



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: January 17, 2008

COUNCIL DISTRICT: 3

SNI AREA: N/A

SUBJECT: PDC05-123. PLANNED DEVELOPMENT REZONING FROM R-M MULTIPLE RESIDENCE ZONING DISTRICT TO A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW OFFICE USES IN AN EXISTING SINGLE-FAMILY RESIDENCE ON A 0.13 GROSS ACRE SITE

RECOMMENDATION

The Planning Commission voted 6-0-1, Commissioner Platten absent, to recommend that the City Council deny the proposed rezoning as recommended by staff.

OUTCOME

The City Council has the option to either deny or direct staff to continue processing of the proposed Planned Development Rezoning. Should the City Council deny the Planned Development Rezoning, the project site would remain solely for residential uses, in conformance with the San Jose 2020 General Plan.

Should the City Council request continued processing of the proposed Planned Development Rezoning, staff would attempt to contact the applicant, complete environmental review, and return to the Planning Commission and the City Council for public hearings. Because the project, as proposed, is inconsistent with the General Plan, it would likely return to public hearing with a staff recommendation of denial.

BACKGROUND

On January 16, 2008, the Planning Commission held a public hearing to consider denial or continued processing of a Planned Development Rezoning from R-M Multiple Residence Zoning District to A(PD) Planned Development Zoning District to allow office uses in an existing single-family residence on a 0.13 gross acre site. The Director of Planning recommended denial of the proposed project.

Planning staff provided analysis that the project does not conform to the General Plan and that the application has been inactive for many months. Guita Haksarian, representing the applicant,

said the applicant requested a deferral of 30 days so that he could be present. She also stated that the applicant had responded to staff's requests in an email in March 2007.

No one spoke in support of, or in opposition to, the proposed project. The Planning Commission then closed the public hearing. Staff reiterated that the proposed project is inconsistent with the General Plan, and that it has been inactive despite attempts by staff to work with the applicant. Staff acknowledged receipt of the March 2007 email from the designer on the project, and restated that the applicant had not responded to staff's request for additional information sent in September of 2007.

Commissioner Campos moved that the Planning Commission recommend denial of the project as recommended by staff. Commissioner Zito seconded the motion. The Planning Commission voted 6-0-1, Commissioner Platten absent, to recommend that the City Council deny the proposed Planned Development Rezoning from R-M Multiple Residence Zoning District to A(PD) Planned Development Zoning District to allow office uses in an existing single-family residence on a 0.13 gross acre site.

ANALYSIS

Denial of the proposed rezoning would maintain the site's RM Multiple Residence Zoning District, which is compatible with the surrounding uses. See original staff report for additional discussion.

EVALUATION AND FOLLOW-UP

Not Applicable.

POLICY ALTERNATIVES

Not Applicable.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30; Public Outreach Policy. 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 rezoning was also published in a local newspaper, the Post Record. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

This project was coordinated with the Department of Public Works, Fire Department, Police Department, Environmental Services Department and the City Attorney.

FISCAL/POLICY ALIGNMENT

This project is not consistent with applicable General Plan policies as further discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Incomplete: Pursuant to Section 15270 of the CEQA Guidelines, CEQA does not apply to projects that a public agency rejects or disapproves.


JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Jeannie Hamilton at 408-535-7800.

DENIAL STAFF REPORT
PLANNING COMMISSION

P.C. Agenda: 1/16/08
 Item No. 4.b.

