



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: September 28, 2006

COUNCIL DISTRICT: 6
SNI AREA: Not Applicable

SUBJECT: PDC06-065. PLANNED DEVELOPMENT REZONING FROM R-1-8 RESIDENTIAL ZONING DISTRICT TO ALLOW THE CONSTRUCTION OF TWO SINGLE FAMILY DETACHED RESIDENCES ARRANGED IN A FLAG LOT CONFIGURATION.

RECOMMENDATION

The Planning Commission voted 5-0-2, Commissioners Zito and Pham absent, to make no recommendation to the City Council regarding the proposal to adopt an ordinance to allow up to two residential dwelling units arranged in a flag lot configuration on a 0.40 gross acre site.

OUTCOME

Should the City Council approve the rezoning of the site from R-1-8 Single-Family Residence Zoning District to an A(PD) Planned Development Zoning District, two single-family detached residential units arranged in a flag lot configuration would be allowed on the site.

Should the City Council were to deny the rezoning from R-1-8 Single-Family Residence Zoning District to an A(PD) Planned Development Zoning District, as recommended by Planning staff, the Zoning would remain R-1-8, Single Family Residence, to allow a future single-family house, and could allow a possible secondary unit under the City's Pilot Program.

BACKGROUND

On September 27, 2006, the Planning Commission held a public hearing to consider the proposed rezoning. Planning staff recommended the Planning Commission recommend denial of the subject Planned Development Rezoning.

A representative for the applicant, Stan Nielsen, made a presentation stating the proposal meets the criteria listed in the Flag Lot policy. He stated he feels the subject site is unique in its neighborhood because it is the largest of the 20 lots on Settle Avenue that are larger than 10,000 square feet. He explained the front lot in the proposed two-lot project would be approximately 10,000 square feet in

size. He demonstrated that the second, rear house would be somewhat visible from the street from some angles and explained that the location of the shared driveway somewhat restricted the ability to view the rear house from the street. He acknowledged that the subject site does have single-story houses to the east, south and west, but stated there are other examples of two-story houses along the block face.

One member of the public spoke against the proposed rezoning. He commented that he lives in the neighborhood and that his lot is 11,000 square feet in size. He indicated that although the subject site is 17,000 square feet, if the subject site were subdivided, the new lots would be some of the smallest lots in the neighborhood. The speaker then expressed that if the flag lot configuration were allowed, the character of the neighborhood would be negatively altered, as other owners of large lots might see a precedent to subdivide their lots. He further expressed that the street is too narrow to accommodate the additional cars the two houses would generate, and that on-street parking is already a problem. He noted other area residents were attending a community meeting on the Greenprint for District 6 and were unable to attend.

Commissioner Dhillon asked the applicant's representative if the developer had identified any additional lots within the area that they would target next as a flag lot. The representative stated that they have not identified any other sites on the street. They stated they believe this lot is the best candidate for a flag lot because it is one-eighth bigger than the next largest lot.

Commissioner Kamkar commented on the issue of street presence and asked if the applicant was willing to redesign the rear house so it would have more street presence. The representative stated they would be willing to work on a new design to produce revisions that might address staff's concerns regarding the street presence.

Staff restated for the Planning Commission that staff's primary concern with this application is not the project design. Staff indicated a willingness to work with the applicant to resolve design-related concerns should the rezoning be approved. Staff stressed for the Commission that even if the design concerns were resolved, staff's recommendation to deny the proposal would not change. Staff restated that the primary issues are whether or not it is appropriate to subdivide the property into two smaller lots, whether such a subdivision would set a precedent for future intensification on this street, and whether or not the proposed increased density would be appropriate in the existing established single-family neighborhood.

Commissioner Campos inquired about the length of time the lot has been vacant. Staff stated they were unsure of the exact timeframe but believed the lot had been vacant since a fire destroyed the previous structure.

Commissioner Kamkar made a motion to approve the flag lot project as requested by the applicant. Commissioner Dhillon seconded the motion.

Deputy Director Hamilton explained that the flag lot policy was adopted by the City Council in the 1990s, largely as a result of the over development of many lots in Willow Glen. She stated that the City Council had worked closely with the community to create the Flag Lot Policy in to help preserve the character of such older neighborhoods in San Jose. The Deputy Director further explained that the applicant would have the opportunity to take advantage of the Pilot Program that

would allow up to a 600 square-foot second unit to be constructed behind a single-family residence on the site.

Commissioner Kalra commented that the size of the proposed homes is very large and that they do not appear to be compatible with the character of the neighborhood. He stated a six-bedroom home would be different than most of the homes in the surrounding area.

