



Memorandum

CITY COUNCIL STAFF REPORT

File No.	C20-013 & SP20-027
Applicant:	Bodhi Light International
Location	Northeast corner of Delmas Avenue and West Virginia Street (796 Delmas Avenue)
General Plan	Neighborhood/Community Commercial
Existing Zoning	R-2 Two-Family Residence
Proposed Zoning	CP Commercial Pedestrian
Council District	3
Historic Resource	No
Annexation Date:	March 16, 1911 (Gardner)
CEQA:	Exempt pursuant to CEQA Guidelines Section 15301(a) for Existing Facilities

APPLICATION SUMMARY:

Conforming Rezoning (File No. C20-013) from the R-2 Two Family Residence Zoning District to the CP Commercial Pedestrian Zoning District and a Special Use Permit (File No. SP20-027) to allow an existing commercial building to be occupied with a church/religious assembly use on an approximately 0.18-gross acre site.

RECOMMENDATION:

Staff recommends that the City Council:

1. Adopt an ordinance rezoning certain real property from the R-2 Two-Family Residence Zoning District to the CP Commercial Pedestrian Zoning District on an approximately 0.18-gross acre site; and
2. Adopt a resolution approving, subject to conditions, a Special Use Permit to allow an existing commercial building to be occupied with a church/religious assembly use located on the northeast corner of Delmas Avenue and West Virginia Street (796 Delmas Avenue).

PROJECT DATA

GENERAL PLAN CONSISTENCY			
General Plan Designation		Neighborhood/Community Commercial <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
Consistent Policies		Implementation Policies IP-1.1, IP-1.6 and IP-8.2 and Community Design Policies CD-1.6 and CD-2.9	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Residential Neighborhood	R-2 Two-Family Residence	Single-family residence
South	Residential Neighborhood	R-2 Two-Family Residence	Single-family residence
East	Neighborhood/Community Commercial	R-2 Two-Family Residence	Single-family residence
West	Residential Neighborhood	R-2 Two-Family Residence	Single-family residence and duplex

RELATED APPROVALS	
Date	Action
8/12/2009	Special Use Permit File No. SP09-033 to reinstate the legal non-conforming grocery store on a 0.18-gross acre site. No new construction.
6/2/2020	Permit Adjustment (File No. AD20-298) to allow a 300-square foot addition at the rear of the building and the addition of an attached wood trellis at the rear and left sides of the building and the installation of a six-foot high perimeter wood fence.

PROJECT DESCRIPTION

On March 25, 2020, the applicant and owner, Bodhi Light International, applied for a Conforming Rezoning from the R-2 Two-Family Residence Zoning District to the CP Commercial Pedestrian Zoning District (File No. C20-013) and a Special Use Permit (File No. SP20-027) to allow an existing commercial building to be occupied with a church/religious assembly use on an approximately 0.18-gross acre site located at 296 Delmas Avenue.

The existing residential zoning district is not consistent with the General Plan designation of Neighborhood/Community Commercial. Government Code Section 65860 requires properties to be zoned in conformance with the General Plan land use designation. The CP Commercial Pedestrian Zoning District is the conforming zoning district to the Neighborhood/Community Commercial General Plan land use designation. A Special Use Permit is required to allow a church/religious assembly use within the CP Commercial Pedestrian Zoning District. The proposed use (yoga/meditation studio) will function as an indoor assembly use but is classified under the San José Municipal Code as a church/religious assembly use, requiring a Special Use Permit.

The subject 0.18-gross acre site is developed with a 2,450-square foot commercial building that was constructed in 1935. A neighborhood grocery store previously occupied the building. The building is not currently listed or classified on the City's Historic Resources List (HRI). A 300-square foot rear addition, approved with Permit Adjustment File No. AD20-298, brings the total current building square footage to 2,750 square feet. There are no changes proposed to the existing building façade as viewed from Delmas Avenue.

The building has been vacant for more than six months. The proposed rezoning and a Special Use Permit would allow an adaptive commercial reuse of the site and structure as a yoga/meditation studio. Approximately 400 square feet of the interior floor area will be utilized for the assembly use which will hold yoga and meditation classes between the hours of 9 a.m. and 9 p.m., seven days a week (see Operations Plan, Attachment 4). The Permit Adjustment (File No. AD20-298) also approved installation of new wood trellises, a six-foot high perimeter wood fence and new landscaping. Pedestrian access to the site will be from Delmas Avenue and West Virginia Street. The project provides zero off-street parking spaces and no outdoor uses are proposed.

Site Location: The subject site is located on the northeast corner of Delmas Avenue and West Virginia Street, at 796 Delmas Avenue. The site is surrounded with single-family homes on all sides. Biebrach Community Park is located southwest of the site.

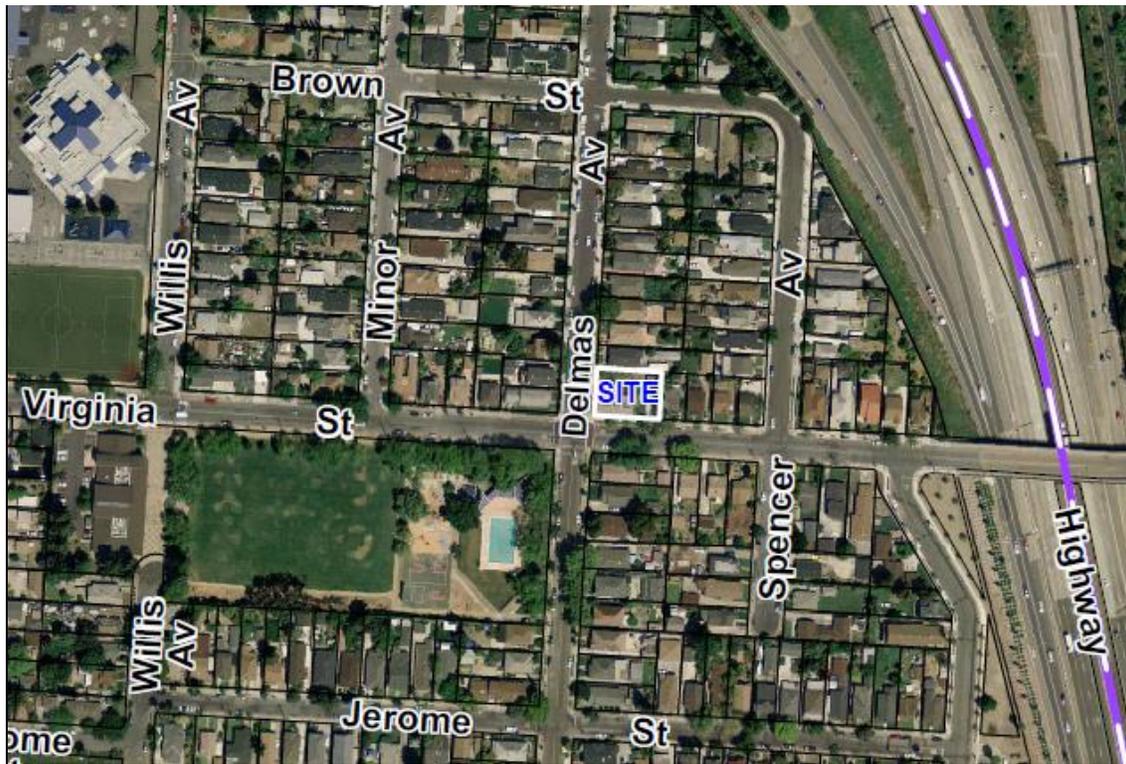


Figure 1: Aerial image of the subject site

ANALYSIS

The project was analyzed for conformance with the following: 1) the *Envision San José 2040 General Plan*, 2) Zoning Ordinance, and 3) the California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial (see Figure 2). This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services.

Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community. Private community gathering facilities are also allowed in this designation. *The proposed yoga/meditation studio is a type of gathering facility that would be supported within this land use designation.*

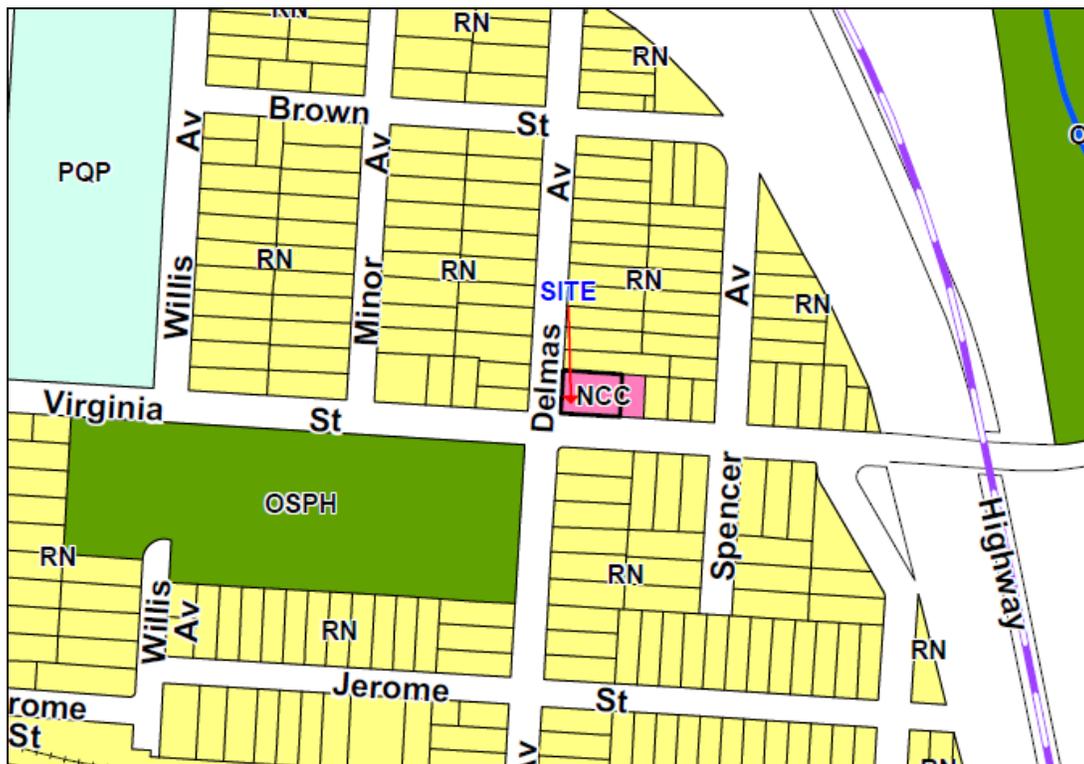


Figure 2: General Plan Land Use/Transportation Diagram

The Conforming Rezoning and Special Use Permit requests are consistent with the General Plan Land Use designation and with the following General Plan policies:

1. Implementation Policy IP-1.1 Land Use/Transportation Diagram: Use the *Envision General Plan* Land Use/Transportation Diagram designations to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the Envision General Plan. Use the

Zoning designation to indicate the appropriate type, form and height of development for particular properties.

2. Implementation Policy IP-1.6 Land Use/Transportation Diagram: Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram and advance *Envision General Plan* Vision, goals, and policies.
3. Implementation Policy IP-8.2- Zoning: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the *Envision General Plan* Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective *Envision General Plan* land use designations, while providing greater detail to the appropriate land uses and form of development.

Analysis: The subject 0.18-gross acre site is currently within the R-2 Two Family Residence Zoning District, which does not allow commercial uses. The building is currently vacant and rezoning the site to a commercial zoning designation will permit commercial uses and conform to the General Plan. Pursuant to Table 20-270, Section 20.120.110 of the Zoning Ordinance, the CP Commercial Pedestrian Zoning District is listed as a conforming district for the General Plan Land Use Designation of Neighborhood/Community Commercial.

The proposed rezoning from the R-2 Two Family Residence Zoning District to the CP Commercial Pedestrian Zoning District would bring the zoning into conformance with the General Plan land use designation of Neighborhood/Community Commercial and allow future commercial uses to be consistent with the zoning district. The proposed religious assembly use would also be consistent with the General Plan land use designation and permitted under the CP Commercial Pedestrian Zoning District.

4. Commercial Design Policy CD-1.6: Promote vibrant, publicly accessible spaces that encourage gathering and other active uses that may be either spontaneous or programmed.
5. Commercial Design Policy CD-2.9: Encourage adaptable space that can be used for community meeting and assembly uses accommodated in a single space.

Analysis: The project provides an appropriate reuse of an existing commercial space for yoga and meditation purposes serving as a private gathering facility for the nearby community in conformance with the General Plan land use designation of Neighborhood/Community Commercial and Community Design Policies CD-1.6 and CD-2.9.

Zoning Ordinance Conformance

The subject 0.18-gross acre site is currently in the R-2 Two Family Residence Zoning District (see Figure 3), which is not consistent with the General Plan land use designation of Neighborhood/Community Commercial.

A conforming rezoning to the CP Commercial Pedestrian or the CN Commercial Neighborhood Zoning Districts is required for the site to be consistent with the General Plan. The CP Commercial Pedestrian zoning district requires a 25-foot rear setback from the property lines which would provide a buffer to the adjacent residential uses from commercial development on

site and allow development to be closer to the street frontages; therefore, rezoning to CP Commercial Pedestrian Zoning District is preferred and proposed.

The proposed rezoning of the site to the CP Commercial Pedestrian Zoning District (see Figure 4) will allow commercial uses on site. A church/religious assembly use requires a Special Use Permit within the zoning district.

The proposed rezoning conforms with Table 20-270, Section 20.120.110, of the San José Municipal Code, which identifies the CP Commercial Pedestrian Zoning District as a conforming district to the Neighborhood/Community Commercial General Plan Land Use/Transportation Diagram designation. The existing residential zoning does not allow commercial uses. Therefore, a conforming rezoning is required for the site to be consistent with the General Plan.



