

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN APPROXIMATELY 502-SQUARE-FOOT ACCESSORY STRUCTURE FOR THE CONSTRUCTION OF AN APPROXIMATELY 2,612-SQUARE-FOOT TWO-STORY SINGLE-FAMILY RESIDENCE ON AN APPROXIMATELY 0.38-GROSS-ACRE SITE LOCATED ON THE NORTHERLY SIDE OF MINNESOTA AVENUE APPROXIMATELY 200 FEET NORTHEAST OF THE INTERSECTION OF MINNESOTA AVENUE AND MERIDIAN AVENUE (1581 MINNESOTA AVENUE) (APN 429-50-052)

FILE NO. PD24-002

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 30, 2022, an application (File No. PD24-002) was filed by Mazen Kawadri, the property owner, with the City of San José for a Planned Development Permit to allow the demolition of an approximately 502-square-foot accessory structure for the construction of an approximately 2,612-square-foot two-story single-family residence on an approximately 0.38-gross-acre site (the “project”), on that certain real property situated in the R-1-8(PD) Planned Development Zoning District and located on the north side of Minnesota Avenue approximately 200 feet northeasterly of the intersection of Minnesota Avenue and Meridian Avenue (1581 Minnesota Avenue, APN 429-50-052) (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, the Planning Commission conducted a hearing on said application on August 28, 2024, 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 made a recommendation to the City Council respecting said matter based on the evidence and testimony; 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 recommendations of the City's Planning Commission and 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, "New Two Story House, 1581 Minnesota Ave, San José, CA 95125" dated October 10, 2023, and last revised April 22, 2024, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection; said plan is incorporated by reference; 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 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:

The foregoing recitals are hereby incorporated by reference as if fully set forth herein, and after considering evidence presented at the public hearing the City Council finds that the following are the relevant facts and findings regarding this project:

1. **Site Description and Surrounding Uses.** The Project Site is an approximately 0.38-gross-acre lot on the north side of Minnesota Avenue approximately 200 feet northeasterly of the intersection of Minnesota Avenue and Meridian Avenue (1581 Minnesota Avenue). The Project Site is occupied by an approximately 1,964-square-foot single-family residence, a 722-square-foot detached garage, a 706-square-foot accessory dwelling unit, a 625-square-foot storage structure, and a 502-square-foot storage structure.

The Project Site is bounded by single-family residences on all sides and a commercial office to the west. The Project Site is accessed by two driveways along Minnesota Avenue.

2. **Project Description.** The project consists of a Planned Development Permit to allow the demolition of an approximately 502-square-foot accessory structure for the construction of an approximately 2,612-square-foot two-story single-family residence on an approximately 0.38-gross-acre site (the “project”) located on the north side of Minnesota Avenue approximately 200 feet northeast of the intersection of Minnesota Avenue and Meridian Avenue (1581 Minnesota Avenue).
3. **Envision San José 2040 General Plan Consistency.** The Project Site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Residential Neighborhood. This designation is applied to established, single-family residential neighborhoods. This designation typically allows a density of up to 8 dwelling units per acre (du/ac), but also allows projects to match the existing neighborhood density if it is greater than 8 du/ac.

New infill development within the Residential Neighborhood land use designation should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance with the quality and character of the surrounding neighborhood. New infill development should be integrated into the existing neighborhood pattern, continuing and, where applicable, extending or completing the existing street network. The average lot size,

orientation, and form of new structures for any new infill development must therefore generally match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project.

Analysis: The Project includes the subdivision of one lot into two lots, resulting in a density of approximately 5.26 dwelling units per acre, which is within the maximum density allowed in Residential Neighborhood. The new single-family residence in the rear of the site would face Minnesota Avenue, matching the orientation of surrounding single-family residences. The Project maintains the existing single-family residence in the front of the lot which is oriented towards Minnesota Avenue. Therefore, the Project is consistent with the General Plan land use designation.