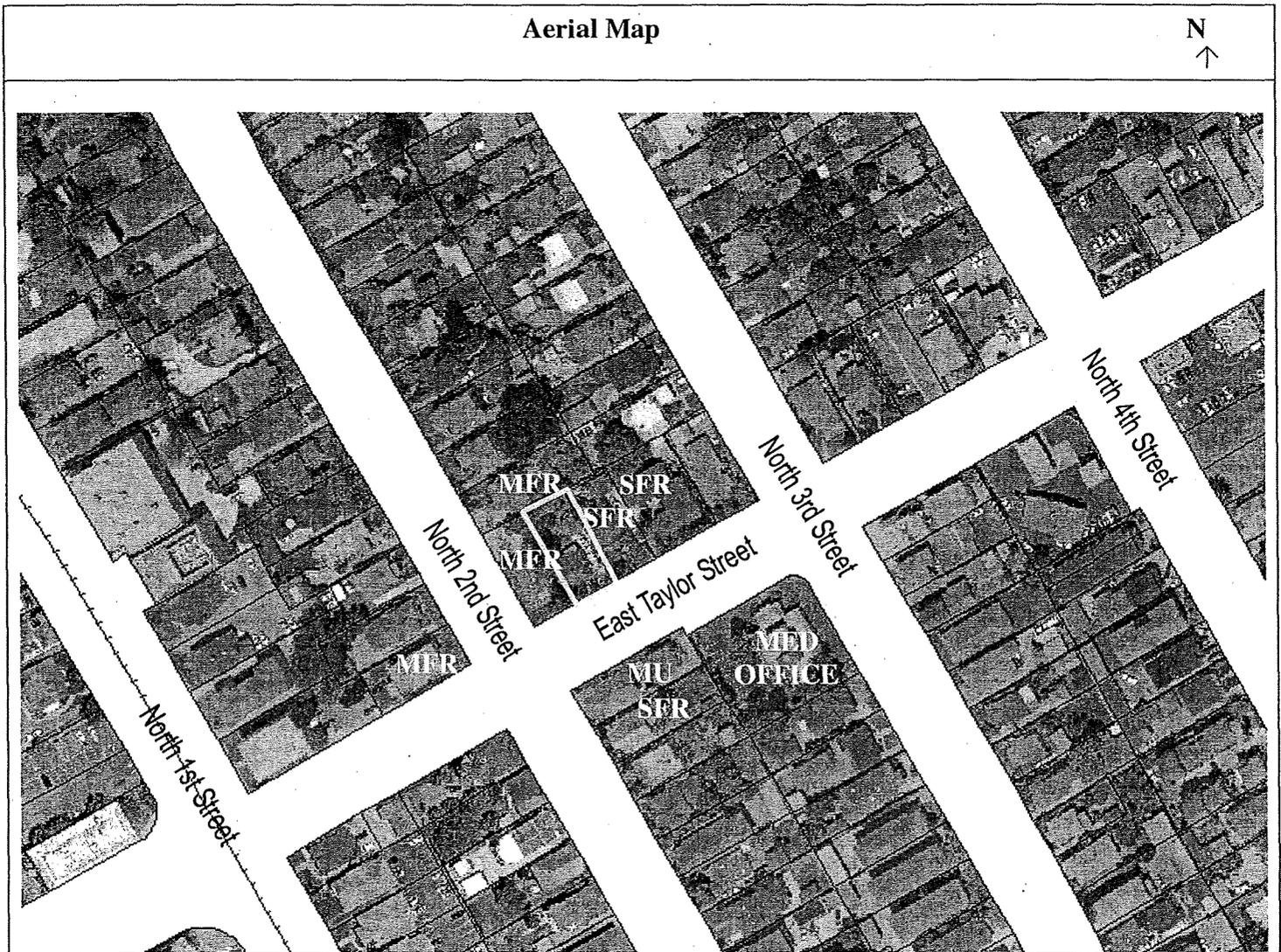
FILE NO.: PDC05-123

Submitted: 12/20/05

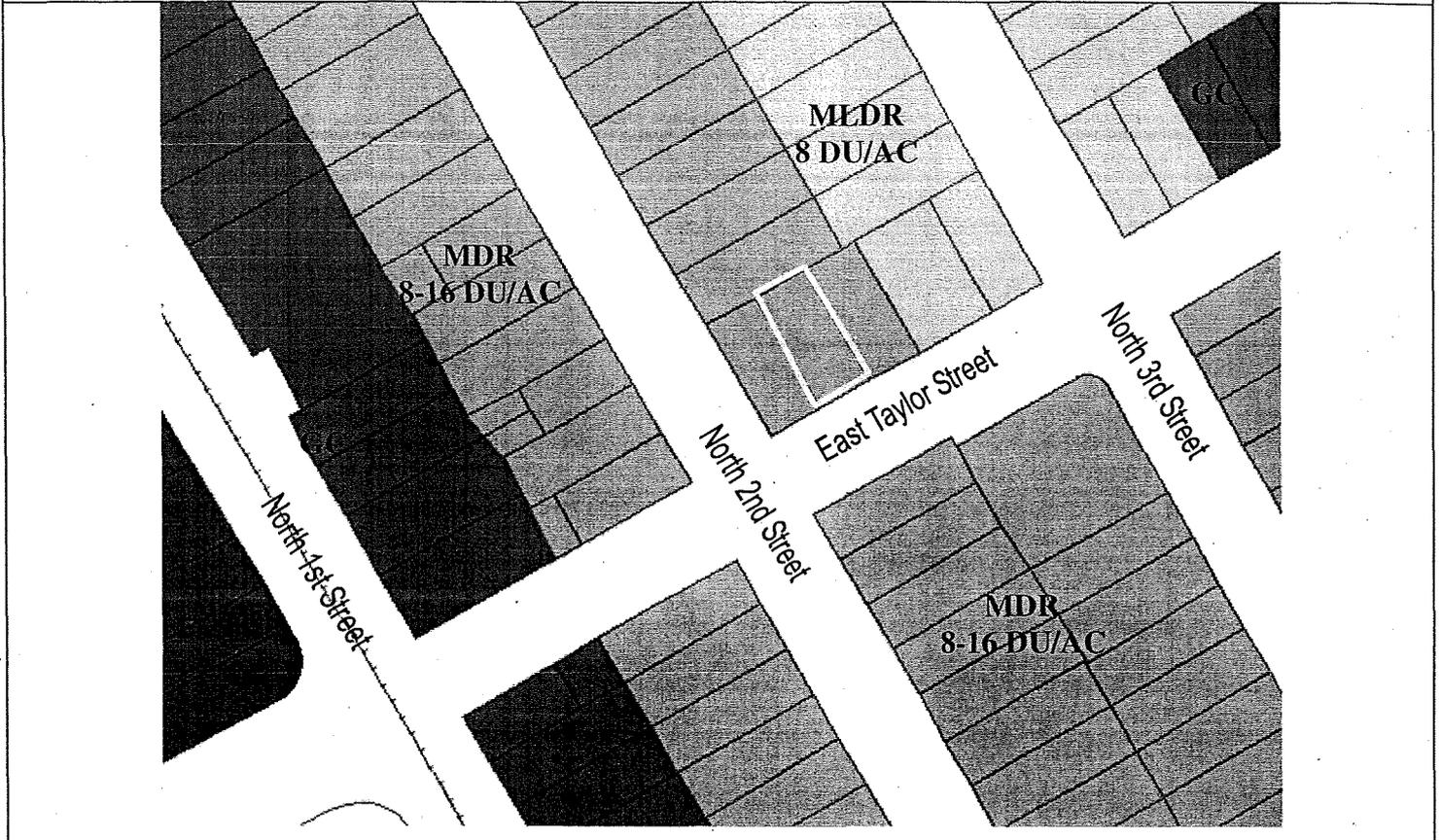
PROJECT DESCRIPTION: Planned Development Rezoning from R-M Multiple Residence Zoning District to A(PD) Planned Development Zoning District to office uses in an existing single-family residence on a 0.13 gross acre site.

Existing Zoning	R-M Multiple Residence
Proposed Zoning	A(PD) Planned Development
General Plan	MDR (8-16 DU/AC)
Council District	3
Annexation Date	3/27/1850
SNI	None
Historic Resource	No
Redevelopment Area	No
Specific Plan	N/A

