



Agenda Report

20-379

Agenda Date: 5/27/2020

REPORT TO PLANNING COMMISSION

SUBJECT

Public Hearing: Action on an Amendment to Variances (V.1090 and V.1091) for the properties located at 1560 and 1582 Jackson Street

REPORT IN BRIEF

Project: Amend Variances that approved a reduction in the minimum lot size, lot width and side yard setbacks requirements for two adjacent parcels located at 1560 and 1582 Jackson Street, and remove the project condition of approval for a covenant agreement prohibiting added residential density on the two single family zoned (R1-6L) properties.

Applicant/Property Owner: Alan Tsai for the property located at 1560 Jackson Street and Mary Ma-Li Chen for the property located at 1582 Jackson Street.

General Plan: Very Low Density Residential

Zoning: Single Family Residential (R1-6L)

Site Area: The lot area for 1560 Jackson Street is 5,271 square feet and is 5,226 square feet for 1582 Jackson Street.

Existing Site Conditions: The properties are separate lots developed with one-story single-family residences. The residence at 1560 Jackson Street has an attached one-car garage while the property at 1582 Jackson Street is without an on-site covered parking structure. The property conditions have not changed since the issuance of the Variance.

Surrounding Land Uses

North: Single family residence

South: Medical office building and a restaurant with associated surface parking lot

East: Single family residence and Jackson Street

West: Multi-family apartment dwelling

Issues: Consistency with the City's General Plan and Zoning Ordinance

Staff Recommendation: Approve the request to amend the Variances for removal of the condition of approval requiring a covenant agreement to prohibit added residential density on two separate single-family residential properties located at 1560 and 1582 Jackson Street.

BACKGROUND

The subject properties were once a single lot that was zoned Medium-Density Residential (R3-36D) and developed with two-single family homes. In 1977 the Property Owner filed for a variance to reduce the lot size, lot width and required side yard setbacks in order to subdivide the property into two lots. The Variance requests were denied by the Planning Commission in March 1977 and were appealed to the City Council. On July 5, 1977, the City Council overruled the Planning Commission denial and approved the Variances for the lot split and reductions in lot size, lot width and side yard

setbacks provided that the Owners did not protest the City rezoning the lots to Single-Family Residential (R1-6L), and executed a Covenant Agreement with the City to restrict the use and density of development of the lots. The Covenant Agreement was executed in February 1978 and limits the Owners and their assigns and successors in interest from expanding the single-family residential use. It also requires any replacement residence to be the same size and character as the existing one-story homes on the two lots. The properties were subsequently sold and are in separate ownership.

City Council meeting minutes of May 3, 1977 and July 5, 1977 are provided as Attachment 2. The recorded Covenant Agreement is provided as Attachment 3.

Since 1978, the City and region have experienced rising job growth and demand for housing. Provisions in State law support the creation of new and affordable housing and have legislated the allowance of accessory dwelling units (ADUs) on single family residential lots to provide additional housing opportunities to increase and diversify a jurisdiction's housing stock. ADUs count towards the City's Regional Housing Needs Allocation (RHNA).

The property owner of 1560 Jackson Street is proposing to intensify development on the property with construction of a 698 square foot detached ADU to the rear of the 789 square foot existing single-family residence. The proposal does not include replacement or expansion of the existing residence. An amendment to the Variances deleting the requirement for the Covenant Agreement is required to allow construction of the proposed ADU that would otherwise be allowed by right under existing State legislation. Terminating the Agreement would afford the property owner of 1582 Jackson Street the opportunity to expand the existing single-family residence and construct an ADU as well, if approved. The property at 1560 Jackson Street could also intensify development further by expanding or replacing the existing single family home in the future, if the covenant is removed.

DISCUSSION

Pursuant to Chapter 18.108.010 of the SCCC, where practical difficulties, unnecessary hardships and effects inconsistent with the general purpose of the Zoning Code may result from strict application of certain provisions, Variances may be granted.

Consistency with the General Plan

The General Plan designation for the subject properties is Very Low Density Residential. This designation is intended for residential densities of up to ten units per acre and is typically single-family in scale and character, with a prevailing building type of detached single-family dwellings.

The proposal is consistent with the following General Plan policies:

- 5.3.1-P8 Work with property owners to improve or redevelop underutilized and vacant properties.
- 5.3.2-P1 Encourage the annual construction of the housing units necessary to meet the City's regional housing needs assessment by reducing constraints to housing finance and development.

