

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE REMOVAL OF TWO WALLS, A PORTION OF THE ROOF, A SIDE DOOR, AND A PORTICO, FOR THE CONSTRUCTION OF A 1,149-SQUARE-FOOT ADDITION TO A 3,476-SQUARE-FOOT COMMERCIAL BUILDING, ON AN APPROXIMATELY 0.43-GROSS-ACRE SITE, LOCATED ON THE WESTERLY SIDE OF NORTH FIFTH STREET, APPROXIMATELY 50 FEET SOUTHEASTERLY OF JACKSON STREET (575, 591, AND 593 NORTH 5TH STREET) (APNS: 249-40-002, 003, & 004)**

**FILE NO. H22-041**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 4, 2022, an application (File No. H22-041) was filed by the Applicant and Property Owner, Kenneth Y. Kai, with the City of San José for a Site Development Permit to allow the removal of two walls, a portion of the roof, a side door, and a portico, for construction of a 1,149-square-foot addition to a 3,476-square-foot, vacant commercial building, on an approximately 0.43-gross-acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located on the westerly side of North Fifth Street, approximately 50 feet southeasterly of Jackson Street (575, 591, and 593 North 5<sup>th</sup> Street, San José, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit A, entitled “Lot Merger Lands of Kai,” and depicted in Exhibit B, that are

attached hereto and made a part hereof by this reference as if fully set forth herein;  
and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

**WHEREAS**, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing this City Council received and considered the reports and recommendation of the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "593 N. 5th Street" dated May 1, 2023, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

**WHEREAS**, said public hearing before this City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

**WHEREAS**, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project Applicant, City staff, and other interested parties;

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this project:

1. **Site Description and Surrounding Uses.** The project site ("site") consists of three contiguous lots located on the westerly side of North Fifth Street, approximately 50 feet southeasterly of Jackson Street (575, 591, and 593 North 5<sup>th</sup> Street).

The approximately 0.43-gross-acre site is currently developed with a 3,476-square-foot vacant, one-story commercial building and a paved surface parking lot. The building was previously used as a restaurant but is currently vacant. Vehicle access to the site is from a 25-foot-wide ingress/egress driveway on North 5<sup>th</sup> Street. The site is accessible to pedestrians from a five-foot-wide sidewalk along North 5<sup>th</sup> Street. Surrounding uses consist of single-story commercial buildings to the north and east, a single-family residence to the south, and a senior center and surface parking lot to the east.

2. **Project Description.** On December 4, 2022, an application for a Site Development Permit, File No. H22-041, and a Conforming Rezoning, File No. C22-125, were filed by Kenneth Y. Kai, owner of the subject site, to change the zoning from the A(PD) Planned Development to the MUC Mixed Use Commercial Zoning District. On January 24, 2023, the Applicant filed for Lot Line Adjustment, File No. AT23-004, to merge the three parcels that comprise the project site.

The project Applicant has filed for a Lot Line Adjustment under File No. AT23-004 to merge the three lots into one, and the approval and recordation of the Lot Line Adjustment is a condition of approval for this Site Development Permit.

The project consists of the removal of two walls, a portion of the roof, a side door, and a portico of a one-story, 3,476-square-foot commercial building, for construction of a 1,149-square-foot addition and installation of three windows. The building will be converted to dental office use. Site changes include restriping of the existing surface parking lot, for a total of 25 vehicle parking spaces and one motorcycle space, and installation of four bicycle parking spaces. Plantings will be added to existing landscaped areas, including two trees. None of the 12 existing onsite trees will be removed.

3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan designation of Mixed-Use Commercial. This designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity. New development of a property with this designation should accordingly include commercial space equivalent to at least a 0.5 floor area ratio

(FAR) for residential/commercial mixed-use projects and 0.25 FAR for commercial projects with a typically appropriate overall FAR of up to 4.5, allowing for a medium intensity of development. Appropriate commercial uses include neighborhood retail, mid-rise office, medium-scale hospitals or other health care facilities, and medium-scale private community gathering facilities.

*Analysis: The MUC Mixed-Use Commercial Zoning District is a conforming zoning district of the Mixed-Use Commercial land use designation, consistent with Table 20-270 of Section 20.120.110 of the Zoning Code. The project is consistent with the MUC land use designation as it will provide commercial space with an FAR of 0.25, which is within the appropriate range.*

The project is consistent with the following key General Plan policies:

Business Growth and Retention Policy IE-2.7: Encourage business and property development that will provide jobs and generate revenue to support city services and infrastructure.

