

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A TENTATIVE MAP TO SUBDIVIDE ONE PARCEL INTO TWO PARCELS ON AN APPROXIMATELY 9.90-GROSS ACRE SITE SITUATED ON THE WEST SIDE OF SILVER CREEK ROAD, APPROXIMATELY 200 FEET NORTHWEST OF THE INTERSECTION OF EAST CAPITOL EXPRESSWAY AND SILVER CREEK ROAD (3155 SILVER CREEK ROAD)

FILE NO. T20-030

WHEREAS, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on November 11, 2020, a concurrent application (File No. T20-030) was filed by the applicant, Miles Johnson, on behalf of the owner, Target Corporation, with the City of San José for a Tentative Map to subdivide one parcel into two parcels on an approximately 9.90-gross acre parcel, on that certain real property situated in the CN Commercial Neighborhood Zoning District and located on the west side of Silver Creek Road, approximately 200 feet northwest of the intersection of East Capitol Expressway and Silver Creek Road (3155 Silver Creek Road, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A", entitled “Legal Description,” and depicted in Exhibit “B,” entitled “Plat Map,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

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

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

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled "Tentative Map", dated January 15, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and is attached hereto and made a part hereof by this reference as if 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

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

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

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

- 1. Site Description and Surrounding Uses.** The subject site is located on the west side of Silver Creek Road, approximately 200 feet northwest of the intersection of E. Capitol Expressway and Silver Creek Road. The existing use of the project site is parking and a commercial shopping center (Target). The project site is adjacent to commercial shopping centers located to the north across Lexann Avenue, south across E. Capitol Expressway, and east across Silver Creek Road, as well as single-family residences to the west across Towers Lane, south across E. Capitol Expressway, and east across the intersection of Silver Creek Road and E. Capitol Expressway.

2. **Project Description.** A Tentative Map to subdivide the existing 9.90-acre property into two parcels of approximately 0.74 acre and 9.16 acres.
3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Neighborhood/Community Commercial. The Neighborhood/Community Commercial designation supports a wide variety 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.
Analysis: The project would subdivide the parcel as described above. Although no development file is currently on file for this site, future development would be required to be consistent with the land use designation and applicable policies of the General Plan. As described below, the parcel sizes exceed the minimum allowed parcel sizes in the zoning district, and are therefore adequate to accommodate the type of commercial development and uses allowed under this General Plan designation.
4. **Zoning Code Compliance.** The subject site is located in the CN Commercial Neighborhood zoning district. Pursuant to Table 20-270 of the San José Municipal Zoning Code, the Commercial Neighborhood Zoning District is a conforming zoning district within the General Plan Land Use Designation of Neighborhood/Community Commercial. The project site is also within the East Capitol Expressway/Silver Creek Road Urban Village; however, this Plan is not currently approved by the City Council.

Minimum Lot Area

The minimum allowed lot area in the CN Commercial Neighborhood zoning district is 6,000 square feet, or as established in an approved Urban Village Plan.

Analysis: The project would subdivide the existing parcel into two lots of approximately 32,234 and 399,009 square feet, respectively, exceeding the 6,000 square foot minimum allowed parcel size.

Parking

The Tentative Map includes a non-exclusive easement for shared parking, ingress/egress, and emergency access. Therefore, the number of parking spaces provided for the existing commercial uses on the site will remain available after the final map records.

Setbacks and Heights

Unless otherwise established in an approved Urban Village Plan, the development standards for the CN Commercial Neighborhood Zoning District require a 10-foot front setback and zero side and rear setbacks. Pursuant to Section 20.85.020, the maximum allowed height of the subject site is 120 feet.

Analysis: No development permit is currently on file for this site. However, future development would be evaluated for conformance to these development standards, as well as all other municipal code regulations, City policies, and guidelines.

5. City Council Policy Consistency

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Under City Council Policy 6-30, the project is considered to be a standard development proposal. Standard development proposals are required to provide Early Notification by website, email, and on-site signage. Following City Council Policy 6-30, the required on-site sign has been posted at the site since December 15, 2020, to inform the neighborhood of the project. Public Notices of the public hearing were 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.