The property owner of 1560 Jackson Street is proposing to construct a detached ADU in the rear yard of the property. An amendment to the Variances deleting the Covenant Agreement requirement would allow the property owner to improve the property and contribute an ADU to the City's housing stock. It would also allow the property owner of 1582 Jackson Street the same opportunity to construct an addition or ADU and contribute to the supply of housing.

Zoning Conformance

The properties located at 1560 and 1582 are under separate ownership and are zoned R1-6L. Due to the reduced development standards approved for each lot by the Variance in 1977, both properties are considered legal non-conforming under the Zoning Code Section 18.94.020 (Non-conforming Uses). As such, non-conforming properties may be expanded in conformance with the Zoning Code, if the Covenant is removed. Should the amendment to the Variances be approved, administrative review of the ADU or expansion of the main house would be carried out consistent with the provisions of the Zoning Code.

Conclusion

Terminating the Covenant Agreement prohibiting the intensification of the residential use on the subject properties would be necessary to allow the Owners the ability to construct additions to the homes or ADUs on the subject properties consistent with the property rights afforded to single-family zoned property owners throughout the City, and as provided under State law to address the housing crisis in California.

ENVIRONMENTAL REVIEW

The project is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15303(a), New Construction or Conversion of Small Structures, in that the amendment to the variance will facilitate the construction of a proposed ADU as well as expansion of the main homes.

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense typically covered by processing fees paid by the applicant.

COORDINATION

This report was coordinated with the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

On May15, 2020, a notice of public hearing of this item was posted in at least three conspicuous locations within 300 feet of the project site and mailed to property owners within 300 feet of the project site. At the time of this staff report, Planning staff has not received public comment in support or opposition to the proposed project.

ALTERNATIVES

1. Adopt a Resolution to Amend the Variances to delete the requirement for a Covenant Agreement prohibiting the intensification of the residential use for the properties located at 1560 and 1582 Jackson Street.
2. Deny an Amendment to the Variances to delete the requirement for a Covenant Agreement prohibiting the intensification of the residential use for the properties located at 1560 and 1582 Jackson Street.

RECOMMENDATION

Alternative 1: Adopt a Resolution to Amend the Variances to delete the requirement for a Covenant Agreement prohibiting the intensification of the residential use for the properties located at 1560 and 1582 Jackson Street.

Prepared by: Debby Fernandez, Associate Planner

Reviewed by: Alexander Abbe, Assistant City Attorney

Approved by: Reena Brilliot, Planning Manager

ATTACHMENTS

1. Resolution Approving the Amendment to the Variances
2. City Council meeting minutes of May 3, 1977 and July 5, 1977
3. Recorded Covenant Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING AN AMENDMENT TO VARIANCES V.1090 AND V.1091 FOR THE PROPERTIES LOCATED AT 1560 and 1582 JACKSON STREET, SANTA CLARA

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on February 13, 2020, Alan Tsai (“Property Owner of 1560 Jackson Street”) filed a Planning Application (PLN2020-14333) with consent of Mai-Li Chen (“Property Owner of 1582 Jackson Street”) to amend Variances (V.1090 and V.1091) for the properties located at 1560 and 1582 Jackson Street (“Project Site”);

WHEREAS, the Project Site has a General Plan designation of Very Low Density Residential and is zoned Single Family Residential (R1-6L);

WHEREAS, the previously approved Variances (V.1090 and 1091) required a Covenant Agreement between the City and the Property Owners prohibiting the intensification of the residential use on the Project Site;

WHEREAS, the Property Owner of 1560 Jackson Street has submitted an application to delete the requirement for a Covenant Agreement prohibiting the intensification of the residential use on the Project Site;

WHEREAS, the Project is Categorically Exempt per Section 15303(a), New Construction or Conversion of Small Structures, as the proposal will facilitate the development of one or more accessory dwelling units and/or the expansion of the main houses;

WHEREAS, on May15, 2020, the notice of the meeting date for this item was posted in three conspicuous locations within 300 feet of the Project Site and mailed to property owners within a 300 foot radius of the Project Site for the Planning Commission hearing on May 27, 2020; and

WHEREAS, on May 27, 2020, the Planning Commission held a duly noticed public hearing to consider the Amendment to the Variances application, during which the Planning Commission

invited and considered any and all verbal and written testimony and evidence offered in favor of or opposition to the proposed amendments to the Variances.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part thereof.

