



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** October 4, 2006

Approved

*Debra Johne*

Date

10/12/06

**COUNCIL DISTRICT:** 6

**SNI AREA:** Not Applicable

## SUPPLEMENTAL MEMO

**SUBJECT: PDC06-028. PLANNED DEVELOPMENT REZONING FROM R-1-8 SINGLE-FAMILY RESIDENCE ZONING DISTRICT TO A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO THREE SINGLE-FAMILY RESIDENCES, TWO CONSTRUCTED WITHOUT THE BENEFIT OF PERMITS, ON A 0.29 GROSS ACRE SITE LOCATED ON THE EAST SIDE OF BIRD AVENUE, APPROXIMATELY 200 FEET NORTH OF WILLOW STREET.**

## REASON FOR SUPPLEMENTAL

On September 19, 2006, staff received a revised proposed site plan (attached) for the proposed rezoning. During his opening statements during the Planning Commission hearing on September 13, 2006, the applicant's representative, Marv Bamberg, indicated the amount of private open space shown for each unit was shown incorrectly. Since the public hearing, the applicant has revised the site plan to propose that the upper unit within the historic Victorian would have access to 738 square feet of private open space located within a southern side yard, that the basement level unit would have access to 346 square-feet of private open space area, also in the southern side yard, and that the unit above the garage would have access to 627 square-feet of private open space area located within the eastern rear setback.

## RECOMMENDATION

Staff has prepared Draft Development Standards that require at least 400 square feet of private open space be provided for the single-family Victorian unit, and that at least 300 square feet of private open space be provided for the studio apartment located above the garage. As revised by the applicant, the amount of private open space proposed by the applicant in the attached plan would exceed the minimum standards of the Residential Design Guidelines and staff's

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recommended standards. Staff continues to recommend the rezoning be limited to only two units, not three as proposed by the applicant.

### **OUTCOME**

If the City Council were to approve 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 Planning Commission and the Director of Planning, only two residential units would be allowed on the 0.29 gross acre site, and the project would conform to the General Plan Land Use designation of Medium Density Residential (8 DU/AC).

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 three residential units would be allowed on the 0.29 gross acre site, with a project density greater than 8 DU/AC, and findings for conformance of the project with the General Plan would require use of the Two Acre Rule.

### **BACKGROUND**

On September 13, 2006, the Planning Commission held a public hearing to consider the proposed rezoning. Planning staff recommended the Planning Commission recommend to the City Council approval the subject Planned Development Rezoning, but to allow only up to two residential units on the site, in conformance with the General Plan Land Use designation of Medium Low Density Residential (8 DU/AC). The Planning Commission supported planning staff's recommendation, voting 4-1-2 (Commissioner Campos opposed, Commissioners Platten and Pham absent) to recommend approval of the PD Zoning for up to two units.

### **ANALYSIS**

Staff is supportive of the increase in the proposed amount of private open space area for each unit as illustrated in the attached revised site plan; however, staff does not believe that the increase in proposed private open space area makes the proposal eligible for the employment of the Two Acre Rule. As existing, the number of units exceeds the density level of the General Plan Land Use designation of Medium Low Density Residential (8DU/AC), the garage and studio apartment do not meet the requirements for an accessory building, and the site is excessively paved. As discussed in the staff report, the applicant is requesting this subject Planned Development Rezoning to legalize an existing situation. Staff does not believe that the proposed increase in the amount of private open space area for each unit is enough to justify an increase in the project density under the General Plan "Two Acre Rule", which requires the project be of exemplary design. Staff does not believe that this three-unit project, as proposed by the applicant, has a level of design expected of projects for which the finding of General Plan conformance requires the use of the "Two-Acre Rule", in that it is not an exceptional design, does not meet or exceed the recommendations of the Zoning Ordinance and staff finds that the increased density is not compatible with the surrounding single-family neighborhood.

Staff concludes that if the proposal were revised per staff's recommendation for two units on this site, the project would conform to the General Plan and the two units would be compatible with the surrounding neighborhood.

### 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 three residential units would be allowed on the 0.29 gross acre site.

If the City Council were to approve 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 Planning Commission and the Director of Planning, only two residential units would be allowed on the 0.29 gross acre site.