6. California Environmental Quality Act.

Under the provisions of Section 15315 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Tentative Map Permit 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. CEQA Guidelines Section 15315 for Minor Land Divisions exempts tentative parcel maps provided certain criteria are met. Section 15315 requires that consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent.

This project meets all of the criteria with no exceptions being required since the project is in an urbanized area, the proposed subdivision is for four or fewer parcels, and the subdivision is in conformance with the General Plan and zoning requirements. Additionally, the property is currently zoned for commercial use and will be rezoned to a commercial use that conforms with the General Plan. No variances or exception are required, all services and access to the proposed parcels to local standards are available, the parcel has not been part of a division of a larger parcel within the previous two years, and the parcel has an average slope of less than 20 percent.

CEQA Guidelines Section 15300.2 provides exceptions to the use of Categorical Exemptions where the use of a Categorical Exemption is prohibited under certain circumstances. The City has considered the projects applicability to all of the exceptions under Section 15300.2. An analysis of each of these exceptions in reference to this specific project is provided below.

(a) Location. Section 15300.2(a) does not apply to the Class Category 15 of exemptions.

(b) Cumulative Impact. Based on the above analysis, there is no evidence of a potential significant cumulative impact on the environment from the proposed project. The project proposes a commercial rezoning to allow an expanded range of commercial uses on a 0.94-acre portion of a commercial property in an urbanized area. It has been determined that the project will not cumulatively impact traffic, noise, air quality, or water quality.

(c) Significant Effect. The project would not result in any significant effects on the environment due to unusual circumstances. The proposed project site does not have any unusual circumstances that would negatively impact the environment.

(d) Scenic Highways. It is not anticipated that the specific project sites will result in damage to any scenic resources.

(e) Hazardous Waste Sites. The proposed project sites are not included on any list compiled pursuant to Section 65962.5 of the Government Code. Therefore, the project is not subject to 15300.2(e).

(f) Historical Resources. There are no historical resources located on the proposed project site; therefore, Section 15300.2(f) does not apply.

7. Subdivision Map Act Findings. In accordance with San José Municipal Code (SJMC) Sections 19.12.130 and 19.12.220 and California Government Code Section 66474, the City of San José, in consideration of the proposed subdivision shown on the Tentative Map with the imposed conditions, shall deny approval of a Tentative Map, if the Director makes any of the following findings:

- a. That the proposed map is not consistent with applicable General and Specific Plans as specified in Section 65451.
- b. That the design or improvement of the proposed subdivision is not consistent with applicable General and Specific Plans.
- c. That the site is not physically suitable for the type of development.
- d. That the site is not physically suitable for the proposed density of development.
- e. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- g. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

***Analysis:** Based on review of the proposed subdivision, a Tentative Map to subdivide one parcel of approximately 9.90-gross acres into two parcels of 0.74 acre and 9.16 acres, respectively, the City Council of the City of San José does not make any such findings to deny the subject subdivision. The project is consistent with the General Plan goals, policies, and land use designation. The project site is in an urbanized commercial area and is therefore physically suitable for the project and allowed uses and density of the proposed zoning district. Furthermore, the project site does not contain historic resources or sensitive habitats or wildlife, and the site is not located within a designated Federal Emergency Management Agency (FEMA) 100-year flood plain.*

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

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Tentative Map.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this Tentative Map within the applicable appeal period, such inaction by the Subdivider shall be deemed to constitute all of the following on behalf of the Subdivider:
 - a. Acceptance of the Tentative Map by the Subdivider; and
 - b. Agreement by the Subdivider to be bound by, to comply with, and to do all things required of or by the Subdivider pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 19 applicable to such Tentative Map.
2. **Expiration of Map.** This Tentative Map shall automatically expire 30 months from and after the date of issuance hereof by the Director of Planning, Building and Code Enforcement of the City of San José. The date of issuance is the date this Tentative Map is approved by the City Council.
3. **Conformance to Plans.** The development of the site shall conform to the approved plans entitled, "Tentative Map," dated January 15, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Tentative Map Plan Set."
4. **Compliance with Subdivision Ordinance.** The final map shall comply with all of the requirements for final maps in Chapter 19.16 of the San José Municipal Code and

shall show and contain all of the data required by San José Municipal Code Section 19.16.110.

