

RESOLUTION NO. 75435

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING SINGLE-FAMILY DETACHED RESIDENCE AND THE EXPANSION OF AN EXISTING GAS AND SERVICE STATION ON A 0.51 GROSS ACRE SITE ON THE SOUTHEAST CORNER OF MCKEE ROAD AND NORTH 33RD STREET (1604 MCKEE ROAD), SAN JOSÉ

FILE NO. CP09-015

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, a Conditional Use Permit Application (CP09-015) was filed on April 1, 2009 to allow the demolition of an existing single-family detached residence and the expansion of an existing gas and service station on that certain real property (hereinafter referred to as "subject property"), situate in the CP Commercial Pedestrian Zoning District, located on the southeast corner of McKee Road and N. 33rd Street (1604 McKee Road), San José, California; and

WHEREAS, the subject property is all that real property described in Exhibit "A," 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 Planning Commission conducted a hearing on said application on April 21, 2010, notice of which was duly given, and Planning Commission voted 5-0-2 to approve the subject conditional use permit request; and

WHEREAS, the appellant timely submitted an appeal of the Planning Commission's decision on April 26, 2010; and

WHEREAS, pursuant to and in accordance with the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, this City Council conducted a de novo hearing on the appeal of 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 appeal matter; and

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

including without limitation that certain memorandum dated April 21, 2010 providing additional information related to the Negative Declaration prepared for the proposed project, as well as the report of the Planning Commission and any other written testimony submitted to the City Council for this item; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Proposed Expansion of Moe's Stop Gas and Service Station," dated August 24, 2009, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested therein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ AS FOLLOWS:

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

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is currently zoned CP Commercial Pedestrian.
3. The site is 0.51 gross acres in size.
4. The applicant is requesting a Conditional Use Permit (CUP) to allow the demolition of an existing single-family detached residence and the expansion of an existing gas and service station on a 0.51 gross acre site on the southeast corner of McKee Road and N. 33rd Street (1604 McKee Road).
5. The project proposes demolition of the existing single-family residence and associated accessory structures.
6. The project proposes to add three new fueling dispensers along the west side of the site with a new 1800 square foot canopy above, close one driveway, reconfigure other driveways and make other associated site improvements.
7. The proposed pump canopy is approximately 18 feet in height.
8. The proposed pump canopy is the same height and scale as the existing pump canopy.

9. The proposed canopy is approximately 60 feet from the rear property line and approximately 70 feet from the side property line.
10. The proposed circulation provides a minimum of 12 feet in width for one-way drive aisles, which exceeds the standard minimum of 10 feet.
11. The proposed expansion will not result in an increase in the parking demand on site.
12. The existing store located on the subject property is legal non-conforming for the off-sale of alcohol. No changes are proposed to the store.
13. The subject site is surrounded by commercial uses on the north, east and west, and by single-family residential uses to the south.
14. The project proposes the removal of 15 trees, none of which are ordinance sized.
15. The project proposes additional landscaping along both street frontages.
16. Per Table 20-140 of the San José Municipal Code, a Conditional Use Permit is required for a gasoline service station use in the CP Commercial Pedestrian Zoning District.
17. A Negative Declaration was approved and adopted by the San José City Council for the proposed project on June 15, 2010, determining that no significant environmental impacts will result from this project.
18. The gas station operates and proposes to continue operating from 6:00 a.m. to 11:00 p.m.
19. The Planning Division received two pieces of correspondence from the Department of Environmental Health of the County of Santa Clara, dated December 7, 2009 and June 15, 2010, indicating that the subject property is in compliance with Local Oversight requirements.

FINDINGS

Based upon all of the foregoing facts enumerated above, the City Council finds that:

1. The interrelationship between the orientation, location and elevations of the proposed building and structure and other uses on-site are mutually compatible and aesthetically harmonious in that:
 - a. The architectural elements of the proposed structure are integrated into a harmonious whole.
 - b. The proposed structure is comparable in terms of mass, scale, and height.
 - c. Sufficient maneuvering room will be provided on site to allow smooth circulation and minimize interference with other uses.
 - d. Parking spaces are conveniently located in relation to the uses they support.
2. The orientation, location and elevation of the proposed building and structure and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
 - a. The structure proposed on site is comparable in terms of mass, scale, and height with existing adjacent or nearby structures.