If the City Council chooses to deny the subject Planned Development Rezoning, the property would remain in the R-1-8 Single-Family Residence Zoning District and the applicant would be required to 1) restore the basement of the Victorian to an art studio/wet craft area, laundry room with full bathroom and storage area, 2) demolish the studio apartment above the garage and 3) and to reduce the size of the existing five-car garage by 24 square feet to conform to prior approved building permits.

### 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.

HONORABLE MAYOR AND CITY COUNCIL

October 4, 2006

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Since the application has been filed, staff has received many inquiries from the community regarding the historic structure. The community has expressed concern that the proposed rezoning would facilitate the demolition of this historic resource. On June 29, 2006 two people attended a community meeting held at the Church of God on Minnesota Avenue. An adjacent property owner expressed concern that adequate guest parking be provided on the site. Since the community meeting, staff has received numerous inquiries regarding the preservation of the historic structure and two letters of protest (see attached). The applicant has supplied 11 letters of support from the neighborhood. Since the Planning Commission hearing, staff has received one additional letter from a community member (attached).

### **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 consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report.

### **COST SUMMARY/IMPLICATIONS**

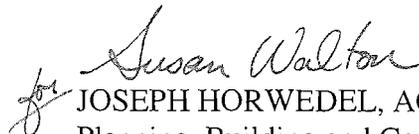
Not Applicable.

### **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.

  
for JOSEPH HORWEDEL, ACTING DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Susan Walton at 408-535-7800

Attachments

Revised site plan

Correspondence from Alison England

**Ross, Rebekah**

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**From:** alikat.2@juno.com  
**Sent:** Sunday, September 10, 2006 11:39 AM  
**To:** rebekah.ross@sanjoseca.gov  
**Subject:** PD status of 1070 Bird Ave.

I would like to show my support for the views expressed by Ken Eklund in his e-mail concerning the PD status of 1070 Bird Ave. Just as Ken Eklund points out I too see vast flaws in the Historic evaluation done by Bonnie Bamburg and share the concern that they home will be open to profound modifications or even demolition if this PD is approved. I don't wish to see this structure, modified as it may be lost to a neighborhood that is honing it's appreciation for not only it's homes but the the stories they tell about it's history.

I have no difficulty with allowing the garage structure to be used as a studio apartment leaving the main building as a single family home. There appears to be adequate space available in the garage structure for comfortable and dignified dwelling, so my sense is this arrangement would not create a blighted or overcrowded situation. I do stress, however that I would not like to see further modifications to the structure of the house or garage to accomplish a garage-studio/sfd scenario.

In my opinion there is too much to lose with no assurances to the contrary if the PD request is approved. This is for the public record.

Alison England

568 Fuller Ave.

San Jose, CA 95125

(408) 299-0312



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** October 03, 2006

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**COUNCIL DISTRICT:** 6  
**SNI AREA:** Not Applicable

**SUBJECT: PDC06-028. PLANNED DEVELOPMENT REZONING FROM R-1-8 SINGLE-FAMILY RESIDENCE ZONING DISTRICT TO A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO THREE SINGLE-FAMILY RESIDENCES, TWO CONSTRUCTED WITHOUT THE BENEFIT OF PERMITS, ON A 0.29 GROSS ACRE SITE LOCATED ON THE EAST SIDE OF BIRD AVENUE, APPROXIMATELY 200 FEET NORTH OF WILLOW STREET**

## RECOMMENDATION

The Planning Commission voted 4-1-2, Commissioner Campos opposed, Commissioners Platten and Pham absent, to recommend that the City Council consider and adopt an ordinance to allow up to two residential dwelling units on the site, as recommended by Planning staff, on a 0.29 gross acre site.

## OUTCOME

If the City Council were to approve 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 Planning Commission and the Director of Planning, only two residential units would be allowed on the 0.29 gross acre site, and the project would conform to the General Plan Land Use designation of Medium Density Residential (8 DU/AC).

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 three residential units would be allowed on the 0.29 gross acre site, with a project density greater than 8 dwelling units per acre, and findings for conformance of the project with the General Plan would require use of the Two Acre Rule.

## BACKGROUND

On September 13, 2006, the Planning Commission held a public hearing to consider the proposed rezoning. Planning staff recommended the Planning Commission recommend to the City Council approval of the subject Planned Development Rezoning to allow up to two residential units on the site in conformance with the General Plan.

