



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: October 8, 2020

Approved

Date

10/9/20

COUNCIL DISTRICT: 2

SUBJECT: ADMINISTRATIVE HEARING ON THE APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT NO. CP18-011 FOR THE 6211 SANTA TERESA BOULEVARD FUEL STATION PROJECT

RECOMMENDATION

1. Conduct an Administrative Hearing on the appeal of the Planning Commission's approval of Conditional Use Permit No. CP18-011 for the 6211 Santa Teresa Boulevard Fuel Station Project which permits the demolition of an existing approximately 2,100 square foot pump canopy and associated fueling station equipment, the removal of 11 ordinance-sized trees and 3 non-ordinance-sized trees, and the construction of a new approximately 1,800-square foot fueling canopy and an 817-square foot addition to the existing 2,239-square foot building for a total of approximately 3,056 square feet for a retail store with 24-hour use, fueling station, a patio with a seating area, site improvements and discontinuation of the non-conforming auto repair use on an approximately 0.47-gross acre site located at 6211 Santa Teresa Boulevard.
2. Adopt a resolution adopting the 6211 Santa Teresa Boulevard Fuel Station Project Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Program, for which an Initial Study was prepared and circulated for public review, in accordance with the California Environmental Quality Act, as amended; and
3. Adopt a resolution denying the permit appeal and approving, subject to conditions, a Conditional Use Permit to allow the demolition of an existing approximately 2,100 square foot pump canopy and associated fueling station equipment, the removal of 11 ordinance-sized trees and 3 non-ordinance-sized trees, and the construction of a new approximately 1,800-square foot fueling canopy and an 817-square foot addition to the existing 2,239-square foot building for a total of approximately 3,056 square feet for a

retail store with 24-hour use, fueling station, a patio with a seating area, site improvements and discontinuation of the non-conforming auto repair use on an approximately 0.47-gross acre site.

OUTCOME

The hearing before the City Council is a de novo hearing pursuant to Section 20.100.280 of the San José Municipal Code. That means that the City Council hears the report from staff and comments and evidence presented by the appellant, the applicant, and the public anew. The City Council must make the required findings to support its determination whether to grant or deny the permit.

Approving the Conditional Use Permit, and thereby denying the appeal, would allow the project applicant to move forward with the building permit phase of the project to allow the demolition of an existing fuel pump canopy and associated fueling station equipment, removal of 14 trees, and site upgrades including an addition for a retail store with 24-hour use, fueling station, a patio with a seating area, and discontinuation of the non-conforming auto repair use.

Denying the Conditional Use Permit, and thereby granting the permit appeal, would mean that the applicant could operate the site in accordance with previously approved Conditional Use Permit, File No. CP84-049 but without the proposed demolition and new development.

EXECUTIVE SUMMARY

On May 9, 2018, the project applicant, Jesse Kent, applied for a Conditional Use Permit, File No. CP18 011. The project site, located at 6211 Santa Teresa Boulevard, is currently used as a fueling station, auto repair, and retail store.

The proposed project was considered and approved by the Planning Commission at its July 22, 2020 meeting by a unanimous decision of 7-0.

A timely appeal (Exhibit A) of the permit was filed on July 30, 2020 by Mr. Norman Clancy. The appeal identified the following concerns:

1. Bribery
2. Fraud
3. Zoning Violations

An Environmental Appeal was also received on July 30, 2020. However, the period for appealing the environmental determination for the proposed project had expired by the time the appeal was filed, because the CEQA determination is required to be appealed within three business days of the Commission's decision (San José Municipal Code Section 21.04.140(E)(1)). The decision was made on July 22, 2020 and the appeal was filed on July 30, 2020. Therefore,

the CEQA appeal of the application is untimely and does not meet the requirements for appeal and cannot be heard by the City Council on appeal. Staff response on the CEQA appeal is made as a courtesy only for the information of the City Council and not for the purpose of responding to valid and timely appeals. Only the appeal of the Conditional Use Permit portion of the proposed project by Appellant Norman Clancy, not the CEQA portion of the appeal, may move forward for City Council determination.

The analysis in this memorandum and the Planning Commission Staff Report outlines the proposed project's conformance with the General Plan policies, Municipal Code requirements, and City Council policies.

Staff recommends denial of the permit appeal. The comments raised in the permit appeal do not negate the Conditional Use Permit findings, and the proposed project continues to be consistent with the goals and policies of the General Plan, Zoning District, and City Council policies.

BACKGROUND

Site Location

The site consists of an existing auto repair shop and retail store, both contained in an approximately 2,239-square foot building, along with the four fueling pump islands and canopy. Under the current code, auto repair is not a permitted use in the CP Commercial Pedestrian Zoning District, so the existing auto repair may be considered an existing allowed non-conforming use, as the site has been in operation prior to the existing Commercial Pedestrian Zoning District's use limitations.

The proposed project site is bounded by a fueling station to the north across Santa Teresa Boulevard and commercial uses to the south, east, and west across Cottle Road. The nearest residential use is approximately 182 feet across Cottle Road. The proposed project would close the driveway along Santa Teresa Boulevard closest to the Santa Teresa Boulevard and Cottle Road intersection on the proposed project site. Access to the site is gained through two driveways. One driveway is located off Cottle Road at the proposed project site and the other driveway is located off Santa Teresa Boulevard, adjacent to the site (ingress and egress is permitted through an easement).

Site History

On September 13, 1967, File No. H67-183 was approved for a service station use. Subsequently, on May 22, 1985, Resolution Number 85-51, File No. CP84-049 was approved for the redevelopment of the existing service station including the addition of a service bay, exterior modifications including signage, façade upgrade, and site landscaping.

On July 22, 2020, the Planning Commission considered and approved the current application File No. CP18-011 filed on May 9, 2018. The proposed project's approval was appealed to the

City Council and the appellant stated “bribery, fraud, and zoning violations” as the reasons for the appeal. No additional details were included in the appeal application.

Proposed Project

On May 9, 2018, the applicant, Jesse Kent, submitted an application for a Conditional Use Permit. The proposed project would allow the demolition of the existing canopy and associated fueling station equipment, tree removals, a remodeling of the site including an addition to the existing building for a retail store with 24-hour use, a patio seating area, site improvements and discontinuation of the non-conforming auto repair use.

Planning Commission’s Hearing

On July 22, 2020, the Planning Commission considered the proposed Conditional Use Permit and associated 6211 Santa Teresa Blvd Fuel Station Project Mitigated Negative Declaration. Below is a summary, of the Planning Commission Meeting. The item was pulled from the consent calendar to be heard under public hearing. Staff provided a brief summary of the proposed project.

Vince Rivero of VER Consultants spoke on behalf of the owner. He indicated that they were looking forward to upgrading the site, that he met with neighbors to discuss their concerns, and that he has been available for questions.

Vice Chair Bonilla asked the applicant team about the community input process. Vince Rivero responded that he visited the site, made himself available to neighbors who had concerns, and met with a neighbor to the southeast and another neighbor to the northwest. He noted the proposed project development sign was posted onsite and the Planning Commission hearing was noticed to surrounding neighbors.

Commissioner Torrens asked about the safety record of 7-Eleven. Vince Rivero replied that they are working to improve their record and working with the Police Department on security. Crystal Justice, Construction Manager of 7-Eleven, elaborated that the proposed project would include onsite cameras on the exterior parking lot and fueling area, as well as in the interior of the convenience store.

Chair Caballero asked what the current hours of the operations of the existing facility were. Crystal Justice replied that the store and fuel station currently operate 24-hours daily. However, she presumed that the auto repair portion is not 24-hours.

The appellant, Norman Clancy, spoke against the proposed project, raising the following items:

- A request to delay any review, identifying concerns with making approvals during the pandemic.
- Clarification of the fact that he was the one who reached out to Vince Rivero of the applicant’s team and indicated that there was discussion regarding a fence.

- General concerns regarding noise, traffic, and loss of home value with the implementation of the proposed project.

Commissioner Oliverio made a motion to approve Staff's recommendation; Vice Chair Bonilla seconded the motion. Commissioner Oliverio indicated Planning Commission's consideration for approval is based on the proposed land use and not by the brand of the project. Vice Chair Bonilla echoed the comment reiterating that approvals are by land use not the brand.

Chair Caballero requested clarification on whether this proposed project would go before City Council and if so, on what date. The City Attorney's Office clarified that the proposed project is for a Conditional Use Permit and all the other permits are subordinate. It was also indicated that Planning Commission is the final decision maker unless appealed to City Council.

The Planning Commission voted, and the motion passed unanimously 7-0 to approve the Conditional Use Permit and adopt the permit resolution.

Additional Public Comments

Numerous public comments were received. Some of the comments were received prior to the hearing, and a majority was received after the Planning Commission Hearing (see Exhibit D). In summary, the questions and comments raised, and staff's responses, included:

- Questions regarding the planning process and Planning Commission procedures

Staff Response: Information was provided regarding Planning Commission procedures. Links to the July 22, 2020 Planning Commission hearing, minutes, and the Citywide Design Guidelines Study Session that was held at 5:00 p.m. prior to the Planning Commission meeting.

- The proposed use is not consistent with the Commercial Pedestrian Zoning District.

Response: The proposed project includes a fuel station, retail store, and the elimination of the existing non-conforming auto repair use. Pursuant to Municipal Code [Section 20.40.100](#) and [Section 20.40.500](#), a Conditional Use Permit is required for a fuel service station or charge station with no incidental service or repair and for Late Night Use. Retail sales, goods, and merchandise is a permitted use pursuant to Municipal Code [Section 20.40.100](#). The expansion of the retail store would eliminate the non-conforming auto repair use from the site. Therefore, the proposed project uses are either conditional or permitted uses and are not non-conforming uses.

While the proposed project includes a fuel station use, pursuant to the City's Traffic Memorandum dated January 21, 2020, the proposed project would include widening of the sidewalk along the proposed project frontage on Cottle Road to 10 feet and on Santa Teresa Boulevard to 15 feet. Additionally, the proposed project would close a driveway on Santa Teresa Boulevard. These additions would enhance pedestrian safety and comfort walking to and from the convenience store.

- Environmental review, traffic, and noise.

Response: An Initial Study and Mitigated Negative Declaration were prepared for the proposed project and circulated for public comments from April 27, 2020 to May 18, 2020. Ahead of the hearing, staff responded to the appellant's concerns regarding the noise and traffic of the area and proposed project. Links to the environmental document and technical appendices were provided.

According to the Traffic Memorandum dated January 21, 2020, a Local Transportation Analysis for the proposed project was reviewed by the City's Traffic team. In alignment with the State of California Senate Bill 743 (SB 743), the City of San Jose has adopted the Transportation Analysis Policy, Council Policy 5-1. The policy establishes the threshold for transportation impacts under the California Environmental Quality Act (CEQA) based on vehicles miles traveled (VMT) instead of levels of service (LOS). This project analyzed transportation impacts using the VMT metric and conformed to Council Policy 5-1.

Proposed project conditions:

- 1. Provide a 32-foot wide driveway along Cottle Road. The City typically requires commercial driveways to be no more than 32 feet in width.*
- 2. Provide a 32-foot wide driveway along Santa Teresa Boulevard.*
- 3. Advise large fuel tankers to enter on Santa Teresa Boulevard and exit on Cottle Road. Large fuel tankers should be advised to refill their gas tanks during off-peak hours, as they may need to cross into multiple lanes while entering and exiting the project site.*
- 4. Construct a 15-foot sidewalk along Santa Teresa Boulevard and a 10-foot sidewalk on Cottle Road.*

With the inclusion of the above conditions, the proposed project will be in conformance with the City of San José Transportation Analysis Policy (Council Policy 5-1). Therefore, a determination for a negative declaration can be made with respect to traffic impacts.

Pursuant to Municipal Code [Section 20.40.600](#), commercial uses adjacent to a property used or zoned for commercial purposes must not exceed a maximum of 60 decibels at the property line. Pursuant to the proposed project's noise memorandum prepared by Analytical Environmental Services dated March 2020, traffic noise and noises related to heating, ventilation, air conditioning, and the trash operations would generate operational noise similar to existing gas station conditions on the existing project site. The new building would have up to two HVAC systems on the roof top, one on the western side and one on the eastern side. The trash enclosure would be located adjacent to the northeast corner of the store. The proposed project would not significantly increase operational noise levels as the use and site layout would remain the same and the HVAC system would have upgraded equipment which produces less noise. The projected noise would be 58.5 decibels at the sensitive receptor and residences located

southwest of the site. Furthermore, noise generated from the mechanical equipment on-site would be conditioned to be consistent with Zoning Ordinance performance standards.

- Viewing the hearing:

Response: Staff acknowledges that this transition during the Covid-19 situation has been difficult but has been done with full consideration to minimizing health risk to the public by not holding public hearings in person. Therefore, in conformance with state orders and in coordination with other City departments, the Planning Division has been proceeding with virtual public hearings (Zoom platform) in order for to continue services and allow for public hearings consistent with state and county requirements, which balance public health needs with the responsibility of government to continue conducting business. Aside from the public hearing, staff has been available to receive mail, emails, and phone calls. Staff has no information indicating whether large gatherings such as in-person public hearings will be allowed, so a virtual public hearing appears to be the only option available at this time.

- Requests regarding construction and to meet staff at the site/site visit.

Response: An informational link to sjpermits.org where projects could be researched and Building Division contact information was provided. At this time, staff is unable to conduct onsite visits/meetings for each request received. Staff is available to communicate with customers/residents via telephone, video conference and email.

Appeal

A timely appeal (Exhibit A) of the permit was filed on July 30, 2020 by Norman Clancy. The appeal identified the following concerns:

1. Bribery
2. Fraud
3. Zoning Violations

ANALYSIS

The appeal identified bribery, fraud, and zoning violations.

Response to Appeal Item #1 and #2 – Bribery and Fraud

In speaking with Mr. Clancy, Staff stated their recommendation for approval to Planning Commission is based on the proposed project's ability to meet the Conditional Use Permit findings of approval and that the environmental review did not identify any noise or transportation/traffic impacts. Planning Staff identified that the proposed project's Conditions of Approval would require new mechanical equipment to comply with the Municipal Code noise limits and the outdoor area hours of operation would be limited to sunrise to sunset.

Ahead of the Planning Commission hearing, staff spoke with both the applicant and appellant about the review process. Additionally, the appeal process was identified for both the applicant and appellant.

Any negotiations between the applicant and neighbors are separate and apart from the review of this application.

The proposed project was reviewed in accordance with the City's General Plan, Council Policies, Zoning Code, Design Guidelines, and CEQA.

Response to Appeal Item #3 - Zoning Violations

The proposed project site is in the CP Commercial Pedestrian Zoning district, which is intended to support pedestrian-oriented retail activity at a scale compatible with the surrounding residential neighborhoods. Pursuant to Municipal Code [Section 20.40.100](#) and [Section 20.40.500](#), a Conditional Use Permit is required for a fuel service station with no incidental service or repair and for Late Night Uses which operate between the hours of 12 midnight and 6 a.m. in the CP Commercial Pedestrian Zoning District. The proposed project's fuel station use is a conditionally permitted use and the retail use (convenience store) is a permitted use in the CP Commercial Pedestrian Zoning District.

The proposed project would enhance pedestrian circulation by widening the sidewalk along the proposed project frontage on Cottle Road to 10 feet and on Santa Teresa Boulevard to 15 feet. Additionally, the proposed project would close a driveway on Santa Teresa Boulevard which would reduce vehicle and pedestrian conflicts around the site. These additions would enhance pedestrian safety and comfort walking to and from the convenience store.

As described in the Planning Commission Staff Report (see Exhibit B), the proposed project was found to be in conformance with the City's General Plan land use designation and goals and policies, Zoning Code, applicable Design Guidelines, and City Council Policies.

Finally, there are no open Code Enforcement cases on this site, and the proposed project would eliminate the non-conforming auto repair use on-site.

