



## CITY COUNCIL STAFF REPORT

<b>File No.</b>	C20-019
<b>Applicant:</b>	Jithender Majjiga
<b>Location</b>	South side of Empire Street, at the corner of E. Empire Street and N. Sixth Street (236 E. Empire Street)
<b>Existing Zoning District</b>	CN Commercial Neighborhood
<b>Proposed Zoning District</b>	R-1-8 Single Family Residence
<b>APN</b>	249-47-017
<b>General Plan Land Use Designation</b>	Residential Neighborhood
<b>Council District</b>	3
<b>Historic Resource</b>	Yes, Hensley Historic District
<b>Annexation Date:</b>	March 27, 1850 (Original City)
<b>CEQA:</b>	Exempt pursuant to CEQA Guidelines Section 15303(a) for New Construction or Conversion of Small Structures and Section 15331 for Historical Resource Restoration/Rehabilitation

### APPLICATION SUMMARY:

Conforming Rezoning from the CN Commercial Neighborhood Zoning District to the R-1-8 Single Family Residence Zoning District on an approximately 0.06-gross acre site.

### RECOMMENDATION:

1. Consider an exemption in accordance with CEQA Guidelines Section 15303(a) for New Construction or Conversion of Small Structures and Section 15331 for Historical Resource Restoration/Rehabilitation; and
2. Approve an ordinance rezoning an approximately 0.06-gross acre site, located on the south side of East Empire Street, at the corner of East Empire Street and North Sixth Street (236 E. Empire Street), from the CN Commercial Neighborhood Zoning District to the R-1-8 Single Family Residence Zoning District.

### PROJECT DATA

GENERAL PLAN CONSISTENCY	
<b>General Plan Designation</b>	<b>Residential Neighborhood</b> <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent
<b>Consistent Policies</b>	<b>Implementation Policies IP-1.1, IP-1.6, and IP-8.2</b>

SURROUNDING USES			
	General Plan Land Use	Zoning District	Existing Use
<b>East (across N. Sixth Street)</b>	Public/Quasi Public	A(PD) Planned Development	Northside Community Center
<b>North (across East Empire Street)</b>	Residential Neighborhood	LI Light Industrial	Single-family residence
<b>West</b>	Residential Neighborhood	CN Commercial Neighborhood	Single-family residence
<b>South</b>	Residential Neighborhood	CN Commercial Neighborhood	Surface parking lot, beyond railway tracks

RELATED APPROVALS	
Date	Action
<b>3/27/1850</b>	Original City
<b>Pending</b>	<p>File No. HP20-004: Historic Preservation Permit for demolition of an existing single-family residence and construction of a new house on the same site to exceed 0.45 floor area ratio (FAR), on a 0.06-gross acre site in the Hensley Historic District.</p> <p>File No. V20-003: Development Variance to setbacks and parking from the minimum R-1-8 Single-Family Residence Zoning District standards and removal of one ordinance-sized tree for a new single-family residence on a 0.06-gross acre site.</p>

## PROJECT DESCRIPTION

On December 1, 2020, the owner/applicant, Jithender Majjiga, filed an application to rezone an approximately 0.06-gross acre site from the CN Commercial Neighborhood Zoning District to the R-1-8 Single Family Residence Zoning District.

### Site Location and Surrounding Uses:

The subject site is located on the south side of East Empire Street, at the southwest corner of East Empire Street and North Sixth Street, at 236 E. Empire Street (see Figure 1). The triangular shaped 0.06-acre lot contains an existing single-family house, built circa 1889, listed on the City's Historic Resources Inventory (HRI) as a contributing structure to the Hensley City Landmark District.

The site is surrounded by a community center to the east, across North Sixth Street, single-family homes to the west and north, across East Empire Street, and a surface parking lot to the south, beyond the Southern Pacific Railroad tracks.