Figure 3: Existing Zoning Map



Figure 4: Proposed Zoning Map

The CP Commercial Pedestrian zoning designation is intended for a wide variety of commercial uses such as retail, restaurant, personal services, and a church/religious assembly use is allowed with a Special Use Permit. The proposed use (yoga/meditation studio) will function as an indoor assembly use but is classified under the San José Municipal Code as a church/religious assembly use. The CP Commercial Pedestrian Zoning District would allow the property to be consistent with the General Plan and to be used and developed in accordance with the allowable uses in Table 20-90, Section 20.40.100 of the San José Municipal Code, as amended, including a church/religious assembly use as a specially permitted use with a Special Use Permit, pursuant to the development standards discussed below.

a. Setbacks and Heights

The project includes interior improvements to an existing commercial building and a 300-square foot addition at the rear for ADA compliance restrooms. This was approved with Permit Adjustment (File No. AD20-298). The existing structure is 12 feet in height and the project does not propose to construct additional stories or add height to the existing structure.

Table 20-100 in Section 20.40.200 of the San José Municipal Code establishes the following development standards for CP Commercial Pedestrian Zoning District (see Table 1):

Development Standards	CP Commercial Pedestrian Zoning District
Lot Size (Minimum)	6,000 square feet (0.13-acre)
Front Building Setback (Maximum)	10 feet maximum
Side Setback (Minimum)	Zero feet from property line
Rear Setback (Minimum)	25 feet from property line
Height (Maximum)	50 feet

Table 1: Setbacks and Height

Analysis: The 0.18-acre lot size conforms to the minimum 0.13-acre lot size requirement in the CP Commercial Pedestrian Zoning District. The existing front setbacks are approximately zero feet where 10 feet is the maximum setback requirement. The side setbacks are zero feet (west) and 40 feet (east) where zero feet is the minimum requirement, and the rear setback is 32'-10" where 25 feet is the minimum requirement, from the respective property lines (see Table 1). The existing 12-foot height of the building conforms to the maximum 50-foot height requirement of the zoning district. The project, therefore, conforms to the setbacks and height requirements. Any future redevelopment at the site would require conformance with the development standards of the CP Commercial Pedestrian Zoning District.

b. Minimum Required Parking

Pursuant to Section 20.90.210, uses instituted prior to November 10, 1965, shall not be required to meet off-street parking requirements of the zoning code unless there is a substantial change in parking requirements for the structure or for the use of the structure or land.

A "substantial change" (c) means greater than a forty percent difference between (a) and (b), as follows: (a) the number of parking spaces required under current code for the structure or use, as it existed on November 10, 1965, and (b) the number of parking spaces required under the current code for the proposed structure or use. [Substantial change: $b - a = c$, if $c/a > .40$ (40%)]

- i. If the change is not a substantial change, no additional off-street parking is required.
- ii. If the change is a substantial change, the current off-street parking requirements shall apply to the entire structure or use.

The prior use was a grocery store and the proposed use is an assembly use. The parking space computation for the two uses is provided below:

The San José Zoning Ordinance requires one parking space per 200 square feet of floor area for retail uses; the 2,750-square foot grocery store at the rate of one space per 200 square feet would require 13 spaces. The proposed assembly area is 400 square feet within the building and the use, at the rate of one parking space per 30 square feet of floor area would require 14 spaces. To be considered a substantial change, 40 percent of the required parking spaces per current code standards would be 18 spaces. The proposed assembly use requires only 14 spaces which is under the 40 percent requirement. Hence it is not considered a substantial change.

Analysis: The existing commercial building was built in 1935, and the grocery store use was legally established prior to 1965. The prior use would require a total of 13 spaces per current code standards. The proposed assembly use requires 14 spaces which is under the 40 percent requirement and, hence, it is not considered a substantial change; therefore, the proposed project would not be required to meet the parking requirements of the zoning ordinance, and the existing condition of zero off-street parking space provision is acceptable.

Required Findings for Special Use Permit

Section 20.100.720 of the Zoning Ordinance establishes required findings for approval of a Special Use Permit. Based upon an analysis of the facts, the City Council must be able to find that:

- a. The Special 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 proposed project has a Land Use/Transportation Diagram Designation of Neighborhood/Community Commercial. The project is consistent with the General Plan Implementation Policies IP-1.1, IP1.6 and IP 8.2, and Commercial Design Policies CD-1.6 and 2.9, in that a church/religious assembly use is a type of commercial use consistent with the land use designation. The project provides an indoor assembly/gathering facility type of use to the nearby community and the associated rezoning will bring the parcel's zone into conformance with the General Plan designation.

- b. The Special 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 conforms to the proposed CP Commercial Pedestrian Zoning District and to the development standards of the zoning district, pursuant to the Zoning Ordinance in terms of use, setbacks, and height, as well as the provision of zero off-street parking.

- c. The Special 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 Council Policy 6-30 on outreach, as the on-site sign has been posted on the property since April 20, 2020. Public hearing notices have been sent to property owners and occupants within 500 feet of the project site. Between the time of the application submittal and the writing of this memorandum staff received a few public inquiries regarding the nature and type of land use. Staff provided the requested information and no other comments have been received since then. Staff has been available to answer questions from the public regarding the project.

- d. The proposed use at the location requested will not:

1. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
2. Impair the utility or value of property of other persons located in the vicinity of the site; or
3. Be detrimental to public health, safety or general welfare; and

Analysis: The project was approved for minor interior and exterior alterations with a Permit Adjustment (File No. AD20-298) to accommodate the proposed yoga/meditation studio in the existing 2,750-square foot building. The operation of the use will be between the hours of 9:00 a.m. and 9:00 p.m. daily for up to 15 people, seven days a week, as stated in the operations plan submitted by the applicant (see Attachment 4). A condition of approval stating this fact is added in the Resolution as well. The assembly use will be held indoors so as not to cause adverse noise impacts at the adjacent properties. Additionally, the project will install a six-foot high perimeter wood fence, and new trees and landscaping will be

planted along the property boundaries to enhance visual aesthetics of the site (see Attachment 5). Therefore, the project would not adversely affect, impair, or be detrimental to public health or welfare.

- 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 subject 0.18-gross acre site is large enough to allow interior and exterior improvements to the rear of the building as well as addition of trellises, a six-foot high perimeter fence and landscaping (approved with prior permits). The site meets the maximum front and minimum side and rear setbacks pursuant to the CP Commercial Pedestrian Zoning District and is exempt from off-street parking pursuant to Section 20.90.210. Therefore, the project will be adequate in size and shape to accommodate the yards, walls, fences, and landscaping, consistent with the requirement.

- f. The proposed site is adequately served:

1. 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
2. By other public or private service facilities as are required.

Analysis: The site is within a developed area currently served by all necessary private and public facilities. The subject site is adequately served by the adjacent public streets and can be directly accessed from Delmas Avenue and Virginia Street. The site is currently served by all necessary private and public facilities and will not cause an increase in parking requirements or traffic as stated in the Department of Public Works memorandum dated June 5, 2020.

- 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: The project is consistent with the General Plan, zoning designation, and regulations. The project is an existing commercial building and includes a minor addition to the rear. Existing building setbacks and height will remain unchanged. The CP Commercial Pedestrian Zoning District allows assembly use with a Special Use Permit. The use does not involve the use of significant amounts of hazardous substances. The project had minor interior and exterior alterations approved with a Permit Adjustment (File No. AD20-298), and there will be no impacts related to noise, air quality, or water quality. The project will not affect traffic or stormwater control requirements as stated in the Department of Public Works memorandum dated June 5, 2020.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Under the provisions of Section 15301(a) Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15301(a) applies to projects consisting of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The key consideration is whether the project involves negligible or no expansion of use.