5. **Improvements.** Pursuant to the Subdivision Agreement (hereinafter referred to as "Agreement"), the Subdivider shall, before approval and recording of the Final Map, improve or agree to improve all land within the subdivision and all land outside, but appurtenant to, the Subdivision shown on the Vesting Tentative Map for public or private streets, alleys, pedestrian ways and easements to the satisfaction of the Director of Public Works.
6. **Improvement Contract.** In the event Subdivider has not completed the improvements required for the proposed subdivision at the time the final map is presented for approval, Subdivider shall enter into a subdivision improvement agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and provide the improvement security and insurance required therein.
7. **Public Use Easements.** Subdivider shall dedicate on the final map for public use easements for public utilities, emergency access, open space, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems, and parking in and upon all areas within the subdivision shown on the Tentative Map for the subdivision to be devoted to such purposes.
8. **Conveyance of Easements.** Subdivider shall convey or cause to be conveyed to the City of San José, easements in and upon all areas as shown on the Tentative Map outside the boundaries of, but appurtenant to, the subdivision. Should a separate instrument be required for the conveyance of the easement(s), it shall be recorded prior to the recordation of the Final Map. Such easements so conveyed shall be shown on the Final Map, together with reference to the Book and Page in the Official Recorder of Santa Clara County, where each instrument conveying such easements is recorded.
9. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
10. **Distribution Facilities.** Subdivider shall, at no cost to the City, cause all new or replacement electricity distribution facilities (up to 40KV), telephone, community cable, and other distribution facilities located on the subject property to be placed underground.
11. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Subdivider shall constitute acknowledgement of receipt of notice by Subdivider 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 Plant 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.

12. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of any Building permits, whichever occurs first, the Subdivider will be required to have satisfied all of the following Public Works conditions. The Subdivider is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.

- a. **Transportation:** The site is located in the Evergreen East Hills Development Policy (EEHDP) area. Any future development project on the site will be required to submit a traffic operational analysis. Pending projects within the EEHDP area currently exceed the remaining allocation for commercial land use. Since the allocation is allotted on a first-come-first-serve basis, a future development project may not be covered by the EEHDP. As a result, a future development project may be required to perform a Transportation Analysis if EEHDP allocation is no longer available.
- b. **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.
- c. **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, may be due and payable prior to Public Works clearance upon development of the site.
- d. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee may be due and payable upon development of the site. Contact Amado Valdez at (408) 794-6769 for further information.
- e. **Street Improvements:** Any future development project shall be required to conform to the City of San José Complete Street Design Standard and Guidelines upon development of the site.

13. Conformance with Municipal Code. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.

14. Compliance with Local and State Laws. The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to

permit a violation of any part of the San José Municipal Code. The Vesting Tentative Map shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.

15. Revocation, Suspension, Modification. This Tentative Map is subject to revocation, suspension or modification for violation of any of its provisions or condition.

In accordance with the findings set forth above, a Vesting Tentative Map Permit to use the subject property for said purpose specified above, subject to conditions, is hereby **approved**.

EFFECTIVE DATE

The effective date of this Tentative Map shall be the same effective date of the Conforming Rezoning Ordinance for File No. C20-016 passed for publication on _____, 20__ and shall be no earlier than the effective date of said Rezoning Ordinance.

APPROVED this _____ day of _____, 2021, 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.