*Analysis: The project will allow the renovation and expansion of a vacant commercial building to enable occupancy with a permitted use (dental office) that will employ dentists, dental hygienists, and administrative staff, consistent with the policy.*

Compatibility Policy CD-4.4: Ensure In non-growth areas, design new development and subdivisions to reflect the character of predominant existing development of the same type in the surrounding area through the regulation of lot size, street frontage, height, building scale, siting/setbacks, and building orientation.

*Analysis: The project site is not located within any of the growth areas identified on the General Plan Land Use/Transportation Diagram that are planned to accommodate the majority of the City's job and housing growth. The project will leave the existing site plan largely intact, except for a 1,149-square-foot addition to the southerly elevation that will replace an existing portico and will not affect site circulation. The building height and setbacks will remain the same. While the roof form will be altered as a result of the addition, including new HVAC equipment screens, the same slope and hip-and-gable form will be maintained. The new roof will have the same decorative jutting beam along the roof ridge. On the east (street-facing) elevation, an existing side door will be replaced by a window and two additional windows will be installed. The new windows will match the design of the existing windows.*

*The site is surrounded by one-story commercial buildings on the west and north, a parking lot and the three-story senior center to the west, and a one-story, single-family house to the south. The existing one-story commercial building on the site is compatible with surrounding buildings in terms of height, setbacks, and floor area ratio. The project will maintain this compatibility despite increasing the floor area by*

*approximately one-third, as the footprint of the addition will be located where the portico is currently. Because the project will maintain the scale of the existing building, it will continue to reflect the character of development of the same type in the surrounding area.*

Neighborhood-Serving Commercial Policy LU-5.1: In order to create complex communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multimodal access to a full range of goods and services.

*Analysis: As discussed in the analysis of consistency with policy IE-2.7, the project will renovate and expand a vacant commercial building to accommodate a new commercial use (dental office). The site is easily accessible, with a 25-space vehicle parking lot, one motorcycle space, and four bicycle spaces, as well as direct pedestrian access from the sidewalk on North Fifth Street. The property is also served by Valley Transit Authority bus route 61, and the nearest bus stop is one block away, at the corner of Taylor Street and North 4<sup>th</sup> Street.*

Vibrant Neighborhoods Policy VN-1.3: Encourage the development and maintenance of compatible neighborhood retail and services within walking distance of residences as a means to promote the creation of “complete” neighborhoods.

*Analysis: The project site is located near the corner of North Fifth Street and Jackson Street, within the Japantown commercial area. Nearby businesses include cafes, restaurants, retail stores, and neighborhood services. Japantown is a mixed-use neighborhood, and the surrounding residential area has a mix of single-family and low-scale multifamily buildings whose residents are served by the commercial district within walking distance.*

4. **Zoning Ordinance Consistency.** The project site was rezoned to the MUC Mixed-Use Commercial Zoning District. The project’s consistency with the MUC Mixed-Use Commercial Zoning District and other pertinent Zoning Code provisions is analyzed below.

- a. Land Use. Pursuant to San José Municipal Code Section 20.120.110, the MUC Mixed-Use Commercial Zoning District is a conforming zoning district to the Mixed-Use Commercial General Plan Designation. The MUC Mixed-Use Commercial Zoning District is intended to support implementation of the General Plan by providing flexibility for the development of employment uses, high density housing, and mixed-use development.

*Analysis: Pursuant to Table 20-138 of Section 20.55.203 of the Zoning Code, medical office (including dental office) is permitted by right in the MUC Mixed-Use Commercial Zoning District.*

- b. Development Regulations. The project is subject to the following development standards of the MUC Mixed-Use Commercial Zoning District pursuant to Section 20.55.100 of the Municipal Code.