Summary of the Proposed Project's Conformance

The proposed project is consistent with the Envision San José 2040 General Plan, Municipal Code's Zoning Standards, and the applicable City Council Policies, as further detailed in the Planning Commission Staff Report. In summary, the proposed project is consistent with the site's Neighborhood/Community Commercial General Plan land use designation which supports a broad range of commercial activity.

The proposed project complied with the City Council Public Outreach Policy, 6-30 through posting an onsite sign to inform the neighborhood of the proposed project and public noticing of the proposed project within a 500-foot radius of the proposed project site. The proposed

project was also found to be in conformance with the City Council Policy 6-27 for 24-Hour Uses.

The proposed project conforms to the CP Commercial Pedestrian Zoning District standards, including use, height, setbacks, and parking. The proposed project would eliminate the non-conforming auto repair use. Pursuant to Municipal Code [Section 20.40.100](#) and [Section 20.40.500](#), a Conditional Use Permit is required for a fuel service station or charge station with no incidental service or repair and for Late Night Use. The fuel station use is a conditional use, and retail use is a permitted use in the CP Commercial Pedestrian Zoning District.

Regarding the rear and front setback requirements, pursuant to Municipal Code [Section 20.40.290](#), there shall be no rear setback for a property situated in any commercial district whenever the entire rear property line of such property abuts a property situated in any commercial district or less restrictive district.

Analysis: The entire rear property line of the subject property abuts a property situated in the CP Commercial Pedestrian Zoning District; therefore, no rear setback is required for the proposed project site. The proposed project's 5-foot rear setback is consistent with the requirement.

Pursuant to Municipal Code [Section 20.40.260](#), the Director may grant an exception to the maximum front setback for a lot in the CP commercial district if he/she finds that the adjacent lot(s) have a greater setback and the allowance of a greater setback on the subject lot would promote a more consistent pattern of development, and/or the greater setback is needed to accommodate building design elements.

Analysis: The building on the subject site is oriented towards Santa Teresa Boulevard, similar to other business and shops in the neighborhood. To identify the pattern of development, the lots in the adjacent shopping center and businesses on the block were evaluated. The bulk of the shopping center is set back approximately 256 feet and the pad buildings (bank and fast food restaurant) are set back approximately 18 feet and 63 feet respectively. The setbacks of the fuel station canopy at 33 feet, the building at 103 feet, and the trellis at 101 feet promote a more consistent pattern of development with the surrounding commercial shopping center and accommodate an efficient site design. Therefore, the proposed project is consistent with the required CP Zoning District front setbacks.

As described above, the proposed project is in conformance with the Conditional Use Permit findings (see attached Exhibit B).

CONCLUSION

With respect to the appellant's comments, the Conditional Use Permit continues to conform to the Conditional Use Permit findings set forth in San José Municipal Code [Section 20.100.720](#).

For the reasons stated in this memorandum, staff recommends that the City Council deny the appeal and thereby approve the Conditional Use Permit. The subject site has a

Neighborhood/Community Commercial General Plan land use designation and is in the CP Commercial Pedestrian Zoning District; the subject proposed project conforms to the applicable General Plan, Municipal Code, City Council Development Policies, and City goals, policies, and strategies.

While staff acknowledges the comments and concerns from the public, the decision to approve or deny a Conditional Use Permit should be based on the merits of the proposed project and its conformance to the General Plan, Zoning Ordinance, and applicable City policies. The proposed project conforms to these requirements.

EVALUATION AND FOLLOW-UP

If the City Council approves the Conditional Use Permit, the applicant would need to obtain demolition, grading, and building permit(s) to proceed with the proposed project. The proposed project would be required to adhere to the conditions of approval and Mitigation Monitoring and Reporting Report.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The proposed project would reduce vehicle miles traveled, as the addition of the local-serving commercial use would shorten vehicles miles traveled by surrounding residents. Additionally, the proposed project would enhance mobility and pedestrian safety by widening the sidewalks to 10 feet on Cottle Road and 15 feet on Santa Teresa Boulevard.

POLICY ALTERNATIVES

For its decision on the Conditional Use Permit Appeal, the Council may:

- a. Approve the appeal and deny the Conditional Use Permit,
- b. Deny the appeal and approve the Conditional Use Permit, or
- c. Deny the appeal and approve the Conditional Use Permit as approved by the Planning Commission with additional modifications or conditions of approval.

Staff recommends that the City Council deny the appeal and approve the Conditional Use Permit.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy, whereby the proposed project is considered a standard development proposal. Following City Council Policy 6-30, the applicant posted the onsite sign to inform the neighborhood of the proposed project. The proposed project was noticed at 500 feet, and staff contact information has also been available on the hearing notices. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

An Initial Study (IS) and Mitigated Negative Declaration (MND) entitled "Initial Study/Mitigated Negative Declaration for the 6211 Santa Teresa Boulevard Fuel Station Project" was prepared by the Director of Planning, Building, and Code Enforcement for the subject Conditional Use Permit, the IS/MND was prepared in full compliance with the California Environmental Quality Act and its implementing guidelines. The document was circulated from April 27, 2020 through May 20, 2020.

One public comment from Valley Water was received during the public circulation period. The comment noted the proposed project is not located adjacent to any Valley Water facility or right of way. Therefore, according to Valley Water's Water Resources Protection Ordinance, a Valley Water permit is not required for the proposed project. The commenter did not identify any CEQA related issues. The comment letter is posted on the City's website listed below.

The final IS/MND identified potentially significant environmental impacts and determined that the proposed project would not have a significant effect on the environment with the incorporation of specified mitigation measures. The primary environmental issues addressed in the IS/MND were the potential impacts to biological resources for nesting birds and hazards and hazardous materials due to soil contamination. The MND includes mitigation measures for the previously stated resource areas that would reduce any potentially significant proposed project impacts to a less-than-significant level. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) and in the associated permit as a part of the proposed project.

HONORABLE MAYOR AND CITY COUNCIL

October 8, 2020

Subject: CP18-011

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The entire IS/MND, associated appendices, response to comments, and other related environmental documents are available on the Planning web site at:

<https://www.sanjoseca.gov/negativedeclarations>.

/s/

ROSALYNN HUGHEY, Director

Planning, Building and Code Enforcement

For questions, please contact Deputy Director, Robert Manford, at

robert.manford@sanjoseca.gov or (408) 535-7900.

Attachments: Exhibit A: Appeal Application

Exhibit B: [Planning Commission Staff Report package](#)

Exhibit C: Appeal Resolutions

Exhibit D: Public Comments

(No subject)

Norman Clancy [REDACTED] >

Thu 7/30/2020 11:07 AM

To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>

[External Email]

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF	
FILE NUMBER	RECEIPT # _____
PROJECT LOCATION	AMOUNT _____
	DATE _____
	BY _____
TO BE COMPLETED BY PERSON FILING APPEAL	
PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.	
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT: <u>6211 SATHA TERESA BLVD, SAN JOSE 95123</u>	
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): <u>Bribery Fraud, Zoning Violation</u>	
PERSON FILING APPEAL	
NAME <u>NORMAN CLANCY</u>	DAYTIME TELEPHONE [REDACTED]
ADDRESS [REDACTED]	CITY <u>SAN JOSE</u> STATE <u>CA</u> ZIP CODE <u>95123</u>
SIGNATURE <u>[Signature]</u>	DATE
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) <u>Within 1000 feet</u>	
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)	
NAME	
ADDRESS	
CITY STATE ZIP CODE	
DAYTIME TELEPHONE ()	FAX NUMBER () E-MAIL ADDRESS
PROPERTY OWNER	
NAME <u>LORIS ZIMMERMAN</u>	DATE <u>7/30/2019</u>
ADDRESS [REDACTED]	CITY <u>SAN JOSE</u> STATE <u>CA</u> ZIP CODE <u>95123</u>

Please submit this application IN PERSON to the Development Services Center, 1st FLOOR, City Hall. Appointments are not required but may be accommodated by calling (408) 535-3555 or by visiting the Planning Division's website: <http://www.sanjoseca.gov/index.aspx?nid=3839>. For Assistance, call (408) 535-5680.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#)
Cc: [Buss, Rhonda](#)
Subject: Re: Appeal
Date: Thursday, July 30, 2020 5:28:31 PM

[External Email]

No worries. Thanks

On Thu, Jul 30, 2020 at 1:23 PM Van Der Zweep, Cassandra
<Cassandra.VanDerZweep@sanjoseca.gov> wrote:

Good afternoon Norman,

I would like to confirm receipt of your two emails today. The forwarded application in this email, is for the environmental appeal. The appeal period for the environmental review ended at 5PM on Monday July 27th as indicated in the attached email.

While we cannot accept the environmental appeal application since the appeal period has ended, we are working on the intake of your permit appeal application whose appeal period does not end until Monday August 3rd.

Rhonda or I will follow up with next steps for the payment of the permit appeal.

Thank you,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Norman Clancy <[REDACTED]>
Sent: Thursday, July 30, 2020 11:16 AM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra
<Cassandra.VanDerZweep@sanjoseca.gov>
Subject: Appeal

[External Email]



CITY OF SAN JOSE
 Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San Jose, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6955
 Website: www.sanjoseca.gov/planning

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT #
TYPE OF ENVIRONMENTAL DETERMINATION (ER, MND, EX)	AMOUNT
	DATE
	BY

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:

Norman Clancy

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

*Traffic noise, Negative declaration
 Special permit public hearing
 I illegally held a public hearing address by city staff*

PERSON FILING APPEAL

NAME	<i>Norman Clancy</i>
SIGNATURE	<i>[Signature]</i>
DATE	<i>9/18/13</i>
DATE	<i>11/30/12</i>

CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME	
ADDRESS	
CITY	
STATE	
ZIP CODE	
DAYTIME TELEPHONE	
FAX NUMBER	
E-MAIL ADDRESS	

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

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RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING AN APPEAL AND APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING 2,100-SQUARE FOOT FUELING PUMP CANOPY AND ASSOCIATED FUELING STATION EQUIPMENT, REMOVAL OF ELEVEN ORDINANCE-SIZED TREES AND THREE NON-ORDINANCE-SIZED TREES, AND THE CONSTRUCTION OF A NEW 1,800-SQUARE FOOT FUELING PUMP CANOPY AND AN 817-SQUARE FOOT ADDITION TO THE EXISTING 2,239-SQUARE FOOT BUILDING FOR A TOTAL OF APPROXIMATELY 3,056 SQUARE FEET TO EXPAND THE EXISTING RETAIL STORE WITH 24-HOUR USE, FUELING STATION, A PATIO WITH A SEATING AREA, SITE IMPROVEMENTS, AND DISCONTINUATION OF THE NON-CONFORMING AUTO REPAIR USE ON AN APPROXIMATELY 0.47-GROSS ACRE SITE LOCATED AT THE SOUTHEAST CORNER OF SANTA TERESA BOULEVARD AND COTTLE ROAD (6211 SANTA TERESA BOULEVARD)

FILE NO. CP18-011

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on May 9, 2018, an application (File No. **CP18-011**) was filed by Jesse Kent, of Smith Construction, on behalf of owner Zadco Enterprises, with the City of San José for a Conditional Use Permit to allow the demolition of an existing approximately 2,100 square foot fueling pump canopy and associated fueling station equipment, the removal of 11 ordinance-sized trees and 3 non-ordinance-sized trees, and the construction of a new approximately 1,800-square foot fueling pump canopy and an 817-square foot addition to the existing 2,239-square foot building for a total of approximately 3,056 square feet for a retail store with 24-hour use, fueling station, a patio with a seating area, site improvements and discontinuation of the non-conforming auto repair use on an approximately 0.47-gross acre site, on that certain real property situated in the CP

Commercial Pedestrian Zoning District and located at the southeast corner of Santa Teresa Boulevard and Cottle Road (6211 Santa Teresa Boulevard 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 “Legal Description,” which is 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, the Planning Commission conducted a hearing on said application on July 22, 2020, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission approved the requested Conditional Use Permit Amendment, for which decision an appeal to the City Council was timely filed by a neighbor of the subject property; and

WHEREAS, on July 30, 2020, a timely appeal of the Planning Commission’s approval of the Conditional Use Permit Amendment was filed by Norman Clancy, 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 de novo hearing on said application and the appeal of the Planning Commission’s decision, 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 plan for the subject property entitled, “7-11 Convenience and 76 Fuel” dated July 6, 2020, 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 the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council;

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

After considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on a 0.47-gross acre site on the southeast corner of Santa Teresa Boulevard and Cottle Road. On September 13, 1967, File No. H67-183 was approved for a service station use on the subject site with the fueling pumps in an east-west orientation. Subsequently, on May 22, 1985, Planning Commission Resolution Number 85-51 (File No. CP84-049) was approved for the redevelopment of the existing service station to the current configuration with the fueling pumps in a north-south orientation, exterior modifications including signage, façade upgrade, and site landscaping. Currently, the site consists of an existing, auto repair shop, and retail store both contained in a 2,239-square foot building, along with the four fueling pump islands and canopy. Under the current code, auto repair is not a permitted use in the CP Commercial Pedestrian Zoning District so the existing auto repair use is a legal non-conforming use.

The project site is bounded by a fueling station to the north across Santa Teresa Boulevard and commercial uses to the south, east, and to the west across Cottle Road. The nearest residential use is approximately 182 feet across Cottle Road. The driveway off Santa Teresa Boulevard closest to the Santa Teresa Boulevard and Cottle Road intersection is to be closed at the project site. Access to the site is gained through two driveways. One driveway is off of Cottle Road at the project site and the other driveway is off of Santa Teresa Boulevard, adjacent to the site (allowed through

an easement).

2. Project Description.

The project is for a Conditional Use Permit to allow the demolition of an approximately 2,100-square foot existing fueling pump canopy and associated fueling station equipment, removal of 11 ordinance-sized trees and three non-ordinance-sized trees, and the construction of a new approximately 1,800-square foot fueling pump canopy and an 817-square foot addition to the existing 2,239-square foot building for a total of approximately 3,056 square feet for a retail store with 24-hour use, fueling station, a patio with a seating area site improvements, and discontinuation of the non-conforming auto repair use, on an approximately 0.47-gross acre site. Six employees would work at the site.

Site improvements include new landscaping, new curb, gutter, and a 15-foot wide sidewalk along Santa Teresa Boulevard, and curb, gutter and 10-foot wide sidewalk along Cottle Road with street trees to be provided along Santa Teresa Boulevard on Cottle Road. The driveway off Santa Teresa Boulevard closest to the Santa Teresa Boulevard and Cottle Road intersection is to be closed at the project site.

Summary

On July 22, 2020, the Conditional Use Permit Application was approved by the Planning Commission. A Permit Appeal application of the Conditional Use Permit and an Environmental Appeal application was received by an adjacent neighbor of the project site, Norman Clancy, on July 30, 2020. The Permit Appeal was a timely filing and identified bribery, fraud, and zoning violations.

Response to Appeal Item #1 and #2 – Bribery and Fraud

In speaking with Mr. Clancy, Staff stated their recommendation for approval to Planning Commission is based on the project's ability to meet the Conditional Use Permit findings of approval and that the environmental review did not identify any noise or transportation/traffic impacts. Planning Staff identified that the project's Conditions of Approval would require new mechanical equipment to comply with the Municipal Code noise limits and the outdoor area hours of operation would be limited to sunrise to sunset.

Ahead of the Planning Commission hearing, staff spoke with both the applicant and appellant about the review process. Additionally, the appeal process was identified for both the applicant and appellant.

Any negotiations between the applicant and neighbors are separate and apart from the review of this application.

This project was reviewed in accordance with the City's General Plan, Council

Policies, Zoning Code, Design Guidelines, and CEQA.

Response to Appeal Item #3 - Zoning Violations

The project site is in the CP Commercial Pedestrian Zoning district, which is intended to support pedestrian-oriented retail activity at a scale compatible with the surrounding residential neighborhoods. Pursuant to Municipal Code [Section 20.40.100](#) and [Section 20.40.500](#), a Conditional Use Permit is required for a fuel service station with no incidental service or repair and for Late Night Uses which operate between the hours of 12 midnight and 6 a.m. in the CP Commercial Pedestrian Zoning District. The project's fuel station use is a conditionally permitted use and the retail use (convenience store) is a permitted use in the CP Commercial Pedestrian Zoning District.