2. That the Planning Commission hereby approves the Amendment to the Variances to delete the requirement for a Covenant Agreement prohibiting the intensification of the residential uses on the Project Site.

3. That pursuant to SCCC Section 28.108.040, the Planning Commission hereby makes the following findings related to the Variances request:

A. That there are unusual conditions applying to the land or building which do not apply generally in the same district, in that the Property Owners of 1560 and 1582 Jackson Street are not afforded the same property rights as single-family residential property owners throughout the City and recently approved State law to construct residential additions or accessory dwelling units and improve their properties;

B. That the granting of the Variances is necessary for the preservation and enjoyment of substantial property rights of the Property Owner, in that deleting the prohibition of intensifying the residential use of the Project Site would allow the Property Owners to improve and invest in the Project Site with the construction of additional living area and/or an accessory dwelling unit on the Project Site consistent with R1-6L development standards and State law;

C. That the granting of such Variances shall not, under the circumstances of the particular case, materially affect adversely the health, safety, peace, comfort or general welfare of persons residing or working in the neighborhood of the applicant's property, and will not be detrimental to the public welfare in the neighborhood of the applicant's property, and will not be materially detrimental to the public welfare or injurious to property or improvements in said

neighborhood, in that any proposal to intensity the residential use with construction of an accessory dwelling unit or residential addition on the Project Site would be subject to City Code and Building Code requirements; and

D. That the granting of the Variances is in keeping with the purpose and intent of the Zoning Ordinance, in that the proposal would provide consistency with State law requirements to allow the construction of accessory dwelling units or expansion to the main dwelling consistent with current R1-6L development standards.

4. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 27th DAY OF MAY, 2020, BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:
ABSTAINED:	COMMISSIONERS:

ATTEST: _____
ANDREW CRABTREE
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. None

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The following additional Special Order of Business items were then observed by the Council and Audience: (1) City's 125th Anniversary, after having been originally incorporated on July 5, 1852; and, (2) Recognition and presentation by the Mayor of a 20 years Service Pin to City Manager Donald R. Von Raesfeld whose service with the City began in July 1957. Mr. Austen D. Warburton, City Historian, addressed the Council and Audience relative to two above-mentioned anniversary events.

Councilman Hansen arrived at the meeting at 7:40 P.M. and took his place at the Council Table.

It was moved by Councilman Texera, seconded by Councilman Stewart, that the Minutes of the City Council for meeting held on June 14, 1977, be accepted, approved and adopted as written. Motion was approved by the Council.

Mr. Felton Valdry, a member of the City Planning Commission, and former Chairman of the Citizens Advisory Committee - Budget Review Subcommittee, addressed the Council re his non-participation in the recent Subcommittee response to the 1977/78 Budget, and requested that the recent Minutes of the Citizens Advisory Committee be clarified to reflect his non-participation in any recent meetings and/or responses from the Budget Review Subcommittee.