There are two other active planning development permit applications currently on file for the subject site, which are Historic Preservation Permit File No. HP20-004 and Development Variance File No. V20-003.

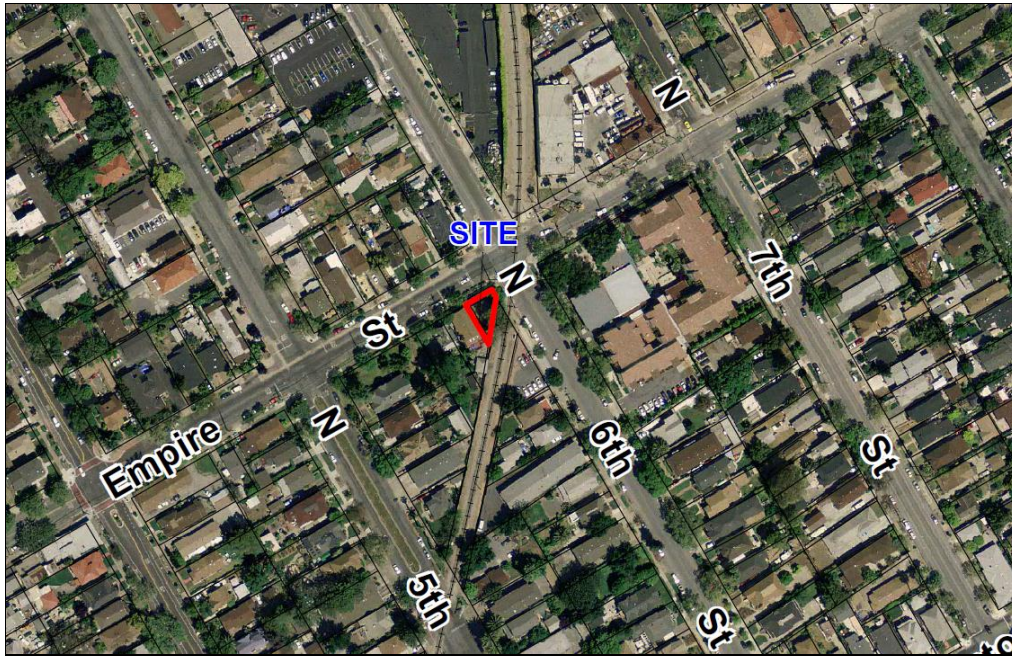


Figure 1: Aerial Map of the subject site

## ANALYSIS

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

### Envision San José 2040 General Plan Conformance

The subject site is designated Residential Neighborhood on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan (see Figure 2). This designation allows a density of 8 DU/AC and a FAR of up to 0.7 (1 to 2.5 stories). This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods. The intent of this designation is to preserve the existing character of these neighborhoods by limiting new development to infill projects that conform to the prevailing neighborhood development pattern. New projects should complement existing neighborhood conditions in terms of density, average lot size and orientation, and massing of structures, with particular emphasis given to maintaining consistency with other homes fronting onto the public street to be shared with the proposed new project.

*Analysis: The property owner proposes to demolish the existing single-family residence and construct a new compatible house at the site, with a 0.62 floor area ratio, which will maintain the character, appearance, street orientation and access from East Empire Street. This will maintain consistency and the neighborhood pattern with other homes fronting onto the same public street. The proposed rezoning is consistent with the site's Envision San José 2040 General*

*Plan Land Use/Transportation Diagram designation of Residential Neighborhood, in that a single-family detached residence is an intended use under this designation.*

