



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: September 8, 2020

Approved

Date

9/17/2020

COUNCIL DISTRICT: 9

SUBJECT: ADMINISTRATIVE HEARING ON THE APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT NO. CP19-021 FOR THE BASCOM RESIDENTIAL CARE FACILITY PROJECT

RECOMMENDATION

- (a) Conduct an Administrative Hearing to consider the Appeal of the Planning Commission's approval of Conditional Use Permit No. CP19-021 for the Bascom Residential Care Facility Project, which permits the demolition of four commercial buildings totaling approximately 6,030 square feet and the removal of two ordinance-size trees and four non-ordinance size trees for the construction of a one to three-story, 83-unit state-licensed Residential Care Facility for the Elderly with approximately 72,380 square feet of above grade floor area and an approximately 30,240 square feet of basement containing 7,750 square feet of activity rooms, staff room, utility rooms, and 22,450 square feet of parking and circulation on an approximately 1.23-gross acre site located to the west of South Bascom Avenue, approximately 177 southerly of Dry Creek road (2375 and 2395 South Bascom Avenue).
- (b) Adopt a resolution denying the permit appeal and approving, subject to conditions, Conditional Use Permit No. CP19-021, for the Bascom Residential Care Facility Project, which permits the demolition of four commercial buildings totaling approximately 6,030 square feet and the removal of two ordinance-size trees and four non-ordinance size trees for the construction of a one to three-story, 83-unit state-licensed Residential Care Facility for the Elderly with approximately 72,380 square feet of above grade floor area and an approximately 30,240 square feet of basement containing 7,750 square feet of activity rooms, staff room, utility rooms, and 22,450 square feet of parking and circulation on an approximately 1.23-gross acre site located to the west of South Bascom Avenue, approximately 177 southerly of Dry Creek road (2375 and 2395 South Bascom Avenue).

OUTCOME

The hearing before the Council is a de novo hearing pursuant to Section 20.100.280 of the Zoning Ordinance. This means that the Council hears the report from staff and comments and the evidence presented by the appellant, the applicant and the public anew, and must make the required findings to support the Council's determination whether to grant or deny the permit.

Approving the Conditional Use Permit, and thereby denying the permit appeal, would allow the project applicant to move forward with the building permit phase for the residential care facility project as previously described on the approximately 1.23-gross acre site located at 2375 and 2395 South Bascom Avenue.

Denying the Conditional Use Permit, and thereby granting the permit appeal, would mean that the project applicant cannot move forward with the building permit phase and the project applicant must re-apply in the future to redevelop the project site.

EXECUTIVE SUMMARY

The project site located at 2375 and 2395 South Bascom Avenue is currently occupied by Dry Creek Plaza, a commercial development containing four buildings totaling approximately 6,030 square feet and outdoor storage yards.

On June 18, 2019, the applicant, Advocacy Development Partners, submitted an application for a Conditional Use Permit, File No. CP19-021, for a Residential Care Facility project. The proposed project was considered and approved at the Planning Commission Hearing on July 22, 2020.

A timely appeal (Exhibit A) of the permit was filed on August 3, 2020, by Mr. Brett Townsend, the owner of the property to the north of the project site (2355 South Bascom Avenue). The appeal stated the following concerns:

- The approved project fails to meet the requirements of the California Fire Code, Santa Clara County Standards for Fire Department Vehicle Access, and the requirements of the San Jose Fire Department.
- The project places substantial reliance upon a 15-foot non-exclusive ingress/egress easement over the adjacent property located at 2355 South Bascom Avenue; such reliance is misplaced and inadequate.
- The project as currently designed poses unacceptable risks to the safety of the occupants thereof.

The analyses in this memorandum and the Public Outreach section (Page 15-16) of the Planning Commission Staff Report addresses the concerns raised in this appeal. The project conditions (Conditions 30-32) included in Resolution No. 20-021 and adopted by the Planning Commission on July 22, 2020, ensures that the project will comply with the Fire Code and Fire Department's requirements during the Building Permit application stage and prior to the issuance of any building permits.

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

BACKGROUND

Site Location

The project site is located on the west side of South Bascom Avenue, approximately 177 feet southerly of Dry Creek Road (2375 and 2395 South Bascom Avenue). The 1.23-gross acre site is currently occupied by Dry Creek Plaza, a commercial development containing four buildings totaling approximately 6,030 square feet and outdoor storage yards. The site is bounded by commercial use and single-family residential to the north, single-family residential to the west, multi-family residential and commercial to the south, and commercial to the east across South Bascom Avenue.

Proposed Project

The subject Conditional Use Permit application was filed by Advocacy Development Partners on June 18, 2019. The subject project would allow the demolition of all existing structures on site for the construction of a Residential Care Facility for the Elderly. The project would remove three existing driveways on South Bascom Avenue and construct a single two-way driveway. This driveway would provide access to a basement parking level containing 45 parking stalls and loading and drop-off/pick-up areas. The hours of operation and visitor hours would be 24 hours a day, seven days a week. The front doors would be secured after 8 p.m. and a lock-code provided to staff and family members.

As part of the planning process, projects are reviewed by various departments, including the Fire Department. The Fire Department reviews projects for conformance with the Fire Department's requirements and the California Fire Code (CFC). If a project does not meet some of the Fire Department's requirements or the CFC, a Variance application can be filed with the Fire Department to allow alternative methods of compliance by incorporating additional design measures such as a higher-density fire sprinkler system and/or additional fire hydrants.

The proposed project does not meet the CFC and the San Jose Fire Department's requirements on providing a 26-foot-wide fire access road around the proposed building, the maximum distance between the proposed Fire Department Connection and the fire hydrant, and fire hydrant spacing. Hence, the applicant submitted a Variance application (See Exhibit C) to the Fire Department on December 11, 2019, with several design measures. These design measures include a greater density of fire sprinklers, standpipes, a smoke ventilator, a fire access through an existing easement on the adjacent property to the north, and the installation of a new fire hydrant at Dry Creek Road. The Fire Department approved the application on January 9, 2020. The Fire Department has preliminarily approved the variance request and will make a final determination upon reviewing the construction drawings for the project. If there are any issues with the final design, the applicant will be required to work with the Fire Department to resolve the issues prior to issuance of a building permit.

Planning Commission's Hearing

On July 22, 2020, the Planning Commission considered the proposed Conditional Use Permit and associated Mitigated Negative Declaration for the project. Three members of the public spoke against the project approval citing the following concerns:

- Building setback to the northern property line and its non-compliance with Commercial Design Guidelines 1.B.5 which requires larger building setback to downhill single-family properties
- No fire access road around the site
- Fire safety

Staff responded that the proposed 21-foot setback is greater than the ten-foot side setback required by the Commercial Pedestrian Zoning District and only a small portion of the building has a setback of 21 feet from the northern property line. Commercial Design Guideline 1.B.5 requires a larger building setback to downhill single-family properties. This design guideline does not apply to the project because the adjacent single-family home site is not in the downhill situation described and illustrated in the guideline. In addition, there are existing mature trees on the adjacent single-family home properties and proposed evergreen trees along the proposed concrete masonry unit perimeter walls along the property line to provide screening to the building. The building also includes a planted "green wall" facing the property line to further soften its appearance from the adjacent single-family homes. Staff explained that the proposed setback to the northern property line complies with the Zoning Code requirements and is consistent with the Commercial Design Guidelines.

Regarding the fire access and safety concerns, staff responded that the project has been reviewed by the Fire Department and a Fire Code Variance application was approved by the Fire Department in January 2020 to allow the project not to include a 20 to 26-foot wide fire access road around the proposed building, given that the project will include fire safety design features such as a greater density of fire sprinklers, standpipes, a smoke ventilator, a fire access through an existing easement on the adjacent property to the north, and the installation of a new fire

hydrant at Dry Creek Road. The design of these elements will be reviewed by the Fire Department during the building permit application stage and must be approved by the Fire Department prior to issuance of any building permit. The Planning Commission Resolution also includes a project condition (Condition #32) to ensure the fire access through the adjacent property will meet the Fire Department's requirements.

Commissioner Oliverio motioned to approve Staff's recommendation. Commissioner Bonilla seconded the motion. The Planning Commission voted (7-0) to approve the Conditional Use Permit and adopt the permit resolution.

Appeal

A timely appeal (Exhibit A) of the Conditional Use Permit Amendment was filed on August 3, 2020, by Mr. Brett Townsend. The appeal identified the following concerns:

- The approved project fails to meet the requirements of the California Fire Code, Santa Clara County Standards for Fire Department Vehicle Access, and the requirements of the San Jose Fire Department in various aspects.
- The project places substantial reliance upon a 15-foot non-exclusive ingress/egress easement over the adjacent property located at 2355 South Bascom Avenue. Such reliance is misplaced and inadequate.
- The project as currently designed poses unacceptable risks to the safety of the occupants thereof.

ANALYSIS

The appeal identified issues related to Fire Code compliance and raises safety concerns caused by limited exit access. The Fire Department reviewed the project during the Planning review process and approved the Fire Code Variance application as described (Exhibit C), to allow the project not to provide a perimeter access road, due to the inclusion of fire safety design features that compensate for any loss.

The design measures are not required to be included in the Planning entitlement plans, as they are construction design details that will be included in the construction documents at the building permit application stage. The Fire Department will review the construction drawings during the plan check process. The Fire Department will ensure the project design meets all Fire requirements prior to the issuance of any Building Permit. The adopted Resolution No. 20-021 for this Conditional Use Permit also includes the following conditions to ensure compliance with the Fire Code and the Fire Department's requirements:

- Condition #30, Fire Department Clearance. Hazmat clearance and compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
- Condition #31, Fire Department Requirements. The project shall conform to the requirements of the Fire Department at the building plan review stage to the satisfaction of the Chief Building Official and the Fire Chief.

The second issue raised in the appeal application is the 15-foot non-exclusive ingress/egress easement on the adjacent property (2355 South Bascom Avenue). The issue was discussed in the Planning Commission Staff Report (pages 15-16, Exhibit B). In response to this issue, staff included the following project condition in the Resolution:

- Condition #32, Fire Access. Prior to issuance of any Building Permits for the project, evidence shall be provided to the Fire Department that the 15-foot wide non-exclusive ingress/egress easement on the adjacent property (2355 South Bascom Avenue) is free and clear of obstructions to the satisfaction of the Fire Department.

This will also be reviewed by the Fire Department during the building permit application stage and prior to the issuance of any building permit.

The third issue raised in the appeal is the safety concern for the occupants of the facility caused by limited exit access. The project design is required to meet the Building Code and Fire Code requirements. The Building Division and the Fire Department will review the project during the building permit application stage to ensure the project meets all requirements including exit access prior to the issuance of any Building Permit.

The issues raised in the Conditional Use Permit Appeal do not negate the Conditional Use Permit findings for approval outlined in the appealed Conditional Use Permit Resolution included in the Planning Commission Staff Report (Exhibit B) and the Draft City Council Conditional Use Permit Resolution (Exhibit D).

Due to an administrative oversight, the following condition was added to the Resolution pursuant to the Housing Department's request:

Condition No. 37: Affordable Housing Conditions. Prior to the issuance of the final building permit, the Housing Department shall review the management plan and building plans to confirm that the project will serve patients that require supervision (memory care) and does not include dwelling units or suites subject to the City's Inclusionary Housing Ordinance (IHO) or the Affordable Housing Impact Fee (AHIF). If the project is determined to be subject to the IHO or AHIF based on that review, an Affordable Housing Compliance Plan is required at that time.

- a. If the project is subject to the AHIF, no building permit may be issued until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.
- b. If the project is subject to the IHO, no building permit may be issued until the Affordable Housing Agreement is recorded and no Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO are met.

CONCLUSION

The Conditional Use Permit conforms to the Conditional Use Permit findings set forth in San José Municipal Code Section 20.100.760. Staff recommends that the City Council adopt the proposed resolution denying the appeal and approving Conditional Use Permit No. CP19-021 based on this memorandum, the Planning Commission's Staff Report, and evidence in the administrative record. The subject site has a Neighborhood Community Commercial General Plan land use designation and is in the Commercial Pedestrian Zoning District; the subject project conforms to the applicable General Plan policies, Municipal Code, Commercial Design Guidelines, City Council development policies, as well as the Building Code and Fire Code.

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) for the project to proceed. The project would be required to adhere to the project's conditions of approval and the Mitigation Monitoring and Reporting Program.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The development of the project would:

- Facilitate the construction of an energy and water efficiency building.
- Widen the sidewalk along the project's South Bascom Avenue frontage and close unnecessary driveways.
- Implement off-site pedestrian improvements, including installing a crosswalk via a signal modification on the south leg of the South Bascom Avenue and Dry Creek Road intersection with new ADA compliant curb ramps, on both the southwest corner and southeast corner (pork chop island) of the intersection, and shifting the existing bus stop to the south so it does not conflict with the new crosswalk.

POLICY ALTERNATIVES

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

- a. Deny the Conditional Use Permit and thereby approving the appeal;
- b. Approve the Conditional Use Permit and thereby denying the appeal; or
- c. Approve the Conditional Use Permit with additional modifications or conditions of approval, thereby denying the appeal.

Staff recommends that the City Council deny the permit appeal and approve the Conditional Use Permit, subject to the same conditions of approval approved by the Planning Commission.

PUBLIC OUTREACH

Staff followed City Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. A sign describing the project has been posted on the project site since August 19, 2019. A community meeting was held on October 17, 2019, to inform the surrounding community of the proposed project. The meeting was coordinated with the Office of Council District 9 and the Council District staff attended the meeting. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. During the review process, staff met with community members several times to discuss their concerns and questions. In addition, a City website was created for the project. The website includes the project information, plans and the project contact. Staff has been available to answer questions from the public. The staff report is also posted on the City's website. Comments received during the community meeting and project review are further discussed in the attached Planning Commission Staff Report (Exhibit B).

COORDINATION

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

HONORABLE MAYOR AND CITY COUNCIL

September 8, 2020

Subject: File No. CP19-021

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CEQA

Mitigated Negative Declaration (MND) was prepared for the Bascom Residential Care Facility by the Department of Planning, Building, and Code Enforcement and was approved by the Planning Commission on July 22, 2020 (Resolution No. 20-022).

/s/

ROSALYNN HUGHEY, Director

Planning, Building and Code Enforcement

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

Attachments: Exhibit A: Appeal Application

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

Exhibit C: Fire Variance Application dated approved on January 9, 2020

Exhibit D: Draft City Council Conditional Use Permit Resolution

Exhibit E: Letter from the CP19-021 Applicant

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER CP19-021	RECEIPT # _____
PROJECT LOCATION 2375 & 2395 South Bascom Avenue	AMOUNT \$250
	DATE 8/3/20
	BY Justin D.

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 (408) 371-6681
ADDRESS 2355 So. Bascom Ave.	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.

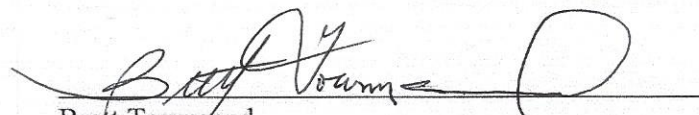
2. The Easement is non-exclusive, which means that the owner of the adjacent property has the right to use the Easement area. Current use consists of delivery of large boats and boat equipment on tractor trailer trucks that, on occasion, would make use of the Easement for fire apparatus access impossible.