This being the time and date previously continued from the May 3, 1977 Council meeting for the hearing on the Variance Appeal (3/25/77), submitted on behalf of the Estate of Mary S. Silva, to the action of the City Planning Commission (Items #8 & 9 - 3/23/77 - Files V.1090 & V.1091) in denying certain lot size, lot width and side yard variances, to permit existing 84.6 foot wide lot located on the west side of Jackson Street, between El Camino Real and Civic Center Drive, to be split into 2 separate lots in order to settle an estate, the Council proceeded to consider this matter. The Director of Planning & Inspection showed location of above property containing single family homes (1560 & 1582 Jackson Street) presently zoned R3-36D. The Council also considered letter (6/30/77), submitted by Attorney Anthony I. Escobar, enclosing copy of Superior Court Case No. 92647, entitled "Order Determining Interest in Estate and Order Instructing Norbert R. Silveira, Executor; and, letter (6/27/77), submitted by Attorney James V. Torre, representing certain heirs, stating that the Silva family desires to partition and retain the property in the family. Attorney Escobar was present at this meeting, and informed Council that the heirs had no objection to rezoning above proposed lot splits to an R-1 zone, and stated that the lot split was necessary to settle above estate, and the jog in the dividing line can be worked out between the heirs. A discussion was held by the Council re above matter. Councilman Mahan expressed concern with the proposed substandard and narrow lot widths. Councilman Stewart inquired whether above-mentioned Superior Court Order could force the City to partition above estate property, and was informed by the City Attorney that above Court order could be used to divide the estate. Councilman Kiely suggested that above lot split be approved subject to limiting the future property use to one story single family dwellings. The City Attorney informed Council that a Covenant Agreement can be prepared placing reasonable terms and restrictions on the use of the property. Councilman Texera made reference to recent efforts of the Council to lower the density in certain portions of the City, and stated that above proposed lot split would accomplish above objective, notwithstanding the substandard-sized lots. It was moved by Councilman Texera, seconded by Councilman Hansen, that the hearing on above matter be closed. Motion was approved by the Council. It was then moved by Councilman Texera, seconded by Councilman Stewart, that the Council overrule the denial actions of the City Planning Commission (Items #8 & 9 - 3/23/77 - Files V.1090 & V.1091); and, on the basis of favorable findings, made by the Council, above Variance request for lot split and reduction in lot size, reduction in lot width and reduction in side yard, be granted and approved, subject to the execution of appropriate Covenant Agreement to be prepared by the City Attorney providing that property owners concerned will not protest the rezoning of above 2 split lots from R3-36D to R1 and that any single family dwellings thereon will only be replaced with dwellings of similar size and character. Motion was approved by the Council with Councilmen Mahan and Street dissenting.

This being the time and date previously set for the hearing on the Variance Appeals (3/25/77), submitted on behalf of the Estate of Mary S. Silva, to the actions of the City Planning Commission (Items #8 & 9 - 3/23/77 - Files V.1090 & V.1091) in denying Variance Applications to reduce required lot size, required lot width and required side yard for certain property located at 1560 and 1582 Jackson Street, the Council proceeded to consider this matter. The Director of Planning and Inspection showed location map and plot plan, and cited the basis for Commission findings and denial. Councilman Texera inquired whether above proposed division of property could be accomplished with a Record of Survey, and was informed by Staff that above total property is zoned R3-36D and is developed with two single family homes, and a split of said property would result in two substandard sized lots. Attorney Anthony I. Escobar, representing the Executor of above-mentioned Estate, addressed the Council re the efforts being made to distribute above property to the heirs concerned, as per terms of the will. Councilman Stewart inquired whether the Probate Judge could split above property without City Council approval, and inquired whether a rezoning application can be initiated by the City to rezone above property from R3-36D to R-1. Attorney Escobar informed Council that he had not discussed any downgrading of zoning with the heirs. Councilman Texera cited the existing housing shortage problem, and commented in favor of splitting above property into two parcels. Attorney James Torre, representing one of the heirs (Mr. & Mrs. Don Murray), informed Council that certain members of above family desired to continue to live in above-mentioned dwellings, and stated that he saw no objection to rezoning above property R-1, but would consult the other heirs relative to their comments thereon. Councilman Texera suggested a continuance to allow above Attorneys to consult with their respective clients. It was moved by Councilman Texera, seconded by Councilman Stewart, that the Council continue the hearing on above-mentioned Variance Appeals to July 5, 1977, at 7 P.M., to permit further study and review by all parties concerned therein. Motion was approved by the Council.

This being the time and date previously set for the first public hearing on the proposed use of General Revenue Sharing Funds for fiscal year 1977/78, the Council proceeded to consider this matter. Council was informed by Staff that Notice of above hearing was published; and, the procedure requiring the holding of two hearings to receive citizen input was explained to the Council, with the final hearing to be heard concurrently with the total Budget for the City. Councilman Hansen made reference to the proposals submitted by the Staff for the use of the \$900,000 to be received by the City for fiscal year 1977/78, and inquired as to the source of funding for the proposed Quadruplex Multipurpose facility to be located at the Mission Community College site, and was informed by the City Manager the funding for said project was to be included elsewhere in the total budget. Mr. David Parks (Mauricia Avenue) inquired as to the date of the next public hearing on above matter, and was informed by Staff that the date of said hearing was tentatively set for June 14, 1977 at 7 P.M. It was moved by Councilman Texera, seconded by Councilman Stewart, that the first public hearing on the proposed 1977/78 General Revenue Sharing Fund Budget be closed. Also, the above matter be referred to the Staff for appropriate action. Motion was approved by the Council.