A representative for the applicant, Marvin Bamburg, made a brief opening statement stating that he believed the project qualifies for the use of the Two Acre Rule for increased density because the project includes the preservation and restoration of an existing historic resource and because the three units in the past have not created problems in the neighborhood. He noted the surrounding area includes higher density development and multi-family residences to the south and southwest of the subject site.

Commissioner Dhillon asked for the representative's response to a letter sent by Ken Eklund (see attached) received by the Planning Commissioners the afternoon of the public hearing and to staff's recommendation to allow only two units on the site. Staff presented Mr. Bamburg with a copy of the letter from Mr. Eklund. Mr. Bamburg could not comment on the letter, but did state that based on his opinion of Mr. Eklund's first letter, Mr. Bamburg felt Mr. Eklund did not have a clear understanding of the zoning process.

Commissioner Kamkar asked the applicant if the proposed studio apartment located above the garage and the proposed basement-level one-bedroom apartment would be rental units or if the units would be sold individually. Mr. Bamburg clarified that the owner of the property would occupy the upper portion of the Victorian house and that the basement unit and the studio above the garage would be rented to tenants.

Commissioner Kalra requested that staff clarify which of the three units staff is proposed to remain. Staff clarified that the staff recommendation is that the Victorian home be restored to one single-family residence and that the studio apartment above the garage be retained as the second unit.

Commissioner Zito made a motion to approve the proposed Planned Development Rezoning to allow up to two dwelling units on the site per staff's recommendation. He commented that the project representative's statement only reflected the potential for the applicant to have additional revenue from a third unit and did not provide enough evidence to support the use of the Two Acre Rule for exemplary design.

Commissioner Kalra inquired if the basement unit would be part of the existing Victorian house. Staff noted that should a zoning for two units be approved during the Planned Development Permit stage, the applicant would work with staff to restore the integrity of the historic resource and would need to have the basement level incorporated into the upper portion of the house.

Commissioner Zito inquired if basements that are independent of the main/upper portion of the house are characteristic of Victorian homes. Staff acknowledged this may be the case and reiterated that staff will be working with the applicant and with the City's Historic Preservation Officer to restore the integrity of the historic resource during the Planned Development Permit stage.

Commissioner Campos indicated he would not support the motion. He stated that he believed a family could occupy the basement of the house even if it is not rented and for that reason could not support staff's recommendation.

The Planning Commission voted 4-1-2, Commissioner Campos opposed, Commissioners Platten and Pham absent, to recommend approval of the Planned Development Rezoning to allow up to two residential units on the site per staff's recommendation.

## ANALYSIS

Staff's analysis indicates a project with three units does not conform to the General Plan Land Use Designation of Medium Low Density Residential (8 DU/AC). Staff does not believe that this three-unit project, as proposed by the applicant, has a level of design expected of projects for which General Plan conformance requires use of the Two-Acre Rule for an increase in density in that it is not an exceptional design, does not meet or exceed the recommendations of the Residential Design Guidelines, and is not compatible with the surrounding single-family neighborhood.

Staff concludes that if the proposal were revised per staff's recommendation, two units on this site would conform to the General Plan land use designation without the use of the Two Acre Rule, and these two units would be compatible with the surrounding neighborhood. Additionally, this Planned Development Rezoning would facilitate the preservation and restoration of the existing historic resource.

## 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 three residential units would be allowed on the 0.29 gross acre site.

If the City Council were to approve 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 Planning Commission and the Director of Planning, only two residential units would be allowed on the 0.29 gross acre site.

If the City Council chooses to deny the subject Planned Development Rezoning, the property would remain in the R-1-8 Single-Family Residence Zoning District and the applicant would be required to 1) restore the basement of the Victorian to an art studio/wet craft area, laundry room with full bathroom and storage area, 2) to demolish the studio apartment above the garage and 3) to reduce the size of the existing five-car garage by 24 square feet to conform to prior approved building permits.

## PUBLIC OUTREACH/INTEREST

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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.