- b. The proposed structure does not unreasonably interfere with the light and air available to adjacent sites.
 - c. The use of the site will not interfere with the use of adjacent properties since sufficient buffering between uses will be provided.
 - d. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that the Negative Declaration prepared for the project was approved and adopted and no other environmental hazards were disclosed by the facts received on the project.
3. 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 in that:
 - a. Landscaping will be added to the site and an adequate automatic irrigation system will be provided to support this landscaping.
 - b. Outdoor activities, exterior heating, ventilating, plumbing, utility, and trash facilities will be screened by parapets, fences, walls or other devices compatible with the architectural treatment of the structure.
 4. Traffic access, pedestrian access and parking are adequate in that:
 - a. Sufficient driveway curb cuts and driveways will be provided on site to provide access to the site without interfering with off-site circulation.
 - b. Pedestrian walkways will be provided to all major building entrances.
 - c. The proposed number and size of parking spaces complies with the requirements of the Zoning Ordinance.
 5. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram and this application is consistent with this designation.
 6. 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
 7. 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
 8. 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.

Further, the City Council finds based upon all of the foregoing facts and information that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project conforms to the San José Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The City Council has considered all of the following criteria, that are set forth in Title 20 of the San Jose Municipal Code, in evaluating the proposed demolition:
 - a. Whether the failure to approve the permit would result in the creation of continued existence of a nuisance, blight, or dangerous condition;
 - b. Whether the failure to approve the permit would jeopardize public health, safety or welfare;
 - c. Whether the approval of the permit would maintain the supply of commercial space in the City of San José;
 - d. That both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
 - e. Whether rehabilitation or reuse of the existing building would not be feasible;
 - f. Whether the approval of the demolition of the building should facilitate a project which is compatible with the surrounding neighborhood; and
 - g. Whether the demolition of the building without an approved replacement building would have an adverse impact on the surrounding neighborhood.
5. The benefits of permitting the demolition of the residence on the subject property outweigh the impacts of the demolition and the demolition will facilitate a project that conforms to the City's General Plan and Zoning Code and is compatible with the surrounding area.

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

CONDITIONS

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient

of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant 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 Water Pollution Control Plant 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. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **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 applicant'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.
3. **Conformance with Plans.** The use development shall conform to approved plans entitled, "Proposed Expansion of Moe's Stop Gas and Service Station," dated August 24, 2009 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
4. **Major Permit Adjustment.** Prior to the issuance of a Building Permit, the applicant is required to apply for and have approved a Major Permit Adjustment for site modifications to address the issue of on-street queuing through:
 - a. The use of on-site queuing, relocated parking and directional arrows and signage.
 - b. Promote improved aesthetic interface along the McKee and 33rd Street frontage with additional landscaping.
5. **Lot Line Adjustment.** A Lot Line Adjustment for the removal of the property line between the two subject properties is required to be recorded prior to the issuance of Building Permits.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
7. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation

is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

8. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
9. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
10. **Operations Plan.** Loitering is prohibited on or around the premises or the area under the control of the applicant licensee(s). No alcoholic beverages shall be consumed on any property adjacent to the premises over which the project developer/applicant has control. The project developer/applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.
11. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
12. **Tree Removals.** This permit approves the removal of 15 trees, none of which are ordinance sized trees. All non-orchard trees that are to be removed shall be replaced at the following ratios:
 - a. Each tree less than 12 inches in diameter to be removed shall be replaced with one 15-gallon tree.
 - b. Each tree 12 inches to 17 inches in diameter to be removed shall be replaced with two 15-gallon trees.
 - c. Trees 18 inches in diameter or greater to be removed shall be replaced with four 24-inch box trees.Any future tree removals shall be deemed a change to the approved landscape plan and shall require approval by the Director of Planning, Building, and Code Enforcement.
15. **Hours of Operation.** This permit does not allow for 24 hour operation. Standard hours of operation are from 6:00 a.m. to 12:00 Midnight.
16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
17. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to

overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

- 18. Construction Impact Mitigation Measures.** The applicant shall ensure that the following construction impact mitigation measures are fully implemented throughout the duration of construction activities associated with this project. For the purposes of this Permit, "construction" shall mean all on-site activities including site clearing, grading, and construction. Failure to comply with these conditions by the applicant, project contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City.
- a. **Mitigation Measure:** These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
 - b. **Equipment:** Mitigation of construction phase noise at the site shall include the use of quiet or "new technology" equipment, particularly with improved exhaust mufflers. All internal combustion engines used at the project site shall be equipped with the type of muffler recommended by the equipment manufacturer. In addition, all equipment shall be maintained in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train and other components.
 - c. **Construction Hours:** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite work within 500 feet of any residential unit so as to avoid the more sensitive evening, nighttime and weekend hours.
 - d. **Construction Deliveries:** Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
 - e. **Plans:** The construction hours shall be printed on all plans for the project used to construct the project.
 - f. **Fencing:** The site shall be wholly enclosed by security fencing. The gates to the project site shall remain locked during all other times, except for a fifteen-minute period immediately preceding and following the above hours of construction.
 - g. **Construction Employees:** Construction workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
 - h. **Construction Activities:** Construction equipment, materials, and workers shall not

be staged on any area of the site within 50 feet of an adjoining property used for residential purposes unless the Director of Planning approves a Permit Adjustment authorizing such activity. The construction staging area shall not create a public or private nuisance.

- i. Disturbance Coordinator: A disturbance coordinator shall be identified by the developer for this project. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other construction-related conditions in this permit.
 - j. Daily Log: The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinators visits to the project if the coordinator is not solely responsible for this project site. This log shall be available for inspection by City Staff upon request.
 - k. Telephone Contact: A phone with answering machine for complaints or other communication during non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.
 - l. Signage: The name and phone number of the disturbance coordinator, the hours of construction limitations, the project contact telephone number, City File Number CP09-015, city contact and phone number (department and phone number) shall be displayed on a weatherproof sign posted at each entrance to the project site.
19. **Dust Control/Air Quality.** Project construction shall implement the Bay Area Air Quality Management District's list of feasible construction dust control measures. The following construction practices shall be implemented during all phases of construction on the project site:
- a. Water all active construction areas at least twice daily or as often as needed to control dust emissions.
 - b. Cover all trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
 - c. Apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas during construction of the site.
 - d. Sweep daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust.
 - e. Sweep public streets daily, or as often as needed, with water sweepers, to keep streets free of visible soil material.
 - f. Hydro seed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
 - g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust.

- h. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- i. Replant vegetation in disturbed areas as quickly as possible.

20. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

- a. *Minor Improvement Permit:* The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- b. *Grading/Geology:*
 - i. A grading permit will be required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. Although the Project site is within the State of California Seismic Hazard Zone, a geotechnical investigation report addressing the potential hazard of liquefaction is not required.
- c. *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) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating the all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.

- d. *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.
- e. *Undergrounding:* The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to McKee Road prior to issuance of a Public Works Clearance. One hundred percent (100%) of the base fee in place at the time of payment will be due. (Currently, the base fee is \$395 per linear foot of frontage which corresponds to an approximate fee in the amount of \$58,969.55).
- f. *Street Improvements:*
 - i. Owner to irrevocably dedicate the necessary right-of-way (approximately 22 feet) along McKee Road to accommodate an ultimate right-of-way of 130 feet.
 - ii. The Owner will be responsible for relocating the existing pumps, canopy, fuel tank, landscaping and other existing improvements within the dedication area prior to the start of construction of the future McKee Road widening project upon written notice from the City.
 - iii. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - iv. Remove and replace the existing full access driveway on McKee Road closest to the intersection of McKee Road and N. 33rd Street with a 16' wide, one-way, right-turn-exit-only driveway.
 - v. Proposed driveway width for the new driveway on N. 33rd Street to be 26'.
 - vi. Install a City-standard handicap ramp at the corner of McKee Road to serve both the crosswalks crossing McKee Road and N. 33rd Street. Relocate existing inlet and re-stripe crosswalks as needed.
 - vii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - viii. 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.
- g. *Electrical:*
 - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - ii. Locate and protect existing electrical conduit in driveway construction.
 - iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas.
- h. *Street Trees:* The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.