This also being the time and date previously continued from the April 19, 1977 Council meeting for the hearing on the proposed adjustment of City's fees and charges, the Council proceeded to consider this matter. The City Manager summarized the status of above proposal to date, and made reference to letter (3/30/77) previously submitted by the Santa Clara Chamber of Commerce-Board of Directors, recommending that the Council not adopt the proposed fees and charges, and that actual costs incurred by the City be justified. A discussion was held by the Council re above matter. Councilman Texera expressed concern with the proposed \$25 charge for Architectural review. Councilwoman Street commented that she agreed with the recommendations of the Santa Clara Chamber of Commerce, and questioned the justification for increasing certain fees and charges by 100%; and also, inquired re the basis for increasing Electric Department reconnection charges from \$3.50 to \$10. The City Manager distributed copies of summary report setting forth a comparison of local fees and charges versus those in adjacent cities. Councilman Kiely suggested that the

MRD:BD 2-1-78

For benefit of the City of Santa Clara. Recorded free of charge under Section 6105 of the Government Code.

5964644

D 552 PAGE 242

AGREEMENT

(COVENANT RUNNING WITH THE LAND)

3/14/78 THIS AGREEMENT, made this 20th day of February, 1978, by and between the CITY OF SANTA CLARA, California, a municipal corporation, hereinafter called "CITY", and "NORBERT R. SILVEIRA"

as executor on behalf of the estate of Mary S. Silva, hereinafter "OWNERS".

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

WHEREAS, OWNERS are the owners of certain real property located at 1560 and 1582 Jackson Street, Santa Clara, California, which property is shown on 1977 Santa Clara County Property Tax rolls as Assessor's Parcel Nos. 224-26-047

and is hereinafter referred to collectively as "PROPERTY"; and,

WHEREAS, PROPERTY once was a single lot with approximately 84.6 feet of frontage on Jackson Street; and,

WHEREAS, the single lot with the 84.6 foot frontage was zoned R3-36D; and,

WHEREAS, the CITY was willing to permit a lot split into two lots, each with substandard area and width, in order to expedite settlement of a probate estate; and,

WHEREAS, the CITY was willing to permit the split into two lots only if the OWNERS would be willing to assure the CITY that the density on the two lots would not be increased; and,

WHEREAS, the City Council permitted the OWNERS' variance request for a lot split, reduction in lot size, reduction in lot width, and reduction in side yard, on the basis that OWNERS would execute a covenant running with the land restricting OWNERS to the existing single story, single family dwellings, on each of the two lots (with no possibility of size addition, replaceable only by dwellings of similar size and character); and,

WHEREAS, it is further the intent of the parties hereto to bind all OWNERS of PROPERTY, present and future, their assigns and

S. C. # 14628

MAR 27 1978

For benefit of the City of
Santa Clara, Recorded fees
of charge under Section 6109
of the Government Code.

D 532 PAGE 243

successors in interest, by giving notice that this agreement shall constitute a covenant running with the land, and it shall be binding upon all said OWNERS of PROPERTY, present and future, their assigns or successors in interest.

NOW, THEREFORE, IT IS HEREBY FURTHER AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Whenever the term "OWNERS" is used herein, it shall refer collectively to the OWNERS signing this agreement and/or their assigns or successors in interest.

2. OWNERS agree that the dwellings situated on said PROPERTY shall remain single story, single family residential dwellings, and that in the event that replacement is necessary, that the dwellings will be replaced with structures of similar residential character and with square footage that will not exceed the square footage of the currently existing structures.

3. Each and every covenant made by OWNERS and the CITY is made for the direct benefit of the hereinafter indicated respective lands or interest in lands held by the parties hereto, their assigns and/or successors in interest, and shall run with said respective lands or interests in lands and, if applicable, their responsibilities and burdens thereof are imposed on and shall run with said respective lands or interests in lands held by the parties hereto, their assigns or successors in interest.

4. The land of OWNERS which is benefitted by this agreement is the above mentioned PROPERTY.

5. The land of CITY which is benefitted by this agreement is Jackson Street, a public street owned by the CITY.

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FILED FOR RECORD AT REQUEST OF
CITY OF SANTA CLARA
MAR 27 1978
D 532 PAGE 243
596864
MAR 27 1978
SANTA CLARA COUNTY
REGISTERED MAIL

For benefit of the City of Santa Clara. Recorded free of charge under Section 6108 of the Government Code.