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

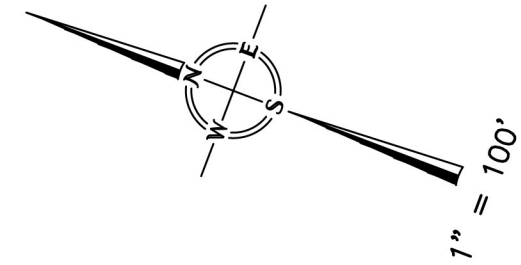
1. The Project will be occupied by approximately 93 assisted living and memory care patients, most of whom will be non-ambulatory. In addition, as many as 27 staff will be on site.

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.

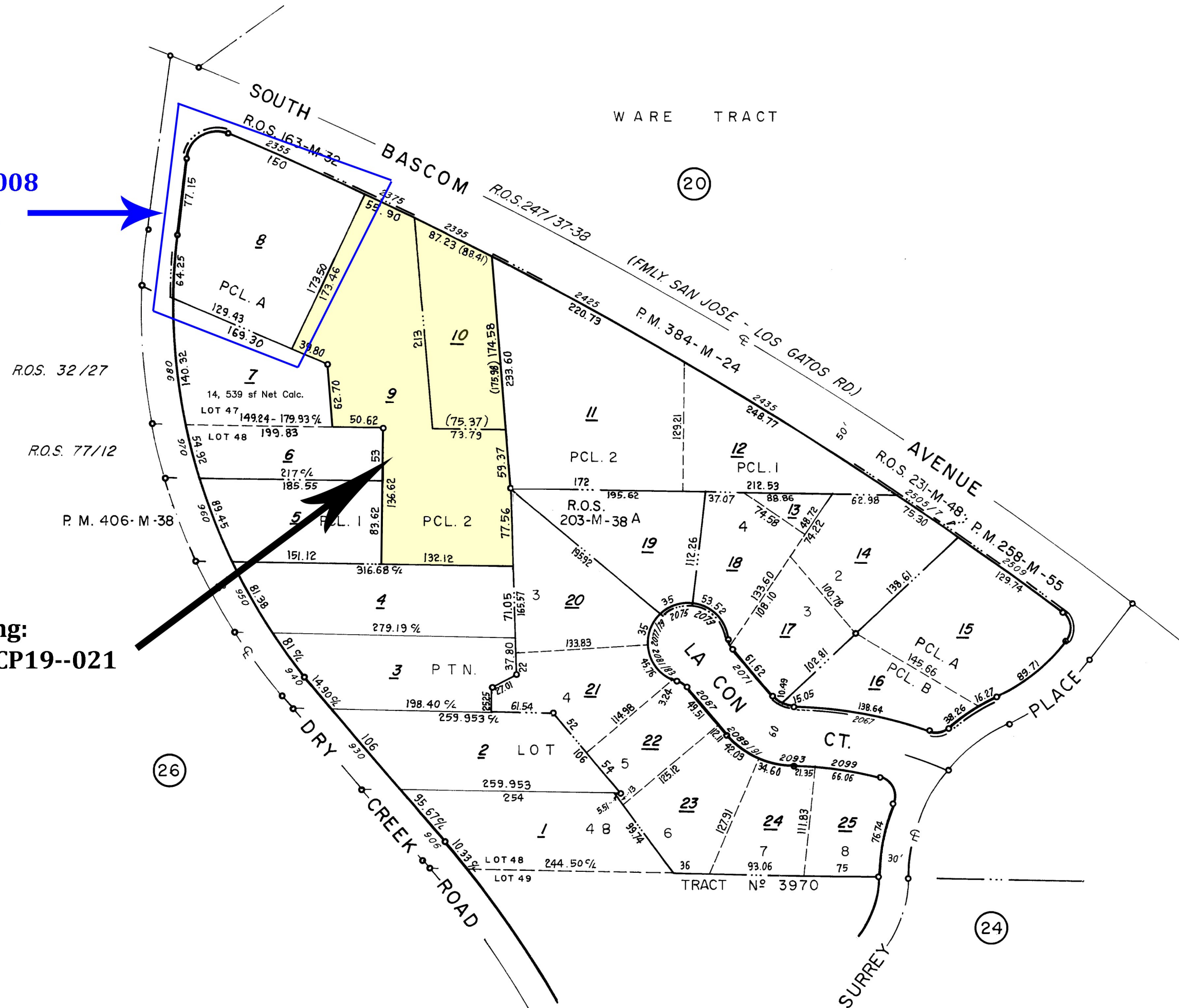
For the reasons discussed above, it is respectfully submitted that this Project as currently proposed is unsafe and that Resolution No. 20-021 of the Planning Commission approving a Conditional Use Permit should be overturned.


Brett Townsend
Owner of 2355 So. Bascom Ave., San Jose, CA

Date: 8/3/2020



**Appealing:
Project CP19--021**





Memorandum

TO: PLANNING COMMISSION
SUBJECT: CP19-021

FROM: Rosalynn Hughey
DATE: July 22, 2020

COUNCIL DISTRICT: 9

Type of Permit	Conditional Use Permit & Site Development Permit
Demolition	+/-6,030 square feet
Proposed Land Uses	Residential Care Facility for the Elderly
New Residential Units	N/A
New Square Footage	72,380 square feet (above ground) & 30,240 square feet underground
Additional Policy Review Items	N/A
Tree Removals	2 ordinance-size trees and 4 non-ordinance size trees
Project Planner	Angela Wang
CEQA Clearance	Mitigated Negative Declaration for the Bascom Residential Care Facility Project
CEQA Planner	Bethelhem Telahun

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Adopt a resolution adopting the Mitigated Negative Declaration for the Bascom Residential Care Facility Project, for which an Initial Study was prepared, and adopting an associated Mitigation Monitoring and Reporting Plan, all in accordance with the California Environmental Quality Act (CEQA), as amended;
2. Adopt a resolution approving, subject to conditions, a Conditional Use Permit to allow the demolition of four commercial buildings totaling approximately 6,030 square feet, and the removal of two ordinance-size trees and four non-ordinance sized trees for the construction of a one to three-story, 83-unit state-licensed Residential Care Facility for the Elderly with approximately 72,380 square feet of above grade floor area and an approximately 30,240 square feet of basement containing 7,750 square feet of activity rooms, staff room, utility rooms, and 22,450 square feet of parking and circulation on an approximately 1.23-gross acre site.

PROPERTY INFORMATION

Location	2375 & 2395 South Bascom Avenue (west side of South Bascom Avenue, approximately 177 feet southerly of Dry Creek Road)
Assessor Parcel No.	412-25-009 & 010
General Plan	Mixed Use Commercial
Growth Area	South Bascom Avenue (South) Urban Village Area
Zoning	CP Commercial Pedestrian
Historic Resource	N/A
Annexation Date	1/21/1980 (Leigh No. 1-C-2110)
Council District	9
Acreage	1.23 (Gross)
Proposed Density	N/A

PROJECT BACKGROUND

As shown on the attached aerial map (Exhibit A), the project site is located on the west side of South Bascom Avenue, approximately 177 feet southerly of Dry Creek Road. The 1.23-gross acre site is currently occupied by Dry Creek Plaza, a commercial development containing four buildings totaling approximately 6,030 square feet and outdoor storage yards.

The site is bounded by commercial use and single-family residential to the north, single-family residential to the west, multi-family residential and commercial to the south and commercial to the east across South Bascom Avenue.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Neighborhood /Community Commercial & Residential Neighborhood	CP Commercial Pedestrian & R-1-8 Single-Family Residence	Commercial
South	Neighborhood/Community Commercial, Residential Neighborhood & Mixed Use Neighborhood	CP Commercial Pedestrian, R-2 Two-Family Residence & R-M Multiple Residence	Restaurant and Duplexes
East	Neighborhood/Community Commercial	CP Commercial Pedestrian	Restaurant and Office
West	Residential Neighborhood	R-1-8 Single-Family Residence	Single-Family Residential

On June 18, 2019, the applicant, Advocacy Development Partners, applied for a Conditional Use Permit (File No. CP19-021) to allow the demolition of four commercial buildings totaling approximately 6,030 square feet, and the removal of two ordinance-size trees and four non-ordinance sized trees for the construction of a one to three-story, 83-unit state-licensed Residential Care Facility for the Elderly with approximately 72,380 square feet of above grade floor area and an approximately 30,240 square feet of basement containing 7,750 square feet of activity rooms, staff room, utility rooms, and 22,450 square feet of parking and circulation on an approximately 1.23-gross acre site.

The project would remove three existing driveways on South Bascom Avenue and construct a single two-way driveway. The driveway would be restricted to right-turn in/out movements only, due to the raised median island along South Bascom Avenue. This driveway would provide access to a basement parking level containing 45 parking stalls, loading and drop-off/pick-up areas. The project also involves the removal of two ordinance-size trees and four non-ordinance size trees to facilitate the new construction.

Operations

The proposed facility will be a state-licensed residential care facility for the elderly (RCFE) as defined by the California Department of Social Services. The facility would offer trained assistance to seniors with activities of daily life, including health and exercise programs, housekeeping, laundry service, social activities and programs, in house grooming services, 24-hour staff supervision and security, three daily meals in the common dining room, dining assistance, transportation, an emergency response system in each room and daily health screenings of each resident. Only assisted living and memory care will be offered at the facility. No independent living will be provided as part of the operations of the facility.

Amenities of the proposed facility include multiple common area and activity rooms including a theater, therapy salon room, activity rooms, multiple lounges, arts and crafts room, library/media room, and a wellness center. These spaces are intended to provide the occupants with spaces for daily activities. The facility would also provide dedicated rooms for vendors and third-party services, such as barbers, beauticians, and physical and occupational therapists.

The facility would be staffed 24 hours a day, 365 days a year. The total number of staff employed in the facility would be approximately 70. There would be three shifts per day, morning shift (6 AM to 2 PM), afternoon shift (2PM to 10 PM) and night shift (10 PM to 6 AM). The maximum number of staff on-site would be approximately 27 people during the morning shift. The hours of operation and visitor hours would be 24 hours a day, seven days a week. The front doors will be secured after 8 P.M., with a lock-code provided to staff and family members.

ANALYSIS

The proposed Rezoning and Conditional Use Permit are analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. Municipal Code
3. Commercial Design Guidelines
4. California Environmental Quality Act (CEQA)

[Envision San José 2040 General Plan](#) Conformance

Land Use Designation

As shown in the attached **General Plan map (Exhibit B)**, the proposed project site has an Envision San José 2040 General Plan designation of **Neighborhood/Community Commercial (NCC)**. The NCC 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 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. General office uses, hospitals and private community gathering facilities are also allowed in this

designation.

Additionally, the subject site is located in the future **South Bascom Avenue (South) Urban Village** area. Prior to the adoption of an Urban Village Plan, development should occur consistent with the General Plan land use designation and the Zoning District.

Conditional Use Permit Conformance to General Plan

The residential care facility would function as a commercial use that provides variety of jobs that offer daily care services for clients. The project would generate approximately 70 jobs to provide services to the clients. The project proposes one to three stories (51'-3") high and at a FAR of 1.34 with 72,380 square feet on a 1.23-gross acre site. Therefore, the project is consistent with the Neighborhood/Community Commercial land use designation.

General Plan Policies

The project also conforms to the following key General Plan goal and policies:

1. Compatibility Policy CD-4.1: Maintain and update design guidelines adopted by the City and abide by them in the development of projects.

Analysis: The project is consistent with the Commercial Design Guidelines which requires new development to be compatible with the adjacent residential neighborhoods. The proposed building steps down towards the single-family residential to the north and the west of the project site to reduce the visual impact to single-family residential, and the proposed architectural style fits into the surrounding neighborhoods. Please see full analysis in the Commercial Design Guidelines Section.

2. Education and Services Goal ES-6: Access to Medical Services: Provide for the health care needs of all members of the San José community.
3. Education and Services Policy ES-6.1: Facilitate the development of new and promote the preservation and enhancement of existing health care facilities that meet all the needs of the entire San José community.

Analysis for Goal ES-6 and Policy ES-6.1: The residential care facility provides on-site daily care for clients requiring assistance with daily activities. The facility would provide spaces for a client's therapist to come on-site and facility Staff would provide health related services throughout the building including medication administration via the nurse and med rooms. This project would serve an aging population demographic, as well as those with assisted living needs.

4. Education and Services Policy ES-6.11: Provide sufficient land for facilities to accommodate future health care needs of the aging population, such as nursing home care, assisted living, and continuing care retirement communities.

Analysis for Policies ES-6.11: This project would enable the development of a facility with both memory-care and assisted living for senior citizens.

5. Land Use and Employment Goal IE-1: Proactively manage land uses to provide and enhance economic development and job growth in San José.
6. Land Use and Employment Policy IE-1.4: Manage land uses to enhance employment lands to improve the balance between jobs and workers residing in San José. To attain fiscal sustainability for the City, strive to achieve a minimum ratio of 1.1 jobs/employed resident by 2040. In the near term, strive to achieve a minimum ratio of 1 job per employed resident by 2025.

Analysis for Goal IE-1 and Policy IE-1.4: The project would provide approximately 70 new jobs as described in the project description. The type of staff needed would increase the number of jobs available for a wide variety of skill levels. Staffing of the facility would include nurses, nursing assistants, medication technicians, culinary staff, housekeepers, maintenance staff, and other support staff.

The project also conforms to the following key design policies:

7. General City Design Policy, CD-1.8: Create an attractive street presence with pedestrian-scaled building and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.
8. General City Design Policy, CD-1.9: Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Urban Villages, or along Main Streets, place commercial and mixed-use building frontages at or near the street-facing property line with entrances directly to the public sidewalk, provide high-quality pedestrian facilities that promote pedestrian activity, including adequate sidewalk dimensions for both circulation and outdoor activities related to adjacent land uses, a continuous tree canopy, and other pedestrian amenities. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street facade and pedestrian access to buildings.
9. General City Design Policy, CD-1.12: Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
10. Community Design Policy CD-2.3: Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate.

Analysis for CD-1.8, 1.9, 1.12 and 2.3: The project design will enhance and promote pedestrian activities along South Bascom Avenue by widening the existing 10-foot sidewalk along the project frontage to 15 feet, locating parking, vehicular circulation and pick-up/drop-off/loading activities within the basement level, and placing the active uses of the facility such as lobby, lounge/bistro, dining, and office along the street frontage. The building is placed at the back of the sidewalk with an entry facing South Bascom Avenue. The ground floor along South Bascom Avenue has large storefront windows to create an attractive pedestrian environment. The dining room on the third floor includes a long deck along South Bascom Avenue, which provides variation to the building façade and an active use facing the street. The overall building design creates an attractive streetscape to promote pedestrian activities in the area.

Municipal Code Conformance

Land Uses

A Conditional Use Permit is required for a residential care facility in the proposed CP Commercial Pedestrian Zoning District per Table 20-90 of Section [20.40.100](#). Pursuant to Section [20.200.1030](#) of the Zoning Ordinance, a residential care facility is defined as a facility licensed by the state of California where care, services or treatment is provided to persons living in a community residential setting.

Development Regulations

The project conforms with the following setback requirements in the CP Commercial Pedestrian Zoning District:

Standard	CP Zoning District	Proposed
Front Setback	10 feet maximum	5 feet to property line, 0 feet to proposed back of sidewalk
Interior Side Setback (adjacent to residence district)	10 feet minimum	21 feet to the north side and 12'-1" to the south side
Interior Side Setback (adjacent to non-residence district)	None required	8'-3" to the south side and 16' to the north side
Rear Setback	25 feet minimum	25 feet

Height

The maximum height is subject to Zoning Code Section [20.85.020.E](#) which allows a maximum height of 120 feet in this urban village area. The project building is 51.25 feet in height. The project conforms with the height requirement.