Since the application has been filed, staff has received many inquiries from the community regarding the historic structure. The community has expressed concern that the proposed rezoning would facilitate the demolition of this historic resource. On June 29, 2006 two people attended a community meeting held at the Church of God on Minnesota Avenue. An adjacent property owner expressed concern that adequate guest parking be provided on the site. Since the community meeting, staff has received numerous inquiries regarding the preservation of the historic structure and two letters of protest (see attached). The applicant has supplied 11 letters of support from the neighborhood. Since the Planning Commission hearing, staff has received one additional letter from a community member.

### **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.

  
for JOSEPH HORWEDEL, SECRETARY  
Planning Commission

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

cc: Norm Dreyer, 1070 Bird Avenue, San Jose, CA 95125

Marvin Bamburg/Pam Yoshida, MBA Architects, 1176 Lincoln Avenue, San Jose, CA 95125

Bonnie L. Bamburg, Urban Programmers, 10710 Ridgeview Avenue, San Jose, CA 95127

## Ross, Rebekah

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**From:** Ken Eklund [writerguy@writerguy.com]  
**Sent:** Wednesday, September 13, 2006 10:39 AM  
**To:** Rebekah Ross  
**Subject:** PDC06-028: Neighborhood support for Staff recommendations

Dear Rebekah:

Following you will find a letter to the Planning Commissioners regarding PC06-028 (1070 Bird Avenue). Please enter this letter into the permanent record for this project. I especially wish for it to come to the attention of Commissioners Zito and Pham; I could not send them the letter directly.

Thank you for the opportunity to comment on this project, which is an important one for our neighborhood.

Regards,

Ken Eklund  
North Willow Glen  
408-280-1441

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Dear Members of the Planning Commission:

I am writing to you regarding PDC06-028, affecting a historic house at 1070 Bird Avenue, which comes before the Planning Commission tonight. I am not able to attend the hearing in person.

I will be brief: as a principal of the neighborhood association in which the project resides (the North Willow Glen neighborhood), I urge the Commission to support the staff recommendations for this project. To me, the key issue is whether to allow the applicant to invoke the two-acre rule exemption and legalize three units on the residential property, or to uphold the General Plan for our neighborhood and allow two units.

From a neighborhood point of view, there are several problems with granting the exemption:

1) The discretionary rule is supposed to be invoked based on (a) compatibility with surrounding land uses and (b) to encourage exceptional design. Neither apply in this case. (a) Our neighborhood is single-family vintage homes with green yards, not three-unit complexes with basement units. (b) The proposed design cuts up the property into three sub-properties, each with its own sub-yard, and adds pavement to a property that is already way more paved than the neighborhood norm. In effect, the design takes erosions of the house itself that have occurred without permits over 110 years and seeks to extend their effect into the yard. This is further erosion of the home's vintage character, not exceptional design.

2) The application seeks to make legal ALL of the unpermitted degradations of the home. Considering that the W. Harris Prat Fleming House is one of the most historically significant in our neighborhood, this sets an alarming precedent. The neighborhood seeks to restore its vintage charm, not legalize erosions that have occurred. That is setting the bar way too low.

3) The neighborhood seeks compliance with the General Plan, or exceptions that steer homes toward restoration. Three units does not bring this historic home closer to restoration or compatibility with the neighborhood, and sets a bad precedent that other owners may follow.

I believe that Planning Staff have come up with a successful compromise. I and the neighborhood as a whole certainly appreciate the applicant's decision to work within the process and his stated goals of restoring the W. Harris Prat Fleming house. And we heartily support the protections for the historic home built into the staff recommendation. But we cannot support the application, which goes beyond the ostensible goal of restoring the home into making it a small rental residential complex.

A quick word about our neighborhood. In the course of the last ten years, it has transitioned from a neighborhood going down to a neighborhood on its way up up up. The key to its revival has been its vintage homes and the people who love them, buy them, and fix up both their homes and the neighborhood. Our turnaround has been quite remarkable and the Association and its members have won several awards from the City in the past few years.

I ask you and the Commission to support the work of our neighborhood, and approve Planning Staff's recommendation for 1070 Bird Avenue. Thank you.