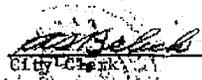
D 552 PAGE 244

6. This agreement shall be recorded by CITY in the Office of the County Recorder of Santa Clara County.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the date and year first above written.

ATTEST:

CITY OF SANTA CLARA
a municipal corporation


City Clerk

W. A. Gissler
Mayor

APPROVED BY TO FORM:

Michael R. Downey
Assistant City Attorney

D. R. Von Raesfeld
City Manager

The Estate of Mary S. Silva

Robert A. Gilman
As Executor on Behalf of the Estate

(Attach copy of Probate Court Authorization)

STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA } ss

D 552 PAGE 245

On this 21st day of March, 19 78, before me, LILLIAN S. WILLIAMS, a Notary Public in and for the County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared W. A. Gissler, D. R. Von Raesfeld and A. S. Bellick known to me to be the Mayor, City Manager and City Clerk, respectively of the municipal corporation described herein, and that they executed the within instrument on behalf of the said municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Santa Clara the day and year in this certificate first above written.



Lillian S. Williams
LILLIAN S. WILLIAMS
Notary Public in and for the County of Santa Clara, State of California.
My Commission expires July 21, 1979.

MAR 27 1978

5817855

D 217 10/3/77

COVENANT AGREEMENT

THIS AGREEMENT, made and entered into this 4th day of October, 1977, between the CITY OF SANTA CLARA, a municipal corporation of the State of California, hereinafter called "CITY" and NORBERT R. SILVEIRA, executor of the estate of MARY S. SILVA, deceased, hereinafter called "EXECUTOR".

WITNESSETH

WHEREAS, there exists a single parcel of real property located in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

PORTION OF SUB LOT 19 as shown upon that certain Map entitled, "Map of the Town and Sub-Lots of Santa Clara, Santa Clara County, California, surveyed by J. J. Bowen, County Surveyor, July 1866, which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Book B of Maps, at page 103, and more particularly described as follows:

BEGINNING at a point on the Westerly line of Jackson Street distant thereto 144 feet Northerly from the point of intersection of the Northerly line of Clay Street with the Westerly line of Jackson Street; thence running Westerly and along the Northerly line of land conveyed by H. H. Warburton to C. H. Wilson by Deed dated January 27, 1899 and recorded January 28, 1899 in Book 215 of Deeds, page 512, 75 feet to a point on the Easterly line of land conveyed by H. H. Warburton, et ux, to Antone Freitas by Deed dated October 29, 1902 and recorded in Book 256 of Deeds, page 512; thence running Northerly and along said Easterly line of land so conveyed to Antone Freitas 6 inches to the Northeastly corner of said land; thence running Westerly and along the Northerly line of said land and the Northerly line of land conveyed by H. H. Warburton et ux, to Mrs. Betty F. Lundin by Deed dated August 4, 1892 and recorded in Book 151 of Deeds, page 56, 198 feet to a point on the Westerly line of Sub Lot 19 in the City of Santa Clara; thence running Northerly and along the Westerly line of said Sub Lot 19, 84 feet; thence running Easterly and parallel with the Northerly line of Clay Street 273 feet to a point on the Westerly line of Jackson Street; thence running Southerly and along said Westerly line of Jackson Street 84.50 feet to the point of beginning.

WHEREAS, there currently exists on said parcel of real property two (2) single family residential structures, more commonly known as 1560 Jackson Street and 1582 Jackson Street, and that said structures are being used as single family residences; and

City of Santa Clara

For benefit of the City of Santa Clara. Recorded from of charge under Section 6108 of the Government Code.