Contact the City Arborist at (408) 277-2756 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.

21. **Demolition.** The structures to be removed will be surveyed for the presence of asbestos-containing materials at the demolition permit stage; and if any suspect ACM are present, they will be sampled prior to demolition in accordance with NESHAP guidelines, and all potentially friable ACM will be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with NESHAP, Cal-OSHA and BAAQMD requirements. The structures to be removed will be surveyed for the presence of lead based paint at the demolition permit stage; and if any suspect LBP is present, it will be sampled prior to demolition, and all potential LBP will be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with EPA and OSHA requirements.
22. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. Construction Plans: This permit file number, CP09-015, shall be printed on all construction plans submitted to the Building Division.
 - b. Emergency Address Card: The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. Americans With Disabilities Act: The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
 - d. Street Number Visibility: Street numbers of the buildings shall be easily visible at all times, day and night.
23. **Fire Clearance.** A Fire Clearance shall be obtained from Fire Chief (408) 535-3555) prior to the issuance of a building permit.
24. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
25. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, 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 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; 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 Conditional Use permit to use the subject property for said purpose specified above is hereby **granted and approved**.

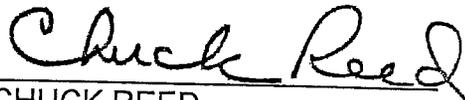
APPROVED this 15th day of June, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.


CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk

“EXHIBIT A”
LOT LINE ADJUSTMENT FOR
LANDS OF MOHAMMAD MOHEBZADE SHIRAZI

Being All of that certain real property described in Deed Document Number 7508385 recorded November 4, 1982 and Deed Document Number 15697064, Recorded May 29, 2001, Official Records of Santa Clara county California

APN 481-03-017 and APN 481-03-016

PARCEL A

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING at a point on the Northeasterly line of 33rd Street, formerly Chace Avenue, distant thereon South 37°49' East 37.85 feet from the intersection of the Northeasterly line of said 33rd Street with the Southeasterly line of McKee Road, as said 33rd Street and McKee Road are shown on the Map of the Chace Villa Lots filed in Book “F-2” of maps, page 34, Santa Clara County Records, said point of beginning also being the most Southerly corner of that certain parcel of land conveyed by Antone Smith, et al, to City of San Jose, a Municipal Corporation, by deed dated April 9, 1951 and recorded July 21, 1951 in Book 2256 of Official Records, page 531, Santa Clara County Records, thence along said Northeasterly line of 33rd Street, South 37°49' East 117.15 Feet; thence leaving 33rd Street, and running parallel with said southeasterly line of McKee Road, North 49°42' East, 122.00 feet; thence parallel with said Northeasterly line of 33rd Street, South 37°49' West 136.92 feet to the Easterly corner of said parcel of land conveyed to City of San Jose, thence along the Southeasterly and Easterly lines of said Parcel of land conveyed to City of San Jose, South 49°42' West 102.85 feet and Southerly along the arc of a curve to the left having a radius of 20 feet, through an angle of 87°31' an arc distance of 30.55 feet to the point of beginning and being a portions of Lots 23 and 24 of the Chace Villa Lots, as shown on the Map thereof on file in the office of the Recorder of County of Santa Clara, State of California in Book “F-2” of Maps, page 34.

And, in addition thereto, the following area:

Beginning at a point in the Easterly line of Thirty-third Street, formerly Chace Avenue, distant thereon Southerly 155 feet from the intersection of said line of Thirty-third Street, with the Southerly line of McKee, as shown on the Map hereinafter referred to; thence along said line of Thirty-third Street southerly 45 feet; thence easterly and parallel with said line of McKee Road, 122 feet; thence Northerly and parallel with said line of Thirty-third Street, 45 feet, thence Westerly and parallel with said line of McKee Road, 122 feet to the point of beginning, being a portion of Lots 23 and 24 of the Chace Villa Lots as per Map of same recorded in the Office of the County Recorder of Santa Clara County, California in Book “F-2” of Maps, page 34.