The Project is consistent with the following Envision San José 2040 General Plan policy:

Residential Neighborhoods Policy LU-11.6: For new infill development, match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project. As an exception, for parcels already developed with more than one dwelling unit, new development may include up to the same number of dwelling units as the existing condition. The form of such new development should be compatible with and, to the degree feasible, consistent with the form of the surrounding neighborhood pattern.

Analysis: The average lot size within the surrounding neighborhood is approximately 8,696 square feet. While the subdivision creates lots approximately 5,496 and 11,131 square feet in size, the larger flag lot is a result of the existing lot's unique configuration which has a frontage of approximately 75 feet and a rear width of approximately 150 feet. The subdivision retains the property's frontage. As the neighborhood comprises single-family residences, the new single-family residence at the Project Site would be consistent with the surrounding neighborhood's residential form. Therefore, the Project is consistent with this policy.

4. Zoning Ordinance Consistency

The project site is located in the R-1-8(PD) Planned Development Zoning District.

Use Regulations

Chapter 20.60 of the Zoning Ordinance allows a Planned Development Zoning District to be established through ordinance, including regulations for allowed uses and development standards. The Planned Development Zoning District can be effectuated through a valid Tentative Map or Planned Development Permit. Per Section 20.60.040.B of the Zoning Code, when a Planned Development Permit has been implemented, the provisions of the permit prevail over the regulations of the base district zoning of the property.

The development standards of the Planned Development Zoning District allow

permitted, special, and conditional uses of the R-1-8 Single-Family Residence Zoning District, as may be amended, with the issuance of a Planned Development Permit.

Development Standards

The R-1-8 Single-Family Residence Zoning District in Section 20.30.200 of the Zoning Code and the R-1-8(PD) Planned Development Zoning District development standards are compared in the table below, including Project compliance with the Planned Development Zoning standards.

Development Standard	R-1-8 Zoning District Requirements	R-1-8(PD) Planned Development Zoning District Development Standards	Project Compliance with PD Standards
Minimum Lot Area	5,445 square feet	5,445 square feet	5,476 square feet
Minimum Front Setback	20 feet	20 feet	25 feet
Minimum Side Setback	5 feet	5 feet	5 feet
Minimum Rear Setback	20 feet	13 feet 5 feet for decks attached to the main residence	13 feet (main residence) 5 feet (attached deck)
Maximum Height	35 feet	35 feet	26 feet, 9 inches
Maximum Number of Stories	2.5 stories	2.5 stories	2 stories
Minimum Driveway Length	18 feet	18 feet	90 feet
Minimum Driveway Width	N/A	10 feet	14 feet

Analysis: As shown on the Planned Development Permit plan set and Vesting Tentative Map, the Project conforms with all required height and setback standards pursuant to the General Development Plan of the R-1-8(PD) Planned Development Zoning District.

Parking

Under Section 20.90.900.B, this project is exempt from Transportation Demand Management (TDM) plan requirements because it consists of fewer than 16 single-

family detached housing units, and fewer than 26 units of all other home end uses. Under this Section, no parking is required, and there are no parking requirements within the Planned Development Zoning standards.

Analysis: While there are no parking requirements, this project provides two off-street covered parking spaces for the new single-family residence. The Project does not include removal of any existing off-street parking spaces.

5. City Council Policy Consistency

City Council Policy 6-19: Flag Lot Development in Single-Family Neighborhoods

As the Project allows the construction of a unit on a flag lot, the Project is subject to Council Policy 6-19: Flag Lot Development in Single-Family Neighborhoods. The Project is consistent with the following criteria:

1. Flag lots are not appropriate in situations where a series of large lots could be converted to flag lot developments, thereby raising the density and changing the character of the neighborhood.

Analysis: The surrounding neighborhood (lots on the same block fronting Minnesota Avenue) does not contain any other large lots with residences that could be converted to flag lot developments. The Project is consistent with this criterion.