The project would enhance pedestrian circulation by widening the sidewalk along the project frontage on Cottle Road to 10 feet and on Santa Teresa Boulevard to 15 feet. Additionally, the project proposes to close a driveway on Santa Teresa Boulevard which would reduce vehicle and pedestrian conflicts around the site. These additions would enhance pedestrian safety and comfort walking to and from the convenience store.

As described in the Planning Commission Staff Report the project was found to be in conformance with the City's General Plan land use designation and goals and policies, Zoning Code, applicable Design Guidelines, and City Council Policies.

Finally, there are no open Code Enforcement cases on this site and the project would eliminate the non-conforming auto repair use on-site.

Pursuant to the email dated July 30, 2020, the Environmental Appeal application was received after the appeal period ended and was therefore untimely and not accepted.

3. General Plan Conformance.

Land Use Designation

The project site has an Envision San José 2040 General Plan designation of Neighborhood Community Commercial and is located within the Santa Teresa Boulevard/Cottle Road Urban Village boundary. This designation supports a broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use, and public interaction.

Analysis: The project is consistent with the Neighborhood/Community Commercial designation, as the project is for the remodeling of an existing fueling station and retail store. These commercial uses provide a service to the local neighborhood, and the site is located approximately 80 feet from the nearest bus station and approximately 1,650 feet to Cottle Light Rail Station.

General Plan Policies

In addition to conforming to the General Plan Land Use Diagram, the project conforms to the following key General Plan policies as noted below.

- a. Commercial Lands LU-4.1: Retain existing commercial, lands to provide jobs, goods, services, entertainment, and other amenities for San José’s workers, residents, and visitors.

Analysis: The expansion of the retail store would provide jobs and services at the existing fueling station to residences, businesses, and visitors in the surrounding neighborhood. New trees and landscaping would enhance the aesthetics of the site. The remodeling of the retail uses would increase the economic viability of the existing fueling station site.

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

Analysis: The project would help ensure continued neighborhood services to the residences, businesses, and visitors in the surrounding neighborhood. The expansion of the fueling station and retail use would allow for an increase in the amount and variety of goods that would be provided to the neighborhood. The retail store would sell retail products such as pre-packaged food items, frozen and refrigerated foods, dairy products, salads, fruits, entrees, and automobile accessories. Since the subject site is adjacent to a neighborhood shopping center, the project would also enhance other retail shops in the shopping center, providing customers with a conveniently located a fueling station and retail shop, allowing for a more complete shopping experience.

The project provides a patio with a trellis and seating area to the west of the store, where customers can sit and rest. The adjacent walkway provides connectivity to Cottle Road. Additionally, the project is located within approximately 80 feet of a bus station and approximately 1,650 feet to Cottle Light Rail Station. The project provides bike racks to encourage multi-modal access to the fuel station and retail store.

- c. Land Use Policy LU-5.2: To facilitate pedestrian access to a variety of commercial establishments and services that meet the daily needs of residents and employees, locate neighborhood-serving commercial uses throughout the city,

including identified growth areas and areas where there is existing or future demand for such uses.

Analysis: The remodeled pumps and retail store would be more aesthetically pleasing causing the site to be more inviting, potentially attracting new customers. The retail store and fueling station would provide amenities to meet the daily needs of both the residents and visitors to the area. The project provides an outdoor patio area with a trellis and seating area located to the west of the retail store. The patio area makes the site more inviting and the adjacent walkway provides connectivity to Cottle Road. The retail store would sell retail products such as pre-packaged food items, frozen and refrigerated foods, dairy products, salads, fruits, entrees and automobile accessories, at a prominent corner site in a neighborhood that has continuous vehicle traffic due to the surrounding commercial shopping center and gas service use.

Additionally, new curb, gutter, and a 15-foot wide sidewalk along Santa Teresa Boulevard, and curb, gutter and a 10-foot sidewalk along Cottle Road with street trees to be provided along Santa Teresa Boulevard and on Cottle Road, allowing for improved pedestrian access, safety, and circulation. The site would provide the required off-street vehicular and bicycle parking, sufficient site lighting, and landscaping.

4. Zoning Ordinance Compliance.

Land Uses

The project is located within the CP Commercial Pedestrian Zoning District. Pursuant to Section 20.40.100 of the San José Municipal Code, Table 20-90, fuel service use is shown as a conditional use in the CP Commercial Pedestrian Zoning District.

The CP Commercial Pedestrian District Zoning District is intended to support pedestrian-oriented retail activity at a scale compatible with surrounding residential neighborhoods. This district is also intended to support intensive pedestrian-oriented commercial activity and development consistent with the General Plan urban design policies. CP zoning districts are unique because development standards of an approved Urban Village plan control those of the CP zoning district (see clarification in Zoning Code, Table 20-100). However, because the Santa Teresa Boulevard/Cottle Road Urban Village does not have an approved Urban Village Plan, the development standards of the CP Zoning District alone apply to the project.

As previously identified, a service station with auto repair was originally approved at this site under File No. H67-183. The site was redeveloped with the same uses under File No CP84-049.

Development Standards

Pursuant to Municipal Code Section 20.40.100 and Section 20.40.500, a Conditional Use Permit is required for a fuel service station or charge station with no incidental

service or repair and for Late Night Use. The following table outlines setbacks required in the Commercial Pedestrian Zoning District pursuant to Chapter 20.40.200 of the Zoning Ordinance.

Setbacks and height:

	Required	Project
Retail Building Front (Santa Teresa Boulevard) (Retail Building)	0 feet, no further than 10 feet	103 feet
Canopy Front (Santa Teresa Boulevard)	0 feet, no further than 10 feet	33 feet
Trellis to Front (Santa Teresa Boulevard)	0 feet, no further than 10 feet	101 feet
Building to side interior	None	7 feet, 2 inches
Canopy to side interior	None	15 feet
Trellis to side interior	None	107 feet, 8 inches
Building to side corner (Cottle Road)	None	50 feet, 11 inches
Canopy to side corner (Cottle Road)	None	44 feet 11 inches
Trellis to side corner (Cottle Road)	None	20 feet
Building to rear	25 feet minimum	3 feet, 9 inches
Canopy to rear	25 feet minimum	87 feet, 4 inches
Trellis to rear	25 feet minimum	10 feet 10 inches
Building Height	50 feet maximum	20 feet, 6 inches
Canopy Height	50 feet maximum	18 feet
Trellis Height	50 feet maximum	10 feet, 10 inches

Analysis: The fuel station and auto repair uses were established by approved File No. H67-183. The auto repair use is a legal non-conforming use in the CP Commercial Pedestrian Zoning District pursuant to Municipal Code Section 20.40.100. The project is an expansion of the retail store into the area of the building that the auto repair is currently in, eliminating the legal non-conforming auto repair use on site. With the addition, the retail store would total 3,056 square feet.

As described above, File No CP84-049 approved redevelopment of the subject site including the building that houses the convenience store. Although the building does not meet the current setback standards in the front and rear, the foundation is to remain so the building will retain its legal non-conforming status. The legal non-conforming status of the project site is explained below.

Pursuant to Municipal Code Section 20.150.060.

- a. Any legal nonconforming structure, the use of which is not legal nonconforming, may be expanded upon such land only upon issuance of and in compliance with a site development permit in accordance with the applicable development standards of the zoning district said structure is in. Nothing in this provision permits the further diminution of an existing nonconforming development standard except as otherwise provided for in this title.
- b. Structures that do not conform to the current parking requirements are subject to the parking requirements of Section 20.90.210 regarding any change in use.

Analysis: A fuel station is a conditionally allowed use and a retail store is a permitted use in CP Commercial Pedestrian Zoning District. The expansion of the retail store would eliminate the non-conforming auto repair use from the site. So the uses are not legal non-conforming. The front and rear setback of the building would be maintained. The building addition would not worsen the front or rear setbacks, as the addition is on the west side, with no further diminution of an existing non-conforming development standard. Additionally, the project meets the parking standards as identified in the City's Zoning code.

Additionally, the new canopy continues to maintain the 33-foot front setback, which is the same as the existing canopy and is consistent with the side and rear setbacks. The trellis is consistent with the height and setbacks as shown in the table above, except for the front setback, and the trellis does not worsen the condition of the front or rear setback of the site.

Performance Standards

Noise. Pursuant to Municipal Code Section 20.40.600, commercial uses adjacent to a property zoned for commercial purposes must not exceed a maximum of 60 decibels at the property line. Pursuant to the project's noise memo prepared by Analytical Environmental Services dated March 2020, traffic noise and noises related to heating, ventilation, air conditioning, and the trash operations would generate operational noise similar to existing gas station conditions on the existing project site. The new building would have up to two HVAC systems on the roof top, one on the western side and one on the eastern side. The trash enclosure would be located adjacent to the northeast corner of the store. The project would not significantly increase operational noise levels as the use and site layout would remain the same and the HVAC system would have upgraded equipment which produce less noise. The projected ambient noise level would be 58.5 dBA at the sensitive receptor, residences located southwest of the site which would result in a 0.5 dBA increase in ambient noise and not result in an impact pursuant to General Plan Standard EC-1.2. Furthermore, noise generated from the mechanical equipment on-site are required by conditions of approval to be consistent with Zoning Ordinance performance standards. The conditions of approval would require an acoustical study for the selected mechanical equipment be provided

confirming the proposed stationary equipment placement and design would not exceed 60 decibels at the adjacent commercial property lines in accordance with City standards.

Parking: Automobiles. Parking for this site is based on the square feet of the retail store and number of employees and components for the fuel station use. Retail is parked at 1 space per 400 net square feet (Municipal Code Section 20.90.220.c.) and the fueling station is parked at 1 space per employee, 1 per air/water pump, and 1 per information stop Municipal Code Section 200.90.060.) The project would have 6 employees. Therefore, 8 parking spaces are needed for the fueling station and 7 parking spaces are needed for the retail store, for a total of 15 required parking spaces. 8 parking spaces are shown at the pumps and 7 vehicle parking spaces are shown at the north end of the store. Therefore, vehicle parking is consistent with current parking requirements for this use.

Motorcycles. Pursuant to Municipal Code Section 20.90.350, commercial uses requires 1 motorcycle parking space for every 20 code required parking spaces. 1 motorcycle parking space is required, and 1 motorcycle parking space is provided.

Bicycles. A total of 3 spaces are required pursuant to Municipal Code Section 20.90.060.b., and 3 bicycle parking spaces are provided.

5. **Outdoor Lighting:** Pursuant to Municipal Code Section 20.40.530b., light fixture heights should not exceed eight feet when adjacent to residential uses unless the setback of the fixture from the nearest residential property line is twice the height of the fixture. No ground mounted light fixture shall exceed 25 feet in height.

Analysis: The light fixtures are shown on the approved plans as a maximum of 20 feet in height, and are adjacent to commercial uses. The nearest residential use is across Cottle Road a divided 4 to 5 lane road approximately 182 feet, and is separated by a six-foot concrete masonry unit wall along the residential property line. Therefore, the outdoor lighting will not affect the residential uses.as the lighting is consistent with Zoning requirements.

6. **Tree Removal:** Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees. Findings are made for the project based on the findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the resolution.

Pursuant to Municipal Code Section 13.32.100.A:

- a. Neither the director nor the planning commission on appeal shall issue a permit for the removal of any tree, other than an unsuitable tree, on any private parcel of land in the city unless the director or the commission on appeal makes at least one of the following findings:

- i. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010; or
- ii. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
- iii. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal;

Analysis: There are 11 ordinance-sized trees and three non-ordinance sized trees to be removed. The 11 ordinance sized trees and are to be removed in accordance with Municipal Code Section 13.32.100.A.1 and Section 13.32.100.A.3. In summary, pursuant to the certified arborist's letter dated 1/22/20 and as shown on the arborists report dated 11/25/19, the two trees (trees 167 and 168) to the south of the building are recommended for removal because the trees are too large for the area they are planted in and, these trees are actually poor specimens from a structural standpoint and will not tolerate the encroachment that will occur during site demolition and reconstruction. Tree 177 on the eastern side of the property is recommended for removal as the planter area and resulting soil volume is too small. Trees 169, 170, 171, 175, 176, 178, 179, and 180 which ring the property edges on all sides are all rated in poor condition and recommended for removal due to the poor condition. The Palm trees numbered 172, 173, and 174 which are located at the Santa Teresa Boulevard and Cottle Road corner are to be removed pursuant to the request from the City's Public Works department.

Tree Removal Table:

Item No.	Tree No.	Dia- meter in Inches	Circumf. in Inches (not diameter)	Ord. Sized	Species	To be removed	Native/Non- Native	Replace- ment Ratio	Required Number of trees to be replaced
1	167	6	15.70	No	Coast Live Oak	Remove	Native	1:1	1
2	168	5	18..85	No	Coast Live Oak	Remove	Native	1:1	1
3	171	12	37.70	No	Privet	Remove	Non-Native	2 : 1	2
4	178	13	40.84	Yes	Chinese Tallow	Remove	Non-Native	4:1	4
5	179	15	47.12	Yes	Chinese Tallow	Remove	Non-Native	4:1	4
6	170	14	43.98	Yes	Privet	Remove	Non-Native	4:1	4
7	169	15	47.12	Yes	Privet	Remove	Non-Native	4:1	4

8	177	15	47.12	Yes	Chinese Tallow	Remove	Non-Native	4:1	4
9	176	16	50.26	Yes	Privet	Remove	Non-Native	4:1	4
10	175	16	50.26	Yes	Privet	Remove	Non-Native	4:1	4
11	172	16	50.26	Yes	California Palm	Remove	Non-Native	4:1	4
12	180	19	59.69	Yes	Chinese Tallow	Remove	Non-Native	4:1	4
13	173	23	72.26	Yes	California Palm	Remove	Non-Native	4:1	4
14	174	23	72.26	Yes	California Palm	Remove	Non-Native	4:1	4

Analysis: As shown in the table above, there are 11 ordinance-sized trees and three non-ordinance sized trees to be removed, for a total of 14 trees to be removed. Twelve of the trees to be removed are non-native and two are native. A total of forty-eight 15-gallon or twenty-four 24-inch box replacement trees are required. Fifteen 24-inch box non-native replacement trees and nine 24-inch box native replacement trees are to be provided for a total of twenty-four 24-inch box replacement trees to be provided.

7. City Council Policies

City Council Policy 6-27: Evaluation of 24-Hour Uses requires that all commercial uses operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit. This is to ensure compatibility of late night and early morning uses with surrounding land uses. The policy acknowledges that while there is a general public need for some late night services, there are potentially significant problems with such uses, including proximity to residential uses and noise. This policy is intended to provide guidelines for the appropriate development of establishments that operate during these late-night hours, while avoiding the problems associated with such operations. Below is an evaluation of the proposed project for conformance with the policy

- a. Area Use Compatibility: Twenty-four hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding areas.

Analysis: There is an existing fueling station and retail store on-site, and those uses would be the same. The expansion of the store, new canopy and pumps would modernize the existing convenience store and gasoline service station, and eliminate the non-conforming auto repair use. The project is a 24-hour use. Pursuant to the San José Police Department memorandum dated 2/19/19, the Police Department is neutral to the project. Additionally, the applicant has prepared a Mitigation Management/Operations Plan and has submitted it to the Director of PBCE. Pursuant to the Mitigation Management/Operations Plan, the project applicant shall maintain a liaison with the Police Department.

The service station is in a commercial area separated from the nearest residential use by approximately 182 feet across Cottle Road, and a 6-foot high concrete masonry unit wall along the residential property. Therefore, the project would not be a detriment to the residential uses.

- b. Use Separation: Physical separation of incompatible uses is the best means to avoid potential problems. Generally, 24-hour uses should be located within 300 feet (measured from the building entrance and “Designated Parking Area” and/or “Outdoor Use Area” to the residential property line) from any property that is residentially zoned, planned, or in use. The 300-foot separation requirement may be increased or decreased on a case by case review of the specific circumstance of the site and project use based on the intensity of the use, location of other buildings and physical features, neighborhood input or other relevant criteria.