The project includes minor interior and exterior improvements to the existing building, to allow small private gathering type of assembly use which will not generate additional traffic or parking. The Director of Planning, Building and Code Enforcement approved a Notice of Exemption for the project on July 27, 2020. The project is an existing commercial building and includes the operation of a yoga and meditation studio inside the building, with no outdoor uses. Existing building setbacks and height will remain unchanged. The approval of the Conforming Rezone and Special Use Permit would not trigger any additional or expanded use of the project site. Further, none of the exceptions under CEQA Section 15300.2 applies to the project.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals. The project consists of internal improvements to a commercial building.

PUBLIC HEARING NOTIFICATION

Staff followed Council Policy 6-30: Public Outreach Policy. The on-site sign has been posted at the subject site since April 20, 2020. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

/s/

ROSALYNN HUGHEY, Director
Planning, Building and Code Enforcement

For questions, please contact Robert Manford, Deputy Director, at (408) 535-7900.

Attachments: Attachment 1 - Legal Description
Attachment 2 - Draft Ordinance
Attachment 3 - SP20-027 Resolution
Attachment 4 - Operations Plan
Attachment 5 - Project Plan Sets

EXHIBIT "A"
Legal Description

For [APN/Parcel ID\(s\): 264-23-056](#)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF HOME STREET WITH THE EASTERLY LINE OF DELMAS AVENUE AS SHOWN UPON THE MAP HEREINAFTER REFERRED TO; THENCE FROM SAID POINT OF BEGINNING, EASTERLY ALONG SAID NORTHERLY LINE OF HOME STREET, 104 FEET TO THE POINT OF INTERSECTION THEREOF, WITH THE WESTERLY LINE OF THE PARCEL OF LAND CONVEYED BY ROBERT B. GRAY, ET UX, TO SAMUEL P. SOBERANES, ET UX, BY DEED RECORDED MAY 8, 1931, IN [BOOK 567 OFFICIAL RECORDS, PAGE 208](#), RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; THENCE NORTHERLY ALONG SAID WESTERLY LINE OF THE SOBERANES PARCEL AND PARALLEL WITH THE AFOREMENTIONED EASTERLY LINE OF DELMAS AVENUE, 78 1/2 FEET TO THE NORTHERLY LINE OF LOT 23 AND SHOWN UPON SAID MAP; THENCE WESTERLY PARALLEL WITH SAID NORTHERLY LINE OF HOME STREET AND ALONG SAID NORTHERLY LINE OF LOT 23, 104 FEET TO THE SAID EASTERLY LINE OF DELMAS AVENUE; THENCE SOUTHERLY ALONG SAID LINE 78 1/2 FEET TO THE POINT OF BEGINNING.

BEING THE WESTERLY 104 FEET OF LOTS 23 AND 24 AS SHOWN UPON THE MAP ENTITLED, "MAP OF THE BENDER SUBDIVISION IN THE ODD FELLOWS SAVINGS BANK TRACT", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON SEPTEMBER 6, 1888 IN [BOOK D OF MAPS, PAGE 11](#).

DELMAS AVE

790

L = 39.25 ft

L = 138.0 ft

264-23-057

L = 104.0 ft

L = 78.5 ft

264-23-056
AREA=0.18+/-

L = 78.5 ft

264-23-055

264-23-054

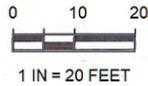
L = 104.0 ft

L = 43.0 ft

L = 43.0 ft

POB

WEST VIRGINIA STREET



LEGEND:

POB POINT OF BEGINNING



PROJECT

BODHI LIGHT INTERNATIONAL
796 DELMAS AVENUE
SAN JOSE, CA 95125

SHEET TITLE

FLAT MAP TO ACCOMPANY
DESCRIPTION

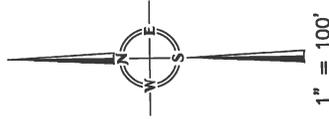
REVISIONS

No. Date Notes

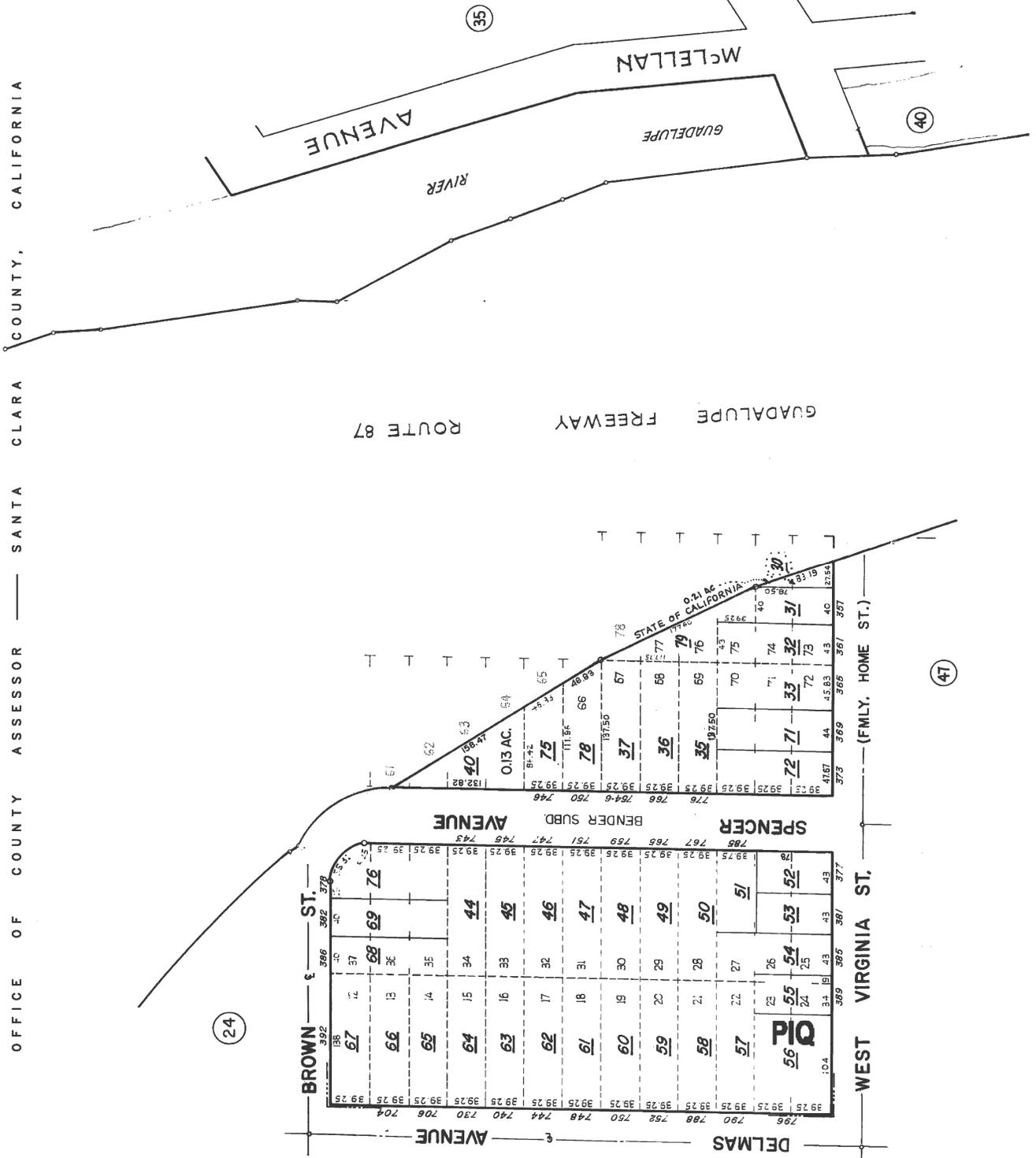
DATE: 7/22/20

SHEET: AC-2

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA



TWA DET. MAP 115
 LAWRENCE E. STONE — ASSESSOR
 Cadastral map for assessment purposes only.
 Compiled under R. & T. Code, Sec. 327.
 Effective Roll Year 2010-2011



This map/plot is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 0.18 GROSS ACRE SITE SITUATED ON THE NORTHEAST CORNER OF DELMAS AVENUE AND WEST VIRGINIA STREET (796 DELMAS AVENUE) (APN: 264-23-056) FROM THE R-2 TWO FAMILY RESIDENCE ZONING DISTRICT TO THE CP COMMERCIAL PEDESTRIAN ZONING DISTRICT

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, a Statement of Exemption was prepared for a rezoning under File No. C20-013, and said Statement of Exemption (CEQA Categorical Exemption Section 15301[a] Existing Facilities that applies to interior or exterior alterations involving negligible or no expansion of the existing or former use) was adopted on July 27, 2020; and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to the CP Commercial Pedestrian Zoning District; and

WHEREAS, this Council of the City of San José has considered and approves the Statement of Exemption as the appropriate environmental clearance for the proposed project prior to acting upon or approving the subject rezoning; and

WHEREAS, the proposed rezoning is consistent with the designation of the site in the applicable General Plan.

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

SECTION 1. The recitals above are incorporated herein.

SECTION 2. All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned CP Commercial Pedestrian Zoning District.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" and depicted in Exhibit "B" attached hereto and incorporated herein by this reference.

SECTION 3. The district map of the City is hereby amended accordingly.

SECTION 4. Any land development approval that is the subject of City File No. C20-013 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

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PASSED FOR PUBLICATION of title this ____ day of _____, 2020 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW AN EXISTING COMMERCIAL BUILDING TO BE OCCUPIED WITH A CHURCH/RELIGIOUS ASSEMBLY USE ON A 0.18 GROSS-ACRE SITE LOCATED ON THE NORTHEAST CORNER OF DELMAS AVENUE AND WEST VIRGINIA STREET (796 DELMAS AVENUE)

FILE NO. SP20-027

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 25, 2020, an application (File No. SP20-027) was filed by the property owner, Bodhi Light International, with the City of San José for a Special Use Permit to allow an existing commercial building to be occupied with a church/religious assembly use on a 0.18 gross-acre site, on that certain real property situated in the CP Commercial Pedestrian Zoning District and located on the northeast corner of Delmas Avenue and West Virginia Street (796 Delmas Avenue, 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,” and depicted in Exhibit “B,” entitled “Parcel Map,” 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, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard

and to present evidence and testimony respecting said matter; and

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Bodhi Light International, San José, CA 95125 " dated July 22, 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 this City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

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

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

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

1. **Site Description and Surrounding Uses.** The project site is located on the northeast corner of Delmas Avenue and West Virginia Street, at 796 Delmas Avenue. The site is surrounded with single-family homes on all sides. Biebrach Community Park is located to the southwest of the site.

The subject 0.18-gross acre site is developed with a 2,450-square foot commercial building which was built in 1935 and was previously used as a neighborhood grocery store. The building is not currently listed or classified on the City's Historic Resources List (HRI). A 300-square foot rear addition, approved with Permit Adjustment File No. AD20-298, brings the total current building square footage to 2,750 square feet.

2. **Project Description.** The project is a Special Use Permit to allow an existing commercial building to be occupied with a church/religious assembly use on a 0.18-gross acre site located on the northeast corner of Delmas Avenue and West Virginia Street (796 Delmas Avenue). The proposed use (yoga/meditation studio) will function as an indoor assembly use but is classified under the San José Municipal Code as a church/religious assembly use.

The building has been vacant for more than six months and the proposed Special Use Permit would allow an adaptive commercial reuse of the structure as a yoga/meditation studio. Approximately 400 square feet of the interior floor area will be utilized for the assembly use which will hold yoga and meditation classes between the hours of 9 a.m. to 9 p.m., seven days a week. The Permit Adjustment (File No. AD20-298) also approved installation of new wood trellises, six-foot high perimeter wood fence and gate as well as new landscaping. No changes will be made to the front building façade on Delmas Avenue and pedestrian access to the site will be from Delmas Avenue as well as West Virginia Street. The project provides no off-street parking and no outdoor uses are proposed.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services. Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community. Private community gathering facilities are also allowed in this designation.

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

- a. Implementation Policy IP-1.1 Land Use/Transportation Diagram: Use the Envision General Plan Land Use/Transportation Diagram designations to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the Envision General Plan. Use the Zoning designation to indicate the appropriate type, form and height of development for particular properties.
- b. Implementation Policy IP-1.6 Land Use/Transportation Diagram: Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram, and advance *Envision General Plan* Vision, goals and policies.

Analysis: The proposed rezoning from the R-2 Two Family Residence Zoning District to the CP Commercial Pedestrian Zoning District would bring zoning into conformance with the General Plan land use designation of

Neighborhood/Community Commercial and allow future commercial uses to be consistent with the zoning district.

- c. Commercial Design Policy CD-1.6: Promote vibrant, publicly accessible spaces that encourage gathering and other active uses that may be either spontaneous or programmed.
- d. Commercial Design Policy CD-2.9: Encourage adaptable space that can be used for community meeting and assembly uses accommodated in a single space.

Analysis: The project provides an appropriate reuse of an existing commercial space for yoga and meditation purposes serving as a private gathering facility for the nearby community, in conformance with the General Plan designation of Neighborhood/Community Commercial and Community Design Policies CD-1.6 and CD-2.9.

4. **Zoning Code Compliance.** The subject 0.18-gross acre site is the CP Commercial Pedestrian Zoning District which allows church/religious assembly use with issuance of a Special Use Permit (SUP) within the zoning district. The proposed use (yoga/meditation studio) will function as an indoor assembly use but is classified under the San José Municipal Code as a church/religious assembly use.