Regards,

Ken Eklund  
Past President, North Willow Glen  
Board of Directors, North Willow Glen  
526 Fuller Avenue  
San Jose CA 95125  
408-280-1441

CITY OF SAN JOSE, CALIFORNIA  
 Planning, Building and Code Enforcement  
 200 East Santa Clara Street, San Jose, CA 95113-1905

Hearing Date/Agenda Number  
 PC: 9/13/2006 Item: 4h  
 CC: 10/24/2006 Item:

File Number: PDC06-028

# STAFF REPORT

Application Type  
 Planned Development Rezoning

Council District: 6      SNL: None

Planning Area: Willow Glen

Assessor's Parcel Number:  
 264-50-047

## PROJECT DESCRIPTION

Completed by: Rebekah Ross

Location: Northeast side of Bird Avenue, approximately 230 feet northeast of Willow Avenue

Gross Acreage: 0.29      Net Acreage: 0.29      Net Density: 10.34

Existing Zoning: R-1-8 Single Family Residence      Existing Uses: One single-family residence, one (1) one-bedroom apartment and one (1) studio apartment above a five car detached garage

Proposed Zoning: A(PD) Planned Development      Proposed Use: One single-family residence, one (1) one-bedroom apartment and one (1) studio apartment above a five car detached garage

## GENERAL PLAN

Existing Land Use/Transportation Diagram Designations  
 Medium Low Density Residential (8 DU/AC)

Project Conformance:  
 Yes    No  
 See Analysis and Recommendations

## SURROUNDING LAND USES AND ZONING

North:	Single family residence	R-1-8 Single Family Residence
East:	Single family residences	R-1-8 Single Family Residence
South:	Multi-family attached (Condominiums)	A(PD) A Planned Development
West:	Single family residences	R-1-8 Single Family Residence

## ENVIRONMENTAL STATUS

<input type="checkbox"/> Environmental Impact Report found complete	<input checked="" type="checkbox"/> Exempt
<input type="checkbox"/> Negative Declaration circulated on July 19, 2006	<input type="checkbox"/> Environmental Review Incomplete
<input type="checkbox"/> Negative Declaration adopted on August 7, 2006	

## FILE HISTORY

Annexation Title: Willow Glen      Date: 10/01/1936

## PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Recommend Approval      Date: September 7, 2006      Approved by: Susan Walton  
 Recommend Approval with Conditions       Action  
 Recommend Denial       Recommendation

### OWNER/ DEVELOPER

Norm Dreyer  
 1070 Bird Avenue  
 San Jose, CA 95125  
 (408) 712-7944

### ARCHITECT/CONTACT

Marvin Bamburg/Pam Yoshida  
 MBA Architects  
 1176 Lincoln Avenue  
 San Jose, CA 95125  
 (408) 297-0288

### HISTORIC CONSULTANT

Bonnie L. Bamburg  
 Urban Programmers  
 10710 Ridgeview Avenue  
 San Jose, CA 95127  
 (408) 254-0969

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: RR

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Public Works (see attached)

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Other Departments and Agencies

None

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**GENERAL CORRESPONDENCE**

Letter from Ken Eklund  
Letter from Dan Erceg  
Letter from Hubert Jansen  
Eleven letters of support supplied by the applicant

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Norm Dreyer, is requesting a rezoning from R-1-8 Single Family Residence to an A(PD) Planned Development Zoning District to allow up to three residential units on a 0.29 gross acre site. A Planned Development Rezoning is required because previous owners of the property, without the benefits of permits, converted the basement of the existing two-story Victorian to an 1,480 square foot one-bedroom apartment, constructed 24 additional square feet to a previously approved five-car detached garage, constructed an 1,480 square foot studio apartment above the five-car detached garage (two stories total) and altered and modified an existing historic resource without the benefits of permits. A Planned Development Rezoning is required because the site, as currently developed, does not conform to the R-1-8 Single Family Residence Zoning District Development standards, and the applicant is proposing to legalize the previous unpermitted development with development standards that are different than of any conventional residential zoning districts.

**Site Context and Conditions.**

The subject site is located on the northeast side of Bird Avenue, approximately 230 feet northeast of Willow Street. Surrounding land uses include single-family detached residences to the north, east, and across the street to the west with residential condominium units to the south. On-street public parking is allowed along the southwestern side of Bird Avenue, but not along the northeastern side of the street along the site frontage. The subject site is located within 230 feet of the intersection of Bird Avenue and Willow Street. This is a busy intersection, which handles traffic exiting from the southern commercial development.