Analysis: The project is adjacent to an existing shopping center on the south and west sides. The project is bounded by Santa Teresa Boulevard to the north and Cottle Road to the west, providing for separation of use from residential. The nearest residential use is approximately 182 feet away across Cottle Road, a divided 4-5 lane road, and is separated by a 6-foot concrete masonry unit wall at the residential property lines so due to these physical separation features, the project uses would be compatible with the residential uses.

- c. Outdoor Activities: Outdoor activities may be limited for 24-hour operations except in the Downtown Core Area.

Analysis: The project site is outside of the Downtown Core Area. Outdoor activity would primarily be limited to the pump islands with limited outdoor use of the landscaped area with seating and tables. Use of this area would be limited to sunrise to sunset and is a project condition. Due to the large distance between the project, roadway, and concrete masonry unit wall, the outdoor activities would not be a nuisance to the residential uses.

- d. Noise: Use of sound attenuation walls and landscaping may be required at property lines in order to minimize noise emanating from the site. No amplified sound is permitted between 10:00 p.m. and 7:00 a.m., except low-volume drive-through speakers specifically approved in conjunction with 24-hour drive-through use.

Analysis: The closest residential property is approximately 182 feet from this site across Cottle Road, a 4 to 5 lane divided road, and is separated by an approximately six-foot high masonry wall adjacent to the residential property line. A permit condition prohibits amplified sound and there is no drive-through use for the project.

- e. Lighting: Light fixtures shall be designed and installed to minimize impacts on adjacent properties, while providing adequate lighting levels to assure security and discourage loitering in parking areas.

Analysis: The new lighting fixtures are appropriately shielded to shine downward pursuant to the City's lighting policy. The project is conditioned to be consistent with the City's Outdoor Lighting Policy and/or Exception to the Outdoor Lighting Policy. Additionally, the light poles are consistent with Municipal Code Section 20.40.530 as described above.

- f. Cleaning and Maintenance: Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m. Special conditions to control on- and off-site litter may be required on a case-by-case basis.

Analysis: Cleaning and maintenance procedures are required and are described in the Mitigation Management/Operations Plan. The project conditions include a Mitigation Management/Operations Plan as described below.

- *Litter Control. The project applicant shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site.*
- *Police Issues. The project applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug, and other police problems which may arise from the operation between 12:00 midnight and 6:00 a.m.*
- *Lighting. The project applicant shall provide enhanced lighting of the designated parking and use areas and related areas of the site to the satisfaction of the Director of Planning, Building and Code Enforcement.*
- *Exterior Clean Up. Exterior clean up and maintenance activities including garbage pickup shall not occur later than 10:00 p.m. or prior to 7:00 a.m. when the business is located within 300 feet of residential uses.*
- *Delivery. The delivery hours will occur no later than 9:00 pm and no earlier than 7:00 am.*

Additionally, there is a project condition limiting the hours of the patio area to from sunrise to sunset.

8. Design Guidelines

Commercial Design Guidelines

The City's Commercial Design Guidelines establish design objectives for service stations as shown below. The project is consistent with the guidelines in the following ways:

Page 3, A1: New development should complement the building forms, architectural styles and landscape patterns of neighboring 'permanent' development.

Analysis: The project architecture is complementary to the surrounding shopping center. Similar to the shopping center, the retail store is one story, and has an earth tone colored palate. The columns on the fuel station canopy has a change in material

like many of the pillars in the surrounding shopping center, emphasizing the columns base. Similar to the shopping center landscaping, the project provides perimeter landscaping, low hedges, ground covering and includes trees in the landscape bulbs in the parking area (to the north of the retail store).

Page 15, A2: Landscaping should generally consist of live plants. Gravel, colored rock, tan-bark, and similar materials are acceptable as mulch, but not as ground cover.

Analysis: As part of the sites redesign, new landscaping is provided throughout the entire site. The landscaping plan consists of new trees, shrubs, flowering plants, and ground cover.

Page 84, B.1: Structures on the site should be spatially related: buildings should not be placed haphazardly but should be organized into a simple cluster.

Analysis: The subject site is a small corner lot and the eight pumps with 16 fueling stations are clustered under one canopy in a linear fashion. The retail store and trellis are also aligned in a linear fashion at the rear of the site. The pumps are separated from the retail store and trellis area to allow for site circulation.

Page 84, C.1: All structures on the site (including kiosks, car wash building, gas pump columns, etc.) should be architecturally consistent with the main structure.

Analysis: The project provides natural earth tones for its color palette. The retail store and trash enclosure employs stucco and a stone base for exterior materials. The canopy also has a stone base and the trellis is shown as a wooden structure. This leads to comprehensive earth tones and textures throughout the site providing architectural consistency creating a harmonious design.

Page 85, D.6: Each pump island should include stacking for two vehicles (40 feet) on-site.

Analysis: Each pump island provides enough room for the stacking of two cars.

9. California Environmental Quality Act.

An Initial Study (IS) and Mitigated Negative Declaration (MND) entitled “Initial Study/Mitigated Negative Declaration for the 6211 Santa Teresa Boulevard Fuel Station Project” was prepared by the Director of Planning, Building, and Code Enforcement for the subject Conditional Use Permit. The document was circulated for a 22-day public review between April 27, 2020 to May 20, 2020. The 20-day comment period was extended for two days (from May 18, 2020 to May 20, 2020) to account for a two-day delay in posting with the State Clearinghouse in accordance with the Governor’s Executive Order N-54-20.

One public comment from Valley Water was received during the public circulation period. The comment noted the project location is not located adjacent to any Valley Water facility or right of way. Therefore, according to Valley Water’s Water Resources Protection Ordinance, a Valley Water permit is not required for the project. The

commenter did not identify any CEQA related issues. The comment letter is posted on the City's website listed.

The final IS/MND identified potentially significant environmental impacts and determined that the project would not have a significant effect on the environment with the incorporation of specified mitigation measures. The primary environmental issues addressed in the IS/MND were the potential impacts to biological resources for nesting birds and hazards and hazardous materials due to soil contamination. The MND includes mitigation measures for the previously stated resource areas that would reduce any potentially significant project impacts to a less-than-significant level. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) and in the associated permit as a part of the project.

The entire IS/MND, associated appendices, response to comments, and other related environmental documents are available on the Planning web site at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/6211-santa-teresa-blvd-fuel-station-project>.

10. Conditional Use Permit Findings

Section 20.100.700 of the Zoning Ordinance specifies the required findings for approval of a Conditional Use Permit. These findings are made for the project based on the analysis related to General Plan, Zoning Ordinance, and CEQA conformance and subject to the conditions set forth in the Permit:

- a. The conditional use permit, as approved, is consistent with and will further the policies of the general plan, applicable specific plans and area development policies; and

Analysis: The project would further goals of the General Plan as described above in the General Plan Conformance section.

- b. The conditional use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: The project would eliminate the legal non-conforming auto repair use on site. File No. CP84-049 approved redevelopment of the subject site including the building that houses the retail store. As described in the Zoning section above the building does not meet the current setback standards in the front and rear. Because the foundation is to remain, the building will retain its legal non-conforming status with regard to the front and rear setbacks. The addition would not worsen the front or rear setbacks as the addition is on the west side of the building. The new canopy continues to maintain the 33-foot front setback, which is the same as the existing canopy and is consistent with the side and rear setbacks. The trellis is consistent with the height, except for the front setback, and the trellis does not worsen the condition of the front setback of the site. So the

project meets the use, height, and setbacks standards as well as parking standards.

- c. The conditional use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project is consistent with the City's 24-Hour Use Policy as described above in the policy analysis section.

- d. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety, or general welfare; and

Analysis: As described above, there is an existing fueling station, auto repair, and retail store at the subject site. The project upgrades the site with a new fueling canopy, an addition to the retail store for a total 3,056 square feet, termination of the non-conforming auto repair use and new landscaping which would make the site more visually appealing. The site upgrade and 24-hour use would provide the added convenience of late-night hours to neighborhood residents as well as commuters. The addition to the retail store would allow more retail products including prepackaged meals, deli meats, milk, snacks, shampoo, motor oil, etc. Alcohol sales are not allowed by this Conditional Use Permit.

The project site is adjacent to commercial uses and would not adversely affect residential properties due to the distance and separation of the residential uses to the subject site. The residential uses are approximately 182 feet away across Cottle Road, a 4 to 5 lane divided road, and are separated from the road and the project site by an approximately 6-foot high concrete masonry unit wall at the residential property line. Additionally, project conditions include a Mitigation Management/Operations Plan as identified above. Additionally, there is a project condition limiting the hours to of the patio area to from sunrise to sunset.

Therefore, with implementation of the Mitigation Management measures (shown in the policy section above), the project would not adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area. Nor would it impair the utility or value of neighboring properties or be detrimental to public health, safety or general welfare as the project is to upgrade the existing fueling station and allow for 24-hour use.

- e. 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 said use with the uses in the surrounding area; and

Analysis: The fueling station and retail store uses are to remain, and the project is of adequate size and shape to accommodate the project as all project components are designed to be on-site.

- f. The proposed site is adequately served:
- i. 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
 - ii. By other public or private service facilities as are required.

Analysis: As identified above, the current uses onsite consist of a fueling station and retail store. One driveway off Santa Teresa Boulevard closest to the Santa Teresa Boulevard and Cottle Road intersection is to be closed at the project site. Access to the site is gained through two driveways. One driveway is off of Cottle Road at the project site and the other driveway is off of Santa Teresa Boulevard, adjacent to the site (allowed through an easement), which also serves the adjacent shopping center. Santa Teresa Boulevard is a fully paved road with all public utilities provided to the site. Cottle Road is a fully paved 4-5 lane divided road. There is a bus station approximately 80 feet from the project site and 1,650 feet to Cottle Light Rail Station.

- g. 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 affect on adjacent property or properties.

Analysis: As described above, the project would not result in an unacceptable negative affect on adjacent property or properties with regards to noise, vibration, dust, drainage, erosion, storm water runoff, and odor as the project. Additionally, there are standard environmental permit conditions (best management practices) included in the Conditional Use Permit Resolution which would ensure dust, noise, drainage, and stormwater runoff are minimized during the project's construction.

11. Site Development Permit Findings

A Site Development Permit is also required for this project because a Site Development Permit is required for the erection, construction, enlargement, placement or installation of a building or structure on any site, pursuant to Municipal Code Section 20.100.610. In accordance with Zoning Code Section 20.100.140, applications for one or more development permits for the same site may be reviewed and acted upon in a unified process using the procedure for the highest level permit

(here, the Conditional Use Permit). To make the Site Development Permit findings pursuant to San José Municipal Code Section 20.100.630, the City Council must determine that:

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.

Analysis: As discussed above, there is an existing fuel station on site and the expansion of the retail store as well as the new canopy would allow for continued services for the residences, businesses, and commuters in the surrounding neighborhood. The remodeling of the retail uses would be more aesthetically pleasing, and would potentially attract new customer to the site which could increase the economic viability of the existing fueling station site. The building and structures are architecturally compatible with one another as well as the surrounding shopping center as described above. Additionally, new trees and landscaping would enhance the aesthetics of the site. Therefore, the project would further the policies of the General Plan.

- b. 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: The project is consistent with the City's development standards for use, height, and setbacks as discussed in the Zoning Conformance section above.

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency.

Analysis: As described above, the Site Development Permit is consistent with City Council Policy 6-27: Evaluation of 24-Hour Uses. The project site is adjacent to commercial uses and would not adversely affect residential properties due to the distance and separation of the residential uses from the subject site. The nearest residential uses are approximately 182 feet away across Cottle Road, a 4-5 lane divided road, and are separated by an approximately 6-foot high concrete masonry unit wall along the residential property line and Cottle Road. Additionally, the project is required to comply with the approved Mitigation Management Plan.

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

Analysis: As shown above, the building and canopy are complimentary to one another showing a cohesive relationship with regards to exterior finish materials providing aesthetic harmony. The building and canopy columns use the same stone material for the base and share the same color walls which is visually appealing. Additionally, the wood trellis is complimentary to the natural earth tones found in the stone in the building, canopy, and trash enclosure. The project would

primarily face Santa Teresa Boulevard with the pumps oriented in a linear fashion. The trellis and retail store are also aligned in a linear fashion along the southern end of the site allowing for site compatibility.

- e. 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: As discussed above, the project site is situated at the corner of Santa Teresa Boulevard and Cottle Road. The project would primarily face Santa Teresa Boulevard, which serves as an east-west connector, with site access from both Santa Teresa Boulevard and Cottle Road. The materials and colors are harmonious with the shopping center that surrounds it. The tile roofing and tan and beige tones are compatible with the existing shopping center. The new landscaping and modernization of the site would add to and improve the neighborhood character.

- f. 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 affect on adjacent property or properties.

Analysis: As identified above, the project would not have an unacceptable negative affect on adjacent property or properties with regards to noise, vibration, dust, drainage, erosion, storm water runoff, and odor as the project. Additionally, there are standard environmental permit conditions (best management practices) are included in the Conditional Use Permit Resolution which would ensure dust, noise, drainage, and stormwater runoff are minimized during the project's construction

- g. 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: As shown on the approved plan sets, new landscaping, irrigation systems, utilities, and trash facilities will upgrade the appearance of the neighborhood. Much of the mechanical equipment will be behind screening on the rooftop. The new landscaped area, pathway, and storefront glazing would enhance the neighborhood appearance.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: As identified above, the project is accessible from one driveway off of Cottle Road and one driveway off of Santa Teresa, meets the zoning requirements for parking, and provides ample pedestrian access to the site from Cottle Road and Santa Teresa Boulevard.

12. Demolition Findings: Chapter 20.80.460 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are

made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight, or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety, or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal, or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: The demolition of the existing approximately 2,100 square foot pump canopy, landscaping, monument sign, light, fueling system, and air and water pump would allow for the improvement of the fueling system and site conditions. The demolition would facilitate an upgrade and expansion to the existing fuel station and retail store that includes a new approximately 1,800-square foot fueling canopy and an 817-square foot addition to the existing 2,239-square foot building for a total of approximately 3,056 square feet for a retail store which would be compatible with the surrounding neighborhood as described above. Since the demolition is for commercial structures, the City's existing housing stock would be maintained. The site is not identified on the City's Historic Resources Inventory. There is no historical significance as the project was constructed between 1974 and 1986 and does not meet the age criteria of 50 years. The project would not have an adverse impact on the surrounding neighborhood as identified in the City Council Policy section above.

In accordance with the findings set forth above, the appeal of the Conditional Use Permit is denied. The appeal identified bribery, fraud, and zoning violations. As identified above, any negotiations between the applicant and neighbors are separate and apart from the review of this application. The Conditional Use Permit findings and the environmental review did not identify any noise or transportation/traffic impacts. Planning Staff identified that the proposed project's Conditions of Approval would require new mechanical equipment to comply with the Municipal Code noise limits and the outdoor area hours of operation would be limited to sunrise to sunset. The project was reviewed in accordance with the City's General Plan, Council Policies, Zoning Code, Design Guidelines, and CEQA. Additionally, a Conditional Use Permit to use the subject property for the said purpose

specified herein and subject to each and all the conditions hereinafter set forth, are hereby conditionally **approved**. This City Council expressly declares that it would not have approved these Permits 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 conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Pursuant to Section 20.100.290(B) of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Conditional Use Permit and Site Development Permit (collectively referred to as "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 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no 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 to extend the validity of this Permit in accordance with Title 20 of the San José 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 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 by 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 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 shall conform to the approved Conditional Use Permit plans entitled, "7-11 Convenience and 76 Fuel" dated July 6, 2020, 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 the "Approved Plan Set."
6. **Use Authorization.** Subject to all conditions herein, this Permit allows a 24-hour use and fueling station use.
7. **Operations Plan.** Permittee shall fully comply with the approved Management and Operations Plan, dated 7/6/2020, as may be amended.
8. **Mitigation Management Plan.** Permittee shall fully comply with the approved Mitigation Management Plan, dated 6/26/2020.
9. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
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. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy or Exception to the Outdoor Lighting Policy.
13. **Colors and Materials.** All building colors and materials shall be those specified on the Approved Plan Set.
14. **Trellis Area.** Outdoor use within the trellis area must be limited to sunrise to sunset.
15. **Trellis Height.** The trellis height must not be greater than 12 feet.
16. **Stormwater Stenciling.** All storm drain inlets and catch basins shall be stenciled with the "NO DUMPING - FLOWS TO BAY," applied to the top and/or face of the curb next to the storm drain inlet. The development maintenance entity and/or property owner shall ensure that all storm drain inlet markings located on privately-maintained streets within the property are present and maintained.
17. **Anti-Graffiti.** The operator shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
18. **Litter Control.** The permittee shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site.
19. **Police Issues.** The permittee shall maintain a liaison with the Police Department to effectively control crime, gang, drug, and other police problems which may arise from the operation between 12:00 midnight and 6:00 a.m.
20. **Exterior Clean Up.** Exterior clean up and maintenance activities including garbage pick-up shall not occur later than 10:00 p.m. or prior to 7:00 a.m. when the business is located within 300 feet of residential uses
21. **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. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
22. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.

23. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
24. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
25. **Building and Property Maintenance.** The property owner or operator 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.
26. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
27. **Street Number Visibility.** Street numbers of the building shall be easily visible from the street at all times, day and night.
28. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. 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.
29. **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.
30. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
31. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
32. **Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
33. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.

34. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
35. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
36. **Affordable Housing Financing Plans.** The San José City Council ("City") approved the Envision San José General Plan 2040 ("General Plan") in 2011. The General Plan provides the framework for development located in San José.

The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

37. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

- 38. Building Division 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, CP18-011 shall be printed on all construction plans submitted to the Building Division.
 - b. Americans with Disabilities Act. The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. Emergency Address Card. The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. Construction Plan Conformance. A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins 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.
 - e. Other. Such other requirements as may be specified by the Chief Building Official.
- 39. Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2016 California Fire Code.
- 40. Demolition Permit.** A demolition permit may be issued for the buildings and structures indicated on the Approved Plans only upon the issuance of a Grading Permit for the project. Any modification to this precondition shall require approval of a Major Permit Adjustment. In no case shall this precondition supersede applicable mitigation measures for the project.
- 41. Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
- 42. Timing of Tree Removals.** Trees that are proposed for removal, as indicated on the Approved Plans, may be removed only upon the issuance of a Grading Permit for the project. Any modification to this precondition shall require approval of a Major Permit Adjustment. In no case shall this precondition supersede applicable mitigation measures for the project.
- 43. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee shall 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/index.aspx?nid=2246>.

- 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:** A Local Transportation Analysis (LTA) was performed for this project, which identified and analyzed the impacts on transportation, access, and related safety elements in the proximate area of the project based on 21 a.m. and 19 p.m. net peak hour trips. See separate LTA Memo dated 1/21/20 for additional information. The following conditions shall be implemented:
 - i. Provide a 32-foot wide driveway along Cottle Road.
 - ii. Provide a 32-foot wide driveway adjacent to the eastern property line along Santa Teresa Boulevard.
 - iii. Advise large fuel tankers to enter on Santa Teresa Boulevard and exit on Cottle Road. Large fuel tankers should be advised to refill their gas tanks during off-peak hours, as they may need to cross into multiple lanes while entering and exiting the project site.
 - iv. Construct a 15-foot wide sidewalk along Santa Teresa Boulevard project frontage and a 10-foot wide sidewalk along Cottle Road project frontage
- c. **Urban Village Plan:** This project is located in the Santa Teresa Boulevard/Cottle Road Urban Village per the Envision San José 2040 General Plan. In order for this project to establish an identity as an Urban Village, the project is required to construct up to 15-foot sidewalks.
- d. **Grading/Geology:**
 - i. A grading permit is 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 4 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 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.

- iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- e. **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, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
 - iv. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
- f. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area and will not create and/or replace one acre or more of impervious surface. The project is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) which requires demonstrating that post-project runoff is less than or equal to the estimated pre-project rates and durations.
- g. **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.

- h. **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.
- i. **Street Improvements:**
 - i. Construct curb, gutter, and 15-foot wide City standard attached sidewalk with 4-foot by 5-foot tree wells behind back of curb along Santa Teresa Boulevard project frontage. Provide approximately 3 feet of public street easement dedication to accommodate the new sidewalk width.
 - ii. Construct curb, gutter and 10-foot wide City standard attached sidewalk with 4-foot by 5-foot tree wells behind back of curb along Cottle Road project frontage. Provide approximately 4 feet of public street easement dedication along Cottle Road to accommodate the new sidewalk width.
 - iii. Construct 32-foot wide City Standard driveway along Cottle Road project frontage.
 - iv. Close westerly driveway along Santa Teresa Boulevard project frontage.
 - v. 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.
 - vi. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
- j. **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.
- k. **Street Trees:**
 - i. 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 cut-outs at the back of curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.
 - ii. Remove existing palm trees adjacent to public sidewalk as palm fronds present a safety risk to pedestrians.
 - iii. The recommended street trees on Santa Teresa Boulevard are Ginkgo biloba 'Autumn Gold' planted 35 feet on center in park strip and the recommended street trees on Cottle Road are Maackia amurensis planted 25 feet on center. Consult the City Arborist for alternatives.

- iv. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are to be removed.

44. **Mechanical Equipment:** The City's Municipal Code limits noise from mechanical and other stationary equipment to 60 decibels at the commercial or other non-residential property line. Prior to construction, during the design phase of the building, an acoustical study will be required to demonstrate to the City's Chief Building Official that noise emissions from stationary equipment on the new building would conform to the City's requirements. Completion of this study would be required prior to issuance of a building permit.

45. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. _____.

46. **Standard Environmental Permit Conditions.**

- a. **Air Quality:** The permittee shall implement the following measures during all phases of construction to control dust and exhaust at the project site.
 - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least 2 feet of freeboard.
 - iii. Remove visible mud or dirt track-out onto adjacent public roads by using wet power vacuum street sweepers at least daily. The use of dry power sweeping is prohibited.
 - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (e.g., dirt, sand, etc.).
 - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
 - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - vii. Replant vegetation in disturbed areas as quickly as possible.
 - viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, CCR § 2485).
 - x. Provide clear signage for construction workers at all access points.

- xi. Maintain and properly tune construction equipment in accordance with manufacturer’s specifications.
 - xii. Check all equipment by a certified mechanic and record a determination of “running in proper condition” prior to operation.
 - xiii. Post a publicly visible sign with the telephone number and person at the Lead Agency to contact regarding dust complaints.
- b. **Tree Replacement:** The removed trees would be replaced according to tree replacement ratios required by the City, as provided in the Table below, as amended.

TABLE 9. TREE REPLACEMENT RATIOS				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15 gallon
19 up to 38 inches	3:1	2:1	none	15 gallon
Less than 19 inches	1:1	1:1	none	15 gallon

Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a permit is required for removal of trees of any size.
 A 38-inch tree equals 12.1 inches in diameter.
 A 24-inch box tree equals two 15-gallon trees

- Single-family and two-dwelling properties may be mitigated at a 1:1 ratio. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of PBCE or the Director’s designee, at the development permit stage:
 - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
 - Pay off-site tree replacement fee(s) to the City, prior to the issuance of grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

- c. **Santa Clara Valley Habitat Conservation Plan Coverage Screening Form:** The Project is subject to applicable Santa Clara Valley HCP conditions and fees prior to issuance of any grading or building permits. The permittee shall submit a Santa Clara Valley HCP Coverage Screening Form to the Supervising Environmental Planner of the Department of PBCE for review and will complete subsequent forms, reports, and/or studies as required.
- d. **Cultural Resources:** Before ground disturbance is to occur, the Project would comply with the following permit conditions for the protection of subsurface prehistoric, historic, and other archaeological resources during construction.
 - i. In the event that prehistoric or historic resources are encountered during excavation and/or grading of the project site, all activity within a 50-foot radius of the find shall halt, the Director of PBCE or the Director’s designee and the City’s Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and 2) make appropriate recommendations regarding the disposition

of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the NWIC (if applicable). Project personnel shall not collect or move any cultural materials.

- ii. **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code §§ 7054 and 7050.5 and PRC §§ 5097.9 through 5097.99, as amended per AB 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the project site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Director of PBCE or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner, who shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC shall then designate a Most Likely Descendant (MLD). The MLD shall inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Santa Clara County Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance.
 - o The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - o The MLD identified fails to make a recommendation.
 - o The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- iii. **Paleontological Resources.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of PBCE shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that the items can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the PBCE.

e. Geology and Soils:

- i. To avoid or minimize potential damage from seismic shaking, the Project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the project site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City's Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The Project shall be designed to withstand soil hazards identified on the site and the Project shall be designed to reduce the risk to life or property onsite and offsite to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches would be installed, if necessary, to divert runoff around excavations and graded areas.
- v. If vertebrate fossils are discovered during construction, all work on the project site shall stop immediately, the Director of Planning or Director's designee of the Department of PBCE shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to preparation and recovery of fossil materials so that the materials can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall be responsible for implementing the recommendations of the paleontological monitor. A report of all findings shall be submitted to the Director of Planning or Director's designee of PBCE.

f. Hydrology

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.

- v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall be required to maintain at least 2 feet of freeboard.
 - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
 - viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system may also be installed at the request of the City.
 - ix. The permittee shall comply with the City's Grading Ordinance, including implementing erosion and dust control measures during site preparation and complying with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- g. **Noise Construction-Related Noise.** Noise minimization measures include, but are not limited to, the following.
- i. Construct solid plywood fences around ground-level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - ii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - iii. Prohibit unnecessary idling of internal combustion engines.
 - iv. Locate stationary noise-generating equipment such as air compressors or portable power generators as far away as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
 - v. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
 - vi. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
 - vii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
 - viii. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
 - ix. Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler) and shall require that reasonable measures be implemented to correct the problem.

Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

- x. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.

47. Loitering Prohibited. Loitering on the premises shall be prohibited.

48. 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 Conditional Use 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, the appeal of the permit is denied and a permit to use the subject property for said purpose specified above is hereby **approved**.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
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.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE 6211 SANTA TERESA BOULEVARD FUEL STATION MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the 6211 Santa Teresa Boulevard Fuel Station Project under Planning File No. CP18-011 (the “Initial Study/Mitigated Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

WHEREAS, the 6211 Santa Teresa Boulevard Fuel Station Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Conditional Use Permit which would demolish all existing structures, remove the existing underground fuel tanks, and construct a 3,056 square feet (sf) convenience store with 24-hour use, site improvements (paving, exterior lighting, landscaping, and the removal of 14 trees of which 11 are ordinance size), a fuel canopy with four fuel dispensers, and two new underground fuel tanks on an approximately 0.47-gross acre site located at the southeast corner of Santa Teresa Boulevard and Cottle Road (6211 Santa Teresa, Assessor’s Parcel Number 704-01-007), San José, California; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the

environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the “Mitigation Monitoring and Reporting Program”); and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any

interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

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

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/ Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning, Building and Code Enforcement at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby deny the environmental appeal and adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File No. CP18-011). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/ Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, Building and Code Enforcement located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

From: [Van Der Zweep, Cassandra](#)
To: [Norman Clancy](#); [Buss, Rhonda](#)
Subject: Re: Meeting
Date: Tuesday, July 14, 2020 3:49:16 PM

Hi Norman,

Rhonda and I are free to meet via Zoom tomorrow at 4PM. I have set up the Zoom Meeting invite and emailed you a calendar invitation. You can access Zoom through the internet or phone. Due to the COVID 19 crisis, we are currently not doing in person meetings.

If this time doesn't work, please let me know and we can coordinate a time later this week.

Thanks,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Norman Clancy [REDACTED] >
Sent: Tuesday, July 14, 2020 9:21 AM
To: Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>; Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Subject: Meeting

[External Email]

Hi Cassandra,

Is the plan still to meet tomorrow? I am around all day if you want to meet today.

Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Re: File No.CP18-011, 6211 Santa Teresa Blvd.
Date: Friday, July 17, 2020 9:20:00 AM

[External Email]

Hi,

OK great. I will absolutely keep you in the loop. Let's just work together to fix the problems.

Norman

On Thu, Jul 16, 2020 at 5:06 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman,

Hope you are well and having a good day.

Thank you for taking the time to meet with us yesterday via zoom. Here is the [link](#) to the Planning Commission Agenda and which includes a link to the hearing documents for File No. CP18-011, the 7-11 project. The draft Resolution includes the draft project conditions and Mitigation Measures.

Pursuant to our discussion, Cassandra (copied) and I met with Vince and Karly (of the applicant's team). Vince indicated that they were meeting internally to discuss your concerns and that he would be circling back with you.

Please let us know if you need any further information. Also, would you be able to keep us informed on your discussions with the applicant's team?

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: 7-11
Date: Wednesday, July 22, 2020 11:00:16 AM

[External Email]

Hi,

Can you send me a copy of the documents and or drawings that 7-11 will be presenting tonight?

Norman.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: 7-11
Date: Wednesday, July 22, 2020 12:32:57 PM

[External Email]

Hi,

At this point I don't think 7-11 is serious about doing what they said they would do. There are far more residential homes affected by the 7-11 then just mine.

I have noticed 7-11 had a bad experience with neighbors in San Jose already. Let's see what happens but I question almost all of what they have submitted and represented already. Can I request the participants be put under oath?

Norman

Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Re: File No.CP18-011, 6211 Santa Teresa Blvd.
Date: Wednesday, July 22, 2020 2:47:28 PM

[External Email]

Hi ,

Please call me at [REDACTED]

On Thu, Jul 16, 2020 at 5:06 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman,

Hope you are well and having a good day.

Thank you for taking the time to meet with us yesterday via zoom. Here is the [link](#) to the Planning Commission Agenda and which includes a link to the hearing documents for File No. CP18-011, the 7-11 project. The draft Resolution includes the draft project conditions and Mitigation Measures.

Pursuant to our discussion, Cassandra (copied) and I met with Vince and Karly (of the applicant's team). Vince indicated that they were meeting internally to discuss your concerns and that he would be circling back with you.

Please let us know if you need any further information. Also, would you be able to keep us informed on your discussions with the applicant's team?

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

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From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: Adjournment
Date: Wednesday, July 22, 2020 3:12:51 PM

[External Email]

Hi,

7-11 isn't playing nice in the sandbox. I need to have this meeting adjourned. 7-11 wants to quietly slip this thorough tonight and I am going to do anything in my power to stop that. I need a little time to ensure all the neighbors are aware of the 7-11. I need to know more about the project before I can list my complaints and or comments and suggestions as per the requirement to bring up issues that can be litigated later at the public hearing. It is complicated so it will take some time. The environmental review has problems as well. I just need more time.

Please get back to me before the meeting.

Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#)
Subject: 7-11
Date: Wednesday, July 22, 2020 6:06:01 PM

[External Email]

Hi Rhonda,

I am not sure what to do. The data in the document I have is wrong and maybe fraudulent. If that approval goes through tonight I will have to sue the city. Are there any other channels I can go through to get more time to review the proposed project and validate the contents.

No approvals should be given with the virus still in full force. It is hard to get people together.

Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: Fraud
Date: Wednesday, July 22, 2020 7:07:14 PM

[External Email]

I was kidding when I asked for 500k. And I knew he would tell you. You have all committed fraud and I am going to sue you immediately both personally and with the city. All you had to do was your job. I will tie that up in litigation for years.

I have four cases in Federal Court right now and I will add you all to that docket list. Negligence- and bad faith. He knew he had that approval before he walked in the door. Now we have to deal with this for years to come. Terrific.
Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: Adjournment
Date: Wednesday, July 22, 2020 3:12:51 PM

[External Email]

Hi,

7-11 isn't playing nice in the sandbox. I need to have this meeting adjourned. 7-11 wants to quietly slip this thorough tonight and I am going to do anything in my power to stop that. I need a little time to ensure all the neighbors are aware of the 7-11. I need to know more about the project before I can list my complaints and or comments and suggestions as per the requirement to bring up issues that can be litigated later at the public hearing. It is complicated so it will take some time. The environmental review has problems as well. I just need more time.