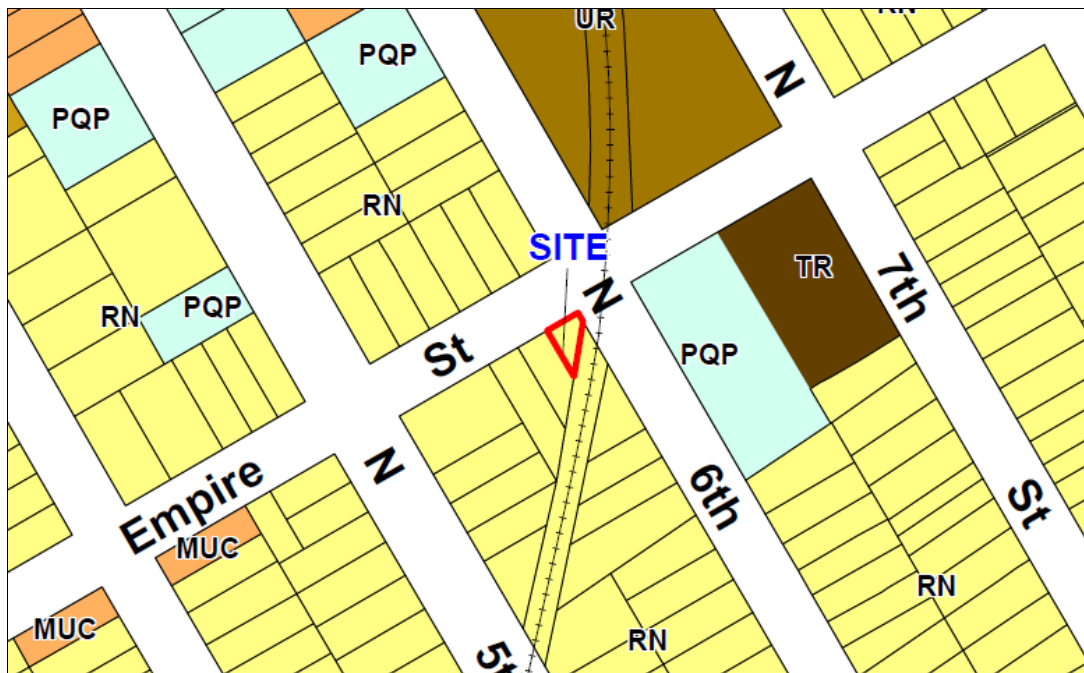


Figure 2: General Plan Map

The proposed rezoning is also consistent with the following General Plan Policies:

1. **Implementation Policy IP-1.1- Land Use/Transportation Diagram:** Use the *Envision General Plan* Land Use/Transportation Diagram designations to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the *Envision General Plan*. Use the Zoning designation to indicate the appropriate type, form and height of development for particular properties.
2. **Implementation Policy IP-1.6- Land Use/Transportation Diagram:** Ensure that proposals to rezone and pre-zone properties conform to the Land Use/Transportation Diagram, and advance *Envision General Plan* vision, goals and policies.
3. **Implementation Policy IP-8.2- Zoning:** Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the *Envision General Plan* Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective *Envision General Plan* land use designations, while providing greater detail as to the appropriate land uses and form of development.

*Analysis:* The subject 0.06-gross acre site is currently in the CN Commercial Neighborhood Zoning District, which does not allow construction of a new house. The current residential use is considered a legal non-conforming use as it is not consistent with the CN Commercial Neighborhood Zoning District. Pursuant to Table 20-270 and Section 20.120.110 of the