Development Standard	Requirement	Project
Maximum front setback	10 feet	10 feet
Maximum side setback	10 feet	5 feet 4 inches
Minimum rear setback	10 feet	51 feet 7 inches
Maximum height	85 feet	16 feet 11.5 inches
Floor area ratio (FAR)	0.25-4.5	0.25

*Analysis: The project consists of removing two walls, a portion of the roof, a side door, and a portico from a one-story, 3,476-square-foot commercial building, for construction of a 1,149-square-foot addition and installation of three windows. The total floor area of the building after construction of the addition will be 4,625 square feet, and the building will be consistent with all of the setback, height, and FAR requirements of the MUC Mixed-Use Commercial Zoning District.*

- c. Parking. The dental office is categorized as a medical office use for the purpose of applying the Parking Ordinance. The project application was submitted before the recent parking requirement modifications and therefore, pursuant to Section 20.90.060 (in effect when the permit application was deemed complete); therefore, the project Applicant has applied the parking requirement for the medical office under the previous Parking Ordinance, as follows:

Parking Type	Required Parking Ratio	Calculation Basis	Minimum Spaces Required	Spaces Provided
Vehicle	1 space/ 250 sf	Net floor area = 3,932 sf	16	25
Bicycle	1 space/ 4,000 sf	Floor area = 4,625 sf	2	4
Motorcycle	1 space/20 vehicles spaces	16 vehicle spaces	1	1

*Analysis: As shown in the table above, the project Applicant will provide a total of 25 vehicle parking spaces, one motorcycle space, and four bicycle parking spaces onsite, consistent with Section 20.90.060 of the San José Municipal Code.*

- d. Performance Standards. Pursuant to Section 20.55.202 of the Municipal Code, no primary use or activity shall be conducted or permitted:
1. In a manner that causes or results in the discharge of any waste materials into or upon the ground, into or within any sanitary or storm drain system, into or within any water system or water, or into the atmosphere; or
  2. in a manner that constitutes a menace to persons or property or in a manner that is dangerous, obnoxious, or offensive by reason of the creation of a fire, explosion, or other physical hazard, or by reason of air pollution, odor, smoke, noise, dust, vibration, radiation, or fumes; or
  3. In a manner that creates a public or private nuisance.

*Analysis: The project will operate entirely inside the building during regular business hours. There will be no outdoor activities other than cars circulating in the parking lot, nor will there be late-night hours. The office entrance is located on the building's south elevation, more than 70 feet from the nearest residential use. During the temporary construction period, work hours will be limited to 7:00 a.m. to 7:00 p.m. Monday through Friday. The use will not generate fire, explosions or other physical hazards. Waste generated by the facility will be subject to waste handling and disposal provisions in Title 9 of the San José Municipal Code.*

5. **Senate Bill 330 Consistency.** The Housing Crisis Act of 2019 (SB 330) limits the way local governments may reduce the capacity for residential units that can be built on properties that allow housing, including actions such as down-zoning; changing general or specific plan land use designations to a less intensive use; reductions in height, density, or floor area ratio; and other kinds of increased requirements. An exception to this is that the intensity of residential uses on a property may be reduced if changes in land use designations or zoning elsewhere ensure “no net loss” in residential capacity within the jurisdiction.

*Analysis: The project was rezoned from the A(PD) Planned Development Zoning District (File No. PDC81-004), which only allows restaurant use, to the MUC Mixed Use Commercial Zoning District, which allows commercial and mixed-use (commercial and residential) development with a residential density up to 50 DU/AC (dwelling units per acre). Therefore, the rezoning will result in a net gain of 21 allowable residential units. Although the project proposes only commercial use of the property, the rezoning would result in a net gain of 21 allowable residential units.*

6. **Citywide Design Standards and Guidelines.** The project is subject to the Citywide Design Standards and Guidelines and is consistent with the following applicable provisions:

Section 2.2.1, Pedestrian and Bicycle Access Location

- Standard 4: Provide direct access for all lobbies, public open spaces, and paseos from the street or publicly accessible pedestrian walkways.

*Analysis: The site plan includes a paved, four-foot-wide paved walkway from the sidewalk to the building entrance.*

Section 2.2.2, Driveways and Vehicle Drop-offs

- Standard 1: Locate curb cuts at least 50 feet away from pedestrian and bicycle entrances.
- Standard 2: Entrance/exit driveways must be limited to a maximum of two per 200 feet on all mid-block parcels.

*Analysis: The building entrance is located more than 58 feet from the nearest curb cut and there is one ingress/egress driveway, consistent with the standard.*

Section 2.2.3, Services and Utilities Access and Location

- Standard 2: Provide a covered area for solid waste collection when it is located outside the building envelope.