Please get back to me before the meeting.

Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [REDACTED]
Subject: File No. CP18-011, 6211 SANTA TERESA BOULEVARD
Date: Wednesday, July 8, 2020 5:07:00 PM

Dear Norman Clancy,

Hope all is well with you and yours.

I received a message regarding this file. How can I help you?

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: [Buss, Rhonda](#)
To: [REDACTED]
Cc: [Van Der Zweep, Cassandra](#)
Subject: File No.CP18-011, 6211 Santa Teresa Blvd.
Date: Thursday, July 16, 2020 5:06:00 PM

Dear Norman,

Hope you are well and having a good day.

Thank you for taking the time to meet with us yesterday via zoom. Here is the [link](#) to the Planning Commission Agenda and which includes a link to the hearing documents for File No. CP18-011, the 7-11 project. The draft Resolution includes the draft project conditions and Mitigation Measures.

Pursuant to our discussion, Cassandra (copied) and I met with Vince and Karly (of the applicant's team). Vince indicated that they were meeting internally to discuss your concerns and that he would be circling back with you.

Please let us know if you need any further information. Also, would you be able to keep us informed on your discussions with the applicant's team?

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: [Van Der Zweep, Cassandra](#)
To: [Norman Clancy](#)
Cc: [Buss, Rhonda](#); [Tu, John](#)
Subject: Re: 306 Brian Court
Date: Monday, July 13, 2020 10:38:36 AM

Hi Norman,

I am happy and free to speak with you this week. I have cc'd Rhonda the Project Manager and her supervisor so they are aware.

Please let me know any specific points you would like to discuss.

This way we can be prepared for our conversation and I can invite the appropriate people to our meeting if needed.

I am free Wednesday 10AM-11AM, Thursday 9AM to 10AM and 1PM to 2PM, all Friday afternoon.

Thanks,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement

City of San José | 200 East Santa Clara Street

Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Norman Clancy <[REDACTED]>
Sent: Monday, July 13, 2020 10:21 AM
To: Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: [REDACTED] Brian Court

[External Email]

Hi Cassandra,

Are you available to speak this week?

Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Norman Clancy](#)
Cc: [Van Der Zweep, Cassandra](#)
Subject: RE: File No. CP18-011, 6211 SANTA TERESA BOULEVARD
Date: Thursday, July 9, 2020 6:16:00 AM

Dear Norman,

Thank you for your email and inquiry.

The existing gas station site is proposed for remodeling. The project went through environmental review which includes noise. Please see the project noise information below.

Performance Standards (Noise). Pursuant to Municipal Code [Section 20.40.600](#), commercial uses adjacent to a property used for zoned for commercial purposes must not exceed a maximum of 60 decibels at the property line. Pursuant to the project's noise memo prepared by Analytical Environmental Services dated March 2020, traffic noise and noises related to heating, ventilation, air conditioning, and the trash operations would generate operational noise similar to existing gas station conditions on the existing project site. The new building would have up to two HVAC system on the roof top, one on the western side and one on the eastern side. The trash enclosure would be located adjacent to the northeast corner of the store. The project would not significantly increase operational noise levels as the use and site layout would remain the same and the HVAC system would have upgraded equipment which produce less noise. The projected noise would be 58.5 decibels at the sensitive receptor, residences located southwest of the site. Furthermore, noise generated from the mechanical equipment on-site would be conditioned to be consistent with Zoning Ordinance performance standards.

Below is the condition that is in draft resolution.

Mechanical Equipment: The City's Municipal Code limits noise from mechanical and other stationary equipment to 60 decibels at the commercial or other non-residential property line. Prior to construction, during the design phase of the building, an acoustical study will be required to demonstrate to the City's Chief Building Official that noise emissions from stationary equipment on the new building would conform to the City's requirements. Completion of this study would be required prior to issuance of a building permit.

Cassandra van der Zweep (copied) is the Environmental Project Manager. She would be the best person to contact for additional noise information if needed.

Hope this information helps.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Wednesday, July 8, 2020 5:21 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Subject: Re: File No. CP18-011, 6211 SANTA TERESA BOULEVARD

[External Email]

Hi Rhonda.

I wanted to speak to you about the noise generated by the new gasoline station on Cottle and Santa Teresa Blvd. I live at [REDACTED] and if there is anything that could be done to mitigate the noise which comes along with the expanded use please let me know.

Are there any plans to mitigate sound?

Thanks,

Norman

On Wed, Jul 8, 2020 at 5:07 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman Clancy,

Hope all is well with you and yours.

I received a message regarding this file. How can I help you?

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Norman Clancy](#)
Cc: [Van Der Zweep, Cassandra](#)
Subject: RE: File No. CP18-011, 6211 SANTA TERESA BOULEVARD
Date: Thursday, July 9, 2020 11:14:00 AM

Dear Norman Clancy,

Thank you for your email.

The noise information is a summary. Cassandra van der Zweep (copied) is the Environmental Project Manager. Her email is Cassandra.VanDerZweep@sanjoseca.gov and her phone number is 408-535-7659. She would be the best person to contact for additional noise and environmental information.

Hope this information helps.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Thursday, July 9, 2020 8:20 AM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Subject: Re: File No. CP18-011, 6211 SANTA TERESA BOULEVARD

[External Email]

Rhonda,

Surprise! No email address for Cassasndra!!!! I would like to have your phone number or the number of someone who can help me.

On Wed, Jul 8, 2020 at 5:07 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman Clancy,

Hope all is well with you and yours.

I received a message regarding this file. How can I help you?

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Van Der Zweep, Cassandra](#)
To: [Buss, Rhonda](#); [Norman Clancy](#)
Subject: Re: File No. CP18-011, 6211 SANTA TERESA BOULEVARD
Date: Thursday, July 9, 2020 4:34:54 PM

Hi Norman,

Email is the best way to contact me. Please feel free to follow up with any specific questions you might have.

Thanks,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Sent: Thursday, July 9, 2020 11:14 AM
To: Norman Clancy [REDACTED]
Cc: Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: RE: File No. CP18-011, 6211 SANTA TERESA BOULEVARD

Dear Norman Clancy,

Thank you for your email.

The noise information is a summary. Cassandra van der Zweep (copied) is the Environmental Project Manager. Her email is Cassandra.VanDerZweep@sanjoseca.gov and her phone number is 408-535-7659. She would be the best person to contact for additional noise and environmental information.

Hope this information helps.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Thursday, July 9, 2020 8:20 AM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Subject: Re: File No. CP18-011, 6211 SANTA TERESA BOULEVARD

[External Email]

Rhonda,

Surprise! No email address for Cassasndra!!!! I would like to have your phone number or the number of someone who can help me.

On Wed, Jul 8, 2020 at 5:07 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman Clancy,

Hope all is well with you and yours.

I received a message regarding this file. How can I help you?

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Provedor, Jennifer](#)
Subject: RE: Public Question - CP18-011
Date: Wednesday, July 8, 2020 5:05:00 PM

Hi Jennifer,

Thank you. I will email him.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Provedor, Jennifer
Sent: Wednesday, July 8, 2020 5:00 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Subject: Public Question - CP18-011

Hi Rhonda,

I hope all is well. I received a call from a member of the public that would like for you to contact them regarding file no. CP18-011. Contact information below:

Norman Clancy

[REDACTED]
[REDACTED]

Please let me know if you have any questions.

Thank you.

Kind Regards,

Jennifer Provedor

Senior Supervisor, Administration | 408.535.3505
City of San Jose | Planning, Building, and Code Enforcement
200 E Santa Clara Street, 3rd Floor Tower | San Jose, CA 95113

From: [Buss, Rhonda](#)
To: [REDACTED]
Subject: File No. CP18-011, 6211 SANTA TERESA BOULEVARD
Date: Wednesday, July 8, 2020 5:07:00 PM

Dear Norman Clancy,

Hope all is well with you and yours.

I received a message regarding this file. How can I help you?

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Re: File No. CP18-011
Date: Thursday, July 23, 2020 4:20:46 PM

[External Email]

Vince from 711 tried to bribe me to not go to the meeting. What are you going to do?

On Thu, Jul 23, 2020 at 3:40 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman,

If you would like to appeal the decision made by the Planning Commission last night, please see the application links below. The application should be submitted to ZoningQuestions@sanjoseca.gov.

- Permit appeal: <https://www.sanjoseca.gov/home/showdocument?id=15363>
- CEQA appeal: <https://www.sanjoseca.gov/home/showdocument?id=15323>

The appeal period would end at 5:00 PM on August 3, 2020.

Thank you,

Rhonda Buss
Planner
City of San Jose
Development Services, 3rd Floor Planning
200 East Santa Clara Street
San Jose, CA 95113-1905

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: 3 days after the public hearing to appeal
Date: Thursday, July 23, 2020 5:37:41 PM

[External Email]

I would like to file an appeal for the illegal apprival given to 7 11. I am unable to bring the appeal notice to city hall because of the Pandamic.

The appeal is based on bribery fraud.

How can I get this to you and still be timely with the appeal.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: Phone call from Planning board
Date: Thursday, July 23, 2020 6:50:49 PM

[External Email]

Hi,

I was told I would hear from your cohorts on the planning board but I haven't heard from them.

Does Vince take you all to dinner etc. You are all too cozy with 7 11. Last night was disgusting and you will all be held accountable.

All they had to do was build a fence that would actually do something. Well now he goes to jail.

Young and invincible - sometimes they learn and sometimes they don't.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Comic relief- Not even close. I want this entire project investigated
Date: Thursday, July 23, 2020 8:17:29 PM

[External Email]

CP Commercial Pedestrian. The CP Commercial Pedestrian District is a district intended to support pedestrian oriented retail activity at a scale compatible with surrounding residential neighborhoods. This district is designed to support the goals and policies of the General Plan related to neighborhood business districts. The CP Commercial Pedestrian District also encourages mixed residential/commercial development where appropriate.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: Cassandra
Date: Friday, July 24, 2020 6:37:27 AM

[External Email]

Cassandra,'

You and I need to talk. You are going to jail too. Are you kidding? I am not only calling the State but I am also putting in a complaint with the FBI.

Get a lawyer. I am suing you and your business.

The report looks like you did it in crayons. Now you will have to defend yourself. Which of course is impossible.

You should have just done your job.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Van Der Zweep, Cassandra](#)
To: [Norman Clancy](#); [Buss, Rhonda](#)
Subject: Re: 3 days after the public hearing to appeal
Date: Friday, July 24, 2020 8:20:02 AM

Good morning Norman,

Appeal applications can be submitted via email to ZoningQuestions@sanjoseca.gov with the completed appeal application. Once received, Planning will provide instructions for making the appeal payment. (\$250 per appeal).

The application for the permit appeal is located

here: <https://www.sanjoseca.gov/home/showdocument?id=15363>

As Rhonda noted yesterday, the appeal period for the permit ends Monday, August 3 at 5PM.

The application for an environmental appeal is located

here: <https://www.sanjoseca.gov/home/showdocument?id=15323>

The appeal period for the environmental determination ends Monday, July 27 at 5PM.

The appeals would be considered at a City Council hearing.

Thank you,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement

City of San José | 200 East Santa Clara Street

Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Norman Clancy [REDACTED]
Sent: Thursday, July 23, 2020 5:37 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: 3 days after the public hearing to appeal

[External Email]

I would like to file an appeal for the illegal approval given to 7 11. I am unable to bring the appeal notice to city hall because of the Pandemic.

The appeal is based on bribery fraud.

How can I get this to you and still be timely with the appeal.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: Re: 3 days after the public hearing to appeal
Date: Friday, July 24, 2020 8:35:39 AM

[External Email]

I want the recording and video of the meeting July 22 Planning Commission meeting or whatever you call it. This entire process is a joke. I will appeal but just make sure the planning commission takes a nap before their next meeting. Please let me know what you are going to do about the bribery issue with Vine from 7-11. The environment review is a joke. I have calls out to a few governmental agencies that I hope will help me stop you. Obey the law!

Norman

On Fri, Jul 24, 2020 at 8:20 AM Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov> wrote:

Good morning Norman,

Appeal applications can be submitted via email to ZoningQuestions@sanjoseca.gov with the completed appeal application. Once received, Planning will provide instructions for making the appeal payment. (\$250 per appeal).

The application for the permit appeal is located here: <https://www.sanjoseca.gov/home/showdocument?id=15363>

As Rhonda noted yesterday, the appeal period for the permit ends Monday, August 3 at 5PM.

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The appeal period for the environmental determination ends Monday, July 27 at 5PM.

The appeals would be considered at a City Council hearing.

Thank you,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Norman Clancy [REDACTED] >

Sent: Thursday, July 23, 2020 5:37 PM

To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>

Subject: 3 days after the public hearing to appeal

[External Email]

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The appeal is based on bribery fraud.

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: The minutes from the meeting are missing. Please provide the minutes-unedited
Date: Friday, July 24, 2020 1:26:09 PM

[External Email]

M	TELECONFERENCED MEETING	INFORMATIONAL WORKSHOP MINUTES MINUTES FOR 7-8-20	
STUDY SESSION: SAN JOSE CITYWIDE DESIGN AND GUIDELINES AGENDA AGENDA FOR 7-22-20	5:00 PM 6:30 PM	ZOOM LINK: HTTPS://SANJOSECA.ZOOM.US/J/97222550770	MINUTES FOR 7-22-20

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: Questions and Comments
Date: Friday, July 24, 2020 3:01:20 PM

[External Email]

Hi,

Can I have the names of the two planning commission members who seemed to me to be falling asleep at the meeting last night?

What is their compensation? I would like to learn more information on these so-called "workshops". I would like to see the records from those workshops. I have never seen anything like this in my life. You admit (on the record) a business on a busy street has been operating a garage illegally for 30 years and then you give him an expansion of a use right next to thousands of residential homes. How does that happen?

THERE WILL BE LOUD VEHICLES COMING OUT OF 7-11 DRIVING BY THOUSANDS OF HOUSES AT 2,3,4,5 O'CLOCK IN THE MORNING. Just a remodel right

I took a picture of the site and the garage was not approved and should be vacated immediately based on the bribery, fraud, and zoning.

How are you going to handle all of the people who want to view the meeting? It is going to be a challenge to get a chance to speak - especially if you are the ones who decide who speaks - totally illegal. I hope you are passing this information onto the Town Attorney. Maybe he can stop you all from a costly and entirely unnecessary lawsuit

Being a Planning Board member should be a passion not a burden. The Zoning around this house is ridiculous and you made that happen.

Did the team think I was extorting money from 7-11? Nope, not today but he tried to bribe me. Would you like more details?

I have the bribe recorded and In writing - what are you going to do?

Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Pedestrian Zone
Date: Friday, July 24, 2020 4:42:57 PM

[External Email]

What is the definition of "pedestrian zone" as it relates to the code

Thanks,

norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Planning Board Resumes
Date: Saturday, July 25, 2020 8:56:40 AM

[External Email]

Hi,

Where can I find the background information for the Planning Board Members?

Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: Questions and Comments
Date: Friday, July 24, 2020 3:01:20 PM

[External Email]

Hi,

Can I have the names of the two planning commission members who seemed to me to be falling asleep at the meeting last night?

What is their compensation? I would like to learn more information on these so-called "workshops". I would like to see the records from those workshops. I have never seen anything like this in my life. You admit (on the record) a business on a busy street has been operating a garage illegally for 30 years and then you give him an expansion of a use right next to thousands of residential homes. How does that happen?

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Being a Planning Board member should be a passion not a burden. The Zoning around this house is ridiculous and you made that happen.

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I have the bribe recorded and In writing - what are you going to do?