The 0.29 gross acre site is comprised of one parcel currently developed with two buildings that house a total of three residential units. One of the buildings is a Queen Anne Cottage (Victorian) that is listed as a Contributing Structure on the Historic Resources Inventory. The basement level of this house has been converted to a one-bedroom apartment without permits. The second building is a five-car detached garage with an unpermitted second-level studio apartment. The applicant resides within the three-bedroom 'upper level' residence in the Victorian and has indicated that both the basement level apartment and the studio apartment above the garage are currently unoccupied.

A State Department of Parks and Recreation (DPR) Historic Report indicates the Queen Anne Victorian was constructed in 1889. Past building permits indicate the five-car detached garage was constructed in 1984. The

Victorian is located near the front of the lot, approximately 44 feet from the front property line, 19 feet from the southern side property line, 95 feet from the rear property line and 24 feet from the northern side property line. The five-car detached garage with a second level studio apartment is located behind the Victorian, approximately 116 feet from the front property line and has limited visibility from the street. A five-foot side setback separates the detached garage from the southern property line shared with the adjacent condominium project. Nineteen feet separate the east elevation of the garage from the rear southern property line. The front façade of the detached garage is 36 feet away from the northern side property line. The Victorian and the two-story detached garage have a 25-foot separation between the buildings.

As currently developed and built in 1889, the Victorian is considered to be legal non-conforming and is not required to meet the current development standards of the R-1-8 Single Residence Family Zoning District. The detached garage, as developed, does not conform to the development standards for an accessory building or to the development standards for a secondary unit in a residential zoning district under the City's pilot secondary unit program. Access to these buildings is from a shared driveway located off of Bird Avenue. Mature landscaping and trees exist throughout the site. No buildings are proposed for demolition, and no trees would be removed as a result of this proposal.

### **Historic Resource Evaluation**

The historic analysis of the subject site indicates the structure is not eligible for individual listing in the California Register of Historical Resources or the National Register of Historic Places. Because none of the structures on the site qualify as a City Landmark or for the California Register of Historical Resources, the proposed project would not result in a significant impact to cultural resources and would not result in a significant impact under the California Environmental Quality Act (CEQA). Alterations have been done to the house without the benefit of permits. As a result of these modifications, the architectural integrity of the structure has been compromised but the structure retains many of its original, character defining features. The structure's significance relates mainly to the association of significant historic events in the history of San Jose. In 1933, the house was occupied by John M. Holms, one of two people lynched in St. James Park that year for the kidnapping and murder of a prominent community member.

Due to the unique history of this former resident, the structure ranks high on the Historic Resources Inventory. Currently the structure is listed as a "Contributing Structure" on City's Historic Resources Inventory. Based on the analysis of the Historic Report submitted for this project, the City's Historic Preservation Officer has determined the structure qualifies as a "Structure of Merit" on the City's Historic Resources Inventory, despite the loss of integrity. The Historic Resources Inventory will be amended to reflect this higher-ranking merit status.

The proposed project has been referred to the Historic Landmarks Commission and is scheduled to be discussed as an informational item on October 4, 2006. Because this staff report was prepared prior to the Historic Landmarks Commission hearing, a subsequent memo summarizing the opinions of the Historic Landmarks Commission will be distributed only to the City Council.

### **Permit History**

Prior building permits indicate the five-car detached garage was constructed in 1984. Prior to 1992, property owners were not required to obtain planning permits for a detached garage. The 1984 building permits issued for the detached garage indicate approval of a 1,456 square foot garage (see attached). Considering that the floor level of the existing five-car garage is 1,480 square feet, it appears that the garage was constructed slightly larger than the approved amount of square footage. The 1,480 square foot studio apartment located above the garage was constructed without the benefits of permits during an unknown time.

In 1997, permits were issued to allow remodeling of 665 square feet of the basement level of the Victorian to include an 1) [art] studio/wet craft area, 2) laundry room, 3) full bathroom and 4) storage area (see attached). In late 2002, the Code Enforcement Division issued a Compliance Order citing the property owners to rectify the illegal conversion of the basement level of the Victorian and the addition of the loft area above the garage used as living space. Planning staff evaluated the site and determined that a Planned Development Rezoning was required to legalize the non-conforming two-story garage structure and to allow more than one living unit on the site. The current property owner acquired this property in late 2005, and per staff's recommendation, filed for this Planned Development Rezoning on April 26, 2006.