2. Neighborhoods that may be appropriate for flag lot development have uniformity of single-family lot sizes but with an occasional and unique-in-its-neighborhood larger parcel suitable for flag lot projects.

Analysis: The average lot size of the surrounding neighborhood, which includes adjacent and surrounding lots sharing the same street frontage, is approximately 8,696 square feet. The subject lot is approximately 16,607 square feet, almost two times the average lot size. The subject lot is a unique-in-its-neighborhood larger parcel. The Project is consistent with this criterion.

3. In neighborhoods which are designated 8 DU/AC, parcels considered for flag lot development are recommended to be approximately 8,000 square feet in size. At a minimum, the parcel must be larger than the average, or of a unique configuration in the surrounding area in order to generously meet R-1 setback zoning codes.

Analysis: The flag lot would be approximately 11,131 square feet, larger than the average lot size of the surrounding neighborhood and exceeds 8,000 square feet. The Project is consistent with this criterion.

4. Flag lot units located away from the street shall maintain a presence to the street, be oriented to the street, and be visible from the street. A larger building mass for the flag lot unit in relation to the front unit is not acceptable as a means to meet the street presence requirement.

Analysis: The new single-family residence would be oriented towards the street, as shown in the attached Planned Development Permit PD24-002 Plan Set. The front

door of the new single-family residence would be visible from Minnesota Avenue. An approximately 2,612-square-foot two-story single-family residence will be situated behind the smaller existing approximately 1,964-square-foot single-family residence. The Project is consistent with this criterion.

5. Flag lots shall be approved only through the Planned Development zoning process.

Analysis: The Project consists of a Planned Development Rezoning. The Project is consistent with this criterion.

6. Orientation, setbacks, and private yards should conform to the following criteria.

- a. All units shall orient to the street.
- b. Front yard setback for the front unit must match neighborhood pattern. "Front" setbacks for rear units must meet R-1 standards.
- c. The mass of the front and back units should be consistent with the average mass in the surrounding neighborhood.

Analysis: The existing single-family residence at the front of the site would maintain its orientation towards Minnesota Avenue. The new single-family residence constructed on the flag lot in the rear would also be oriented towards Minnesota Avenue. Both the front and rear single-family residences meet the front setback requirements of the zoning district. The new single-family residence constructed on the flag lot would have a floor area ratio (FAR) of 0.23, similar to the FAR of surrounding lots and consistent with the FAR supported in the Residential Neighborhood land use designation. Construction of the new single-family residence will result in a density of approximately 5.26 dwelling units per acre across the Project Site. Therefore, the Project is consistent with this criterion.

City Council Policy 6-30: Public Outreach Policy

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the Project. An on-site sign has been posted at the site frontage along Minnesota Avenue since April 25, 2024. 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. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on July 25, 2024. Staff has also been available to respond to questions from the public. To date, no comments have been received for this Project.

6. Environmental Review.

Under the provisions of Section 15303 for New Construction or Conversion of Small Structures of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this Project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Zoning Code, implementing the California Environmental Quality Act of 1970, as amended.

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

- a. One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

Analysis: The Project consists of the construction of one single-family residence on the newly created flag lot. The Project Site is located within a residential zoning district. Therefore, a CEQA exemption can be issued under Section 15303 for New Construction or Conversion of Small Structures.

7. **Planned Development Permit Findings.** To make the Planned Development Permit findings pursuant to San José Municipal Code Section 20.100.940, the City Council must determine that:

- a. The planned development permit, as issued, is consistent with and furthers the policies of the general plan; and

Analysis: As discussed in General Plan Consistency above, the Project is consistent with General Plan Policy LU-11.6 regarding compatibility with adjacent residential development, since the project is similar to the typical lot size and building form of adjacent development. The Project is not located within any specific plan areas, development plan areas, or urban village areas.