Parking

Pursuant to Section [20.90.060](#) of the Zoning Ordinance, the required parking for a residential care facility is one space per the first six client beds, plus one additional space for up to four client beds above the first six, plus one space for each employee or staff member. With a total of 93 beds and 27 staff maximum on-site at a time, a total of 50 vehicle parking spaces is required. Given that the site is within an urban village, a 20% parking reduction can be granted per Zoning Code Section [20.90.220.A.1.a](#). The required number of vehicle parking spaces is 40. The project provides 45 vehicle parking spaces.

Additionally, the project is required to have bicycle parking at the ratio of one bicycle parking space per ten full-time employees, which equals three bicycle spaces. The project provides four bicycle parking spaces on the basement level near the elevator.

Per Section 20.90.330, one (1) motorcycle parking space is required for each 20 code required parking stalls. The project requires three motorcycle parking spaces. The project provides three motorcycle parking spaces in the basement level. The project is therefore in compliance with the parking requirements.

Off-Street Loading

Per Section [20.90.410](#), new construction over 10,000 square feet typically requires a minimum of one loading space, with minimum dimensions of ten feet wide, thirty feet long, and 15 feet high, with all maneuvering for the loading space on-site. This Section also allows loading space requirements to be waived upon a finding that the project includes adequate provision for loading taking into consideration the nature of the allowed uses, the configuration of buildings and their relationship to the street.

As discussed above, the project will direct vehicular circulation, parking, pick-up/drop off and loading activities to the basement level in order to promote pedestrian activities on the street level. The project would include a 10-foot wide by 30-foot long by 10-foot high loading space in the basement level. The applicant has indicated that delivery vendor will use Class 4 to Class 6 trucks that will fit the 10-foot clear height ceiling and turning radius of the parking garage, and larger trucks are not required for the facility. Given the narrow frontage of the site, the high priority of promoting pedestrian activities in an Urban Village, and the nature of the operation, staff recommends allowing the reduced-height loading space of ten feet and including a project condition (Condition #18) to require that all delivery vendors use Class 4 to Class 6 trucks that can clear the 10-foot ceiling height and turning radius in the parking garage and not allow larger trucks.

Lighting

Zoning Code Section 20.40.530.B requires the setback of a lighting fixture from a residentially shared property line to be twice the height of the lighting fixture where the fixture exceeds eight feet in height. Exterior lighting will be installed for the facility and the courtyard for security and access. The project includes the installation of 42-inch height LED bollard lights on pathways, LED wall lights, trellis mounted downlights and ceiling mounted downlights. The ceiling height is 12 feet high with a minimum setback of 24 feet from the property line. The trellis mounted lights are 10 feet above ground with a minimum setback of 31 feet from the property lines. Therefore, the exterior lighting meets the zoning code requirements. The exterior lighting also conforms to the City Council's Outdoor Lighting Policy (4-3), in that all exterior lighting is shielded to direct light downwards to ensure that light and glare does not spill over onto nearby residential properties. The photometric grid depicted on the lighting plan (Sheet 11.0 of the development plans, Exhibit F) shows that lighting would produce zero or nearly zero light spillover along the project site boundaries. Therefore, the project conforms with the Zoning Code lighting requirements.

Screening adjacent to residentially zoned properties

Pursuant to Section [20.40.560](#) of the Zoning Ordinance, a masonry wall or a solid wooden fence of at least five feet in height is required to screen the abutting residentially zoned properties and such screening should include trees or plants if the use includes outdoor activities. The project includes eight-foot high concrete masonry unit (CMU) perimeter walls along the property lines. Landscaping with trees would be placed along the northern, western and southwestern property lines where the project site is adjacent to residentially zoned properties. The project meets this screening requirement.

Noise

Outdoor areas are available to residents of the facility through terraces located on the 2nd and 3rd floors and outdoor courtyard and would be for passive use; no scheduled outdoor activities, events, nor amplified music would occur. Noise generating on-site operational components of the project would include mechanical equipment. The project would include mechanical equipment, such as heating, ventilation, and air conditioning systems (HVAC), as well as emergency generators, pumps, condensers, etc. The generator and water heater and pump room would be located in the basement level. Other mechanical equipment would be installed in the roof well. According to the Noise & Vibration Assessment prepared by Illingworth & Rodkin, Inc. dated June 24, 2020, the noise generated by the generator would not exceed the Zoning Code requirement because it is shielded in a utility room in the basement. The noise generated from rooftop mechanical equipment would not exceed 55 dBA at noise-sensitive land uses in the immediate project vicinity given that the mechanical equipment will be located at a roof well in the front of the building and has substantial distance from the adjacent residential use.

Commercial Design Guidelines

The project is a commercial use and is evaluated under the [Commercial Design Guidelines](#). As discussed above, the project design must also be consistent with the General Plan Community Design policies.

The original project design includes a four-story, 131,240-square foot building with minimum setbacks to the adjacent single-family residential to the north and the west. Since the initial submittal, staff met with the adjacent property owners to the north several times to discuss their concerns with regard to setback, height, privacy, and building scale. Staff reviewed the project based on the Commercial Design Guidelines and requested the applicant to revise the design to address the concerns.

Commercial Design Guideline 1.C.6 requires one and one half feet of setback from single-family (attached and detached) residential for each foot of building height in order to protect residential privacy and to reduce visual mass of the commercial building. The project is adjacent to single-family residential to the west and the northwest. The project is the construction of a 72,380-square foot building stepping down from three stories to one story towards the northern and western property lines to reduce the building mass and visual impact to the adjacent single-family residential. Green walls are located on the building's one-story high wall facing the single-family residential to the north and northwest to help reduce the visual impact. Landscape buffers with trees on the roof decks provide screening to the adjacent residential.

The project building has sloped roofs that fit well into the surrounding neighborhoods. The architectural design breaks up large scale design elements with smaller modules such as terrace, columns with architectural projections and recessions in different colors and a variety of materials such as stone veneer, Hardie plank siding with three colors, warm white trim, wood accent, dark storefront railing and awning, and dark bronze vinyl window.

Per the General Plan Community Design policies, pedestrian orientation is considered a high priority in any new development proposal within Urban Villages. As discussed above, the project is consistent with those design policies by widening the sidewalk, locating parking, vehicular circulation, pickup/drop off areas to the underground level, and placing building at the back of the sidewalk with an entry facing South Bascom Avenue and active uses on ground floor along the street.

There are existing mature trees at the rear yards of the adjacent single-family homes to the north near the shared property lines that screen the project. The project also includes landscaping buffers with trees along the property lines that screen the project from the adjacent residential uses. The project is therefore consistent with the Commercial Design Guidelines and General Plan Community Design policies.

Permit Findings

Conditional Use Permit

Staff recommends the Planning Commission make the following Conditional Use Permit findings:

1. 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: As explained in detail above, the project is consistent with the General Plan land use designation and policies in that the project is a facility that would provide a commercial use with approximately 70 staff employees and provide health care and daily care services to clients. Therefore, this finding can be made.

2. 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 conforms to the definition of a residential care facility. These facilities are considered commercial uses and are conditionally permitted uses within the CP Commercial Pedestrian Zoning District. As discussed above, the project building is approximately 51.25 feet high and is within the maximum building height of 120 feet. The project is required to provide 40 vehicle parking spaces and the project provides 45 vehicle parking spaces. Additionally, the project is required to provide three bicycle parking spaces and three motorcycle parking spaces. The project would provide four bicycle parking spaces to and three motorcycle parking spaces to fulfill the parking requirements. As discussed above, the project requires a waiver of the height of the on-site loading space in the basement level given the narrow frontage of the site, the high priority of promoting pedestrian activities in an Urban Village and the nature of the operation. Approval of the project (Condition #18) requires that all delivery vendors use Class 4 to Class 6 trucks that can clear the 10-foot ceiling height and turning radius in the parking garage and does not allow larger trucks. Therefore, this finding can be made.

3. The Conditional Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: Staff followed [Council Policy 6-30: Public Outreach Policy](#) to inform the public of the proposed project. A sign describing the project has been posted on the project site since August 19, 2019. A community meeting was held on October 17, 2019 to inform surrounding community of the project's intent to develop. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. In addition, a City website was created for the project. The website includes the project information, architectural plans and the project contact. Staff have been available to answer questions from the public. Staff met with some community members twice during the review process, to discuss their concerns and questions. Details regarding the community concerns and comments are described at the end of the staff report. The project is also consistent with the Outdoor Lighting Policy (City Council Policy 4-3) in that all exterior lighting is shielded to direct light downwards to ensure that light and glare does not spill over onto nearby residential properties. Therefore, this finding can be made.

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

Analysis: As described above, the project is located in an area with a mix of residential and commercial uses; therefore, the residential care facility use would be compatible with the surrounding residential and commercial uses. The project would provide clients having medical impairments or in need of assistance with daily activities with permanent or long-term care in a state-licensed facility. Most of the activities are primarily indoors and any outdoor activities are for passive uses with limited impact. Therefore, the project would not adversely affect the surrounding developments. Therefore, this finding can be made.

5. 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 parking and loading area are located in the basement level. The outdoor common areas, fences and landscaping are all located within the 1.23-gross acre site. Therefore, this finding can be made.

6. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
- b. By other public or private service facilities as are required.

Analysis: Access to the site would be from South Bascom Avenue, a north-south six-lane arterial. A VTA bus stop for bus route 61 is located approximately 150 feet north of the project site. As analyzed in the MND, the small increase in transit demand generated by the project is not expected to create demand in excess of the transit service that is currently provided. The site is within a developed area that is currently served by the necessary private and public facilities.

7. 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 stated above, the proposed development occurs in an urbanized area that is adequately serviced by all required utilities and public services, and the Stormwater Control Plan complies with the City's stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. Activities with the Assisted Living and Memory Care community requiring memory care and continuous supervision would occur indoors; therefore, the project would not generate noise above the existing ambient outdoor noise levels. The noise level generated by the mechanical equipment of the facility would not exceed the Zoning Code requirement. The project would therefore not have an unacceptable impact on adjacent properties.

Site Development Permit

Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Site Development Permit, which findings 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.

1. 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: See Conditional Use Permit Finding No.1 above.

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

Analysis: See Conditional Use Permit Finding No.2 above.

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

Analysis: See Conditional Use Permit Finding No.3 above.

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

Analysis: The project is a three-story building facing South Bascom Avenue. The project is designed to locate parking, vehicular circulation, pick-up/drop-off/loading areas in the basement level. The main entrance of the building is from the sidewalk. The trash enclosure is located at the south side of the project site and attached to the building wall. The project design includes a color scheme with different

sections which contribute to an interesting and varied design.

5. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The existing neighborhood near the site consists of primarily one to two-story residential buildings and some one- to two-story commercial buildings. As discussed above, the project building would be located closer to the sidewalk and with the main entrance from the street. The building massing has been reduced and broken up by providing step backs on the upper floors from the adjacent single-family residential use, applying architectural projections and recessions, incorporate smaller modular such as roof decks and terraces and some pedestrian-scale architectural elements such as columns and trellises with different colors and materials to provide variation in design. Although the project is a commercial use, the building design presents residential building features which are aesthetically harmonious with adjacent development or the character of the neighborhood.

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

Analysis: See Conditional Use Permit Finding No.7 above.

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

Analysis: As shown on the plan sets, the landscaping, all walls and fences, utility, and trash facilities are sufficient to maintain and upgrade the appearance of the neighborhood. The project would provide screening trees along the property lines, adjacent to the existing residential development to the north, west and south of the project site. The trash enclosure is located to the south side of the building. The generator would be enclosed and located in the basement level and other mechanical equipment would be located in the roof well.

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

Analysis: The project is accessible by a single two-lane driveway off South Bascom Avenue. This driveway would be restricted to right-turn in/out movements only, due to the raised median island along South Bascom Avenue. As described above, the site design would direct vehicular circulation and parking to the basement level. The project provides 45 parking spaces, which exceeds the 40 parking spaces requirements. The project will widen the existing sidewalk along South Bascom Avenue from 10 feet wide to 15 feet wide. The main entrance of the building is from sidewalk.

Evaluation Criteria for Demolition

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.

1. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
2. The failure to approve the permit would jeopardize public health, safety or welfare;

3. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
4. The approval of the permit should maintain the supply of existing housing stock in the City of San Jose;
5. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
6. Rehabilitation or reuse of the existing building would not be feasible; and
7. 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 four total approximately 6,030-square foot commercial buildings on-site would facilitate the construction of an assisted living and memory care facility. Re-use or rehabilitation of the buildings would not be practical given the small size of the buildings, and the project would not remove residential units from the existing housing stock.

The existing on-site structures are over 45 years old and a Historical Evaluation was completed by the City's Historic Preservation Officer on March 30, 2020 based on the review of the Historic Resource Assessment conducted by TreanorHL in February 2020, the field investigation and staff's analysis. The Historical Evaluation concluded that the structures on site would not qualify for listing in any of the historic resource lists, and the site and its features and the immediate surroundings would not meet the definition of "historical resources" under CEQA.

Tree Removal Permit

Chapter [13.32.100](#) 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.

1. 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 Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
3. 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 eight existing trees near the project perimeter with sizes ranging from 19 inches to 100 inches in circumference. Among these eight trees, two ordinance-sized trees and four non-ordinance sized trees would be removed to facilitate the development of the residential care facility. Four existing trees along the southern property line will be removed because they are located in the proposed walkway along the southern property line. Two existing trees near the western property line will be removed because they are too close to the existing rear fence which will be replaced by a new perimeter wall. According to the City's Tree Replacement ratios, the project would require 16 fifteen-gallon replacement trees or 8 twenty-four-inch box replacement trees. Pursuant to the project landscaping plan, a total of 85 trees including 10 twenty-four-inch box trees will be planted on-site consistent with the City's Tree Replacement ratios.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

An Initial Study (IS)/Mitigated Negative Declaration (MND) was prepared by the Director of the City of San José's Department of Planning, Building and Code Enforcement for the subject Conditional Use Permit. The document was circulated for public comment between May 1, 2020 and May 21, 2020. Four formal comments/emails were received from the public during the public circulation period. Three letters were sent by residents living around the project site and one was sent by Valley Water (formally Santa Clara Valley Water District). Comments from the general public are mainly about traffic, transportation, noise and traffic during construction period, biological resources (nesting raptors), and the fire access from the adjacent property to the north. Valley Water points out that the project site is located in an area subject to inundation from the James J. Lenihan Dam on Lexington Reservoir and the IS/MND has been updated in response to this comment. Other comments from Valley Water include a general note for well and the IS/MND has been updated to include this comment.

The comments received did not result in any substantial changes to the project description, analyses, and/or impacts that was previously disclosed in the IS/MND. These environmental comments are addressed by staff in a formal Response to Comments document. The entire IS/MND, Responses to Comments, and other related environmental documents are available on the Planning web site at: <https://www.sanjoseca.gov/negativedeclarations>.

The project will demolish four existing commercial buildings on the project site. The City's Historic Preservation Officer visited the site and reviewed the Historic Resource Assessment conducted by TreanorHL in February 2020, and concluded pursuant to Section 15064.5 of the CEQA Guidelines that the structures would not qualify for listing on any of the historic resources lists, the site and its features and the immediate surroundings would not meet the definition of "historical resources" under CEQA.