*Analysis: The project includes construction of a covered trash enclosure with masonry walls and a metal roof at the rear of the building. The enclosure will not be visible from the public right-of-way.*

Section 2.3.5, Bicycle Parking Placement

- Standard 2: Place bicycle parking so that bicyclists do not have to cross vehicular parking or drive aisles to enter the building.

*Analysis: The four proposed bicycle parking spaces are directly accessible from the sidewalk via the same walkway that leads directly to the entrance, consistent with the standard.*

Section 2.3.6: Vehicular Parking Placement and Surface Parking Design

- Standard 3: Screen at least 75% of surface parking from primary streets.

*Analysis: The project plans include retaining the existing 32-inch-high walls that screen the entire street frontage of the parking lot. Shrubs will be added to the*

*landscaped areas between the walls and the sidewalk, providing additional screening consistent with this standard.*

#### Section 2.3.8: Landscaping and Stormwater Management

- Standard 1: Select trees which at maturity create a tree canopy cover that shades a minimum of 50% of each on-site parking area.

*Analysis: The project includes planting three trees on the site, in addition to the 12 existing trees. The landscape plans show that approximately 67% of the parking lot will be covered with tree shade when the trees grow to maturity, consistent with the standard.*

#### Section 3.2.2, Vehicular Entrances and Driveways

- Standard 1: Driveways must be less than 25% of street frontage for sites that are more than 100 feet wide at the street.

*Analysis: The driveway width is 25 feet eight inches, which is approximately 19% of the street frontage of 137.5 feet, consistent with the standard.*

#### Section 3.2.3, Services and Utilities Entrances and Design

- Standard 1: Screen solid waste, utilities, and services areas from residential and commercial uses and onsite and off-site view to limit visual impact on the public realm using fences, walls, or landscaping that use durable and weather-resistant materials, are four to five feet tall, and do not interrupt the line-of-sight of drivers entering or exiting the site.
- Standard 2: Install roofs on exterior solid waste enclosures to prevent rain from getting inside and carrying contaminants into the stormwater system.

*Analysis: The proposed trash enclosure will be constructed of concrete slab walls with a metal roof covering to screen the trash receptacles. While the enclosure will be visible from the adjoining residential use to the south, it is approximately 114 feet from the shared property line. The enclosure will be located behind the primary building and therefore will not be visible from the public realm, consistent with the standard.*

#### Section 3.3.2: Roofs and Parapets

- Standard 4: Parapets and other screening elements at the roof level must screen rooftop equipment from view.

*Analysis: The existing building has screens for the rooftop equipment. The design plans include additional screens to match the existing, consistent with the standard.*

### Section 3.3.9, Signage

- Standard 1: Direct all building addresses and primary building signage towards street frontage such that they are visible from the street.

*Analysis: The project plans do not include signage. As shown on the proposed elevations (Sheet A2.2), the building address is located on the east elevation facing North 5<sup>th</sup> Street, consistent with the standard.*

### Exception Request

The project includes an exception request for the following standard:

- a. Section 4.1.1, Commercial Frontages, Standard 2: Create transparent facades with windows or clear glazing for at least 70% of the active frontage length along primary streets.

*Analysis: The percentage of transparency on the east elevation facing the street is 33%, which is inconsistent with the standard. Therefore, for the decision-maker to grant an exception, the following findings must be made:*

1. There is a physical constraint or unique situation that:
  - i. Is not created by the project Applicant or property owner; and
  - ii. Is not caused by financial or economic considerations.

*Analysis: There is a unique situation that supports the Exemption Request in that the property is located within the boundaries of the eligible Japantown National Register Historic District and Candidate City Landmark District. Although the historic evaluation of the property prepared by Robert Cartier of Archaeological Resource Management in April 2023 determined that the existing 1977 building was constructed outside the period of significance of the eligible historic district (1890-1967) and is not individually significant, the project is designed to maintain the existing character of the building to the extent feasible while also rehabilitating it to meet the needs of the dental office use. The east, street-facing elevation of the existing building has three windows and a side door. The project will replace the side door with a window and add two additional windows, increasing the transparency. However, because of the addition to the south elevation, the percentage of transparency will be 33%. The project will maintain the same general design of the elevation and will provide the appropriate level of lighting and privacy for the proposed dental office use.*

2. Approving the exception will not create a safety hazard or impair the integrity and character of the neighborhood in which the subject property is located.