- b. The planned development permit, as issued, conforms in all respects to the planned development zoning of the property; and

Analysis: As discussed in the Zoning Ordinance Consistency above, the Project conforms with the R-1-8(PD) Planned Development Zoning District's use and development regulations. The Project is consistent with all development standards of the General Development Plan, including lot size, setbacks, height, and driveway requirements.

- c. The planned development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The Project is consistent with Council Policy 6-19: Flag Lot Development in Single-Family Neighborhoods in that the Project would create a flag lot on an existing lot that is larger than average. The single-family residence constructed on the flag lot is consistent with the orientation, setback, and massing criteria within the policy.

Council Policy 6-30: Public Outreach Policy was implemented in order to inform the public of the Project. An on-site sign has been posted at the site frontage

along Minnesota Avenue since April 25, 2024. 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. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on July 25, 2024. Staff has also been available to respond to questions from the public. To date, no comments have been received for this Project.

- d. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious; and

Analysis: The Project would allow the construction of a single-family residence on the newly created flag lot. The new single-family residence would match the orientation, mass, and scale of the existing single-family residence in the front lot and other single-family residences in the surrounding neighborhood. The new single-family residence is oriented towards Minnesota Avenue and is larger in square footage compared to the existing single-family residence in front of it, making the new single-family residence more visible from the public right-of-way.

- e. 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: All construction activity and impacts, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, will be temporary. Construction would be limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday. The Planned Development Permit includes standard environmental conditions of approval to reduce any temporary construction effects and requires the Project applicant to implement Best Management Practices and to comply with regulatory agency requirements. Therefore, the Project would not result in significant impacts that would negatively affect adjacent properties.

- 8. **Demolition Findings.** Per Section 20.80.460 of the Municipal Code, prior to the issuance of any Development Permit which allows for the demolition, removal or relocation of a Building, the approval authority shall determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation. In making such a determination, the following factors shall be considered. Staff recommends the Planning Commission adopt the considerations below for each factor, based on the above stated findings related to General Plan, Zoning and CEQA conformance and other reasons stated below, and subject to the conditions set forth in the Resolution:

- 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;

Analysis: The property contains no nuisance, blight, or dangerous conditions. It would be speculative to conclude that failure to approve the permit would result in the creation of nuisance, blight, or dangerous conditions, or jeopardize the public health, safety, or welfare.

- c. The approval of the permit should facilitate a project that is compatible with the surrounding neighborhood;

Analysis: The approval of the permit to demolish an existing approximately 502-square-foot storage unit facilitates a project compatible with the surrounding neighborhood, in that a single-family residence would be constructed within a single-family neighborhood. This project is compatible with the Residential Neighborhood land use designation and consistent with the maximum density allowed.

- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;

Analysis: Approval of the permit increases the supply of housing stock in the City of San José. One housing unit would be constructed.

- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;

Analysis: No buildings, sites, or districts of historical significance are being demolished.

- f. Rehabilitation or reuse of the existing building would not be feasible; and

Analysis: The rehabilitation or reuse of the existing building would not be feasible, as the demolition of the 502-square-foot storage unit is required in order to construct the new single-family residence. Retaining the storage unit would mean that the Project Site could not be developed up to the density allowed by the Residential Neighborhood land use designation.

- 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: Replacement buildings are included in the project, and the storage unit could not be demolished prior to submittal of a building or grading permit for the replacement single-family residence per condition 6 of the Planned Development Permit.

In accordance with the findings set forth above, a Planned Development 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.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to be 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 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. 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 in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand

to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, “New Two Story House, 1581 Minnesota Ave, San José, CA 95125” dated October 10, 2023, and last revised April 22, 2024, 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 plans” or the “Approved Plan Set.”
6. **Demolition Permit.** A demolition permit may be issued for the existing approximately 502-square-foot accessory structure only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
7. **Planned Development District Effectuated.** This Planned Development Permit effectuates the Planned Development Zoning as reflected in the Permit’s Approved Plan Set and the corresponding legal description.
8. **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 of San José.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
10. **Discretionary Review.** The City 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.
11. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.