The predominant existing noise source around the project area is the vehicular traffic along South Bascom Avenue. Outdoor areas are open to residents of the facility through terraces located on the 2nd to 3rd floors and outdoor courtyards and would be for passive use; no scheduled outdoor activities, events, nor amplified music would occur. Noise generating on-site operational components of the project would include mechanical equipment. According to the Noise Report prepared by Illingworth & Rodkin, Inc. dated June 24, 2020, the noise generated by the generator would not exceed the Zoning Code requirement because it is shielded in the basement. The noise generated from rooftop mechanical equipment would not exceed 55 dBA at noise-sensitive land uses in the immediate project vicinity given that the mechanical equipment will be located at a roof well in the front of the building and has substantial distance from the adjacent residential use.

A Transportation Analysis was conducted by Hexagon Transportation Consultants, Inc. on January 24, 2020 for the project. According to the transportation analysis, the project would generate 12.41 vehicle miles traveled (VMT) per employee. This exceeds the threshold of 12.21 VMT per employee based on the City's VMT impact criteria, therefore resulting in a significant transportation impact on VMT. This impact is reduced to a less-than-significant level with the implementation of Mitigation Measure MM TR-1, on-and off-site pedestrian improvements including installing a crosswalk via a signal modification on the south leg of the South Bascom Avenue and Dry Creek Road intersection with new ADA compliant curb ramps on both the southwest corner and southeast corner (pork chop island) of the intersection, and shifting the existing bus stop to the south so as to not conflict with the new crosswalk.

Other primary environmental issues that require mitigation measures are air quality, biological resources, cultural resources and hazards and hazardous materials. The IS/MND includes mitigation measures that would reduce any potentially significant project impacts to a less-than-significant level. In addition to the mitigation measures, other permit conditions in regards to construction dust controls and equipment of

the site, including Best Management Practices and Standard conditions, are included as conditions of approval to ensure all potential impacts have been addressed.

PUBLIC OUTREACH

Staff followed City Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. A sign describing the project has been posted on the project site since August 19, 2019. A community meeting was held on October 17, 2019 to inform surrounding community of the project's intent to develop. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. In addition, a City website was created for the project. The website includes the project information, architectural plans and the project contact. Staff have been available to answer questions from the public. During the review process, staff met with some community members several times in 2019 to discuss their concerns and questions.

Below is a general summary of the comments by members of public.

October 17, 2019 Community Meeting
Number of Attendees: +/-20
Major Comments and Concerns
Cut-through traffic at Dry Creek Road to go to Union Avenue; keep large trucks off Dry Creek Road; speeding at Dry Creek Road; overflow parking to Dry Creek Road
The project will worsen the existing traffic condition in the area. Traffic analysis should include Dry Creek/Union and Camden/Union.
Even delivery once a day could be a problem.
Noise generated by the mechanical equipment and commercial kitchen.
Fire access
Privacy concerns of the adjacent single-family residences along Dry Creek Road

Impact on Dry Creek Road:

The project is in compliance with the Zoning Code parking requirement. The project would provide 45 vehicle parking spaces, which exceeds the parking requirement (40 spaces). Therefore, the project will not result in over-flow parking to Dry Creek Road.

Any existing issues of speeding, cut-through traffic, and large truck movements on Dry Creek Road systemic to the roadway network and not directly attributable to the project. These roadway issues are beyond the scope of the project to address because the project would only generate three new trips to Dry Creek Road from south bound of South Bascom Avenue per the Transportation Analysis prepared by Hexagon Transportation Consultants dated January 24, 2020. Additionally, larger trucks are not required for the facility as discussed above.

Traffic:

As part of the Local Transportation Analysis (LTA) prepared by Hexagon Transportation Consultants, Inc. dated January 24, 2020, a project is generally required to conduct an intersection operations analysis if the project is expected to add 10 or more vehicle trips per hour per lane to any signalized intersection that is located within a half-mile of the project site and is currently operating at LOS D or worse. Based on these criteria, the LTA comprises an analysis of AM and PM peak hour traffic conditions for the following two intersections, South Bascom Avenue and Dry Creek Road (signalized) and South Bascom Avenue and Surrey Place (unsignalized). The intersection of Dry Creek Road and Union Avenue is not a signalized

intersection and the intersection of Camden Avenue and Union Avenue is outside of the half-mile radius of the project site. Hence, they are not required to be included in the analysis.

According to the transportation study, the project would result in a significant transportation impact on VMT and this impact can be mitigated to a less-than-significant level by implementing Mitigation Measure MM TR-1, on-and off-site pedestrian improvements including installing a crosswalk via a signal modification on the south leg of the South Bascom Avenue and Dry Creek Road intersection with new ADA compliant curb ramps, on both the southwest corner and southeast corner (pork chop island) of the intersection, and shifting the existing bus stop to the south so as to not conflict with the new crosswalk.

Noise:

Per the noise report prepared by Illingworth & Rodkin, Inc. dated June 24, 2020, the noise generated by the mechanical equipment would not result in significant noise impact to the surrounding residential use given that the generator room and other utility rooms are located at the basement level and the AC units are located within the roof well that is substantially away from residential use. The noise generated by construction will be temporary and will be mitigated by implementing a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator.

Fire Access:

The Fire Department approved a Fire Code Variance application on January 9, 2020 for the project. The project will include an automatic fire sprinkler system that includes standpipes at all stairwells that will provide readily available water and pressure, and will have automatic smoke vents at roof to provide early smoke evacuation. A new public fire hydrant will be installed at Dry Creek Road to provide hose reach to all portions of the building, and provide firefighters an additional means of access to the site and the building by accessing through the existing 15-foot wide non-exclusive ingress/egress easement on the adjacent property (2355 South Bascom) to the north from Dry Creek Road.

In May 2020, the property owner of 2355 South Bascom Avenue and his representative contacted staff regarding the legality of this ingress/egress easement and stated that this fire access would impact his business and property, and would create a considerable risk. The applicant provided a Preliminary Title Report which includes the legal description of this non-exclusive ingress/egress easement. While the City is not a party to private easement disputes, the draft resolution includes Condition #31 which states “the project shall conform to the requirements of the Fire Department at the building plan review stage to the satisfaction of the Chief Building Official and the Fire Chief”. This will ensure the project is in compliance with the Building Code and Fire Code.

On July 3, 2020, Staff received a letter and two survey exhibits from the representative of the property owner of 2355 South Bascom Avenue. Two issues are raised in this letter. The first issue is about the fire access through the 15-foot wide easement as discussed above. The survey file shows that there is an existing block wall encroaching into the easement area and results in a 13.8-foot wide clearance within the easement area. The letter also states that there is a concrete curb may further restrict the fire access within the easement area to 9.3 feet. In response to this concern, a project condition (Condition # 32) has been included in the draft resolution, “prior to issuance of Building Permits for the project, evidence shall be provided to the Fire Department that the 15-foot wide non-exclusive ingress/egress easement on the adjacent property (2355 South Bascom Avenue) is free and clear of obstructions to the satisfaction of the Fire Department”.

The second issue included in the letter is that the east corner of the proposed building encroaches into a recorded ingress/egress easement (the Bascom Avenue Easement) at the northeast corner of the subject

site along South Bascom Avenue that benefits the adjacent property (2355 South Bascom Avenue). After receiving this comment, the applicant revised the project design to eliminate the building encroachment into this easement (See Site Plan, Sheet 3.1 from the plan set, Exhibit F).

Privacy:

As discussed in the Commercial Design Guidelines section, there are existing mature trees on the adjacent single-family residential properties and the project also proposes trees and landscape buffers at the shared residential property lines and on roof deck/terrace to reduce the privacy impact on the adjacent single-family residential.

Loading/Delivery Area:

The loading/delivery area is located in the basement level.

Project Manager: Angela Wang

Approved by: /s/ Deputy Director for Rosalynn Hughey, Planning Director

ATTACHMENTS:	
Attachment A:	Aerial Map
Attachment B:	General Plan Map
Attachment C:	Zoning Map
Attachment D:	Resolution
Attachment E:	Environmental Resolution and MMRP
Attachment F:	Plan Set
Attachment G:	Operations Plan

Applicant:	Property Owner:
Paul Bunton Advocacy Development Partners 555 Peters Ave, Suite 105 Pleasanton, CA 94556	Bob Bombaci 14932 Heather Drive San Jose, CA 95124

CP19-021 List of Attachments

[Exhibit A- Aerial Map](#)

[Exhibit B- General Plan Map](#)

[Exhibit C- Zoning Map](#)

[Exhibit D- Resolution](#)

[Exhibit E- Environmental Resolution and MMRP](#)

[Exhibit F: Plan Set](#)

[Exhibit G- Operations Plan](#)

[Correspondence Received After 7/15/2020](#)



Variance Application

San Jose Fire Department
Bureau of Fire Prevention
200 E. Santa Clara St., 2nd Fl. Tower
San Jose, CA 95113-1905
Phone: (408) 535-7750
Fax: (408) 292-6067

Fee required: Hourly Rate (min. 3 hours) \$717.00

Fees must be submitted with application

Plan Check# CP19-021

Associated Folder# (Permit#)

PROJECT INFORMATION

Project Name: 2395 South Bascom Ave. - Residential Care Facility of Elderly

Address: 2395 South Bascom Ave.

City: San Jose

Zip: 95008

Type of Construction: IA- Garage, VA - Residential Area

Sprinklered: Yes ☒ No ☐

3 stories plus 1 level

Building Floor Area: 102,290 sf

Tenant Area: 72,050 sf - residential
30,240 sf - garage

Number of stories: parking garage

Describe Use: 3 stories - R-2.1 and 1 Subterranean Parking Garage - S-2

1. Code Requirement (Include code reference)

CFC 2016 Section 503.1.1- All portions of 1st floor exterior bldg. walls shall be within 150' ft. of an approved fire fire apparatus access road. Approximately 364 linear feet of bldg. exceeds 150' ft. from an access road.

CFC 2016 Appendix D Section D105.1, D105.2 and D105.3 - Where vertical distance between the grade plane and the highest roof surface exceeds 30', approved aerial fire apparatus access road is required. Aerial access road shall be

(see page 2 for continuation)

2. Variance Proposed (A brief description shall be included even if additional documents are attached)

Increase residential areas hydraulic calculation from 0.10 gpm/4 sprks. to 0.10 gpm/8 sprks., or alternately 0.15 gpm /4 spks. Increase common areas designated as light hazard by NFPA 13 including corridors minimum 0.15 gpm/sf over 1500 sf, or alternately 0.10 gpm/sf over 3000 sf. Either approach, the sprinklers will be spaced for ordinary hazard using quick response, standard spray sprinklers. Increase parking garage area hydraulic calculation from 0.15 gpm/sf over 1500 sf to 0.20 gpm/sf

(see page 2 for continuation)

3. Justification (A brief description shall be included even if additional documents are attached)

Enhanced design density increases probability of fire extinguishment by automatic fire sprinkler system. Standpipe system at all stairwells will provide firefighter with readily available water and pressure. Automatic smoke vents at roof will provide early smoke evacuation. New public fire hydrant at Dry Creek Road will provide for hose reach to all portions of the bldg. Existing Non-exclusive Ingress/Egress Easement provide firefighters an additional means of access to proposed site & bldg.

APPLICANT INFORMATION

Serena Van Bommel - Fire Tech, Inc.

Requested by (Print Name)

Signature

12 / 11 / 2019

Date

Mailing Address: 4231 Tanager Terrace

City: Fremont

Zip: 94555

Phone: (510) 509 - 2275

Note: Attach plans showing the details of the proposed variance and copies of any reference, test reports, expert opinion, etc. Submit all documents, including plans in 11x17 or 8.5x11 format. The Fire Chief may require that a consultant be hired by the applicant to perform all applicable test, research and analysis and submit a full report of evaluation to the Fire Department for consideration and approval.

Additional City requirements or notes:

Habatelli

Reviewed by Inspector/Engineer

FOR DE ESTRADA

Fire Marshal Signature

Denied ☐
Approved ☒

1 / 9 / 2020

Date

1. Code Requirement: (continuation)

26' ft. wide, and located within min. 15' ft. and max. 30' ft. from bldg. No access road meets these requirements and the roof slope of the building does not provide firefighters access.

Per SJFD requirements, FDC(s) shall be within 100' ft. of a fire hydrant. FDC(s) on the northwest side of the property is not within 100' ft. of a fire hydrant.

Per CFC 2016 Appendix D Section D104.1 Buildings exceeding 30 feet in height shall have at least two means of fire apparatus access for each structure.

Average spacing between hydrants is not in compliance with CFC 2016 and the requirements of SJFD. However, the three (3) hydrants, (new and/or existing) are located along a fire apparatus access road, and no portion of the bldg. is more than 400 feet from a fire hydrant.

2. Variance Proposed: (continuation)

over 1500 sf, or alternately 0.15 gpm/sf over 3000 sf. Attic sprinklers shall be designed as specified by NFPA 13, 2016 edition for light hazard (no design density increase at attic space).

Room Design not allowed.

There are no speculative-leased areas in this building.

Provide fire sprinklers at all closets and bathrooms.

Provide manual wet standpipe system at all stairwells. Standpipe hose valves shall be located at the intermediate landings and on the side of the intermediate landing, where the stairs go up to the next level.

Provide automatic single door smoke vents at roof. Smoke vents will open manually by external and internal pull cables and opens automatically with a fusible link at standard temperature 165 F. Developer and Design Team to work with SJFD on specific size and quantity of smoke vents. Please see Advocacy Development Partners drawing exhibit named **"AUTOMATIC VENTILATION SYSTEM"**

Provide a new public fire hydrant on Dry Creek Road near current Ingress/Egress Driveway, as reflected on Kier & Wright **"DRAWING EXHIBIT FOR VARIANCE APPLICATION"**

Requesting SJFD consideration of existing 15' wide, (approx. 136' ft. long) non- exclusive Ingress/Egress Easement as a means of fire apparatus access to proposed bldg.

Drawing Exhibit Attachments:

1. Kier & Wright "Drawing Exhibit for Variance Application"
2. Advocacy Development Partners "Automatic Ventilation System"
3. Advocacy Development Partners "Floor Plans" Sheet numbers 9.0 thru 9.4



Ingress Egress Driveway

FIRE TECH
INCORPORATED

4231 Tanager Terrace • Fremont, CA 94555
Tel: (510) 509-2275 • Fax: (510) 896-8571
email: Serena@1FireTech.com

Fire Flow Analysis for 2395 South Bascom Ave.

(Calculations per SFM interpretation 11-015 "Fire Flow Requirements with Mixed Construction and San Jose Muni Code 17.12.440)

Bldg. Information:

- 3 Stories plus 1 Level Subterranean Garage
- Occupancy Group – R-2.1 (Assisted Living Facility), S-2 (parking garage)

Total Bldg. Area: 102,290 sf

- 30,240 sf (Type IA - Ordinary Hazard)
- 72,050 sf (Type VA - Light Hazard)

Percent of Building:

- IA = 30,240/102,290 x 100 = 29.56% (Ordinary Hazard)
- VA = 72,050/102,290 x 100 = 70.44% (Light Hazard)

Fire Flow Per Construction Type:

- IA at 102,290 sf = 3500 gpm (25% reduction OH) = 2625 gpm
- VA at 102,290 sf = 5750 gpm (50% reduction LH) = 2875 gpm

Therefore:

0.2956(2625 gpm) + 0.7044(2875 gpm) = 2801.1 gpm = Approx. 3000 gpm (round up)

Final Fire Flow Required: 3000 gpm at 20 psi for a flow duration of 3 hours

Hydrant Quantity/Spacing/Road Frontage Distance:

Per CFC 2016 Appendix C Table C102.1

- Minimum 3 hydrants
- Average spacing between hydrants 400' ft.
- Distance from any point on street or road frontage to hydrant 225' ft.