*Analysis: Approving the exception for the transparency standard will not create a safety hazard as it will not impede necessary visibility of pedestrians, bicyclists, or drivers who enter the property or simply pass by. The integrity of the neighborhood will not be affected because the project will increase the number of windows on the street-facing elevation.*

3. The project meets the intent of the design standard to the extent feasible.

*Analysis: As discussed in finding 1, the project will replace the existing side door and add two windows, for a total of five windows. Therefore, although the final transparency percentage is 33%, below the required 70%, the project will increase the total area of glazing on the street-facing elevation, which meets the intent to maximize the transparency of the façade to the extent feasible.*

7. **City Council Policy Consistency.** The project is subject to City Council Policy 6-3, Public Outreach Policy for Pending Land Use Development Proposals.

*Analysis: Under City Council Policy 6-30, the project is a standard development that requires a public hearing but is not a very small, large, or significant community interest project. Standard development projects are required to provide on-site signage. The Applicant posted an on-site sign on the frontage of the subject site on February 20, 2023. The notice of the public hearing was sent to owners and tenants of all properties within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.*

8. **California Environmental Quality Act.** Under the provisions of Section 15301(e) for 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 Zoning Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 1 Categorical Exemption for Existing Facilities consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use. An example of this exemption includes Subsection (e) for additions to existing structures where the addition will not result in an increase of more than 50% of the floor area of the structure before the addition, or 2,500 square feet, whichever is less.

*Analysis: The project is a Conforming Rezoning to the MUC Mixed-Use Commercial Zoning District to match the Mixed-Use Commercial General Plan land use*

*designation, and the removal of two walls, a portion of the roof, a side door, and a portico on a vacant, 3,476-square-foot commercial building, for the construction of an 1,149-square-foot addition for conversion to a dental office on an approximately 0.43-gross-acre site. The addition will increase the floor area by about 33%, which is below the 50% maximum increase and therefore qualifies for the Class 1 exemption. The only other upgrades to the site include new plantings in landscaped areas, including two trees, and restriping and minor reconfiguration of the existing parking lot.*

The site is located within the boundaries of the eligible Japantown National Register Historic District and Candidate City Landmark District which is considered a historical resource under CEQA. The property was developed in 1977, which is outside the period of significance for the historic district (1890-1967) and is a non-contributing structure to the eligible district. The property was evaluated by Robert Cartier of Archaeological Resource Management in April 2023 and determined not to be individually significant, so the project has been evaluated in relation to its context within the eligible district and potential impacts to the district. The existing building retains "some visual elements of traditional Japanese architecture" which relate to the character of the eligible district, including the "Irimoya" roof form with a decorative jutting beam along the peak. The project is designed to maintain those general elements while also adapting the building to meet the needs of the proposed dental office use. The proposed project is compatible with character of the eligible district because it retains the building's existing setbacks, orientation, scale, proportion, rhythm, massing, height, materials, roof shape and general features and will not cause a substantial adverse change to the significance of the historical resource.

*The scope of the project, the urban setting, and rezoning to a zoning district that permits mixed-use development will therefore not result in a significant environmental impact and qualifies for an exemption under Section 15301(e) for Existing Facilities of the CEQA Guidelines. Furthermore, none of the exceptions listed under Section 15300.2 of the CEQA Guidelines is applicable to the project.*

**9. Site Development Permit Findings.** Pursuant to San José Municipal Code Section 20.100.630, the City Council is required to make the following findings:

1. The site development permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans, and area development policies.

*Analysis: As discussed in the General Plan Conformance section above, the project is consistent with the Mixed-Use Commercial Land Use designation, as it will provide commercial space with an FAR of 0.25, within the allowed range. The project will construct an addition to an existing building but will not affect the site*

*circulation, height, or setbacks, and will therefore be compatible with surrounding development. The new dental office will provide an essential service and contribute to the vitality of Japantown, a walkable area with a mix of neighborhood-serving businesses and low-scale multifamily, and single-family residences.*