EXHIBIT "A"

**LEGAL DESCRIPTION
CITY OF SAN JOSE**

BEING A PORTION OF PARCEL 1 OF THAT CERTAIN MAP ENTITLED "PARCEL MAP", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 13, 1974, IN BOOK 340 OF MAPS, PAGE 2, AS AMENDED BY A CERTIFICATE OF CORRECTION RECORDED SEPTEMBER 26, 1974 IN BOOK B103, PAGE 41, OFFICIAL RECORDS OF SAID COUNTY, SAID PORTION BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF SAID PARCEL 1, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SILVER CREEK ROAD, A 55.00 FOOT WIDE HALF-STREET, AS SHOWN ON SAID PARCEL MAP, SAID POINT BEING DISTANT WESTERLY ALONG SAID NORTHERLY LINE AND SAID SOUTHERLY RIGHT-OF-WAY LINE, 35.11 FEET FROM THE NORTHEAST CORNER OF SAID PARCEL 1;

THENCE ALONG SAID NORTHERLY LINE AND SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES:

1. NORTH 33°54'44" WEST 65.84 FEET;
2. THENCE NORTH 31°02'59" WEST 40.05 FEET TO A LINE PARALLEL WITH AND DISTANT 53.00 FEET SOUTHERLY FROM THE CENTERLINE OF SAID SILVER CREEK ROAD;
3. THENCE ALONG SAID PARALLEL LINE NORTH 33°54'44" WEST 73.14 FEET;

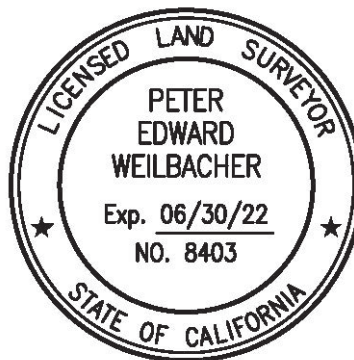
THENCE LEAVING SAID NORTHERLY LINE AND SAID SOUTHERLY RIGHT-OF-WAY LINE SOUTH 51°00'47" WEST 32.75 FEET; THENCE NORTH 38°20'44" WEST 12.98 FEET; THENCE SOUTH 51°31'13" WEST 138.19 FEET; THENCE SOUTH 38°11'45" EAST 156.47 FEET; THENCE SOUTH 51°39'16" WEST 43.79 FEET; THENCE SOUTH 38°11'45" EAST 34.12 FEET TO A POINT OF INTERSECTION WITH A LINE, SAID LINE BEING PARALLEL WITH AND DISTANT 35.00 FEET WESTERLY FROM THE WESTERLY LINE OF PARCEL 2 OF SAID PARCEL MAP; THENCE ALONG SAID PARALLEL LINE, NORTH 51°39'16" EAST 199.40 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 32,331 SQUARE FEET, MORE OR LESS.

SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, RIGHTS, RIGHTS-OF-WAY AND OTHER MATTERS OF RECORD, IF ANY.

PREPARED BY ME OR UNDER MY DIRECTION
ON FEBRUARY 11, 2021.

Peter E. Weilbacher



PETER E. WEILBACHER, PLS 8403

Kimley»Horn

4637 CHABOT DRIVE, SUITE 300, PLEASANTON, CA 94588






PHONE: 925-398-4840

WWW.KIMLEY-HORN.COM

NOTES

1. THE EXISTING PROPERTY LINE AND BOUNDARY INFORMATION SHOWN ON THIS MAP IS PER ALTA/NPSP LAND TITLE SURVEY PREPARED BY PBLA SURVEYING INC. DATED APRIL 4 2019. KIMLEY-HORN DOES NOT ACCEPT RESPONSIBILITY FOR THE ACCURACY OF THE PROPERTY LINE/BOUNDARY INFORMATION. THE INFORMATION SHALL NOT BE USED FOR RECORDATION PURPOSES UNTIL VERIFIED BY A LICENSED CALIFORNIA SURVEYOR PER THE REQUIREMENTS OF THE CALIFORNIA PROFESSIONAL LAND SURVEYORS ACT.