SAN JOSE WATER
1000 & 1001
San Jose, CA 95128-3514

Writer's Direct Line: (408) 279-7821
Email: marty.henderson@sjwater.com

November 27, 2019

Mr. Ray Simpson
Bureau of Fire Prevention
San Jose Fire Department
200 East Santa Clara Street, 2nd Floor
San Jose, CA 95113-1905

Reference: 2395 S. Bascom Ave., San Jose, CA
APN: 412-25-009, 010

Dear Mr. Simpson:

Per your request on or about November 27, 2019, we conducted a computer simulation to determine fire flow availability at the referenced location. You indicated a flow with three hydrants for the purpose of the simulation to determine if 3,000 GPM is available. The table below gives the results of the computer simulation which are valid for one year from the date of the simulation. Elevations are interpolated from United States Geological Survey contours.

Hyd. No.	Location	GPM	Residual PSI	Static PSI
B-13402 Elev. = 204'	S. Bascom Ave., approx. 305' S/S Dry Creek Rd.	1000	47	53
FH-1 Elev. = 204'	S. Bascom Ave., approx. 175' S/S Dry Creek Rd.	1000	47	53
FH-2 Elev. = 198'	Dry Creek Rd., approx. 190' W/W S. Bascom Ave.	1000	48	56
Date of Simulation: November 27, 2019		Total	3000	

Determining the adequacy of fire protection from the information provided herein is the responsibility of those qualified to do so. San Jose Water Company undertakes to supply only such water at such pressure as may be available any time through the normal operation of its system. Section 774 of the Public Utilities Code limits the liability of the utility resulting from a claim regarding the provision or maintenance of an adequate water supply, water pressure, equipment or other fire protection facility or service.

Sincerely,

Marty Henderson
Engineering Support Supervisor

For additional information
Backflow: 408-279-7872
Map requests: 408-818-7360
Static water pressure: 408-818-7361
Water meter sizing: 408-279-7839

MPN
FFH19-880
001
Fire Flow File



0 10 20 40 60
Scale 1" = 20'

DRAWING EXHIBIT FOR VARIANCE APPLICATION
OF
CONDITIONAL USE PERMIT, FILE NO. CP19-021, FOR A
RESIDENTIAL CARE FACILITY FOR ELDERLY
ADVOCACY DEVELOPMENT PARTNERS

SAN JOSE

CALIFORNIA

KIER+WRIGHT
3350 Scott Boulevard, Building 22
Santa Clara, California 95054
Phone: (408) 727-6665
www.kierwright.com

NO.	BY	REVISION
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

DATE	12/10/2019
SCALE	AS SHOWN
DESIGNER	JS
DRAWN BY	JS
JOB NO.	A19534
SHEET	
OF	1 SHEETS

Final installed automatic vents will be similar or equal to the products below. Proposed locations indicated with red squares. Final sizing and spacing will provide adequate ventilation for the final building design. Design team will work with SJFD to determine to determine adequate ventilation.

SafeMAX™ (Single Door)

SMOKE VENT

Babcock-Davis' Single Door SafeMAX Smoke Vent, engineered with a metal cover, is ideal for factory, storage and warehouse occupancies, and hoistways. The single door smoke vent offers the largest effective vent area.



FEATURES

GREATER EFFECTIVE VENT AREA Reduce the number of smoke vents required on the roof with the industry's largest 48 x 96 single door smoke vent.

OPTIONAL LOUVERED CURB Add additional ventilation with louvered curbs. Ideal for use in elevator shafts and hoistways.



DETAILS

MATERIAL

- Aluminum: 11 gauge, mill finish
- Steel: 14 gauge galvalume, high reflectance white powder coat

COVER Formed metal cover with liner, internally stiffened to withstand a live load of 40psf

CURB Single wall curb with EZ tab counterflash and mounting flange

INSULATION 1 inch Polyiso R-6 in cover and around curb.

GASKET Extruded EPDM adhesive backed gasket seal, continuous around cover.

HINGE Heavy-duty pintle hinge with stainless steel hinge pins

SPRING Gas spring with damper opens cover against 10psf snow load

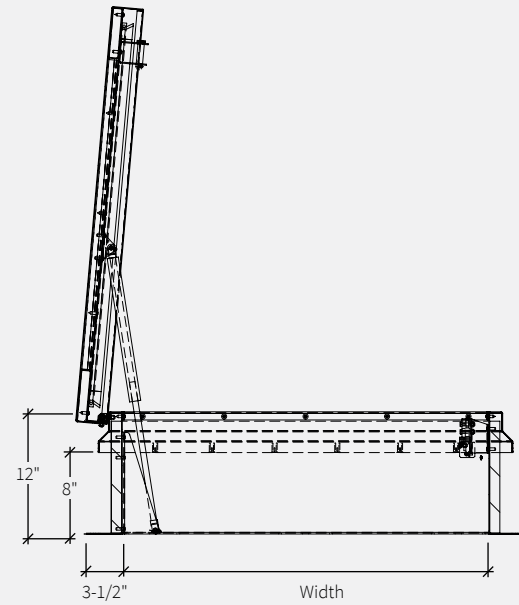
HOLD OPEN ARM Zinc-plated steel automatic hold open arm locks cover in open position

LATCH Zinc-plated steel rotary latch designed to hold covers closed against 10psf wind uplift. Opens manually by external and internal pull cables. **Optional:** automatically with a flexible link at standard temperatures (65°F)

CERTIFICATIONS UL 793 Listed, FM 4430 Approved

ORDER GUIDE

BASE	MATERIAL	WIDTH	X	LENGTH	DOOR	CURB	ELECTRIC	LINK TEMP °F	CLOSING	OPTIONS
BSVS			X							
A	Aluminum Curb & Cover	Standard Sizes (W x L)			1 Single Door	1 Single Wall	N No Electrical	165 350	R Roofstop Close	SFM FM Labeled
B	Galvalume Curb / Aluminum Cover	30" x 30" 36" x 30" 36" x 36" 48" x 48" 48" x 12" 48" x 96"			2 Double Wall	2 Double Wall	L 24VDC/24VAC	212 360	W Manual Winch	OP1 Door Position Sensor
W	Galvalume Curb & Cover	Additional size options also available.			3 Curb Mount	3 Curb Mount	H 110VAC / 240VAC	280 450	A Linear Actuator*	B... Burglar Bars

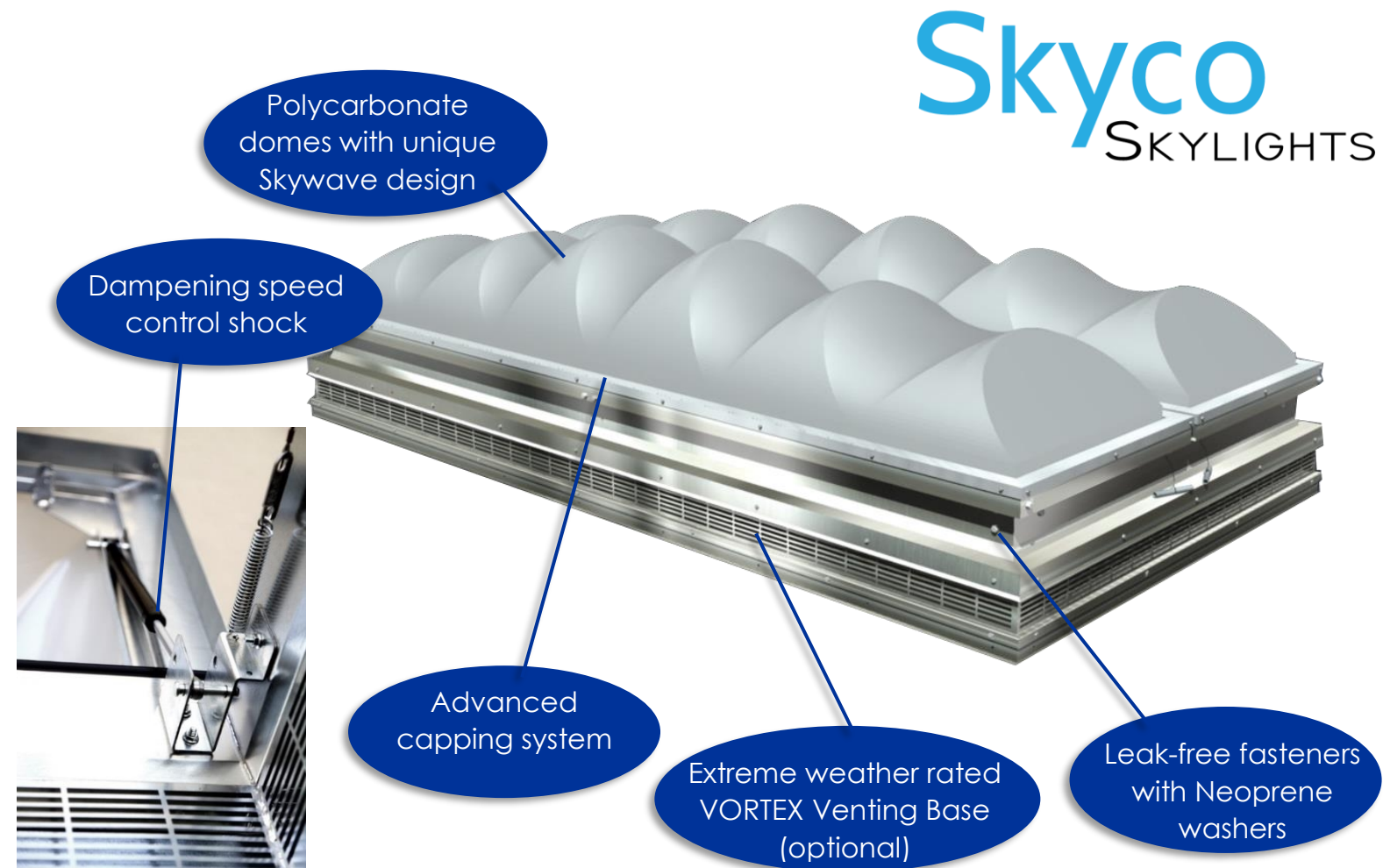


14 babcockdavis Download Drawings, CAD, Spec, and LEED documents at www.BabcockDavis.com



■ Automatic vents (proposed locations, skylights will be used in select locations above common areas)

0' 8' 16' 32'
SCALE 1/16" = 1'-0"



Details:

- UL No. E472388
- Meets standards for Int. Fire Code and CA Fire Code
- 800 lbs. Impact Test
- Light weight - 146 lbs. (without optional VORTEX base)
- High wind rated
- Curb Mounted or Self Flashing Available
- 10 Year Pass Through Warranty

VORTEX Venting Base (optional):

- Extreme weather rated design
- Neoprene washers
- Rain shield comes standard
- Superior intake and exhaust
- Optional: Dust Filter or Insect Screen



INTEGRITY
QUALITY
INNOVATION



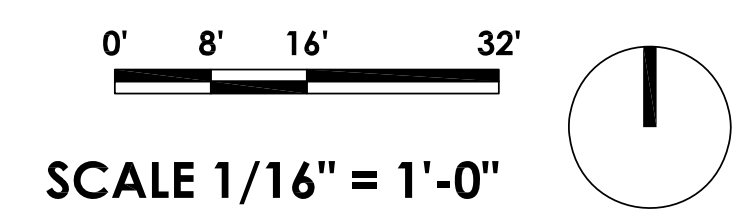
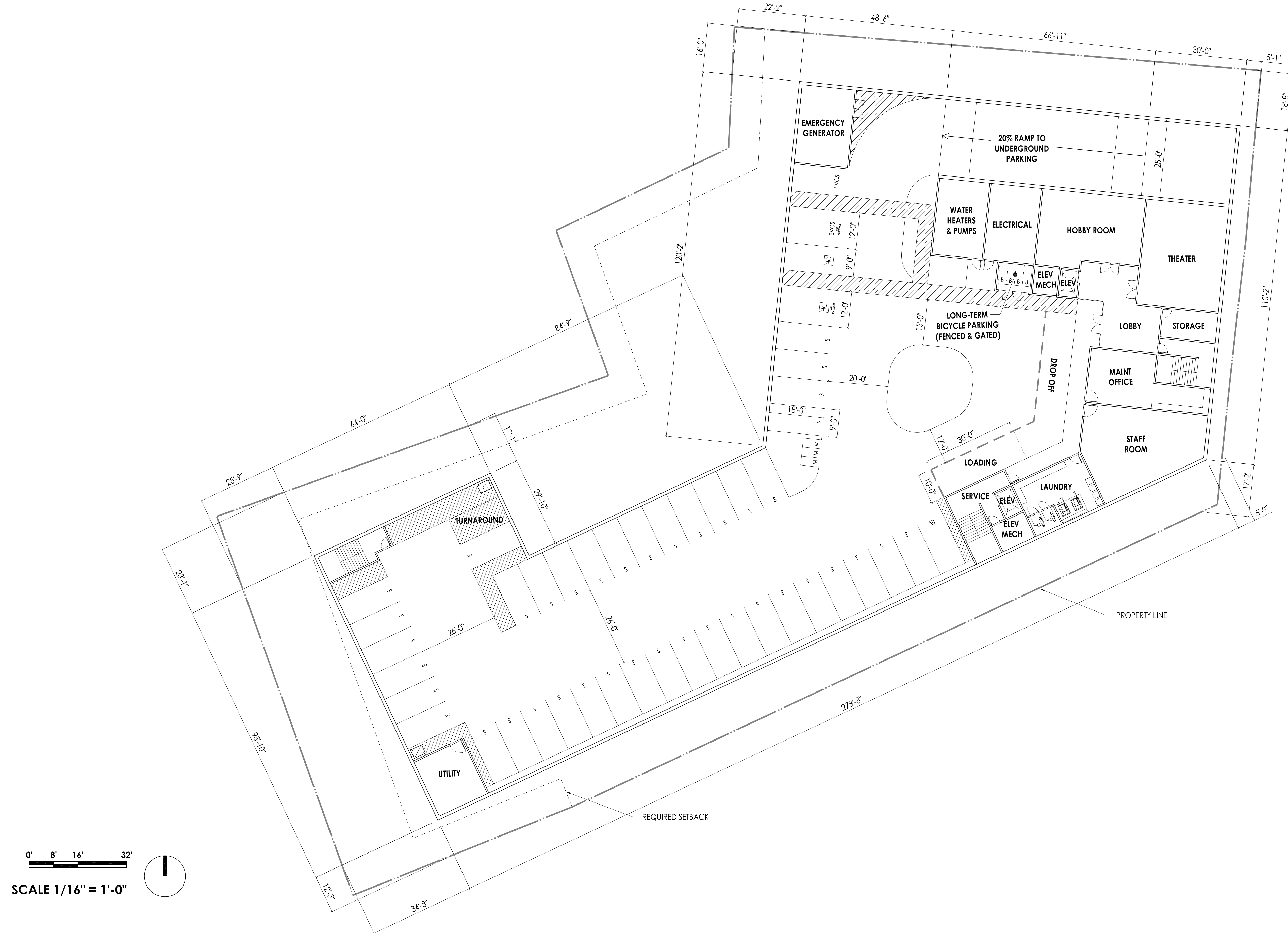
www.SkycoSkylights.com
info@SkycoSkylights.com
949-629-4090

