Use Permit process.

19. **Noise.** The sound level generated on this site shall not exceed 55 dba DNL at any property line adjacent to a property used for residential purposes and shall not exceed 60 dba DNL at any adjacent property line of property used for commercial purposes.
20. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. This use shall not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.

**APPROVED** and issued on this 15<sup>th</sup> day of February, 2012.

Joseph Horwedel, Director  
Planning, Building, and Code  
Enforcement

Deputy

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