2. The site development permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: As discussed in the Zoning Code Conformance section above, the project will be consistent with the development standards of the MUC Zoning District and the parking standards in Section 20.90.060 (prior to the modification of the parking requirements, which went into effect on April 10, 2023), and the proposed use is not expected to generate noise that will be a nuisance to adjoining properties.*

3. The site development permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.

*Analysis: The project is consistent with City Council 6-30: Public Outreach Policy for pending land use and development proposals and on-site noticing/posting requirements. A project information sign was posted on the project frontage on February 20, 2023, and a notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to respond to questions from the public.*

4. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

*Analysis: The project consists of the removal of two walls, a portion of the roof, a side door, and a portico, for construction of an 1,149-square-foot addition and installation of three windows to an existing 3,476-square-foot commercial building, on an approximately 0.43-gross-acre site. The addition will replace an existing portico and will not affect the site circulation, as the building entrance will remain on the southern elevation. While the roof form will be altered as a result of the addition, including new equipment screens, the same hip-and-gable form will be maintained, with a decorative jutting beam along the roof ridge to match the existing. The new windows to be installed on the east elevation will match the existing windows. The new trash enclosure will be constructed at the rear of the site, where it will not interfere with site circulation or be visible from the public right-of-way. Therefore, the interrelationship between the orientation, location, and elevations of proposed buildings will be mutually compatible and aesthetically harmonious.*

5. 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.

*Analysis: The existing one-story commercial building and accessory storage structure on the project site are compatible with adjacent development, which include one-story commercial buildings on the west and north, a parking lot and the three-story senior center to the west, and a one-story, single-family house to the south. The addition to the primary structure will match this pattern of development, maintaining the building's orientation, setbacks, and height, as well as the site circulation. The storage building will remain, and a new covered trash enclosure will be constructed at the rear of the existing building, where it will not be visible from the public right-of-way. Therefore, the project will be compatible and aesthetically harmonious with adjacent development and the character of the neighborhood.*

6. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: During the construction period, the project is expected to generate noise, vibration, and dust, but such impacts will be temporary in nature. The ongoing operation of the dental office will not generate noise aside from vehicle circulation in the parking lot, as all business functions will occur indoors, and will not generate noxious odors. The project is subject to Public Works Department conditions regarding drainage facilities and must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29), which are aimed at controlling environmental impacts. Therefore, the project is consistent with this finding.*

7. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

*Analysis: The project will maintain the existing landscaped areas, which are located along the site perimeter (except the northerly property line) and along the south elevation of the building, adjacent to the parking lot. There are 12 existing trees onsite and an additional two trees will be planted, along with ground cover and shrubs. The two trees to be planted will provide shade for the parking lot. The project will include the construction of a covered trash enclosure with masonry walls and a metal roof located at the northwest corner of the site behind the primary building. A 190-square-foot utility building also located in that corner*

*of the site will remain. These improvements will upgrade the appearance of the neighborhood.*

8. Traffic access, pedestrian access and parking are adequate.

*Analysis: The project site is located on North 5<sup>th</sup> Street, a two-way street with a middle turn lane that permits left turns into the parking lot from the southbound direction. The project's 25-space surface parking lot is directly accessible to vehicles via a single ingress/egress driveway on North 5<sup>th</sup> Street. Pedestrians will be able to access the dental office building using a concrete pathway from the sidewalk and bicycle parking spaces will be provided adjacent to the entrance.*

In accordance with the findings set forth above, a Site Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This City Council expressly declares that it will not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use permitted hereby.

## CONDITIONS OF APPROVAL

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee 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 Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement 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/Certificate of Occupancy.** Procurement of a Building Permit 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 Permittee'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 in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development Permit plans entitled, "593 N. 5<sup>th</sup> Street" dated May 1, 2023, on file with the Department of Planning, Building and Code Enforcement as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or "Approved Plan Set."
6. **Lot Line Adjustment.** Prior to the issuance of a building permit for the project, the Permittee shall secure approval and provide proof of recordation of a Lot Line Adjustment under File No. AT23-004 to consolidate the three parcels.
7. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.

