

## PLANNED DEVELOPMENT PERMIT

<b>FILE NO.</b>	<b>PD12-052</b>
<b>LOCATION OF PROPERTY</b>	<b>Northwest corner of The Alameda and Shasta Avenue (1423 The Alameda).</b>
<b>ZONING DISTRICT</b>	<b>A(PD) Planned Development</b>
<b>ZONING FILE NUMBER</b>	<b>PDC85-08-081</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Neighborhood/Community Commercial</b>
<b>PROPOSED USE</b>	<b>A Planned Development Permit to allow a rear outdoor patio renovation for an existing restaurant (Tee Nee Thai) with minor parking lot improvements on a 0.43 gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt</b>
<b>OWNER/ADDRESS</b>	<b>Albert Pignataro 2079 Polk Avenue San Mateo CA 94403</b>

### FACTS

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

1. The subject site has a designation of Neighborhood/Community Commercial on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The subject site is located in the A (PD) Planned Development Zoning District. The Planned Development Zoning (File No. PDC85-08-081) was reviewed by the City Council and approved with Ordinance No. 22127.
3. Under the provisions of Section 20.100.910 of the San Jose Municipal Code, no building or structure shall be erected, constructed, enlarged, placed or installed or moved onto any site nor shall there be any exterior alteration of any structure which is in a planned development district, and no Building Permit or installation permit shall be issued for such work, except pursuant to and in accordance with a Planned Development Permit.
4. This Planned Development Permit will allow a rear outdoor patio renovation for an existing restaurant (Tee Nee Thai) with minor parking lot improvements.
5. The subject site is 0.43 gross acres in size and is developed with multi-tenant retail commercial uses and associated parking lot.

6. The area surrounding the site is bounded Hester Avenue to the north, The Alameda to the east, Shasta Avenue to the south and single family residential uses to the west. Commercial retail and church uses along Shasta Avenue are primarily located across the site on these three streets.
7. The primary ingress and egress to the project site is from Shasta Avenue.
8. The subject site is rectangular in shape and developed with an existing two story structure along The Alameda. The shared parking lot to the rear of this structure abuts residential uses on the west.
9. The existing structure includes mostly commercial and office uses (restaurants, jewelry store, salon uses, law offices and one residential unit) with an associated surface parking lot.
10. The subject tenant space is located at the north corner of the subject property among other commercial tenant spaces with a residential unit located directly above the subject tenant space.
11. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, File No. PDC85-08-081.
12. The project site is located within 150 feet of residentially zoned properties. The west building facade is located approximately 90 feet and the new outdoor seating area is located approximately from the closest residential property line.
13. The proposed renovation for the outdoor patio area includes new canopy structure, table seating, concrete flooring, wrought iron peripheral fence, outdoor lighting and landscaping.
14. A total number of 40 seats are provided at the existing outdoor patio.
15. The current hours of operation are from 11:00 a.m. to 10:00 p.m. from Monday through Thursday; 11:00 a.m. to 11:00 p.m. on Friday; 9:00 a.m. to 11:00 p.m. on Saturday and 9:00 a.m. to 11:00 p.m. on Saturday.
16. A total number of 22 parking spaces are provided on the subject site.
17. The use of the proposed outdoor patio is until 10:00 p.m.
18. A community meeting was conducted on January 24, 2013 attended by approximately 30 neighbors who supported the renovation of the outdoor patio and parking lot improvements. The neighbors did not express any concerns related to noise or nuisance caused by the subject establishment.
19. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), 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.

## FINDINGS

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

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:
  - a. The rezoning under File No. PDC85-08-081 was found consistent with the site's Envision San Jose 2040 General Plan Land Use/Transportation Diagram land use designation of Neighborhood/Community Commercial in that the development on the site will be integrated with the adjoining commercial and office uses and promotes good pedestrian access between said uses.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
  - a. The proposed project conforms to the approved General Development Plan.
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that:
  - a. The Planned Development Zoning and its development standards were found consistent with the Commercial Design Guidelines.
4. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Director of Planning has determined this project to be exempt from further environmental review in that the proposed renovation will have a minimal impact on the subject site.

Based upon the above-stated finding and subject to the Conditions of Approval set forth below, the Director of Planning approves, pursuant to the San José Municipal Code and Part 8 of Chapter 20.100 (Planned Development Permits), a Planned Development Permit to allow a rear outdoor patio renovation for an existing restaurant (Tee Nee Thai) with minor parking lot improvements.

### 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 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 Planned 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 use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Planned 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 Jose Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit for demolition and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Conformance to Plans.** Development of the site shall conform to approved Planned Development plans entitled "Parking lot renovation and outdoor dining patio renovation, 1401A, 1401B, 1409, 1411, 1413, 1419, 1415, 1423, 1425 The Alameda and 1117 Shasta Avenue, San Jose, California", dated August 29, 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. **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. **Revocation.** This Planned Development 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 Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.
8. **Planned Development Permit.** This Planned Development Permit approves allow a rear outdoor patio renovation for an existing restaurant (Tee Nee Thai) with minor parking lot improvements on the subject site.
9. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
  - a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

- b. **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.
  - c. **Street Improvements:**
    - i. Remove and replace existing broken or uplifted curb, gutter, and sidewalk along project frontages.
    - ii. Close a section of existing driveway and replace with new curb, gutter, and sidewalk.
  - d. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans
  - e. **Street Trees:**
    - i. The locations of the 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 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.
10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, PD12-052 shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access and accessible parking as required by the Americans with Disabilities Act (ADA).
  - c. *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 other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
12. **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 activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes 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.
  - c. *Fencing.* The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.
  - d. *Equipment.* The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
    - i. Stationary noise-generating equipment shall be located as far as possible from sensitive receptors. Staging areas shall be located a minimum of 200 feet from noise-sensitive receptors, such as residential uses.
    - ii. Unnecessary idling of internal combustion engines shall be prohibited.
  - e. *Disturbance Coordinator.* A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San Jose upon request.
13. **Landscaping.** Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent 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.

14. **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.
15. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
16. **Outside Storage.** Unless specifically identified on an approved site plan, no outside storage is permitted for the project.
17. **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.
18. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
19. **Building and Property Maintenance.** The developer 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.
20. **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.
21. **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.
22. **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 **1<sup>st</sup> day of March, 2013.**

Joseph Horwedel, Director  
Planning, Building, and Code Enforcement

Deputy