LEGEND

	EXISTING PROPERTY LINE
	EXISTING RIGHT OF WAY LINE
	CENTERLINE
	SUBJECT PROPERTY
	EASEMENT LINE

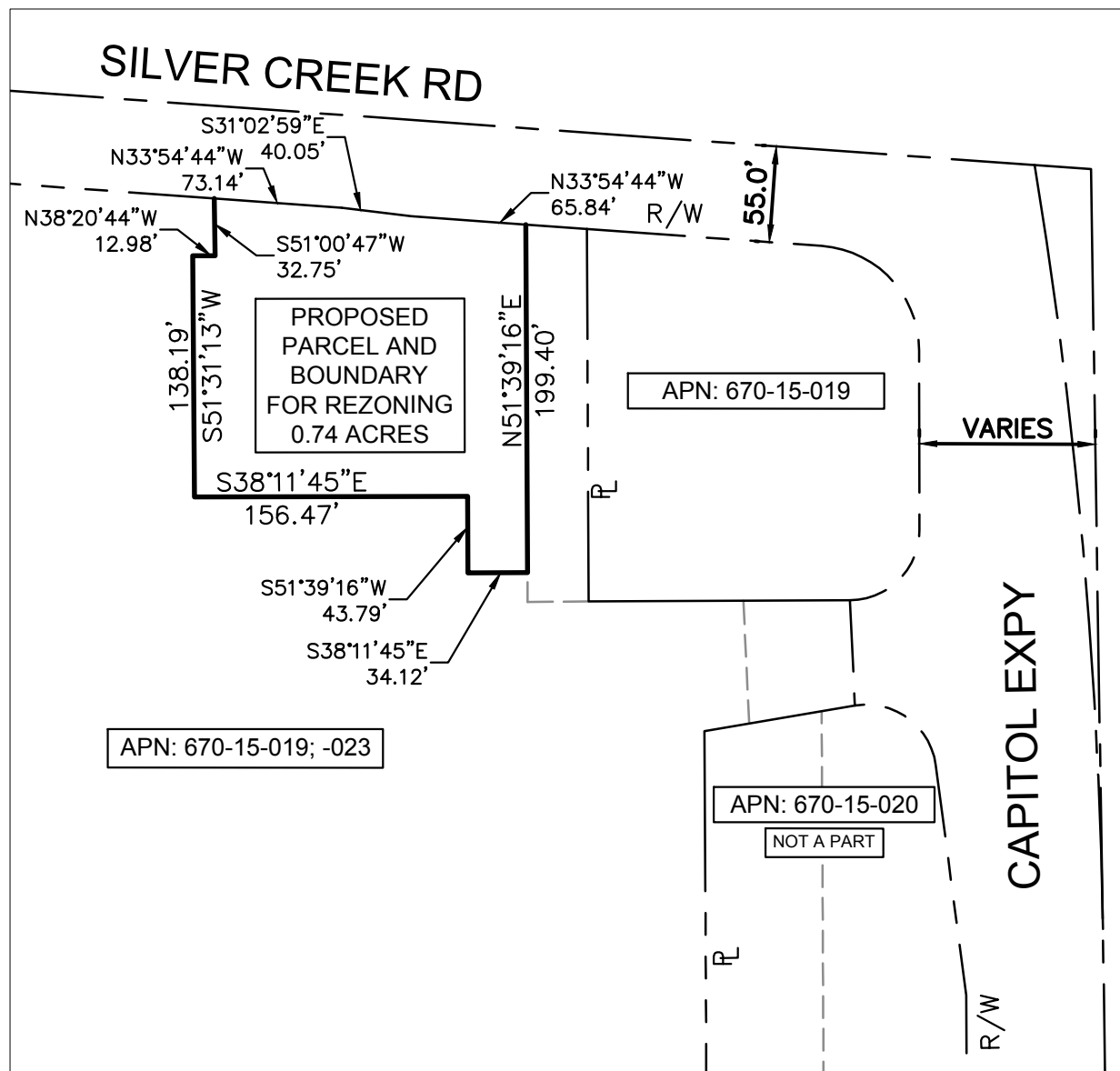
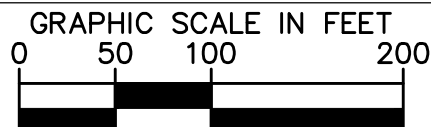


EXHIBIT "B"

3155 SILVER CREEK ROAD - PLAT MAP
FOR: PLANNING PURPOSES

DATED: 03/29/2021



SHEET 1 OF 1

EXHIBIT "B"
(File Nos. C20-016; T20-030)