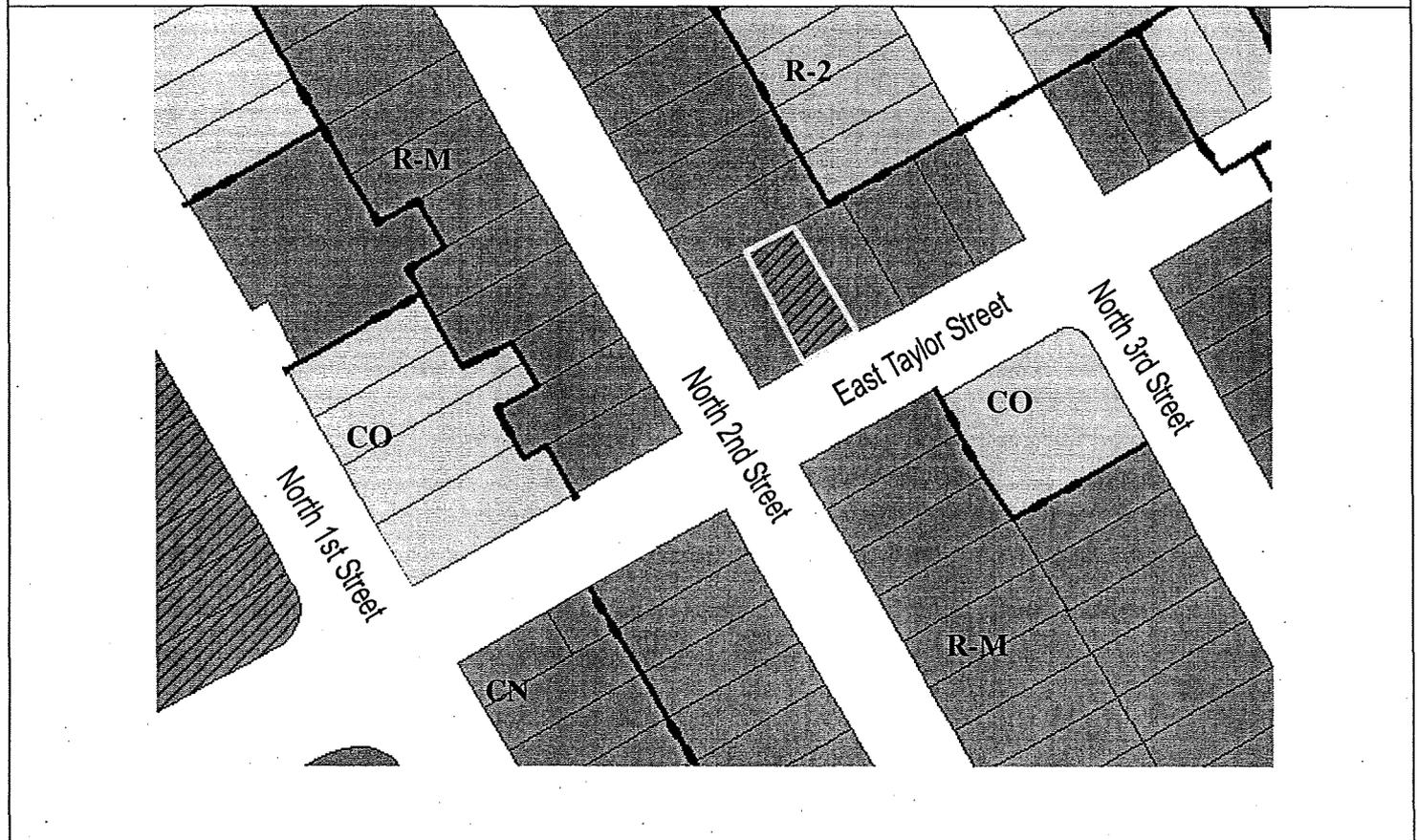
LOCATION: North side of East Taylor Street approximately 110 feet east of North Second Street



GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends the Planning Commission forward a recommendation to the City Council to deny the proposed Planned Development Rezoning for the following reasons:

1. The proposed project, because it proposes a commercial use on a site with a residential General Plan designation, is substantially inconsistent with the San Jose 2020 General Plan.
2. The last communication received from the applicant on this project was Wednesday, March 14, 2007. As of December 2007, the applicant has been inactive for over nine (9) months.

BACKGROUND & DESCRIPTION

On December 20, 2005, the applicant, Cary Lindstrom, filed a Planned Development Rezoning to allow office uses in an existing single-family residence. The application was filed in response to an open Code Enforcement case, in an attempt to legalize an unpermitted attorney's office that was operating out of the site. The applicant filed a Planned Development Rezoning to facilitate use of the Neighborhood Serving Commercial Uses on Residentially Designated Parcels General Plan Discretionary Alternate Use Policy (DAUP). Currently, the General Plan requires a Planned Development Zoning to use this DAUP. Planning staff does not support use of this DAUP for this project.