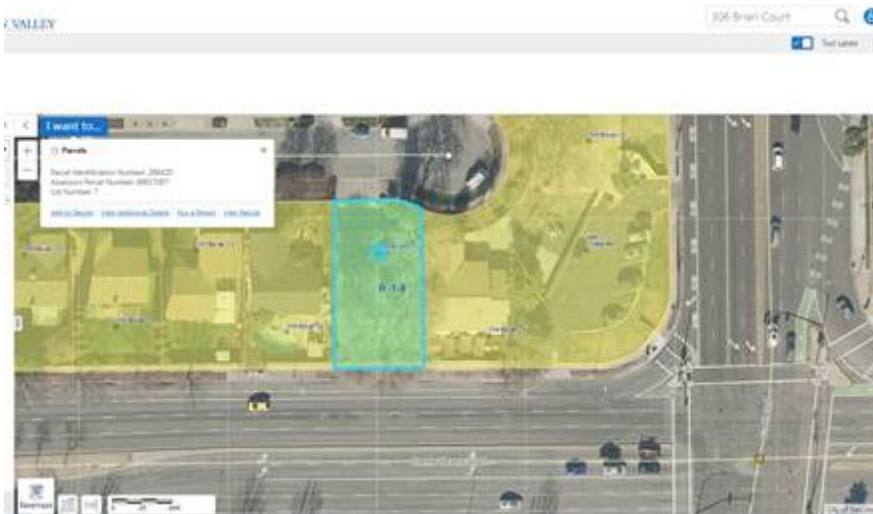
Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Norman Clancy](#)
Cc: [Van Der Zweep, Cassandra](#)
Subject: RE: Pedestrian Zone
Date: Tuesday, July 28, 2020 5:19:00 PM

Dear Norman,

Please see the image below. The parcel is zoned R-1-8 Single Family Residence District.



Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Monday, July 27, 2020 4:04 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Subject: Re: Pedestrian Zone

[External Email]

What is 306 Brian court zoned?

On Mon, Jul 27, 2020 at 4:02 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman,

Municipal Code [Section 20.40.010](#) speaks to the CP Commercial Pedestrian Zoning District.

Thank you,

Rhonda Buss
Planner
City of San Jose
Development Services, 3rd Floor Planning
[200 East Santa Clara Street](#)
[San Jose, CA 95113](#)-1905

From: Norman Clancy [REDACTED] >
Sent: Friday, July 24, 2020 4:42 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: Pedestrian Zone

[External Email]

What is the definition of "pedestrian zone" as it relates to the code

Thanks,

norman
|

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: Re: Symptons
Date: Wednesday, July 29, 2020 5:27:04 PM

[External Email]

That's great. I will send you the appeal paperwork in the morning. Thanks

On Wed, Jul 29, 2020 at 3:30 PM Van Der Zweep, Cassandra
<Cassandra.VanDerZweep@sanjoseca.gov> wrote:

Good afternoon Norman,

Sorry to hear you are not feeling well, I hope you feel better soon.

At this point no appeal/further discussion is scheduled, as we have not receive an appeal application.

If an appeal is filed, we would schedule it for the next available City Council hearing (typically this is about a month or two out due to noticing and scheduling requirements). We would confirm the appeal date with the appellant and notices would be sent to neighbors within 500 feet of the project site (similar to the Planning Commission original hearing notices).

As a reminder, if you are interested in filing a permit appeal the permit appeal application is located here: <https://www.sanjoseca.gov/home/showdocument?id=15363>

The permit appeal application would need to be submitted by Monday, August 3rd no later than 5PM. Appeal applications should be submitted via email to ZoningQuestions@sanjoseca.gov with the completed appeal application. Once the application is submitted, Planning Staff will coordinate the payment of the \$250 application fee.

Thank you,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Norman Clancy <[REDACTED]>
Sent: Wednesday, July 29, 2020 7:52 AM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra

<Cassandra.VanDerZweep@sanjoseca.gov>

Subject: Symptons

[External Email]

Hi,

I have a cough and a fever. Can I be moved off the agenda for appeal until the next meeting?

Norman

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Provedor, Jennifer](#)
Cc: [Van Der Zweep, Cassandra](#); [Galzote, Hannah](#)
Subject: RE: CP18-011
Date: Friday, July 31, 2020 3:25:00 PM

Hi Jennifer,

Please see our responses in blue below.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Provedor, Jennifer
Sent: Friday, July 31, 2020 10:43 AM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Cc: Galzote, Hannah <Hannah.Galzote@sanjoseca.gov>
Subject: RE: CP18-011

Hi Rhonda,

Can you confirm the following:

- Was the permit or CEQA appealed? [Permit](#)
- What CC date will you be selecting? [TBD](#)
- Will the radius remain the same at 500ft? [YES](#)

Thank you.

Kind Regards,

Jennifer Provedor

Senior Supervisor, Administration | 408.535.3505
City of San Jose | Planning, Building, and Code Enforcement
200 E Santa Clara Street, 3rd Floor Tower | San Jose, CA 95113

From: Buss, Rhonda
Sent: Thursday, July 30, 2020 4:30 PM
To: Provedor, Jennifer <jennifer.provedor@sanjoseca.gov>
Subject: CP18-011

Hi Jennifer,

An appeal has been received on this file. Would you be able to prepare a mailing list?

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: [Norman Clancy](#)
To: [Buss, Rhonda](#)
Cc: [Van Der Zweep, Cassandra](#)
Subject: Re: File No. CP18-011 Hearing Minutes and Study Session
Date: Saturday, August 1, 2020 7:44:37 AM

[External Email]

Thank you.

On Fri, Jul 31, 2020 at 6:27 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman,

There is a correction. The File No. should read File No. CP18-011.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Buss, Rhonda
Sent: Friday, July 31, 2020 4:23 PM
To: Norman Clancy <[REDACTED]>
Cc: Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: File No. CP118-011 Hearing Minutes and Study Session

Good Afternoon Norman,

The minutes and study session have been posted. Here is the [link](#) to the hearing minutes and a [link](#) to the Study Session.

Thank you,

Rhonda Buss

Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

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CITY OF SAN JOSE
 Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San Jose, CA 95113-1905
 tel (408) 535-3555 (ex 1408) 292-6555
 Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT #
PROJECT LOCATION	AMOUNT
	DATE
	BY

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

6011 Santa Teresa Blvd, San Jose 95123

REASON(S) FOR APPEAL: *For additional occupancy (from 2 to 4 units) (same)*

Bringing Front Zoning Violation into

PERSON FILING APPEAL

NAME: *Norman K. [redacted]* [redacted]
 ADDRESS: [redacted]
 CITY: [redacted] STATE: *CA* ZIP CODE: *95123*
 DATE: *9/14*

PERMIT CANNOT BE ISSUED FOR THIS SUBJECT SITE (i.e., adjacent property) WITHIN *1000 feet* OF THE SUBJECT SITE (i.e., adjacent property) WITHIN 1,000 FEET.

CONTACT PERSON

IF DIFFERENT FROM PERSON FILING APPEAL

NAME: _____
 ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____
 DAYTIME TELEPHONE: _____ FAX NUMBER: _____ E-MAIL ADDRESS: _____

PROPERTY OWNER

NAME: *Loris ZILBERMAN* [redacted]
 ADDRESS: [redacted]
 CITY: *San Jose* STATE: *CA* ZIP CODE: *95123*
 DATE: *9/18/19*

Please submit this application in person to the Development Services Center, 1st FLOOR, City Hall. Appointments are not required but may be recommended by calling (408) 535-9555 or by visiting the Planning Director's website: <http://www.sanjoseca.gov/index.aspx?nid=3829>. For Assistance, call (408) 535-0266.

PLANNING AND CODE ENFORCEMENT

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT # _____
PROJECT LOCATION	AMOUNT _____
	DATE _____
	BY _____

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:
 2375 and 2395 So. Bascom Ave., San Jose, CA 95008

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

** See Attachment*

PERSON FILING APPEAL

NAME Brett Townsend	DAYTIME TELEPHONE [REDACTED]
ADDRESS [REDACTED]	CITY San Jose
	STATE CA
	ZIP CODE 95008
SIGNATURE <i>Brett Townsend</i>	DATE 8/3/2020
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) Adjacent property owner	

CONTACT PERSON

(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME (SAME AS ABOVE)			
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS	

PROPERTY OWNER

NAME (SAME AS ABOVE)	DATE
ADDRESS	CITY
	STATE
	ZIP CODE

Please submit this application IN PERSON to the Development Services Center, 1ST FLOOR, City Hall. Appointments are not required but may be accommodated by calling (408) 535-3555 or by visiting the Planning Division's website: <http://www.sanjoseca.gov/index.aspx?nid=3839>. For Assistance, call (408) 535-5680.

*
**ATTACHMENT TO TOWNSEND
NOTICE OF PERMIT APPEAL FROM SAN JOSE PLANNING
RESOLUTION NO. 20-021
REGARDING 2375 AND 2395 SO. BASCOM AVE., SAN JOSE, CALIFORNIA
95008**

A. The applicant's proposed Residential Care Facility ("**Project**") fails to meet the requirements of the California Fire Code ("CFC"), Santa Clara County Standards for Fire Department Vehicle Access ("SC Fire Standards"), and requirements of the San Jose Fire Department ("SJFD") in various respects, including:

1. Both the CFC and SC Fire Standards require that buildings exceeding 30 feet in height shall have at least two fire access roads with a clear width of 20 feet.

In Fact: There is only one access road that meets these requirements.

2. The CFC requires that all portions of the first-floor exterior walls of the building are required to be within 150 feet of an approved fire apparatus access road.

In Fact: Approximately 364 linear feet of the building walls are located more than 150 feet from a fire access road.

3. Both the CFC and the SC Fire Standards require that one of the two required fire apparatus access roads should be capable of accommodating fire department aerial apparatus. Such access road shall be at least 26 feet wide and be located no more than 30 feet from the building. In Fact: No access road meets these requirements.

4. SJFD requirements provide that Fire Department Connections shall be located within 100 feet of a fire hydrant. In Fact: Fire Department Connections on the northwest side of the Project do not meet this requirement.

B. The Project places substantial reliance upon a 15-foot non-exclusive ingress/egress easement ("**Easement**") over the adjacent property located at 2355 South Bascom Avenue, San Jose ("**Adjacent Property**"). Such reliance is misplaced and inadequate.

1. The usable width of the Easement is no more than 13.8 feet due to the encroachment of an adjacent single family home and a concrete block retaining wall, contrary to the CFC and SC Fire Standards requiring that the road have a "clear width" of at least 20 feet.


2. The Easement is non-exclusive, which means that the owner of the adjacent property has the right to use the Easement area. Current use consists of delivery of large boats and boat equipment on tractor trailer trucks that, on occasion, would make use of the Easement for fire apparatus access impossible.

C. The Project as currently designed poses unacceptable risks to the safety of the occupants thereof.

1. The Project will be occupied by approximately 93 assisted living and memory care patients, most of whom will be non-ambulatory. In addition, as many as 27 staff will be on site.

2. In the event of an emergency requiring evacuation of patients and/or staff, the only available emergency access for evacuation is Bascom Avenue, located as much as 350 feet from the rear of the building.

For the reasons discussed above, it is respectfully submitted that this Project as currently proposed is unsafe and that Resolution No. 20-021 of the Planning Commission approving a Conditional Use Permit should be overturned.


Brett Townsend
Owner of [REDACTED] San Jose, CA

Date: 8/3/2020

From: [Buss, Rhonda](#)
To: [Norman Clancy](#)
Subject: RE: 3 days after the public hearing to appeal
Date: Monday, July 27, 2020 10:58:00 AM

Dear Norman,

For clarification, as Cassandra indicated in her email dated 7/24/20, the appeal information is below.

The application for the permit appeal is located here: <https://www.sanjoseca.gov/home/showdocument?id=15363>
The appeal period for the permit ends Monday, August 3 at 5 PM.

The application for an environmental appeal is located here: <https://www.sanjoseca.gov/home/showdocument?id=15323>
The appeal period for the environmental determination ends Monday, July 27 at 5 PM.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Thursday, July 23, 2020 5:37 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: 3 days after the public hearing to appeal

[External Email]

I would like to file an appeal for the illegal approval given to 7 11. I am unable to bring the appeal notice to city hall because of the Pandemic.

The appeal is based on bribery fraud.

How can I get this to you and still be timely with the appeal.

[Redacted]

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Norman Clancy](#)
Subject: RE: 3 days after the public hearing to appeal
Date: Monday, July 27, 2020 10:58:00 AM

Dear Norman,

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The appeal period for the environmental determination ends Monday, July 27 at 5 PM.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Thursday, July 23, 2020 5:37 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: 3 days after the public hearing to appeal

[External Email]

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The appeal is based on bribery fraud.

How can I get this to you and still be timely with the appeal.

[Redacted]

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Norman Clancy](#)
Subject: RE: Planning Board Resumes
Date: Monday, July 27, 2020 4:00:00 PM
Attachments: [Application Packet Redacted \(1\).pdf](#)

Dear Norman,

Here is a [link](#) to Planning Commission Appointment information from the agenda on 6/26/20. Item 3 shows the application information for the Commissioners below. Commissioner Oliverio's and Vice Chair Bonilla's applications may be found at this [link](#) under Item 4.

Maribel Caballero, Chair
George Casey
Jorge A. Garcia
Justin Lardinois
Deborah Torrens

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Saturday, July 25, 2020 8:56 AM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: Planning Board Resumes

[External Email]

Hi,

Where can I find the background information for the Planning Board Members?

Norman

[REDACTED]

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Norman Clancy](#)
Cc: [Van Der Zweep, Cassandra](#)
Subject: Re: Pedestrian Zone
Date: Monday, July 27, 2020 4:02:00 PM

Dear Norman,

Municipal Code [Section 20.40.010](#) speaks to the CP Commercial Pedestrian Zoning District.

Thank you,

Rhonda Buss
Planner
City of San Jose
Development Services, 3rd Floor Planning
200 East Santa Clara Street
San Jose, CA 95113-1905

From: Norman Clancy <[REDACTED]>
Sent: Friday, July 24, 2020 4:42 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: Pedestrian Zone

[External Email]

What is the definition of "pedestrian zone" as it relates to the code

Thanks,

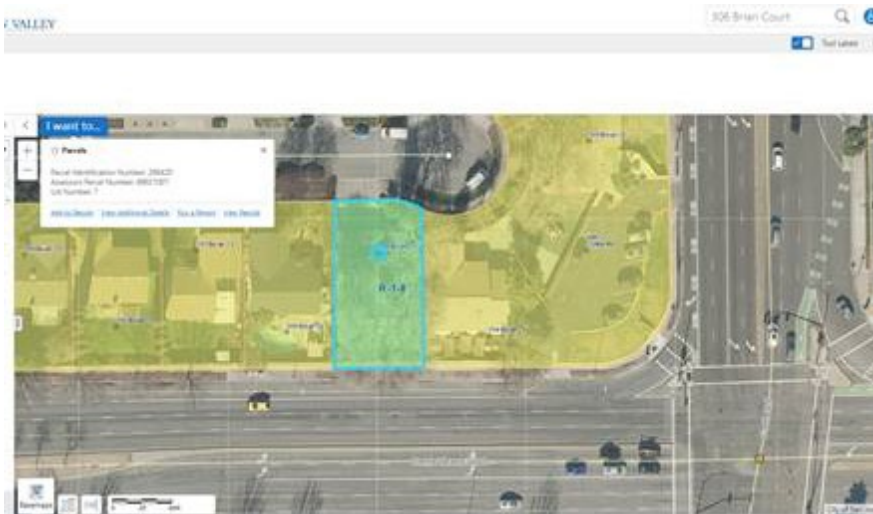
norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Norman Clancy](#)
Cc: [Van Der Zweep, Cassandra](#)
Subject: RE: Pedestrian Zone
Date: Tuesday, July 28, 2020 5:19:00 PM

Dear Norman,

Please see the image below. The parcel is zoned R-1-8 Single Family Residence District.



Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Monday, July 27, 2020 4:04 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Subject: Re: Pedestrian Zone

[External Email]

What is 306 Brian court zoned?