Commissioner Campos commented that this proposal presents a dilemma with no easy resolution, as a choice between a possible future larger home in a Willow Glen neighborhood where monster homes have been a problem in the past, and allowing a flag lot that could set a precedent for future subdivisions and intensification of development in the area that would ultimately change the character of the neighborhood. He stated that currently within the larger area there is only one other flag lot, dating to 1974.

Commissioner Kamkar's motion to recommend the City Council approve the proposed rezoning failed (2-3-2) failed with Commissioners Campos, Platten and Kalra opposed, Commissioners Pham and Zito absent.

The City Attorney stated that in cases where four votes are not garnered, the Commission could make no recommendation to the City Council. The Commissioners then voted 5-0-2, Commissioners Zito and Pham absent, to send no recommendation to the City Council on the rezoning.

ANALYSIS

The primary issue associated with the proposal is conformance with City Council Policy 6-19, Flag Lot Policy, which provides the set of criteria under which a flag lot configuration can be determined to be appropriate in an existing neighborhood.

The Flag Lot Policy specifies that "flag lots are not appropriate where a series of large lots could be converted to flag lot developments, thereby raising the density and changing the character of the neighborhood." Further, the Policy states that flag lot developments may be appropriate in neighborhoods that exhibit a uniformity of single-family lot sizes with an occasional, unique larger parcel with a minimum square footage of 8,000 square feet. The subject site is approximately 17,458 square feet in size. It is one of about 20 parcels that are 10,000 square feet or greater in size along this portion of Settle Avenue, and it is one of 56 lots that are 10,000 square feet or greater within the surrounding area between Lincoln and Bird Avenues, and from Minnesota Avenue to Willow Street. The site is one of many lots that are at least 8,000 square feet or larger. Subdivision of all lots 10,000 square feet and greater just along Settle Avenue could result in approximately 20 additional units, with associated traffic, on the narrow road.

Staff has concluded that the proposal does not meet the fundamental criteria of the Flag Lot Policy with regard to the appropriate use of a flag lot design in an existing neighborhood. As discussed in the staff report, there are numerous lots of a similar size along the same stretch of Settle Avenue, and an even greater number within a couple of blocks in all directions. An additional unit on this site, and in the future on the other similar lots on Settle and the surrounding neighborhood, would likely result in increased density and a change to the neighborhood.

Based on the above analysis, staff recommends that the City Council deny the subject rezoning.

POLICY ALTERNATIVES

If the City Council were to approve the rezoning from R-1-8 Single-Family Residence Zoning District to an A(PD) Planned Development Zoning District, as requested by the applicant, up to two residential units arranged in a flag lot configuration would be allowed on the site.

If the City Council were to deny the rezoning of the site from R-1-8 Single-Family Residence Zoning District to an A(PD) Planned Development Zoning District, as recommended by the Director of Planning, the zoning would remain R-1-8 Single Family Residence and one house, with a possible 600 square foot second unit could be constructed on the site.

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. The applicant posted a notification sign at the site in conformance with the Public Outreach Council Policy. Notices of the community meeting and the public hearings were distributed to the owners and tenants of all properties located within 500 feet of the project site and is posted on the City website. The rezoning was also published in a local newspaper, the Post Record. Staff has been available to answer questions and discuss the proposal with members of public. The Planning Commission's agenda is posted on the City of San Jose's website along with this staff report.

Staff received several telephone calls from members of the community expressing a concern that the proposal would alter the character of the neighborhood, and two emails of opposition from community members (attached). The applicant posted a notification sign at the site in conformance with the Public Outreach Council Policy. Notices of the public hearings were distributed to the owners and tenants of all properties located within 500 feet of the project site and is posted on the City website. The notice of the proposed rezoning was also published in a local newspaper, the Post Record. Staff has been available to answer questions and discuss the proposal with members of public. The Planning Commission's agenda is posted on the City of San Jose's website along with this staff report.

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

Not applicable.

COST SUMMARY/IMPLICATIONS

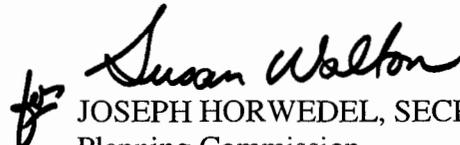
Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Under the provisions of Section 15303(a), 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 Code, implementing the California Environmental Quality Act of 1970, as amended.


JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Principal Planner, Susan Walton, at 535-7847.

cc: Dean DiBenedetto, Highland LLC, 1975 El Camino Real #202, Mountain View, CA 94040
Nielsen Architects, Inc., Attention Stan Nielsen, 2540 Camino Diablo, Suite 201, Walnut Creek
CA 94597