The CP Commercial Pedestrian Zoning District is intended for a wide variety of commercial uses such as retail, restaurant, personal service and a church/religious assembly use is allowed with a SUP. The CP Commercial Pedestrian Zoning District allows the property to be consistent with the General Plan and to be used and developed in accordance with the allowable uses in Table 20-90, Section 20.40.100 of the San José Municipal Code, including a church/religious assembly use as a specially permitted use, per the development standards discussed below:

- a. Setbacks and Heights

Table 20-100 in Section 20.40.200 of the San José Municipal Code establishes the following development standards for CP Commercial Pedestrian Zoning District (see Table 1 below):

Development Standards	CP Commercial Pedestrian Zoning District	Project
Lot Size (Minimum)	6,000 square feet (0.13-acre)	0.18 acre
Front Building Setback (Maximum)	10 feet maximum	0 feet
Street Side Setback	Zero feet from property line	0 feet (west side) 40 feet (east side)

Rear Setback (Minimum)	25 feet from property line	32 feet, 10 inches
Height (Maximum)	50 feet	12 feet

Table 1: Setbacks and Height

Analysis: The project includes interior improvements to an existing commercial building and 300-square foot addition at the rear for ADA compliance restrooms. This was previously approved with Permit Adjustment (File No. AD20-298). The 0.18-acre lot size conforms to the minimum 0.13-acre lot size requirement in the CP Commercial Pedestrian Zoning District. The existing front setbacks are approximately zero feet where 10 feet is the maximum setback requirement, the side setbacks are zero feet (west) and 40 feet (east) where zero feet is the minimum requirement, and the rear setback is 32 feet 10 inches where 25 feet is the minimum requirement, from respective property lines (see Table 1). The existing 12-foot height of the building conforms to the maximum 50-foot height requirement of the zoning district. The project, therefore, conforms to the setbacks and height requirement.

b. Minimum Required Parking

Pursuant to Section 20.90.210 of the San José Municipal Code, uses instituted prior to November 10, 1965 shall not be required to meet off-street parking requirements of the zoning code unless there is a substantial change in parking requirements for the structure or for the use of the structure or land.

A "substantial change" (c) means greater than a forty percent difference between (a) and (b), as follows: (a) the number of parking spaces required under current code for the structure or use, as it existed on November 10, 1965, and (b) the number of parking spaces required under the current code for the proposed structure or use. [Substantial change: $b - a = c$, if $c/a > .40$ (40%)]

- i. If the change is not a substantial change, no additional off-street parking is required.
- ii. If the change is a substantial change, the current off-street parking requirements shall apply to the entire structure or use.

The prior use was a grocery store and the project is an assembly use. The parking space computation for the two uses is provided below.

The San José Zoning Ordinance requires one parking space per 200 square feet of floor area for retail uses; the 2,750-square foot grocery store at the rate of one space per 200 square feet would require 13 spaces. The project's assembly use area is 400 square feet within the building and the use, at the rate of one parking space per 30 square feet of floor area, would require approximately 14 spaces. 40 percent of 13 spaces is 18 spaces. The assembly use requires only 14 spaces which is under the 40 percent requirement.

Analysis: The existing commercial building was built in 1935, and the grocery store use was legally established prior to 1965. As shown above, the prior use would require a total of 13 spaces per current code standards. The assembly use requires 14 spaces which is under the 40 percent requirement and, hence, it is not considered a substantial change; therefore, the project would not be required to meet the off-street parking requirements of the zoning ordinance, and the existing condition of zero off-street parking space provision is acceptable.

5. **California Environmental Quality Act.** Under the provisions of Section 15301(a) Existing Facilities of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15301(a) applies to projects consisting of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The key consideration is whether the project involves negligible or no expansion of use.

The project includes minor interior and exterior improvements to the existing building, to allow small private gathering type of assembly uses which will not generate additional traffic or parking. The Director of Planning, Building and Code Enforcement approved a Notice of Exemption for the project on July 27, 2020. The project is an existing commercial building and includes the operation of a yoga and meditation studio inside the building, with no outdoor uses. Existing building setbacks and height will remain unchanged. The approval of the Conforming Rezone and Special Use Permit would not trigger any additional or expanded use of the project site. Further, none of the exceptions under CEQA Section 15300.2 applies to the project.

6. **Special Use Permit Findings.** Chapter 20.100 of the San José Municipal Code establishes required Findings for issuance of a Special Use Permit. These criteria are applied to the project based on the above-stated findings related to General Plan and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Permit.
- a. The Special 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: As discussed above, the project has a Land Use/Transportation Diagram Designation of Neighborhood/Community Commercial. The project is consistent with the General Plan Implementation Policies IP-1.1 and IP1.6 and Commercial Design Policies CD-1.6 and CD-2.9, in that a church/ religious assembly use is a type of commercial use consistent with the land use designation. The project provides an indoor assembly use to the nearby neighborhood.*
- b. The Special 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: As discussed above, the proposed project conforms to the CP Commercial Pedestrian Zoning District and to the development standards of the zoning district per the Zoning Ordinance, in terms of use, setbacks and height, as well as parking, as discussed above.

- c. The Special 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 Council Policy 6-30 on outreach as the on-site sign has been posted on the property since April 20, 2020. Public hearing notices have been sent to property owners and occupants within 500 feet of the project site. Staff received a few public inquiries via the Council District between the time of the application submittal and writing of this memorandum for the project regarding the nature and type of land use. Staff provided the requested information and no other comments have been received since then. Staff has been available to answer questions from the public regarding the project.

- d. The proposed use at the location requested will not:

1. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
2. Impair the utility or value of property of other persons located in the vicinity of the site; or
3. Be detrimental to public health, safety or general welfare; and

Analysis: The project was approved for minor interior and exterior improvements with Permit Adjustment File No. AD20-298 to accommodate the proposed yoga/meditation studio in the existing 2,750-square foot building. The operation of the use will be between the hours of 9:00 a.m. to 9:00 p.m. daily for up to 10 to 15 people, seven days a week, as stated in the operations plan submitted by the applicant. A condition of approval No. 6 is added in this Permit. The religious assembly use will be held indoors so as not to cause adverse noise impacts at the adjacent properties. Additionally, the project will install a six-foot-high perimeter wood fence and new trees and landscaping will be planted along the property boundaries to enhance the visual aesthetics of the site. Therefore, the project would not adversely affect, impair, or be detrimental to public health or welfare.

- 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: As discussed above, the subject 0.18-gross acre site is large enough to allow interior and exterior improvements to the rear of the building as well as addition of trellises, a perimeter six-foot high wooden fence and landscaping. The site meets the maximum front and minimum side and rear setbacks per the CP Commercial Pedestrian Zoning District and is exempt from off-street parking per

Section 20.90.210, as discussed under the zoning section above. Therefore, the project is adequate in size and shape to accommodate the yards, walls, fences, and landscaping, consistent with the requirement.

- f. The proposed site is adequately served:
1. 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
 2. By other public or private service facilities as are required.

Analysis: The site is within a developed area currently served by all necessary private and public facilities. The subject site is adequately served by the adjacent public streets and can be directly accessed from Delmas Avenue and Virginia Street. The site is currently served by all necessary private and public facilities and will not cause increases in traffic or parking requirements per the Final Public Works Memo, dated 6/5/20.