8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
10. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
11. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
13. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
14. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
15. **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.
16. **No Sign Approval.** No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
17. **Building and Property Maintenance.** The property shall be maintained 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.
18. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
19. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance in effect on January 18, 2023, when the permit application was deemed complete. Any changes to the required vehicular, motorcycle, or bicycle parking

requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

20. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.
21. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
22. **Tree Protection Standards.** The Permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage.
23. **Public Works Clearance for Building Permit(s) or Map Approval.** Prior to issuance of Building permits, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
  - 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. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
  - b. **Transportation:** This project does not require a detailed CEQA Transportation Analysis nor a Local Transportation Analysis. The project is expected to result in less-than-significant transportation impacts and the projected traffic for the project was reviewed and found to be minimal.
  - c. **Grading/Geology:**
    - i. A grading permit may be required prior to the 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. All on-site storm drainage conveyance facilities and earth-retaining structures four feet in height or greater (top of wall to bottom of footing) or is being

- surcharged (slope of 3:1 or greater abutting the wall) 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 latest California Plumbing Code as adopted under the City of San José Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures and source controls to minimize stormwater pollutant discharges.
  - e. **Stormwater Peak Flow Control Measures:** The project is located within a non-Hydromodification Management (HM) area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
    - i. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
  - f. **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 prior to issuance of Public Works clearance.
  - g. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to North Fifth Street prior to issuance of a Public Works Clearance Fifty percent (50%) of the base fee in place at the time of payment will be due. Currently, the 2023 base fee is \$605 per linear foot of frontage and is subject to change every January 31<sup>st</sup> based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
  - h. **Street Improvements:**
    - ii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
    - iii. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted, or non-ADA compliant sidewalk along project frontage.

- iv. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- v. Improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- vi. 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.

i. **Electrical:**

- i. 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.
- ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.

- j. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. 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 park strip. Obtain a Department of Transportation street tree planting permit for any proposed street tree plantings. Street trees show on this permit are conceptual only.

24. **Revocation, Suspension, Modification.** This Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Permit was not abated, corrected or rectified within the time specified on the notice of violation;
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby **approved**.

ADOPTED this 12th day of September, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk

#### NOTICE TO PARTIES

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

**EXHIBIT A**  
**LOT MERGER**  
**PARCEL "A"**

**Situate** in the City of San Jose, County of Santa Clara, State of California, and is more particularly described as follows

**Being** a portion of Block 14, of White's Addition as shown on that map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day Civil Engineer", which map was filed for Record in Book A of Maps at Pages 72 and 73, Official Records of the County of Santa Clara, and is more particularly described as follows;

**Beginning** at a point on the western sideline of Fifth Street, distant thereon 45.83 feet southeasterly from the point of intersection of said western side of Fifth Street and the southern sideline of Jackson Street;


**Thence** southeasterly along the western sideline of Fifth Street 137.50 feet a little more or less, to the northern boundary of the Lands Granted to Alan T. Nakasaki as described in the Trust Transfer Deed Recorded on the 19<sup>th</sup> of October, 2020 in Document #24659343 of Official Records of Santa Clara County;


**Thence** southwesterly and parallel with the southern line of Jackson Street, along the northern boundary said Lands of Nakasaki 137.50 feet;

**Thence** northerly and parallel with the western sideline of Fifth Street 137.50 feet a little more or less to a point;

**Thence** northeasterly and parallel with the southern sideline of Jackson Street 137.50 feet a little more or less to the **Point of Beginning**.