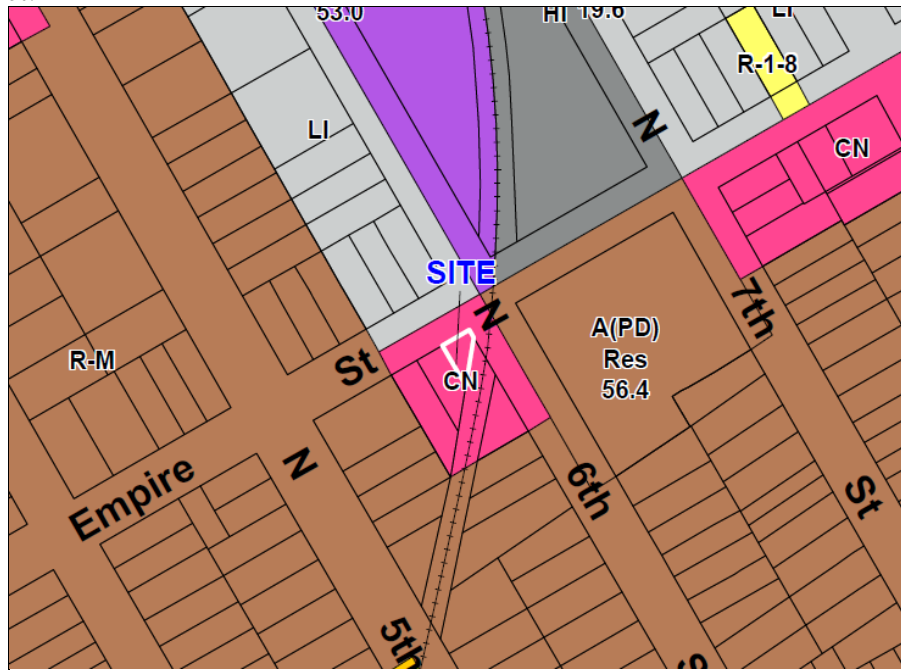


*Zoning Ordinance, the R-1-8 Single-Family Residence Zoning District is listed as a conforming zoning district for the General Plan Land Use Designation of Residential Neighborhood. The proposed rezoning from the CN Commercial Neighborhood Zoning District to the R-1-8 Single Family Residence Zoning District would bring the zoning into conformance with the General Plan and allow future construction of a new single-family house to be consistent with the zoning district as well as the General Plan.*

### **Zoning Ordinance Conformance**

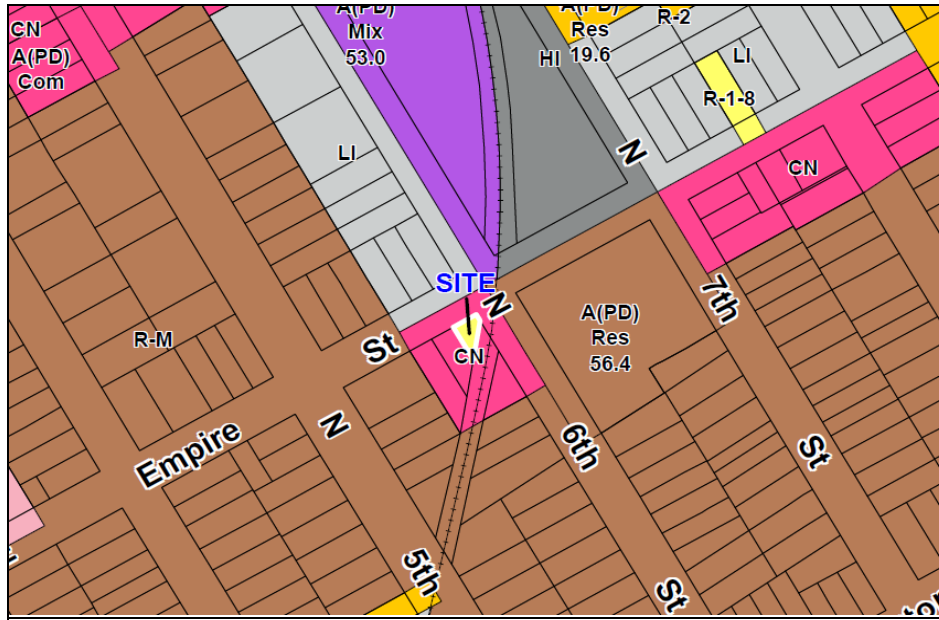
The subject site is currently in the CN Commercial Neighborhood Zoning District (see Figure 3). Rezoning of the site to the R-1-8 Single-Family Residence Zoning District (see Figure 4) will facilitate the construction of a new single-family residence as a permitted use, in conformance with the General Plan Land Use designation of Residential Neighborhood. There are two other applications on file with the Planning Division as follows:

- 1) Historic Preservation Permit File No HP20-004: The site is in the Hensley City Landmark District and requires issuance of a Historic Preservation Permit for the construction of the new house, in conformance with the Secretary of the Interior's Standards.
- 2) Development Variance File No. V20-003: The construction of the new house would exceed 0.45 FAR and would require a variance to reduced setbacks and open parking (tandem) due to the highly constrained shape and size of the 0.06-gross acre (2,050 square feet) triangular lot. A variance has been requested and will be considered by the Planning Director at a future hearing, as a new home could not feasibly be constructed that could meet the development standards of the R-1-8 Single Family Residence Zoning District.



**Figure 3: Existing Zoning Map**

The proposed rezoning conforms with Table 20-270, Section 20.120.110 of the San José Municipal Code, which identifies the R-1-8 Single Family Residence Zoning District as a conforming district to the Residential Neighborhood General Plan Land Use/Transportation Diagram designation. The existing commercial zoning does not allow a single-family residence use. Therefore, a conforming rezoning is required to allow the construction of a new single-family residence and bring the site to be consistent with the General Plan.



**Figure 4: Proposed Zoning Map**

Table 20-100 in Section 20.40.200 of the San José Municipal Code establishes the following development standards for R-1-8 Single Family Residence Zoning District (see Table 1):

Development Standards	R-1-8 Zoning District
Lot Size (Minimum)	5,445 square feet (0.13-acre)
Front Building Setback (Minimum)	20 feet
Side, Interior Setback (Minimum)	5 feet
Side, Corner Setback (Minimum)	12.5 feet
Rear, Interior Setback (Minimum)	20 feet
Rear, Corner setback (Minimum)	20 feet
Minimum driveway length (feet) measured from lot line	18 feet
Maximum number of stories	2.5 stories
Height (Maximum)	35 feet

**Table 1: Setbacks and Height**

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Under the provisions of Sections 15303 for New Construction or Conversion of Small Structures and Section 15331 for Historical Resource Restoration/ Rehabilitation of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended in that the intent of the rezoning is to allow the construction of a single-family residence on the same site. The project includes demolition of an existing single-family residence (dilapidated) and construction of a new compatible house which will conform with the Secretary of the Interior's Standards in the Hensley City Landmark District.

Section 15331 for Historical Resource Restoration/Rehabilitation of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) consists of projects limited to maintenance, repair, stabilization, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings.

Pursuant to Section 15303(a), for New Construction or Conversion of Small Structures, of the California Environmental Quality Act (CEQA), the proposed project includes construction of one new single-family residence, where up to three single-family residences are exempt in an urbanized area. The project site is in an urbanized area and is, therefore, exempt under this section.

## **CONCLUSION**

The proposed rezoning from the CN Commercial Neighborhood Zoning District to the R-1-8 Single Family Residence Zoning District is consistent with General Plan policies IP-1.1, IP-1.6, and IP-8.2. The rezoning also conforms to the General Plan Land Use designation of Residential Neighborhood pursuant to Table 20-270 of the Zoning Code.

## **CLIMATE SMART SAN JOSE**

The recommendation in this staff report has no effect on Climate Smart San José energy, water, or mobility goals.