0 217 111578

WHEREAS, pursuant to an order of the Probate Department of the Superior Court of California, County of Santa Clara, in Case No. 92647, Estate of Mary S. Silva, deceased, entitled ORDER DETERMINING INTEREST IN ESTATE AND ORDER INSTRUCTING NORBERT R. SILVEIRA, EXECUTOR, the said parcel of real property described above has been ordered partitioned by said Executor so as to create separate and distinct parcels of real property out of the single parcel described above, each of which separate parcels contains one of the mentioned residential structures and encompassing approximately one-half of said parcel described above; and

WHEREAS, said Executor, on February 23, 1977, petitioned CITY to permit a variance from the provisions of Zoning Ordinance No. 1204 of the City of Santa Clara to permit substandard lot size, frontage, and side yard areas for each of said proposed separate parcels; and

WHEREAS, the Planning Commission of the City of Santa Clara denied said petition for variance on March 23, 1977; and

WHEREAS, EXECUTOR appealed said decision to the City Council of the City of Santa Clara; and

WHEREAS, the City Council of the City of Santa Clara voted to grant said variance on certain terms, conditions and restrictions, more fully set forth hereinafter.

NOW, THEREFORE, EXECUTOR AGREES, WARRANTS, AND COVENANTS, as follows:

FIRST: EXECUTOR will deliver or cause to be delivered to the City Council of CITY, or to the authorized agent of said Council, a letter signed by said EXECUTOR in his capacity and on behalf of the beneficiaries under the final order of distribution of the Estate of MARY S. SILVA, deceased, assuring said City Council that no objection or protest will be lodged with the CITY to the rezoning of the newly created parcels above from R3-36D to R-1

RECORDED
11/28/77

For benefit of the City of Santa Clara. Recorded free of charge under Section 6103 of the Government Code.

D 227 MEX 979

(single family residence);

SECOND: That the single family residential structures existing on the newly created parcels described above shall be retained as dwelling units and may be replaced only with dwellings of similar size and character;

THIRD: That EXECUTOR will deposit, or cause to be deposited, with the Planning Department of the CITY, all necessary plot maps or other descriptions of said parcels as may be from time to time required by said Planning Department;

FOURTH: Terms, conditions, and covenants set forth herein shall run with said parcels of real property and shall be binding on all parties having or acquiring any right, title, or interest in said parcels of real property, whether by grant, assignment or operation of law.

FIFTH: That failure to comply with the terms, conditions, and covenants set forth herein shall result in the revocation of the variance grant and shall entitle CITY to recover all expenses, including reasonable attorneys fees, incurred in any repair, restoration or rebuilding necessary to conform said parcels of real property to the zoning requirements and building code;

SIXTH: That this Agreement shall be recorded in the Office of the County Recorder of the County of Santa Clara.

IN WITNESS WHEREOF, the parties hereto has executed this Agreement the day and year first above written.

ATTEST:

CITY OF SANTA CLARA

[Signature]
City Clerk

By: William A. Quinlan
Mayor

APPROVED FOR FORM:

By: [Signature]
City Manager

[Signature]
City Attorney

[Signature]
Norbert R. Silveira
Executor of the Estate of
Mary S. Silva, deceased

STATE OF CALIFORNIA

D 217 21380

County of Santa Clara

On this 23th day of September in the year one thousand nine hundred and seventy-seven before me, SHIRLEY M. COLLINS, a Notary Public in and for the City and

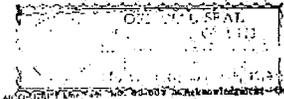
County of Santa Clara State of California, residing therein, Norbert R. Silveira duly commissioned and sworn, personally appeared

known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the City and County of Santa Clara the day and year in this certificate first above written.

Shirley M. Collins

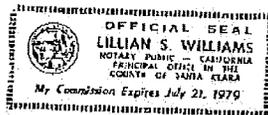
Notary Public in and for the City & County of Santa Clara State of California My Commission Expires April 5, 1979



STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA } SS

On this 4th day of October, 19 77, before me, LILLIAN S. WILLIAMS, a Notary Public in and for the County Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared William A. Gissler, D. R. Von Raesfeld and A. S. Belick known to me to be the Mayor, City Manager and City Clerk, respectively of the municipal corporation described herein, and that they executed the within instrument on behalf of the said municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Santa Clara the day and year in this certificate first above written.



Lillian S. Williams
LILLIAN S. WILLIAMS
Notary Public in and for the County
of Santa Clara, State of California
My Commission expires July 21, 1979

D 217 21377

D 217 21381

FILED FOR RECORD
AT REQUEST OF
City of Santa Clara
OCT 18 11 46 AM '77
OFFICIAL RECORDS
SANTA CLARA COUNTY
GEORGE F. RECODER
REGISTERED RECORDER

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