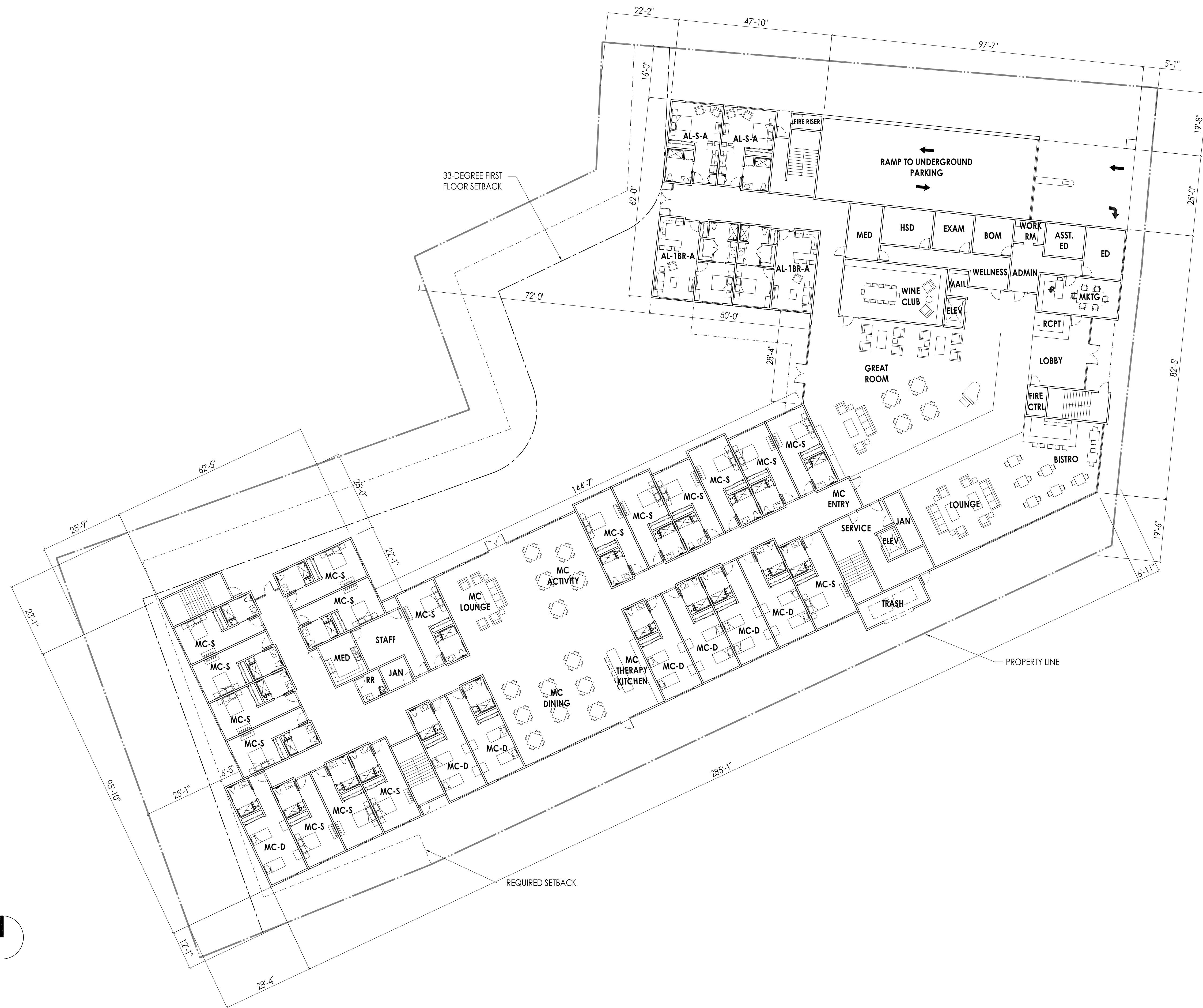
Skyco Skylights
2995 Airway Ave. Suite B
Costa Mesa, CA 92626



Automatic Ventilation System

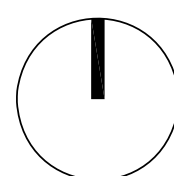
Conditional Use Permit, File No. CP19-021, for a Residential Care Facility · 2375 & 2395 S. Bascom · 11/25/2019





0' 8' 16' 32'

SCALE 1/16" = 1'-0"





0' 8' 16' 32'

SCALE 1/16" = 1'-0"



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 (FILE NO. CP19-021) TO ALLOW THE DEMOLITION OF FOUR COMMERCIAL BUILDINGS TOTALING APPROXIMATELY 6,030 SQUARE FEET, AND THE REMOVAL OF TWO ORDINANCE-SIZED TREES AND FOUR NON-ORDINANCE SIZED TREES FOR THE CONSTRUCTION OF A ONE TO THREE-STORY, 83-UNIT STATE-LICENSED RESIDENTIAL CARE FACILITY FOR THE ELDERLY WITH APPROXIMATELY 72,380 SQUARE FEET OF ABOVE GRADE FLOOR AREA, AND APPROXIMATELY 30,240 SQUARE FEET OF BASEMENT CONTAINING 7,750 SQUARE FEET OF ACTIVITY ROOMS, STAFF ROOM, AND UTILITY ROOMS, AND 22,450 SQUARE FEET OF PARKING AND CIRCULATION ON AN APPROXIMATELY 1.23-GROSS ACRE SITE LOCATED ON THE WEST SIDE OF SOUTH BASCOM AVENUE, APPROXIMATELY 177 FEET SOUTHERLY OF DRY CREEK ROAD (2375 AND 2395 SOUTH BASCOM AVENUE)

FILE NO. CP19-021

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 18, 2019, an application (File No. CP19-021) was filed by the applicant, Paul Bunton of Advocacy Development Partners, on behalf of Bob Bombaci, with the City of San José for a Conditional Use Permit to allow the demolition of four commercial buildings totaling approximately 6,030 square feet, and the removal of two ordinance-size trees and four non-ordinance sized trees for the construction of a one- to three-story, 83-unit state-licensed Residential Care Facility for the Elderly with approximately 72,380 square feet of above grade floor area, and approximately 30,240 square feet of basement containing 7,750 square feet of activity rooms, staff room, and utility rooms, and 22,450 square feet of parking and circulation on an approximately 1.23-gross acre site, on that certain real property situated in the CP Commercial Pedestrian Zoning District and located on the west side of South Bascom Avenue, approximately 177 feet southerly of Dry Creek Road (2375 & 2395 South Bascom 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,” 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, for which decision an appeal to the City Council was timely filed by a neighbor of the subject property; and

WHEREAS, on August 3, 2020, a timely appeal of the Planning Commission’s approval of the Conditional Use Permit was filed by Brett Townsend; 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

recommendations 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, "Conditional Use Permit, File No. CP19-021, for a Residential Care Facility for Elderly, 2375 & 2395 S Bascom Ave, San José, CA95008," dated revised July 10, 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; and

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 and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the west side of South Bascom Avenue, approximately 177 feet southerly of Dry Creek Road. The 1.23-gross acre site is currently occupied by Dry Creek Plaza, a commercial development containing four buildings, paved parking lot, and outdoor storage yards. The site is bounded by commercial use and single-family residential to the north, single-family residential to the west, multi-family residential and commercial to the south and commercial to the east across South Bascom Avenue. Access to the site is from three driveways on South Bascom Avenue.
2. **Project Description.** On June 18, 2019, the applicant, Advocacy Development Partners, applied for a Conditional Use Permit (File No. CP19-021) to allow the demolition of four commercial buildings totaling approximately 6,030 square feet, and the removal of two ordinance-size trees and four non-ordinance sized trees for the construction of a one- to three-story, 83-unit state-licensed Residential Care Facility for the Elderly with approximately 72,380 square feet of above grade floor area, and approximately 30,240 square feet of basement containing 7,750 square feet of activity rooms, staff room, and utility rooms, and 22,450 square feet of parking and circulation on an approximately 1.23-gross acre site.

The project would remove the three existing driveways on South Bascom Avenue and

construct a single two-way driveway. The driveway would be restricted to right-turn in/out movements only, due to the raised median island along South Bascom Avenue. This driveway would provide access to a basement parking level containing 45 parking stalls, loading and drop-off/pick-up areas. The project also involves the removal of two ordinance-size trees and four non-ordinance size trees to facilitate the new construction.

Operations

The facility is a state-licensed residential care facility for the elderly (RCFE) as defined by the California Department of Social Services. The facility would offer trained assistance to seniors with activities of daily life, including health and exercise programs, housekeeping, laundry service, social activities and programs, in-house grooming services, 24-hour staff supervision and security, three daily meals in the common dining room, dining assistance, transportation, an emergency response system in each room and daily health screenings of each resident. Only assisted living and memory care will be offered at the facility. No independent living will be provided.

Amenities of the facility include multiple common areas and activity rooms including a theater, therapy salon room, activity rooms, multiple lounges, arts and crafts room, library/media room, and a wellness center. These spaces are intended to provide the occupants with spaces for daily activities. The facility would also provide dedicated rooms for vendors and third-party services, such as barbers, beauticians, and physical and occupational therapists.

The facility would be staffed 24 hours a day, 365 days a year. The total number of staff employed in the facility would be approximately 70. There would be three shifts per day, morning shift (6 AM to 2 PM), afternoon shift (2PM to 10 PM) and night shift (10 PM to 6 AM). The maximum number of staff on-site would be approximately 27 people during the morning shift. The hours of operation and visitor hours would be 24 hours a day, seven days a week. The front doors will be secured after 8 P.M., with a lock-code provided to staff and family members.

Fire Review

As part of the Planning process, projects are reviewed by various departments including Fire Department. The Fire Department reviews projects for their conformance with Fire Department's requirements and the California Fire Code (CFC). If a project does not meet some of the Fire Department's requirements or the CFC, a Variance application can be filed with the Fire Department to allow alternative methods of compliance by incorporating additional design measures such as a higher-density fire sprinkler system and/or additional fire hydrants.

The proposed project does not meet the CFC and San Jose Fire Department's requirements on providing a 26-foot wide fire access road around the proposed building, the maximum distance between the proposed Fire Department Connection and the fire hydrant, and fire hydrant spacing. Hence, the applicant submitted a

Variance application to the Fire Department on December 11, 2019 with several design measures. These design measures include a greater density of fire sprinklers, standpipes, and smoke ventilator, a fire access through an existing easement on the adjacent property to the north, and the installation of a new fire hydrant at Dry Creek Road. Fire Department approved this application on January 9, 2020. The Fire Department has preliminarily approved this request, and will make a final determination upon reviewing the construction drawings for the project. If there are any issues with the final design, the applicant will be required to work with the Fire Department to resolve them prior to issuance of the Building Permit.

3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan designation of Neighborhood/Community Commercial (NCC). The NCC 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 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. General office uses, hospitals and private community gathering facilities are also allowed in this designation.

Additionally, the subject site is located in the future South Bascom Avenue (South) Urban Village area. Prior to the adoption of an Urban Village Plan, development should occur consistent with the General Plan land use designation and the Zoning District.

Conditional Use Permit Conformance to General Plan

The residential care facility would function as a commercial use that provides a variety of jobs that offer daily care services for clients. The project would generate approximately 70 jobs to provide services to the clients. The project is one to three stories (51'-3") high and at a floor-area ratio (FAR) of 1.35 with 72,380 square feet on a 1.23-gross acre site. Therefore, the project is consistent with the Neighborhood/Community Commercial land use designation.

General Plan Policies

The project is consistent with the following General Plan Policies:

Compatibility Policy CD-4.1: Maintain and update design guidelines adopted by the City and abide by them in the development of projects.

Analysis: The project is consistent with the Commercial Design Guidelines which requires new development to be compatible with the adjacent residential neighborhoods. The project building steps down towards the single-family residential to the north and the west of the project site to reduce the visual impact to single-family residential, and the architectural style fits into the surrounding neighborhoods. A full analysis is provided in the Commercial Design Guidelines section below.

Education and Services Goal ES-6: Access to Medical Services: Provide for the health care needs of all members of the San José community.

Education and Services Policy ES-6.1: Facilitate the development of new and promote the preservation and enhancement of existing health care facilities that meet all the needs of the entire San José community.

Analysis for Goal ES-6 and Policy ES-6.1: The residential care facility provides on-site daily care for clients requiring assistance with daily activities. The facility would provide spaces for a client's therapist to come on-site and facility staff would provide health related services throughout the building including medication administration via licensed nursing staff and medication supply rooms. This project would serve an aging population demographic, as well as those with assisted living needs.

Education and Services Policy ES-6.11: Provide sufficient land for facilities to accommodate future health care needs of the aging population, such as nursing home care, assisted living, and continuing care retirement communities.

Analysis for Policies ES-6.11: This project would enable the development of a facility with both memory-care and assisted living for senior citizens.

Land Use and Employment Goal IE-1: Proactively manage land uses to provide and enhance economic development and job growth in San José.

Land Use and Employment Policy IE-1.4: Manage land uses to enhance employment lands to improve the balance between jobs and workers residing in San José. To attain fiscal sustainability for the City, strive to achieve a minimum ratio of 1.1 jobs/employed resident by 2040. In the near term, strive to achieve a minimum ratio of 1 job per employed resident by 2025.

Analysis for Goal IE-1 and Policy IE-1.4: The project would provide approximately 70 new jobs as described in the project description. The type of staff needed would increase the number of jobs available for a wide variety of skill levels. Staffing of the facility would include nurses, nursing assistants, medication technicians, culinary staff, housekeepers, maintenance staff, and other support staff.

The project also conforms to the following key design policies:

General City Design Policy, CD-1.8: Create an attractive street presence with pedestrian-scaled building and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.

General City Design Policy, CD-1.9: Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Urban Villages, or along Main Streets, place commercial and mixed-use building frontages at or near the street-facing property line with entrances directly to the public sidewalk, provide

high-quality pedestrian facilities that promote pedestrian activity, including adequate sidewalk dimensions for both circulation and outdoor activities related to adjacent land uses, a continuous tree canopy, and other pedestrian amenities. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street facade and pedestrian access to buildings.

General City Design Policy, CD-1.12: Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.

Community Design Policy CD-2.3: Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate.

Analysis for CD-1.8, 1.9, 1.12 and 2.3: The project design will enhance and promote pedestrian activities along South Bascom Avenue by widening the existing 10-foot sidewalk along the project frontage to 15 feet, locating parking, vehicular circulation and pick-up/drop-off/loading activities within the basement level, and placing the active uses of the facility such as lobby, lounge/bistro, dining, and office along the street frontage. The building is placed at the back of the sidewalk with an entry facing South Bascom Avenue. The ground floor along South Bascom Avenue has large storefront windows to create an attractive pedestrian environment. The dining room on the third floor includes a long deck along South Bascom Avenue, which provides variation to the building façade and an active use facing the street. The overall building design creates an attractive streetscape to promote pedestrian activities in the area.

4. **Zoning Conformance.** The project conforms to the development standards set forth in the CP Commercial Pedestrian Zoning District.

- a. **Use.** A Conditional Use Permit is required for a residential care facility in the CP Commercial Pedestrian Zoning District per Table 20-90 of Section 20.40.100. Pursuant to Section 20.200.1030 of the Zoning Ordinance, a residential care facility is defined as a facility licensed by the state of California where care, services or treatment is provided to persons living in a community residential setting.