On Mon, Jul 27, 2020 at 4:02 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman,

Municipal Code [Section 20.40.010](#) speaks to the CP Commercial Pedestrian Zoning District.

Thank you,

Rhonda Buss
Planner
City of San Jose
Development Services, 3rd Floor Planning
[200 East Santa Clara Street](#)
[San Jose, CA 95113](#)-1905

From: Norman Clancy <[REDACTED]>
Sent: Friday, July 24, 2020 4:42 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: Pedestrian Zone

[External Email]

What is the definition of "pedestrian zone" as it relates to the code

Thanks,

norman
|

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.



CITY OF SAN JOSE
Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113-1905
Tel: (408) 535-3555 fax: (408) 292-6065
Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT #
PROJECT LOCATION	AMOUNT
	DATE
	BY

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

6211 SATHA TERESA, BLVD, SAN JOSE 95123
REASON(S) FOR APPEAL: (For additional community issues, attach a separate sheet.)
Bribery fraud zoning violation

PERSON FILING APPEAL

NAME	[REDACTED]	CITY	San Jose	STATE	CA	ZIP CODE	95123
ADDRESS	[REDACTED]						

RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet.)

within 1000 feet

CONTACT PERSON

(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME		CITY		STATE		ZIP CODE	
ADDRESS							
DAYTIME TELEPHONE	() () ()	FAX NUMBER	() () ()	E-MAIL ADDRESS			

PROPERTY OWNER

NAME	Loris Zimmerman	CITY	San Jose	STATE	CA	ZIP CODE	95123
ADDRESS	[REDACTED]						

Please submit this application IN PERSON to the Development Services Center, 1st Floor, City Hall. Appointments are not required but may be accommodated by calling (408) 535-3955 or by visiting the Planning Division's website: <http://www.sanjoseca.gov/index.aspx?nid=3839>. For Assistance, call (408) 535-5666.

Form Approved for Applications No. 1910209

300001-A-1018 (01/01)



From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Planning Board Resumes
Date: Saturday, July 25, 2020 8:56:40 AM

[External Email]

Hi,

Where can I find the background information for the Planning Board Members?

Norman

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Re: 3 days after the public hearing to appeal
Date: Monday, July 27, 2020 12:49:07 PM

[External Email]

Thanks, I noticed I had the wrong date. I am meeting with 7-11, I will let you know what happens.

Norman

On Mon, Jul 27, 2020 at 10:58 AM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman,

For clarification, as Cassandra indicated in her email dated 7/24/20, the appeal information is below.

The application for the permit appeal is located here: <https://www.sanjoseca.gov/home/showdocument?id=15363>

The appeal period for the permit ends Monday, August 3 at 5 PM.

The application for an environmental appeal is located here: <https://www.sanjoseca.gov/home/showdocument?id=15323>

The appeal period for the environmental determination ends Monday, July 27 at 5 PM.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Thursday, July 23, 2020 5:37 PM

To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>

Subject: 3 days after the public hearing to appeal

[External Email]

I would like to file an appeal for the illegal approval given to 7 11. I am unable to bring the appeal notice to city hall because of the Pandemic.

The appeal is based on bribery fraud.

How can I get this to you and still be timely with the appeal.

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Van Der Zweep, Cassandra](#)
To: [Norman Clancy](#); [Buss, Rhonda](#)
Subject: Re: 3 days after the public hearing to appeal
Date: Friday, July 24, 2020 11:56:27 AM

Hi Norman,

The video recording of the Planning Commission hearing is accessible online here: https://sanjose.granicus.com/ViewPublisher.php?view_id=51.

Thanks,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Norman Clancy <[REDACTED]>
Sent: Friday, July 24, 2020 8:35 AM
To: Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>; Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Subject: Re: 3 days after the public hearing to appeal

[External Email]

I want the recording and video of the meeting July 22 Planning Commission meeting or whatever you call it. This entire process is a joke. I will appeal but just make sure the planning commission takes a nap before their next meeting. Please let me know what you are going to do about the bribery issue with Vine from 7-11. The environment review is a joke. I have calls out to a few governmental agencies that I hope will help me stop you. Obey the law!

Norman

On Fri, Jul 24, 2020 at 8:20 AM Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov> wrote:

Good morning Norman,

Appeal applications can be submitted via email to ZoningQuestions@sanjoseca.gov with the completed appeal application. Once received, Planning will provide instructions for making the appeal payment. (\$250 per appeal).

The application for the permit appeal is located here: <https://www.sanjoseca.gov/home/showdocument?id=15363>

As Rhonda noted yesterday, the appeal period for the permit ends Monday, August 3 at 5PM.

The application for an environmental appeal is located here: <https://www.sanjoseca.gov/home/showdocument?id=15323>

The appeal period for the environmental determination ends Monday, July 27 at 5PM.

The appeals would be considered at a City Council hearing.

Thank you,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Norman Clancy [REDACTED] >
Sent: Thursday, July 23, 2020 5:37 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: 3 days after the public hearing to appeal

[External Email]

I would like to file an appeal for the illegal approval given to 7 11. I am unable to bring the appeal notice to city hall because of the Pandemic.

The appeal is based on bribery fraud.

How can I get this to you and still be timely with the appeal.

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Re: Pedestrian Zone
Date: Monday, July 27, 2020 4:22:52 PM

[External Email]

Hi,

I don't think you have interpreted the code in the spirit with which it was written. It does not say it is OK to systemically confiscate the peaceful enjoyment of a home in a residential zone. It doesn't matter - I am dealing with fraud and bribery. Everything flows from that.

Feel free to help me get this wall built.

Norman

On Mon, Jul 27, 2020 at 4:02 PM Buss, Rhonda <rhonda.buss@sanjoseca.gov> wrote:

Dear Norman,

Municipal Code [Section 20.40.010](#) speaks to the CP Commercial Pedestrian Zoning District.

Thank you,

Rhonda Buss
Planner
City of San Jose
Development Services, 3rd Floor Planning
200 East Santa Clara Street
San Jose, CA 95113-1905

From: Norman Clancy <[REDACTED]>
Sent: Friday, July 24, 2020 4:42 PM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: Pedestrian Zone

[External Email]

What is the definition of "pedestrian zone" as it relates to the code

Thanks,

norman

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Sitting in traffic. 85years old How could this happen? You
Date: Monday, July 27, 2020 3:16:43 PM

[External Email]



This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Norman Clancy](#)
To: [Van Der Zweep, Cassandra](#); [Buss, Rhonda](#)
Subject: The minutes from the meeting are missing. Please provide the minutes-unedited
Date: Friday, July 24, 2020 1:26:09 PM

[External Email]

M	TELECONFERENCED MEETING	INFORMATIONAL WORKSHOP MINUTES MINUTES FOR 7-8-20	
STUDY SESSION: SAN JOSE CITYWIDE DESIGN AND GUIDELINES AGENDA AGENDA FOR 7-22-20	5:00 PM 6:30 PM	ZOOM LINK: HTTPS://SANJOSECA.ZOOM.US/J/97222550770	MINUTES FOR 7-22-20

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



CITY OF SAN JOSE
 Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San Jose, CA 95113-1905
 Tel: (408) 535-3555 (or (408) 292-6555)
 Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT #
PROJECT LOCATION	AMOUNT
	DATE
	BY

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:
6011 Santa Teresa Blvd, San Jose 95123

REASON(S) FOR APPEAL: *For additional occupancy (from single to multiple units)
 Existing Front Zoning Violation etc.*

PERSON FILING APPEAL

NAME: *Norman K. [redacted]* STATE: *CA* ZIP CODE: *95123*
 ADDRESS: [redacted] CITY: [redacted] DATE: *7/14*

PERMIT OR OTHER TO SUBJECT SITE (e.g., adjacent property): *Within 1000 feet*

CONTACT PERSON

IF DIFFERENT FROM PERSON FILING APPEAL

NAME: _____ ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____
 DAYTIME TELEPHONE: _____ FAX NUMBER: _____ E-MAIL ADDRESS: _____

PROPERTY OWNER

NAME: *Loris ZILBERMAN* DATE: *7/20/14*
 ADDRESS: [redacted] CITY: *San Jose* STATE: *CA* ZIP CODE: *95123*

Please submit this Application in PERSON to the Development Services Center, 1st FLOOR, City Hall. Appointments are not required but may be recommended by calling (408) 535-3555 or by visiting the Planning Director's website: <http://www.sanjoseca.gov/index.aspx?nid=3829>. For Assistance, call (408) 535-0285.

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT # _____
PROJECT LOCATION	AMOUNT _____
	DATE _____
	BY _____

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:
2375 and 2395 So. Bascom Ave., San Jose, CA 95008

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

** See Attachment*

PERSON FILING APPEAL

NAME <u>Brett Townsend</u>	DAYTIME TELEPHONE [REDACTED]
ADDRESS [REDACTED]	CITY San Jose
	STATE CA
	ZIP CODE 95008
SIGNATURE <i>Brett Townsend</i>	DATE 8/3/2020
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) <u>Adjacent property owner</u>	

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME (SAME AS ABOVE)			
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS	

PROPERTY OWNER

NAME (SAME AS ABOVE)	DATE
ADDRESS	CITY
	STATE
	ZIP CODE

Please submit this application IN PERSON to the Development Services Center, **1ST FLOOR**, City Hall. Appointments are not required but may be accommodated by calling (408) 535-3555 or by visiting the Planning Division's website: <http://www.sanjoseca.gov/index.aspx?nid=3839>. For Assistance, call (408) 535-5680.

*
**ATTACHMENT TO TOWNSEND
NOTICE OF PERMIT APPEAL FROM SAN JOSE PLANNING
RESOLUTION NO. 20-021
REGARDING 2375 AND 2395 SO. BASCOM AVE., SAN JOSE, CALIFORNIA
95008**

A. The applicant's proposed Residential Care Facility ("**Project**") fails to meet the requirements of the California Fire Code ("CFC"), Santa Clara County Standards for Fire Department Vehicle Access ("SC Fire Standards"), and requirements of the San Jose Fire Department ("SJFD") in various respects, including:

1. Both the CFC and SC Fire Standards require that buildings exceeding 30 feet in height shall have at least two fire access roads with a clear width of 20 feet.

In Fact: There is only one access road that meets these requirements.

2. The CFC requires that all portions of the first-floor exterior walls of the building are required to be within 150 feet of an approved fire apparatus access road.

In Fact: Approximately 364 linear feet of the building walls are located more than 150 feet from a fire access road.

3. Both the CFC and the SC Fire Standards require that one of the two required fire apparatus access roads should be capable of accommodating fire department aerial apparatus. Such access road shall be at least 26 feet wide and be located no more than 30 feet from the building. In Fact: No access road meets these requirements.

4. SJFD requirements provide that Fire Department Connections shall be located within 100 feet of a fire hydrant. In Fact: Fire Department Connections on the northwest side of the Project do not meet this requirement.

B. The Project places substantial reliance upon a 15-foot non-exclusive ingress/egress easement ("**Easement**") over the adjacent property located at 2355 South Bascom Avenue, San Jose ("**Adjacent Property**"). Such reliance is misplaced and inadequate.

1. The usable width of the Easement is no more than 13.8 feet due to the encroachment of an adjacent single family home and a concrete block retaining wall, contrary to the CFC and SC Fire Standards requiring that the road have a "clear width" of at least 20 feet.


2. The Easement is non-exclusive, which means that the owner of the adjacent property has the right to use the Easement area. Current use consists of delivery of large boats and boat equipment on tractor trailer trucks that, on occasion, would make use of the Easement for fire apparatus access impossible.

C. The Project as currently designed poses unacceptable risks to the safety of the occupants thereof.

1. The Project will be occupied by approximately 93 assisted living and memory care patients, most of whom will be non-ambulatory. In addition, as many as 27 staff will be on site.

2. In the event of an emergency requiring evacuation of patients and/or staff, the only available emergency access for evacuation is Bascom Avenue, located as much as 350 feet from the rear of the building.

For the reasons discussed above, it is respectfully submitted that this Project as currently proposed is unsafe and that Resolution No. 20-021 of the Planning Commission approving a Conditional Use Permit should be overturned.


Brett Townsend
Owner of [REDACTED] San Jose, CA

Date: 8/3/2020

From: [Norman Clancy](#)
To: [Buss, Rhonda](#); [Van Der Zweep, Cassandra](#)
Subject: Lawsuit
Date: Wednesday, August 5, 2020 7:08:24 AM

[External Email]

If you continue to ignore my emails - I will sue you.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Buss, Rhonda](#)
To: [Norman Clancy](#); [Van Der Zweep, Cassandra](#)
Subject: RE: Construction at proposed 711 on Santa Teresa and Cottle
Date: Wednesday, August 5, 2020 8:32:00 AM

Good Morning Norman,

To research information on projects, it is suggested that sjpermits.org be visited. For construction questions, the Building Department may be reached at InfoInspector@sanjoseca.gov.

Thank you,

Rhonda Buss
Planner
City of San José
Third Floor
200 E. Santa Clara Street
San José, CA 95113

From: Norman Clancy [REDACTED]
Sent: Monday, August 3, 2020 5:51 PM
To: Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>; Buss, Rhonda <rhonda.buss@sanjoseca.gov>
Subject: Construction at proposed 711 on Santa Teresa and Cottle

[External Email]

[REDACTED]Hi

Can you tell me who is working at the site and what are they building / doing?

Norman

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From: [Norman Clancy](#)
To: [Tu, John](#); [Buss, Rhonda](#)
Subject: Re: Construction at proposed 711 on Santa Teresa and Cottle
Date: Wednesday, August 5, 2020 10:09:24 AM
Attachments: [Outlook-Image remo.png](#)
[Outlook-Image remo.png](#)

[External Email]

I don't accept that. Please meet me at the site of the new 711 when you can.

Norman

On Wed, Aug 5, 2020 at 9:56 AM Tu, John <john.tu@sanjoseca.gov> wrote:

Mr. Clancy,

My name is John Tu and I am a Supervising Planner in the Planning Division and I supervise Rhonda. Please refrain from sending accusatory statements towards City Staff as they respond to your inquires as it relates to the review of the project. Any questions not directly within our purview of the Planning Division, we may only be able to reference to the resources to aid you in the information. Staff will continue to provide information and direction as possible but please refrain from rhetoric may be considered hostile or harassing.

Please CCed me in future correspondents with Planning Staff.

Best,

Tong (John) Tu

Planner IV (Supervising Planner) | Planning Division | PBCE
City of San José | 200 East Santa Clara Street
Email: john.tu@sanjoseca.gov | Phone: (408)-535-6818
For More Information Please Visit: <http://www.sanjoseca.gov/planning>

From: Norman Clancy [mailto:[\[REDACTED\]](#)]
Sent: Wednesday, August 5, 2020 8:34 AM
To: Buss, Rhonda <rhonda.buss@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: Re: Construction at proposed 711 on Santa Teresa and Cottle

[External Email]

I am asking you. No hiding. You are responsible for this disaster.

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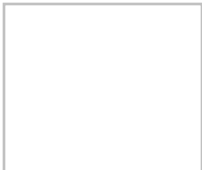
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From: [Tu, John](#)
To: [REDACTED]
Cc: [Buss, Rhonda](#)
Date: Wednesday, September 2, 2020 2:49:13 PM

Good Afternoon Norman,

As the appellant, we would like to inform you that the City Council appeal hearing for File No. CP18-011 been currently scheduled for the October 20, 2020 City Council Hearing at 1:30 PM. The agenda and staff report would be posted seven days prior to hearing at the following link <https://sanjose.legistar.com/DepartmentDetail.aspx?ID=21676&GUID=ACCCFF5-F14A-4E1A-8540-9065F45A8A90&Search=>

The link to the hearing meet would be provided on the agenda and on the notice that will be mailed at least seven days prior to hearing.

Best,
Tong (John) Tu

Planner IV (Supervising Planner) | Planning Division | PBCE
City of San José | 200 East Santa Clara Street
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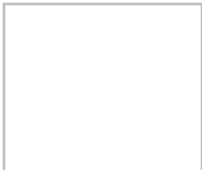
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