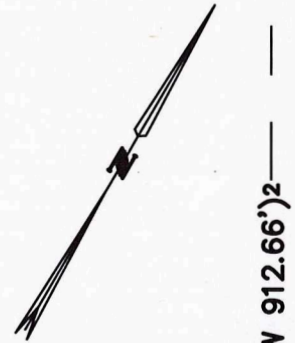
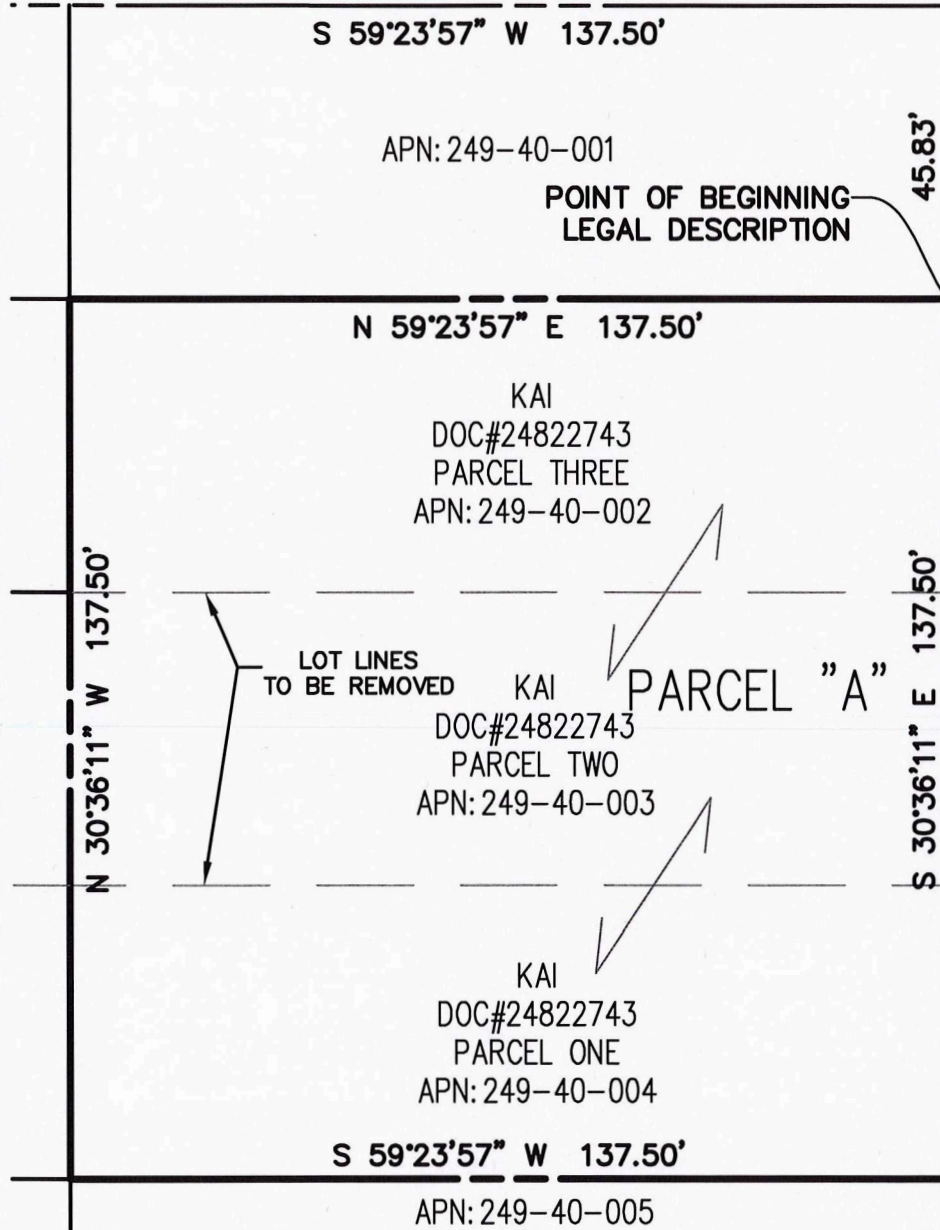
Attached hereto is a plat and by this reference made a part thereof.

  
Alan Brodie French, PLS 9301  
Job #2022-085

  
7-11-2023

# EXHIBIT B

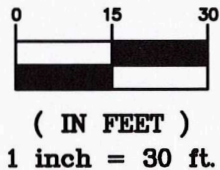
## JACKSON STREET



NORTH FIFTH AVE

BASIS OF BEARINGS  
FOUND MONUMENT TO FOUND MONUMENT  
(N 30°36'11" W 907.69') (N 30°39' W 912.66')<sup>2</sup>

### GRAPHIC SCALE



**APN: 249-40-002**

**APN: 249-40-003**

**APN: 249-40-004**

### EXISTING

### PROPOSED

6,302 SF (0.145ac)	18,906 SF (0.434ac)
6,302 SF (0.145ac)	0 SF (0.0ac)
6,302 SF (0.145ac)	0 SF (0.0ac)

ALPHA LAND  
SURVEYS, INC.  
4444 SCOTTS VALLEY DR. #7  
SCOTTS VALLEY, CA 95066  
(831) 438-4453



*Alan Brodie French*

7/11/2023

JOB #2022-085