- 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: The project is consistent with the General Plan, zoning designation and regulations. The project is an existing commercial building and includes an increase in minor addition to the rear. Existing building setbacks and height will remain unchanged. The CP Commercial Pedestrian Zoning District allows assembly use with this Special Use Permit. The proposed use does not involve the use of significant amounts of hazardous substances. The project had minor interior and exterior alterations approved with Permit Adjustment (File No. AD20-298) and there will be no impacts related to noise, air quality, or water quality. The project will not affect traffic or stormwater control requirements as stated in the Final Public Works Memo, dated 6/5/20, on file with the Planning Division.

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

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José

Municipal Code, should the permittee fail to file a timely and valid appeal of this Special Use 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 Special Use Permit; 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.** The Special Use Permit shall automatically expire four (4) 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/Amendment 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 Special Use 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 Special Use 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 makes a determination that such action is necessary to remain within the aggregate operational capacity of

the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, “Bodhi Light International, San José, CA 95125” dated July 22, 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 Plan Set”.
6. **Use Authorization.** Subject to all conditions herein, this Permit allows an existing commercial building to be occupied with a church/religious assembly use (yoga/meditation studio) as per the operations plan, from 9:00 a.m. to 9:00 p.m., for up to 10 to 15 people, seven days a week, located on the northeast corner of Delmas Avenue and West Virginia Street, as identified in the Approved Plan Set. No outdoor uses are approved with this permit.
7. **Operations Management Plan.** The project is bound to Attachment 4: Operations Plan attached to the Staff Report, labeled “Operations Plan for Yoga/Meditation Center,” dated 4/6/2020.
8. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the Approved Plan Set per File No. AD20-298. Landscaped areas shall be maintained and watered, and all dead plant material is to be removed and replaced by the property owner. Irrigation is to 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 and the City of San José Landscape and Irrigation Guidelines.
9. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines.
10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. 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 conditioned.
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
12. **Building and Property Maintenance.** The permittee or management company 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.

13. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
15. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, 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.
16. **No Generators Approved.** This Permit does not include the approval of any new stand-by/backup electrical power generation facility or changes to the existing facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
17. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
18. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
19. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
20. **Sign Approval.** No new signs or changes to the existing signs are approved at this time. All project signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
21. **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.
22. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief

Building Official:

- a. Construction Plans. This permit file number, SP20-027, 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. 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.

23. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the issuance of any Building permits, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:

<https://www.sanjoseca.gov/your-government/departments/public-works/-development-services>.

- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit may require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- b. **Transportation:** This project would not require a detailed CEQA transportation analysis because the project is expected to result in less-than-significant VMT impacts. Furthermore, no additional transportation analysis is required per Final Public Works Memo dated 6/5/20.
- c. **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 engineered

design alternative for Public Works discretionary approval and must 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.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures and source controls to minimize stormwater pollutant discharges.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **Flood Zone AO, Depth 1 Foot:** Flood conditions will be included in future review.
- g. **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.
- h. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontages adjacent to W Virginia Street and Delmas Avenue prior to issuance of a Public Works Clearance. Ten percent of the base fee in place at the time of payment will be due. Currently, the 2020 base fee is \$515 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year.
- i. **Street Improvements:**
 - i. Any proposed driveways shall be 26 feet wide City standard driveways.
 - ii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
 - iii. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
 - iv. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans

and any necessary pavement restoration will be included as part of the final street improvement plans.

- j. **Strong Neighborhoods Initiative (SNI):** This project is located within the Greater Gardner SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
- k. **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
- l. **Electrical:**
 - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.

24. Revocation, Suspension, Modification. This Special Use 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 Special 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, a permit to use the subject property for said purpose specified above is hereby **approved**.

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EFFECTIVE DATE

The effective date of this Permit (File No. SP20-027) shall be the effective date of the Conforming Rezoning Ordinance for File No. C20-013, passed for publication on _____, 2020 (the "Conforming Rezoning Ordinance") and shall be no earlier than the effective date of said Conforming Rezoning Ordinance.

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.

Operations Plan Example and Other Operational Details

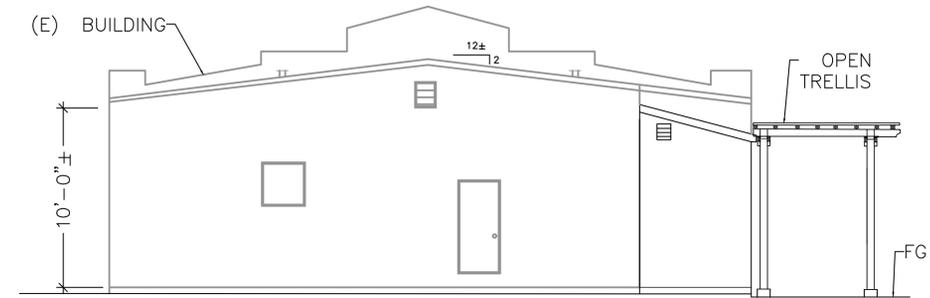
1. **Trash/Litter/Graffiti/Site Maintenance, etc.** The project site and all public streets and spaces within 300 feet of the site will be well maintained, clean and free of litter, graffiti, etc.
2. **Security and Police Issues.** The project will employ up to # security personnel, positioned at each exit/throughout the facility. At a minimum, there will be a minimum of # security persons for every # patrons. If required by operations/law, security personnel will check all patron identification cards prior to admitting. If there is queueing, this will be monitored by security personnel and will occur in a defined area. Security cameras will be strategically throughout the space, including facing the public right-of-way. All security camera video footage will be retained for 30 days in the event that an incident needs review by security personnel or the police.
3. **Loitering and Panhandling.** Loitering and panhandling will not be tolerated and the business operator will maintain a zero tolerance policy. No loitering signs will be posted in conspicuous places containing wording (Spanish and English) that aligns with state and local law (business owner to work with San Jose Police to obtain proper language). All loitering and panhandling issues will be dealt with in a swift and consistent manner by notifying local police. No consumption or open alcoholic beverages will be permitted on the premises. Signs specifically prohibiting this activity will also be placed in conspicuous places in both Spanish and English.
4. **Addressing Neighborhood Concerns.** The project applicant/business operator will engage the community organization/neighborhood leaders/etc. to address neighborhood concerns with any aspect of the business. The project applicant/business operator will be available to meet with concerned parties and create a mutually beneficial mitigation plan in accordance with any and all relevant laws and regulations.
5. **Entertainment.** There are no entertainment uses proposed for this site currently.
6. **Lighting and Windows.** The proposed project is located in a well-lit area that contains ample street light/parking lot lighting/exterior lighting (detailed on the site plan). All lighting issues, such as inadequate lighting or burned out lights, will be addressed promptly by our maintenance provider. The business is designed with full height glass windows to provide a clear and unobstructed view from inside and out. All signage affixed to the windows will not obstruct these views.
7. **Noise.** The project will conform to all local noise performance standards as required by the Municipal Code. All efforts will be made to limit the amount of noise emanating from the business at all times. No entertainment is proposed in the space. Any music played will be kept to ambient background music.
8. **Employee Training.** All staff are trained to check IDs when necessary and cease service to patrons if they feel they've had too much to drink.