## **PUBLIC HEARING NOTIFICATION**

To inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy. Notices of the proposed rezoning application were posted on the site's three frontages. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

/s/

ROSALYNN HUGHEY, Director

Planning, Building and Code Enforcement

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

Attachments: Draft Ordinance  
Legal Description and Plat map



***DRAFT***

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 0.06-GROSS ACRE SITUATED ON THE SOUTH SIDE OF EAST EMPIRE STREET AT THE SOUTHWEST CORNER OF EAST EMPIRE STREET AND NORTH SIXTH STREET (236 EAST EMPIRE STREET) (APN: 249-47-017) FROM THE CN COMMERCIAL NEIGHBORHOOD ZONING DISTRICT TO THE R-1-8 SINGLE FAMILY RESIDENCE ZONING DISTRICT**

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

**WHEREAS**, a Statement of Exemption was prepared for a rezoning under File No. C20-019, and said Statement of Exemption (CEQA Categorical Exemption Section 15303 for New Construction or Conversion of Small Structures that applies to the construction of up to three single-family residences in an urbanized area and Section 15331 for Historical Resource Restoration/Rehabilitation of the house) was adopted on March 2, 2021; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to the R-1-8 Single Family Residence Zoning District; and

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

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

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

**SECTION 1.** The recitals above are incorporated herein.

**SECTION 2.** All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned R-1-8 Single Family Residence Zoning District.

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

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

**SECTION 4.** Any land development approval that is the subject of City File No. C20-019 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

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PASSED FOR PUBLICATION of title this \_\_\_\_ day of \_\_\_\_\_, 2021 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

**EXHIBIT "A" LEGAL DESCRIPTION OF 236 E. EMPIRE STREET, SAN JOSE,**  
**CA. 95112 APN: 249-47-017**  
**LANDS OF MAJJIGA FAMILY REVOCABLE TRUST**

**ALL OF THAT CERTAIN REAL PROPERTY SITUATE IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA, CITY OF SAN JOSE, BEING A PORTION OF LOT 18 IN BLOCK 17 OF THE MAP OF THE SUBDIVISION OF BLOCK 13 & 17 WHITE'S ADD. MADE FOR MRS. STEVENSON, THE MAP OF THE SAME BEING RECORDED ON MAY 18, 1885 IN BOOK B OF MAPS ON PAGE 21, SANTA CLARA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;**

**BEGINNING AT THE SOUTHEASTERLY LINE OF EMPIRE STREET, AS SHOWN ON SAID MAP, 90 FEET NORTHEASTERLY OF THE MOST WESTERLY CORNER OF SAID LOT 18;**

**THENCE, NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF EMPIRE STREET, NORTH 59° 45' 00" EAST, 47.84 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT 18 AND THE SOUTHERLY CORNER OF SIXTH AND EMPIRE STREETS;**

**THENCE SOUTHEASTERLY, ALONG THE SOUTHWESTERLY LINE OF SIXTH STREET, SOUTH 30° 15' 00" EAST, 13.65 FEET TO THE EASTERLY LINE OF SAID LOT 18 AND THE WESTERLY LINE OF THE RAILROAD AS SHOWN ON SAID MAP;**