- b. **Development Regulations:**

The project conforms with the following setback requirements in the CP Commercial Pedestrian Zoning District:

Standard	CP Zoning District	Project
Front Setback	10 feet maximum	5 feet to property line, 0 feet to back of sidewalk
Interior Side Setback (adjacent to residence district)	10 feet minimum	21 feet to the north side and 12'-1" to the south side
Interior Side Setback (adjacent to non-residence district)	None required	8'-3" to the south side and 16' to the north side
Rear Setback	25 feet minimum	25 feet

Height: The maximum height is subject to Zoning Code Section 20.85.020.E which allows a maximum height of 120 feet in this urban village area. The project building is 51.25 feet in height. The project conforms with the height requirement.

c. Parking:

Pursuant to Section 20.90.060 of the Zoning Ordinance, the required parking for a residential care facility is one space per the first six client beds, plus one additional space for up to four client beds above the first six, plus one space for each employee or staff member. With a total of 93 beds and 27 staff maximum on-site at a time, a total of 50 vehicle parking spaces is required. Given that the site is within an urban village, a 20% parking reduction can be granted per Zoning Code Section 20.90.220.A.1.a. The required number of vehicle parking spaces is 40. The project provides 45 vehicle parking spaces.

Additionally, the project is required to have bicycle parking at the ratio of one bicycle parking space per ten full-time employees, which equals three bicycle spaces. The project provides four bicycle parking spaces on the basement level near the elevator.

Per Section 20.90.330 of the San José Municipal Code, one (1) motorcycle parking space is required for each 20 code required parking stalls. The project requires three motorcycle parking spaces. The project provides three motorcycle parking spaces in the basement level. The project is therefore in compliance with the parking requirements.

Off-Street Loading:

Per Section 20.90.410 of the San José Municipal Code, new construction over 10,000 square feet typically requires a minimum of one loading space, with minimum dimensions of ten feet wide, thirty feet long, and 15 feet high, with all

maneuvering for the loading space on-site. This Section also allows loading space requirements to be waived upon a finding that the project includes adequate provision for loading taking into consideration the nature of the allowed uses, the configuration of buildings and their relationship to the street.

As discussed above, the project will direct vehicular circulation, parking, pick-up/drop off and loading activities to the basement level in order to promote pedestrian activities on the street level. The project would include a 10-foot wide by 30-foot long by 10-foot high loading space in the basement level. The height clearance of the basement is 10 feet. The applicant has indicated that delivery vendor will use Class 4 to Class 6 trucks that will fit the 10-foot clear height ceiling and turning radius of the parking garage, and larger trucks are not required for the facility. The 15-foot height requirement is waived given the narrow frontage of the site, the high priority of promoting pedestrian activities in an Urban Village and the nature of the operation. A Condition of Approval for the project (Condition #18) requires that all delivery vendors use Class 4 to Class 6 trucks that can clear the 10-foot ceiling height and turning radius in the parking garage; larger trucks shall not be allowed.

- d. **Lighting.** Zoning Code Section 20.40.530.B requires the setback of a lighting fixture from a residentially shared property line to be twice the height of the lighting fixture where the fixture exceeds eight feet in height. Exterior lighting will be installed for the facility and the courtyard for security and access. The project includes the installation of 42-inch height LED bollard lights on pathways, LED wall lights, trellis mounted downlights and ceiling mounted downlights. The ceiling height is 12 feet high with a minimum setback of 24 feet from the property line. The trellis mounted lights are 10 feet above ground with a minimum setback of 31 feet from the property lines. Therefore, the exterior lighting meets the zoning code requirements. The exterior lighting also conforms to the City Council's Outdoor Lighting Policy (4-3), in that all exterior lighting is shielded to direct light downwards to ensure that light and glare does not spill over onto nearby residential properties. The photometric grid depicted on the lighting plan (Sheet 11.0 of the approved development plans) shows that lighting would produce zero or nearly zero light spillover along the project site boundaries. Therefore, the project conforms with the Zoning Code lighting requirements.
- e. **Screening adjacent to residentially zoned properties:** Pursuant to Section 20.40.560 of San José Municipal Code, a masonry wall or a solid wooden fence of at least five feet in height is required to screen the abutting residentially zoned properties and such screening should include trees or plants if the use includes outdoor activities. The project includes eight-foot high concrete masonry unit (CMU) perimeter walls along the property lines. Landscaping with trees would be placed along the northern, western and southwestern property lines where the

project site is adjacent to residentially zoned properties. The project meets this screening requirement.

- f. **Noise:** Outdoor areas are available to residents of the facility through terraces located on the 2nd and 3rd floors and an outdoor courtyard, which would be for passive use; no scheduled outdoor activities, events, or amplified music would occur. Noise generating on-site operational components of the project would include mechanical equipment, such as heating, ventilation, and air conditioning systems (HVAC), as well as emergency generators, pumps, condensers, etc. The generator and water heater and pump room would be located in the basement level. Other mechanical equipment would be installed in the roof well. According to the Noise & Vibration Assessment prepared by Illingworth & Rodkin, Inc. dated June 24, 2020, the noise generated by the generator would not exceed the Zoning Code requirement because it is shielded within a utility room in the basement. The noise generated from rooftop mechanical equipment would not exceed 55 dBA at noise-sensitive land uses in the immediate project vicinity given that the mechanical equipment will be located at a roof well in the front of the building and has substantial distance from the adjacent residential use.

5. **Commercial Design Guidelines.** The project is a commercial use and is evaluated under the City of San José Commercial Design Guidelines (1990). As discussed above, the project design must also be consistent with the General Plan Community Design policies.

Commercial Design Guideline 1.C.6 requires one and one half feet of setback from single-family (attached and detached) residential for each foot of building height in order to protect residential privacy and to reduce visual mass of the commercial building. The project is adjacent to single-family residential to the west and the northwest. The project is the construction of a 72,380-square foot building stepping down from three stories to one story towards the northern and western property lines to reduce the building mass and visual impact to the adjacent single-family residential. Green walls are located on the building's one-story high wall facing the single-family residential to the north and northwest to help reduce the visual impact. Landscape buffers with trees on the roof decks provide screening to the adjacent residential.

The project building has sloped roofs that fit well into the surrounding neighborhoods. The architectural design breaks up large scale design elements with smaller modules such as terrace, columns with architectural projections and recessions in different colors and a variety of materials such as stone veneer, Hardie plank siding with three colors, warm white trim, wood accent, dark storefront railing and awning, and dark bronze vinyl window.

Per the General Plan Community Design policies, pedestrian orientation is considered a high priority in any new development within Urban Villages. As discussed above, the project is consistent with those design policies by widening the sidewalk, locating parking, vehicular circulation, pickup/drop off areas to the underground level, and

placing the building at the back of the sidewalk with an entry facing South Bascom Avenue and active uses on the ground floor along the street.

There are existing mature trees at the rear yards of the adjacent single-family homes to the north near the shared property lines that screen the project. The project also includes landscaping buffers with trees along the property lines that screen the project from the adjacent residential uses. The project is therefore consistent with the Commercial Design Guidelines and General Plan Community Design policies.

6. **Environmental Review.** An Initial Study (IS)/Mitigated Negative Declaration (MND) was prepared by the Director of the City of San José's Department of Planning, Building and Code Enforcement for the subject Conditional Use Permit. The document was circulated for public comment between May 1, 2020 and May 21, 2020. Four formal comments/emails were received from the public during the public circulation period. Three letters were sent by residents living around the project site and one was sent by Valley Water (formally Santa Clara Valley Water District). Comments from the general public included traffic, transportation, noise and traffic during the construction period, biological resources (nesting raptors), and the fire access from the adjacent property to the north. Valley Water points out that the project site is located in an area subject to inundation from the James J. Lenihan Dam on Lexington Reservoir and the IS/MND has been updated in response to this comment. Other comments from Valley Water include a general note for well and the IS/MND has been updated to include this comment.

The comments received did not result in any substantial changes to the project description, analyses, and/or impacts that were previously disclosed in the IS/MND. These environmental comments are addressed in a formal Response to Comments document. The entire IS/MND, Responses 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/2375-2395-south-bascom-avenue-residential-care-facility-for-the-elderly-rcfe>.

The project will demolish four existing commercial buildings on the project site. The City's Historic Preservation Officer visited the site and reviewed the Historic Resource Assessment conducted by TreanorHL in February 2020, and concluded pursuant to Section 15064.5 of the CEQA Guidelines that the structures would not qualify for listing on any of the historic resources lists, the site and its features and the immediate surroundings would not meet the definition of "historical resources" under CEQA.

The predominant existing noise source around the project area is the vehicular traffic along South Bascom Avenue. Outdoor areas are open to residents of the facility through terraces located on the 2nd to 3rd floors and outdoor courtyards and would be for passive use; no scheduled outdoor activities, events, nor amplified music would occur. Noise generating on-site operational components of the project would include

mechanical equipment. According to the Noise Report prepared by Illingworth & Rodkin, Inc. dated June 24, 2020, the noise generated by the generator would not exceed the Zoning Code requirement because it is shielded in the basement. The noise generated from rooftop mechanical equipment would not exceed 55 dBA at noise-sensitive land uses in the immediate project vicinity given that the mechanical equipment will be located at a roof well in the front of the building and has substantial distance from the adjacent residential use.

A Transportation Analysis was conducted by Hexagon Transportation Consultants, Inc. on January 24, 2020 for the project. According to the transportation analysis, the project would generate 12.41 vehicle miles traveled (VMT) per employee. This exceeds the threshold of 12.21 VMT per employee based on the City's VMT impact criteria, therefore resulting in a significant transportation impact on VMT. This impact is reduced to a less-than-significant level with the implementation of Mitigation Measure MM TR-1, on-and off-site pedestrian improvements including installing a crosswalk via a signal modification on the south leg of the South Bascom Avenue and Dry Creek Road intersection with new ADA compliant curb ramps on both the southwest corner and southeast corner (pork chop island) of the intersection, and shifting the existing bus stop to the south so as to not conflict with the new crosswalk.

Other primary environmental issues that require mitigation measures are air quality, biological resources, cultural resources and hazards and hazardous materials. The IS/MND includes mitigation measures that would reduce any potentially significant project impacts to a less-than-significant level. In addition to the mitigation measures, other permit conditions in regard to construction dust controls and equipment of the site, including Best Management Practices and Standard conditions, are included as conditions of approval to ensure all potential impacts have been addressed.

7. **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.

Analysis: As explained in detail above, the project is consistent with the General Plan land use designation and policies in that the project is a facility that would provide a commercial use with approximately 70 staff employees and provide health care and daily care services to clients. Therefore, this finding can be made.

- 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.

Analysis: The project conforms to the definition of a residential care facility. These facilities are considered commercial uses and are conditionally permitted uses

within the CP Commercial Pedestrian Zoning District. As discussed above, the project building is approximately 51.25 feet high and is within the maximum building height of 120 feet. The project is required to provide 40 vehicle parking spaces and the project provides 45 vehicle parking spaces. Additionally, the project is required to provide three bicycle parking spaces and three motorcycle parking spaces. The project would provide four bicycle parking spaces to and three motorcycle parking spaces to fulfill the parking requirements. As discussed above, the project requires a waiver of the height of the on-site loading space in the basement level given the narrow frontage of the site, the high priority of promoting pedestrian activities in an Urban Village and the nature of the operation. A condition of approval of the project (Condition #18) requires that all delivery vendors use Class 4 to Class 6 trucks that can clear the 10-foot ceiling height and turning radius in the parking garage and does not allow larger trucks. Therefore, this finding can be made.

- c. The Conditional Use Permit, as approved, is consistent with applicable city council policies, or counter Conditional Use Permit balancing considerations justify the inconsistency.

Analysis: Council Policy 6-30: Public Outreach Policy was applied to inform the public of the project. A sign describing the project has been posted on the project site since August 19, 2019. A community meeting was held on October 17, 2019 to inform the surrounding community of the project's intent to develop. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000-foot radius of the project site and posted on the City website. In addition, a City website was created for the project. The website includes the project information, architectural plans and the project contact. Staff have been available to answer questions from the public. Staff met with some community members twice during the review process to discuss their concerns and questions. Details regarding the community concerns and comments are described at the end of the staff report. The project is also consistent with the Outdoor Lighting Policy (City Council Policy 4-3) in that all exterior lighting is shielded to direct light downwards to ensure that light and glare does not spill over onto nearby residential properties. Therefore, this finding can be made.

- d. The proposed use at the location requested will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or impair the utility or value of property of other persons located in the vicinity of the site; or be detrimental to public health, safety or general welfare.

Analysis: As described above, the project is located in an area with a mix of residential and commercial uses; therefore, the residential care facility use would be compatible with the surrounding residential and commercial uses. The project would provide clients having medical impairments or in need of assistance with

daily activities with permanent or long-term care in a state-licensed facility. Most of the activities are indoors and any outdoor activities are for passive uses such as strolling in the gardens. Therefore, the project would not adversely affect the surrounding developments. Therefore, this finding can be made.

- 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 parking and loading areas are located in the basement level. The outdoor common areas, fences and landscaping are all located within the 1.23-gross acre site. Therefore, this finding can be made.

- f. The proposed site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate, and by other public or private service facilities as are required.

Analysis: Access to the site is from South Bascom Avenue, a north-south six-lane arterial. A VTA bus stop for bus route 61 is located approximately 150 feet north of the project site. As analyzed in the IS/MND, the small increase in transit demand generated by the project is not expected to create demand in excess of the transit service that is currently provided. The site is within a developed area that is currently served by the necessary private and public facilities.

- 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 stated above, the project development occurs in an urbanized area that is adequately serviced by all required utilities and public services, and the Stormwater Control Plan complies with the City's stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. Activities with the Assisted Living and Memory Care community requiring memory care and continuous supervision would occur indoors; therefore, the project would not generate noise above the existing ambient outdoor noise levels. The noise level generated by the mechanical equipment of the facility would not exceed the Zoning Code requirement. The project would therefore not have an unacceptable impact on adjacent properties.

- 8. **Site Development Permit Findings:** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Site Development Permit, which findings 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 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: See Conditional Use Permit Finding a above.

- 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: See Conditional Use Permit Finding b above.

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

Analysis: See Conditional Use Permit Finding c above.

- 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: The project is a three-story building facing South Bascom Avenue. The project is designed to locate parking, vehicular circulation, pick-up/drop-off/loading areas in the basement level. The main entrance of the building is from the sidewalk. The trash enclosure is located at the south side of the project site and attached to the building wall. The project design includes a color scheme with different sections which contribute to an interesting and varied design.

- e. The orientation, location and elevation of the buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The existing neighborhood near the site consists of primarily one to two-story residential buildings and some one- to two-story commercial buildings. As discussed above, the project building would be located closer to the sidewalk and with the main entrance from the street. The building massing has been reduced and broken up by providing step backs on the upper floors from the adjacent single-family residential use, applying architectural projections and recessions, incorporate smaller modular such as roof decks and terraces and some pedestrian-scale architectural elements such as columns and trellises with different colors and materials to provide variation in design. Although the project is a commercial use, the building design presents residential building features which are aesthetically harmonious with adjacent development or the character of the neighborhood.

- 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: See Conditional Use Permit Finding g above.

- 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 plan sets, the landscaping, all walls and fences, utility, and trash facilities are sufficient to maintain and upgrade the appearance of the neighborhood. The project would provide screening trees along the property lines, adjacent to the existing residential development to the north, west and south of the project site. The trash enclosure is located to the south side of the building. The generator would be enclosed and located in the basement level and other mechanical equipment would be located in the roof well.

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

Analysis: The project is accessible by a single two-lane driveway off South Bascom Avenue. This driveway would be restricted to right-turn in/out movements only, due to the raised median island along the middle of South Bascom Avenue. As described above, the site design would direct vehicular circulation and parking to the basement level. The project provides 45 parking spaces, which exceeds the 40 parking spaces requirements. The project will widen the existing sidewalk along South Bascom Avenue from 10 feet wide to 15 feet wide. The main entrance of the building is from sidewalk.