12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
13. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
14. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
15. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
16. **No Sign Approval.** Any signage shown on the Approved Plan Set is 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 subsequent Permit Adjustment.
17. **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.
18. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
19. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators would require the permittee to secure appropriate permits and conform to the regulations of Title 20 of the Municipal Code.
20. **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.
21. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
22. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the California Fire Code as adopted or updated by the City.
23. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit file number, PD24-002 shall be printed on all construction plans submitted to the Building Division.
 - b. *San José 's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances

apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.

- c. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - e. *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.
 - f. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
 - g. *Other.* Such other requirements as may be specified by the Chief Building Official.
24. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
25. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract Map by the Director of Public Works, or the issuance of 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: <http://www.sanjoseca.gov/devresources>.
- 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. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion

control plan may be required with the grading application.

- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 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 proposes to 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.
- c. **Transportation:** This project would not require a detailed CEQA transportation analysis because the project is expected to result in less-than-significant VMT impacts based on Table 1 (Screening Criteria for CEQA Transportation Analysis for Development Projects) of the Transportation Analysis Handbook 2020, as a small infill single-family detached housing project of 15 units or less. Furthermore, the projected traffic for the project was reviewed and found to be minimal. No additional transportation analysis is required.
- d. **Stormwater Peak Flow Control Measures:** The project does not create and/or replace one acre or more of impervious surface and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- e. **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.
- f. **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.
- g. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code).
- h. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for the frontage adjacent to Minnesota Avenue prior to issuance of a Public Works

Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2024 base fee is \$627 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect for 75 linear feet at the time the Public Works Clearance is issued (based on 2024 rate, the fee is approximately \$47,025).

i. Street Improvements:

- i. Construct the driveway on Lot 2 to comply with City standards.
 - ii. Provide monetary contribution for an in-lieu fee to the Class IV protected bike lane along the Minnesota Ave project frontage per the CSJ Better Bike Plan 2025 (\$144 per LF)
 - iii. Provide \$3k for signal contributions for HVBP at the intersection of Meridian Avenue and Minnesota Avenue.
 - iv. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - v. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - vi. Dedication and improvements of the public streets shall be to the satisfaction of the Director of Public Works.
- j. **Sanitary:** Submit a conceptive sanitary sewer plan with pipe slopes, surface elevations, and invert elevations.
- k. **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.

l. Street Trees:

- i. 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". Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
- ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

26. 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. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. Biological Resources

- i. **Santa Clara Valley Habitat Plan.** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?BidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) 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/178/Santa-Clara-Valley-Habitat-Plan>.

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 (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Commission for the City of San Jose and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 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 PBCE 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 project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) 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:
 - iii. 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.

- iv. The MLD identified fails to make a recommendation; or
- v. The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

d. Geology and Soils.

- 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 or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) 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 project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or the 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 on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
 - ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
 - iii. All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, 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 Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- f. Hydrology and Water Quality.**
- 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 project applicant 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.

g. Construction-Related Noise.

- i. Limit construction hours to between 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- ii. Construct solid plywood fences around ground level construction sites adjacent to operational business, residences, or other noise-sensitive land uses.
- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Prohibit unnecessary idling of internal combustion engines.
- v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- viii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to adjacent land uses and nearby residences.
- ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- x. Designate a “disturbance coordinator” who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance

coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

27. Revocation, Suspension, Modification. This Planned 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 Planned Development 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.

EFFECTIVE DATE

The effective date of this Planned Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. PDC22-078 passed for publication on _____, 2024 (the "Zoning Ordinance") and shall be no earlier than the effective date of said Rezoning Ordinance.

//

//

//

//

//

//

//

//

//

//

ADOPTED this ____ day of ____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
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.