Planning staff communicated this project's lack of compliance to the applicant in a comment letter dated January 18, 2006. In the comment letter, staff noted a lack of conformance to the San Jose 2020 General Plan and requested that the applicant withdraw the application. No response was received by the applicant. On February 1, 2007, the applicant responded via email requesting time to research their options for continuing with the application. No request for withdrawal was received. On September 13, 2007, Planning staff again requested revised plans of the applicant, and informed the applicant through regular mail that failure to provide revisions would result in the project being set for hearing with a recommendation for denial. To date, no new correspondence has been received.

GENERAL PLAN CONFORMANCE

This site has a designation of Medium Density Residential (8-16 DU/AC) on the adopted San Jose 2020 General Plan Land Use/Transportation Diagram. The proposed rezoning does not conform to this General Plan designation because the Medium Density Residential (8-16 DU/AC) designation is intended for single-family and apartment type uses and the proposed use of this site is office. In addition, the project is not in compliance with Commercial Land Use Policies 5 and 8, which state:

- Commercial Land Use Policy #5: Commercial development should be allowed within established residential neighborhoods only when such development is compatible with the residential development and is primarily neighborhood serving.
- Commercial Land Use Policy #8: Proposals to convert residential properties along major streets to office or commercial use should be approved only when there is a substantial nonresidential character to the area and where satisfactory parking and site design can be demonstrated.

The only route for General Plan conformance for this project is through the Neighborhood Serving Commercial Uses on Residentially designated Parcels General Plan DAUP. This DAUP allows for expansion of a commercial use located within a residential neighborhood if the total area of commercial property does not exceed 30,000 square feet, the use is primarily neighborhood serving, that the scale of new development is compatible with the neighborhood, and that the neighborhood not be subject to undesirable impacts from the commercial use, including parking, noise, littering and hours of operation.

This project does not conform to this DAUP because it is not an expansion of a neighborhood-serving commercial use. The commercial use that was operating on the site, because it was unpermitted, is treated as a new use and the site does not accommodate the parking for such a use.

ENVIRONMENTAL REVIEW

Pursuant to Section 15270 of the CEQA Guidelines, CEQA does not apply to projects that a public agency rejects or disapproves. This project would likely be exempt from CEQA under Section 15303 of the CEQA Guidelines if the City Council votes to consider approval of the Planned Development Zoning.

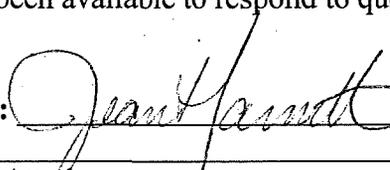
ANALYSIS

Section 20.100.390 of the San Jose Municipal Code gives the Director of Planning the authority to pursue a final decision on any Permit or other approval application on file with the Director for a period of at least six (6) months where there is inactivity on the application on the part of the applicant for at least six (6) consecutive months. For purposes of this Section, "inactivity" on an application means that the Director has requested from the applicant or has provided the applicant with notice of additional information or materials needed by the Director from the applicant to continue to process the application and the applicant has failed to adequately respond to that request or notice. As mentioned above, this project has been inactive for a period exceeding eleven (11) months.

This approach provides an opportunity for the Planning Commission and City Council to consider identified policy issues as well as the lack of responsiveness by the applicant and to determine (1) whether such an application should be denied based upon those inconsistencies and inadequacies prior to completion of environmental review, or (2) whether any such application should be directed for complete processing, including environmental review.

PUBLIC OUTREACH

A sign was posted on-site to notify neighbors of the proposed development. The project site is not within a Strong Neighborhoods Initiative area. The rezoning was also published in a local newspaper, the Post Record. This staff report is also posted on the City's Website. Staff has been available to respond to questions from the public. A notice of this Planning Commission public hearing and subsequent City Council hearing was mailed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public.

Project Manager: Licia McMorrow **Approved by:**  **Date:** 12/21/07

Owner/Applicant: Cary Lindstrom 65 E. Taylor Street San Jose, CA 95112	Attachments: No reduced plan set is available because the applicant has been unresponsive.
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