- 9. **Evaluation Criteria for Demolition.** 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 four total approximately 6,030-square foot commercial

buildings on-site would facilitate the construction of an assisted living and memory care facility. Re-use or rehabilitation of the buildings would not be practical given the small size of the buildings, and the project would not remove residential units from the existing housing stock.

The existing on-site structures are over 45 years old and a Historical Evaluation was completed by the City's Historic Preservation Officer on March 30, 2020 based on the review of the Historic Resource Assessment conducted by TreanorHL in February 2020, the field investigation and staff's analysis. The Historical Evaluation concluded that the structures on site would not qualify for listing in any of the historic resource lists, and the site and its features and the immediate surroundings would not meet the definition of "historical resources" under CEQA.

10. Tree Removal Permit Findings: Chapter 13.32.100 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.

- a. 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 Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
- c. 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 eight existing trees near the project perimeter with sizes ranging from 19 inches to 100 inches in circumference. Among these eight trees, two ordinance-sized trees and four non-ordinance sized trees would be removed to facilitate the development of the residential care facility. Four existing trees along the southern property line will be removed because they are located in the walkway along the southern property line. Two existing trees near the western property line will be removed because they are too close to the existing rear fence which will be replaced by a new perimeter wall. According to the City's Tree Replacement ratios, the project would require 16 fifteen-gallon replacement trees or 8 twenty-four-inch box replacement trees. Pursuant to the project landscaping plan, a total of 85 trees including 10 twenty-four-inch box trees will be planted on-site consistent with the City's Tree Replacement ratios.

In accordance with the facts and findings set forth above, the permit appeal is **denied** and a Conditional Use Permit and Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The 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 conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING 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 Conditional Use Permit and Site Development Permit (collectively "Permit" herein) 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 Conditional Use 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/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described 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. **Scope and Use Authorization of Permit.** Subject to all conditions herein, this Permit allows the demolition of four commercial buildings totaling approximately 6,030 square feet, and the construction of a one-story to three-story, 83-unit state-licensed Residential Care Facility for the Elderly with approximately 72,380 square feet of above grade floor area and approximately 30,240 square feet of basement containing 7,750 square feet of activity rooms, staff room, and utility rooms, and 22,450 square feet of parking and circulation on an approximately 1.23-gross acre site, pursuant to the approved operation management plan which states that care and services are provided 24-hours per day, seven days a week.
6. **Conformance to Plans.** The development of the site shall conform to the approved Conditional Use Permit plans entitled, "Conditional Use Permit, File No. CP19-021, for a Residential Care Facility for Elderly, 2375 & 2395 S Bascom Ave, San José, CA95008", dated revised July 10, 2020, on file with the Department of Planning, Building and Code Enforcement as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
7. **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. This Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
8. **Timing for Demolition.** 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.
9. **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.

10. **Replacement Trees.** A total of 16 fifteen-gallon trees is required for the removal of the two ordinance-sized trees and the four non-ordinance size trees as part of the project. Two fifteen-gallon trees could be replaced by one twenty-four-inch box tree. The permittee shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with said mitigation requirements. Such evidence shall be labeled "File Number CP19-021" and provided to the Planning Project Manager, prior to the issuance of Building Permits or any Public Works clearances.
11. **Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the permittee shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:
 - a. The copy of the Permit shall be a minimum size of 8.5 inches by 11.0 inches; shall be posted at each public street frontage within two feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the Permit is readable from the public sidewalk or right-of-way; or
 - b. If the site does not have a public street frontage, a copy of the Permit shall be posted at a location where the Permit is readable from a common access driveway or roadway.
12. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this Permit, the permittee shall maintain the validated Permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.
13. **State Licensing.** The Permittee shall maintain conformance with all applicable State licensing regulations for a residential care facility for the elderly, as may be amended.
14. **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 the San José Municipal Code.
15. **Green Building Requirements for Tier 2 Non-Residential Development** (≥25,000 square feet). This development shall be subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this Permit, the permittee shall pay a Green Building Refundable Deposit applicable to the gross square footage of said buildings which are approved through this Permit. The project shall achieve the minimum green building certification of LEED Silver. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of

the green building standards indicated above shall be submitted within one 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.

- 16. 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.

- 17. 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.
- 18. Delivery Truck.** All delivery vendors shall use Class 4 to Class 6 trucks that can clear the 10-foot ceiling height and turning radius in the parking garage; larger trucks shall not be allowed.
- 19. Colors and Materials.** All building colors and materials shall be those specified in the Approved Plan Set.
- 20. Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
- 21. Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
- 22. Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:

- a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. The permittee shall clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.
 - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
23. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
24. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
25. **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 separate Sign Permit application.
26. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
27. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
28. **Generators.** This Permit includes the approval of a 280-kilowatt emergency generator powered by a diesel engine located in the generator room at the basement level.
29. **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 *CP19-021* 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 will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

30. **Fire Department Clearance.** Hazmat clearance and compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
31. **Fire Department Requirements.** The project shall conform to the requirements of the Fire Department at the building plan review stage to the satisfaction of the Chief Building Official and the Fire Chief.
32. **Fire Access.** Prior to issuance of Building Permits for the project, evidence shall be provided to the Fire Department that the 15-foot wide non-exclusive ingress/egress easement on the adjacent property (2355 South Bascom Avenue) is free and clear of obstructions to the satisfaction of the Fire Department.
33. **Public Works Clearance for Building Permit(s):** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of any Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>
 - a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation.**
 - i. In alignment with State of California Senate Bill 743 (SB743), the City of San José Policy, Transportation Impact Policy - Council Policy 5-3 has been replaced with a new Transportation Analysis Policy - Council Policy 5-1. Council Policy 5-1 replaces the transportation impacts threshold from Level of Service (LOS) under Council Policy 5-3 to Vehicle Miles Traveled (VMT).
 - ii. A Transportation Analysis has been performed for this project based on 7 AM and 14 PM peak hour trips. The analysis concluded that the subject project will be in conformance with the City of San José Transportation Analysis Policy (Council Policy 5-1) and a determination for a negative declaration can be made with respect to traffic impacts. See separate Traffic memo dated 4/17/20 for additional information. The project is conditioned to construct the following;
 - 1) Install a crosswalk via a signal modification on the south leg of the South Bascom Avenue and Dry Creek Road intersection. The existing bus stop and associated pad on the west side of South Bascom Avenue may need to be shifted slightly to the south so it would not conflict with the new crosswalk.

- 2) Install new ADA compliant curb ramps, on both the southwest corner and southeast corner (pork chop island) of the South Bascom Avenue and Dry Creek Road intersection.
- c. **Urban Village Plan:** This project is located in South Bascom a designated Urban Village per the Envision San José 2040 General Plan. In order for this project to establish an identity as an Urban Village, permittee must meet with Public Works to discuss opportunities for implementation of 15-foot sidewalks within the public right-of-way.
- d. **Private Improvements within Public Property:** The permittee's encroachment of roof overhangs requires the issuance of an encroachment permit, which is subject to the discretionary approval of the City Council. Encroachment permits are authorized and issued in accordance with Chapter 13.37 of the Municipal Code. If the City Council does not authorize an encroachment permit for this project, the permittee shall apply for a Planning Permit Adjustment or Amendment, as applicable, to remove the encroachment(s). If the City Council authorizes an encroachment permit for this project that is not consistent with the encroachment proposed by this Permit, the permittee shall apply for a Permit Adjustment or Amendment, as necessary, to remove the encroachment(s) from the project or modify the encroachment(s) to conform to the approved encroachment permit. If an encroachment permit is authorized, the permittee shall execute an Encroachment Agreement, which shall be recorded against title to the property, prior to the City issuing any permit that would allow the installation or construction of the encroachment.
- e. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - 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. If the project will haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this project involves a land disturbance of one or more acres, the permittee is required to submit a Notice of Intent to the State Water Resources

Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

- v. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
- f. **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.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed, and additional information is required per the Actions/Revisions Section.
 - 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 design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
- g. **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).
- h. **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.
- i. **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.
- j. **Undergrounding:** The project is not required to pay the in-lieu undergrounding fee because there are no existing overhead utilities.
- k. **Street Improvements:**
 - 1) Construct 15-foot wide attached sidewalk with tree wells at the back of curb along South Bascom Avenue project frontage. A 5-foot wide street dedication is required.

- 2) Construct full access 26-foot wide northerly driveway per City of San José standards.
 - 3) Close unused driveway cut(s).
 - 4) 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.
 - 5) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- l. **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.
- m. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current “Guidelines for Planning, Design, and Construction of City Streetscape Projects”. Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any ~~proposed~~ street tree plantings. Street trees shown on this permit are conceptual only.
34. **No Drive Piling Allowed.** All construction contract or relevant document (e.g., equipment rental) shall include language indicating that no pile driving will be permitted without further vibration assessment.
35. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development by Planning Commission Resolution No.20-022.
36. **Standard Environmental Conditions.**
- a. **Air Quality.**
- 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 two feet of freeboard.
 - iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (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, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and contact person regarding dust complaints.

b. Biological Resources.

- i. Any tree to be removed will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size Replacement Tree
	Native*	Non- Native	Orchar d	
38 inches or greater	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

*Native trees are those that are naturally inherent to the Santa Clara Valley. These species include, but are not limited to, California Bay Laurel, Aptos Blue Redwood, Valley Oak, California Buckeye, Box Elder, Western Sycamore, and Red Willow.

x:x = tree replacement to tree loss ratio

38-inch tree equals 12.1 inches in diameter

24-inch box tree = two 15-gallon trees

- ii. As six onsite trees will be removed, the following tree replacements will be implemented: three trees replaced at a 2:1 ratio, one tree replaced at a 3:1 ratio, one tree replaced at a 4:1 ratio, and one tree replaced at a 5:1 ratio. The site contains four native trees, of which two would be removed. The total number of replacement trees required to be planted would be 18. The permittee will plant 80 new trees on the site. These trees are identified in Figures 14A to 14D of the Initial Study/Mitigated Negative Declaration, which shows the species, size, and number of replacement trees per species. Ten trees are native and the remaining are non-native. Any changes to the species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.
- iii. In the event that a project site does not have sufficient area to accommodate the required tree replacement, one or more of the following may be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement
- iv. 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.
- v. 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.
- vi. 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, Building and Code Enforcement. 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.

- vii. The project is subject to applicable Santa Clara Valley Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/>.

c. Cultural Resources.

- i. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement 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 Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will

contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will 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 Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- 1) 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.
- 2) The MLD identified fails to make a recommendation; or
- 3) 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.

d. Geology and Soil.

- 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 site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José 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 on site and off site 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 shall be installed to divert runoff around excavations and graded areas if necessary.
- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

- vi. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or Director's designee 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 they 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, Building and Code Enforcement or Director's designee.

e. Hazards and Hazardous Materials.

- i. In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of the on-site building(s) to determine the presence of asbestos-containing materials and/or lead-based paint.
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- iii. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 - 1) Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.

- 2) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
- 3) Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

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 required to cover all trucks or maintain at least two 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 knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- ix. The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
 - 1) Restriction of grading to the dry season (April 30 through October 1) or meet City requirements for grading during the rainy season;
 - 2) Utilize on-site sediment control BMPs to retain sediment on the project site;
 - 3) Utilize stabilized construction entrances and/or wash racks;
 - 4) Implement damp street sweeping;
 - 5) Provide temporary cover of disturbed surfaces to help control erosion during construction; and

- 6) Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

g. Noise.

The following noise insulation features shall be incorporated into the project to reduce interior noise levels to 45 dBA DNL or less:

- i. Provide a suitable form of forced-air mechanical ventilation for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
- ii. Preliminary calculations indicate that residential units nearest to South Bascom Avenue along the eastern façade would require windows and doors with a minimum rating of 30 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- iii. Residential units located along the northern and southern façades within approximately 155 feet of the centerline of South Bascom Avenue would require windows and doors with minimum STC ratings of 28 with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- iv. A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels resulting from all exterior sources during the design phase pursuant to requirements set forth in the State Building Code. The study will also establish appropriate criteria for noise levels inside the commercial spaces affected by environmental noise. The study will review the final site plan, building elevations, and floor plans prior to construction and recommend building treatments to reduce residential interior noise levels to 45 dBA DNL or lower. Treatments would include, but are not limited to, sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what noise insulation treatments are necessary shall be conducted on a unit-by-unit basis during final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City, along with the building plans and approved design, prior to issuance of a building permit.

37. Affordable Housing Conditions. Prior to the issuance of the final building permit, housing shall review the management plan and building plans to confirm the project will serve patients that require supervision (memory care) and does not include dwelling units or suites subject to the City's Inclusionary Housing Ordinance (IHO) or Affordable Housing Impact Fee (AHIF). If the project is determined to be subject to the IHO or AHIF based on that review, an Affordable Housing Compliance Plan is required at that time.

- a. If the project is subject to the AHIF, no building permit may issue until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.
- b. If the project is subject to the IHO, no building permit may issue until the Affordable Housing Agreement is recorded and no Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO are met.

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

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

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

ADOPTED this _____ 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.

August 27, 2020

Mayor and Members of the City Council
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

RE: File #CP19-021 – Appeal

The purpose of this letter is to provide the City Council with our responses, as the Applicant, to the Townsend Notice of Permit Appeal from San Jose Planning Resolution No. 20-021 ("Attachment") that was submitted by the property owner of 2355 Bascom Ave. ("Appellant").

A. APPELLANT COMMENT:

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...

A. APPLICANT RESPONSE:

After extensive review, the San Jose Fire Department approved the Fire Department Vehicle Access relative to their purview (i.e. State and Local Code requirements) through their standard internal administrative and fire variance processes. The fire variance approved by both the City of San Jose Fire Department and the Applicant, incorporated additional water pressure, fire hydrants, quick response fire sprinklers, additional standpipe systems in all stairwells, and automatic smoke vents at the roof for early smoke evaluation.

B. APPELLANT COMMENT:

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.

B. APPLICANT RESPONSE:

As stated in the Appellant's arguments, the Easement is a non-exclusive easement. However, contrary to the Appellant's arguments, the Easement area is limited to ingress and egress uses only, not for purposes of delivery or storage of large boats or vehicles that would cause an obstruction of the easement in any way that would make access across this easement "impossible."

It is Appellant's responsibility to maintain the Easement area free and clear of obstructions at all times in order to ensure that it is used for the purposes for which it was established. Therefore, any encroachment of the ingress and egress easement, and any failure to immediately remove the encroachment, is in violation of the conditions of the Easement. This violation would pose significant safety risks for which the Appellant would be responsible.



The Planning Commission Staff Report addressed these concerns as raised by the Appellant. The Staff Report stated that in response to these and other encroachment concerns, a project condition (Condition # 32) has been included in the draft resolution, “prior to issuance of Building Permits for the project, evidence shall be provided to the Fire Department that the 15-foot wide non-exclusive ingress/egress easement on the adjacent property (2355 South Bascom Avenue) is free and clear of obstructions to the satisfaction of the Fire Department”.

C. APPELLANT COMMENT:

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

C. APPLICANT RESPONSE:

Prior to the issuance of the Building Permit for this project, the Applicant will demonstrate to the City of San Jose Building Department that the building has been designed to meet or exceed all applicable fire and life safety requirements imposed on it by the City of San Jose and the State of California Division of Social Services.

We respectfully request that the City Council deny the appeal and uphold the Planning Commission approval of Conditional Use Permit #CP19-021.

Respectfully,



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Partner

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Attachment: Townsend Notice of Permit Appeal from San Jose Planning Resolution No. 20-021