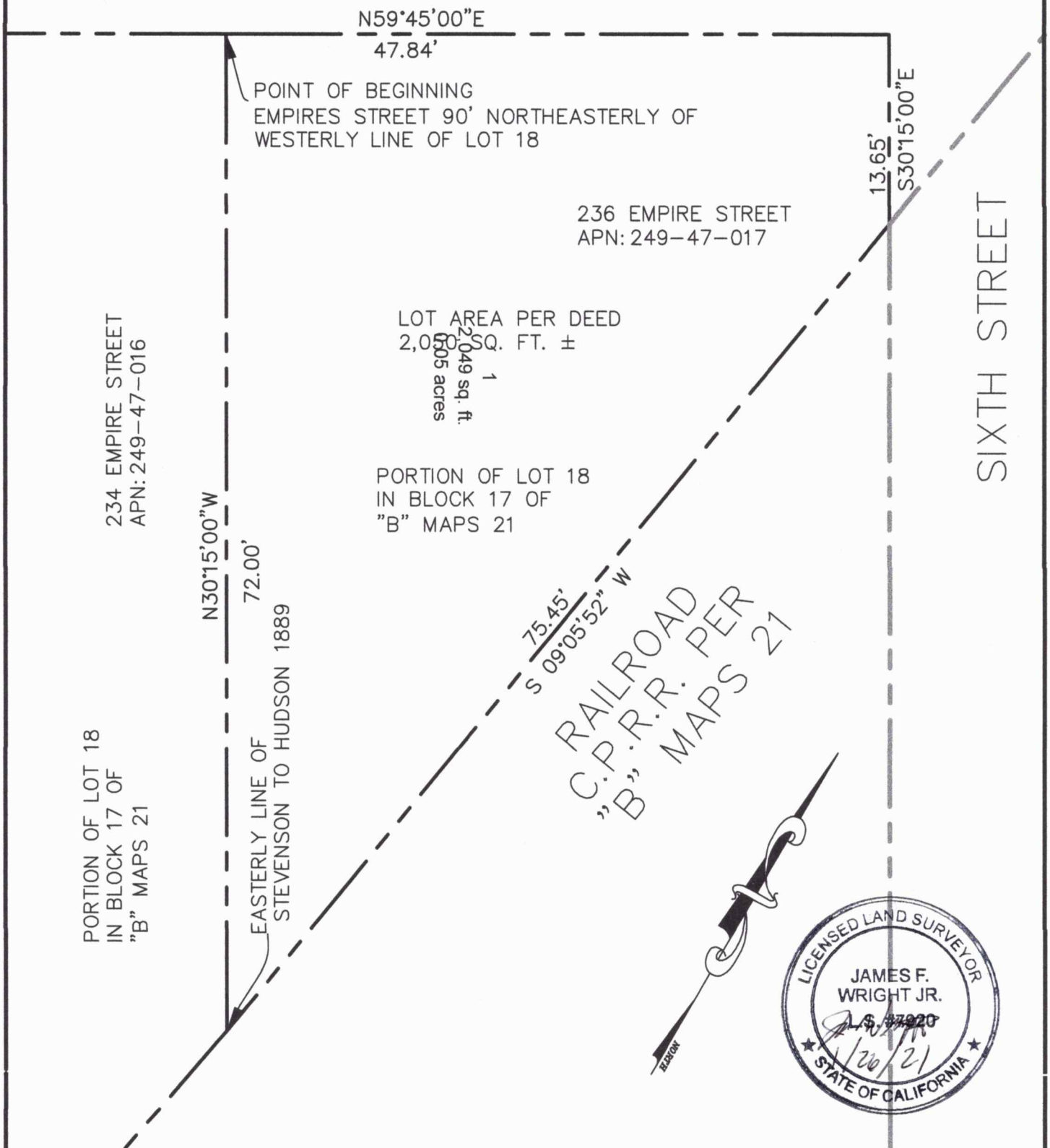
**THENCE SOUTHERLY, ALONG THE EASTERLY LINE OF SAID LOT 18 AND SAID WESTERLY LINE OF THE RAILROAD, SOUTH 09° 05' 52" WEST, 75.45 FEET TO THE MOST EASTERLY CORNER OF THAT TRACT OF LAND CONVEYED ON THE 29TH DAY OF AUGUST, A.D. 1889 BY J. C. STEVENSON, TO JOHN HUDSON, PERPENDICULAR TO THE POINT OF BEGINNING;**

**THENCE, PARALLEL WITH SAID LINE OF SIXTH STREET AND PERPENDICULAR TO THE POINT OF BEGINNING, NORTH 30° 15' 00" WEST, 72.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND BEING HEREIN DESCRIBED AND CONTAINING 2,050 SQUARE FEET OF LAND MORE OR LESS, AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.**



# EXHIBIT "B" PLAT TO ACCOMPANY LEGAL DESCRIPTION

## EMPIRE STREET



PLAT TO ACCOMPANY LEGAL DESCRIPTION  
236 E. EMPIRE ST. SAN JOSE, CA 95112

Date: 1-26-21

Dwn by: JW

Scale 1"=10'

Job J200905