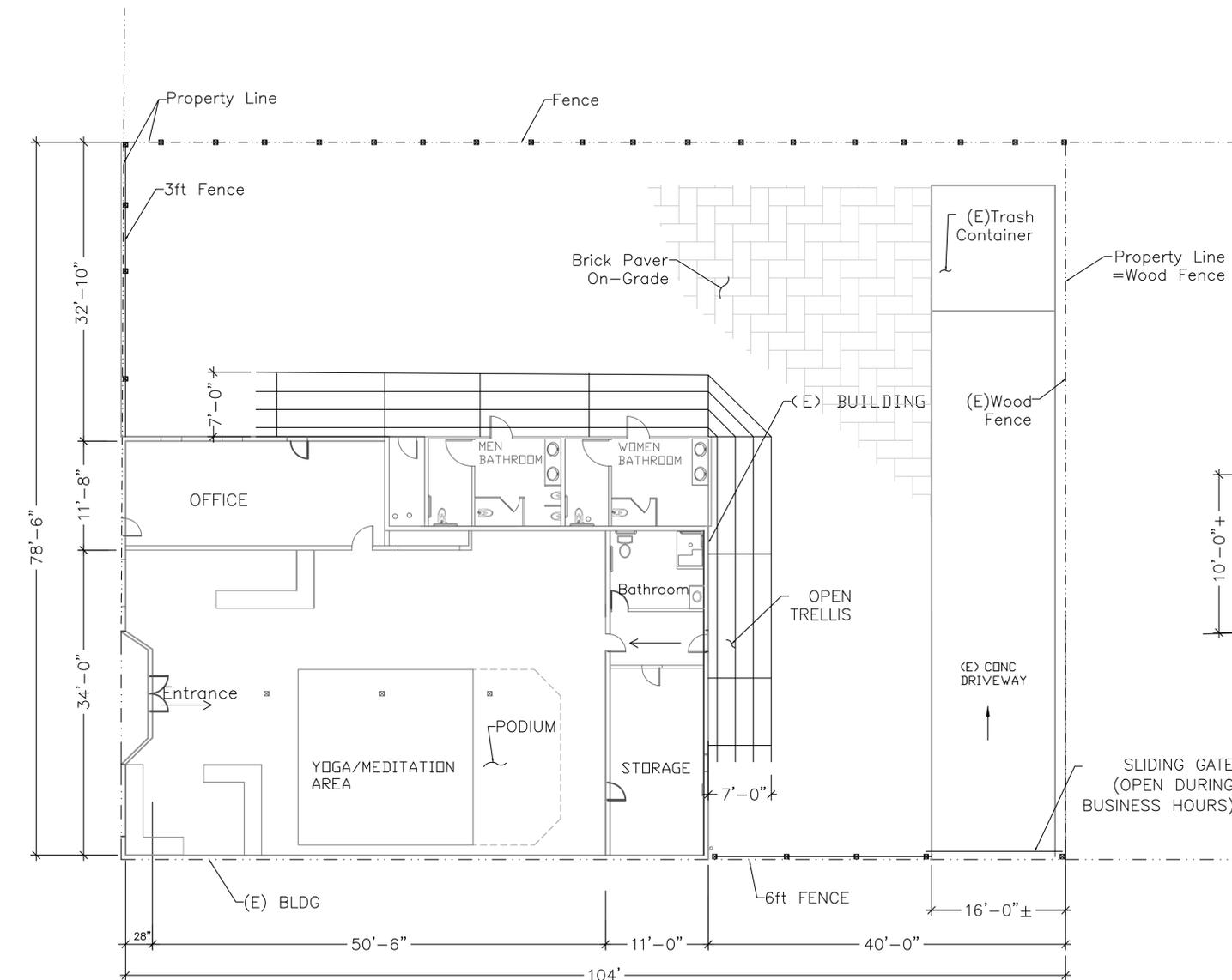
FRONT VIEW
NTS



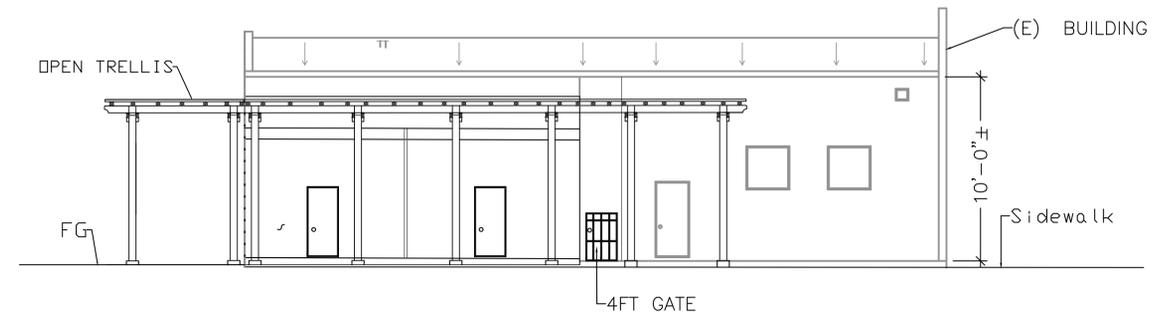
(3ft front fence not shown for clarity)
FRONT ELEVATION
3/16" = 1'-0"



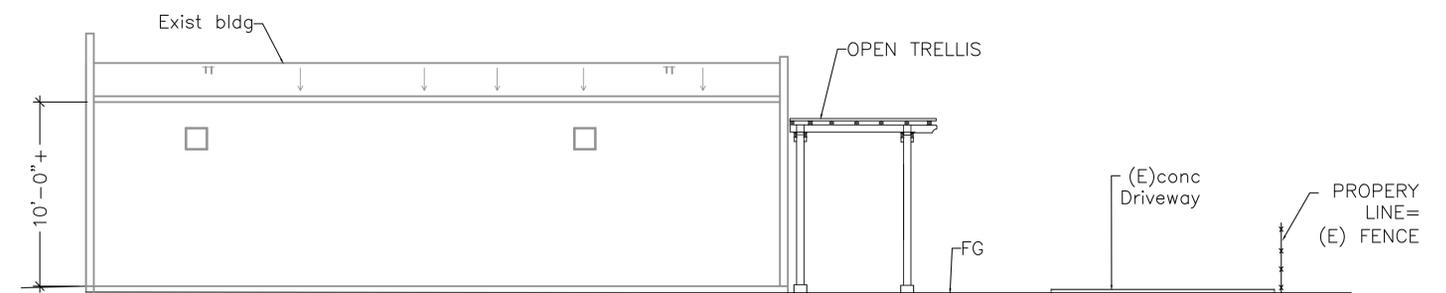
REAR ELEVATION
3/16" = 1'-0"



FLOOR PLAN
1/8" = 1'-0"



NORTH ELEVATION
3/16" = 1'-0"



(From Virginia street, fence and gate not shown for clarity)

SOUTH ELEVATION
3/16" = 1'-0"

C20-013 PLAN SET

PROJECT		
BODHI LIGHT INTERNATIONAL 796 DELMAS AVENUE SAN JOSE, CA 95125		
SHEET TITLE		
FLOOR PLAN		
REVISIONS		
No.	Date	Notes
DATE: 7/22/20		
SHEET: AC-2		