In addition to the above site alterations, modifications and repairs have been completed to the historic structure. Because building permits were not obtained for these alterations, it is difficult to trace when they occurred.

### **Project Description**

The applicant's proposed Planned Development Rezoning would retain the existing Victorian house and the two additional residential units constructed without permits for a total of three units. As indicated on the plan set, the existing building outlines would not be altered, and no changes are proposed to the facades of either building. The submitted floor plans indicate portions of the interior of the home would be restored to be consistent with the original structure.

The existing overhead trellis located between the Victorian and the second building is proposed to be removed. A small existing paved area located at the end of the driveway would be used as an open parking space. The applicant proposes to provide a second open parking space between an existing landscaped area along the western façade of the detached garage and the rear façade of the Victorian. With the addition of these two open parking spaces, seven on-site parking spaces are proposed. New gates and fencing materials would create separate private open space areas for the future tenants of the Victorian basement and studio garage apartment.

The applicant proposes to provide 88 square feet of private open space for the three-bedroom single-family residence located in the upper portions of the Victorian. This private open space would be provided on the existing front porch/deck of the house. The lower level one-bedroom basement unit would be provided 253 square feet of private open space area in the form of a landscaped area located in the existing southern side yard. The studio apartment would be provided 627 square feet of fenced off private open space area within the existing rear yard of the subject site.

### **COMMUNITY OUTREACH**

Since the application has been filed, staff has received many inquires from the community regarding the historic structure. The community has expressed concerned that the proposed rezoning would facilitate the demolition of this historic resource. On June 29, 2006 two people attended a community meeting held at the Church of God on Minnesota Avenue. An adjacent property owner expressed concern that adequate guest parking be provided on the site. Since the community meeting, staff has receive numerous inquiries regarding the preservation of the historic structure and two letters of protest (see attached). The applicant has supplied 11 letters of support from the neighborhood.

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.

## **ENVIRONMENTAL REVIEW**

The historic analysis of the subject site indicates the structure is not eligible for individual listing in the California Register of Historical Resources or the National Register of Historic Places. For the purposes of the California Environmental Quality Act, the City considers historic resources eligible for or designated as City Landmarks, as well as those resources eligible for or listed in the California Register of Historical Resources, as the threshold of significance. Because none of the structures on the site qualify as a City Landmark or for the California Register of Historical Resources, the proposed project would not result in a significant impact to cultural resources and would not result in a significant impact under the California Environmental Quality Act (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.

## **GENERAL PLAN CONFORMANCE**

The proposed density of the project, including three units, of 10.34 DU/AC, does not conform to the site's General Plan Land Use/Transportation Diagram of Medium Low Density Residential (8 DU/AC). Approval of the applicant's proposal would require the use of a Discretionary Alternate Use policy to find conformance with the General Plan. As discussed in greater detail in the Analysis section below, staff does not believe that the project qualifies for use of a discretionary policy as the project does not meet and exceed the Residential Design Guidelines or provide an exceptional design. A two-unit project would result in a density of 7 dwelling units per acre, in conformance with the General Plan.

## **ANALYSIS**

The primary issue associated with the proposal to allow three units on the subject site is conformance with the General Plan. The applicant has indicated that the project qualifies for use of the General Plan discretionary alternate land use policy, "Two Acre Rule," under which parcels may be developed at a higher or lower density range than specified by the General Plan. The policy states that the appropriate density for a given site should be determined based on compatibility with surrounding land uses and that projects developed under this policy should be of exceptional design. The Policy further states that to use this policy, projects should exceed the minimum standards of the Zoning Ordinance and adopted design guidelines. Below, staff has further analyzed the project's General Plan conformance with regard to compatibility, exceptional design, and conformance with City policies and ordinances.

### **Neighborhood Compatibility**

To maintain the character of existing neighborhoods, the General Plan discourages a density level greater than eight dwelling units per acre in areas designated Medium Low Density Residential (8 DU/AC). Single-family detached residences abut the site on the northern and eastern boundaries. The vast majority of the homes in the surrounding neighborhood are single-family detached residences. The subject site is not in an area that has undergone recent changes in development patterns or density levels. Aside from the southern adjacent condominium project, which was approved in 1979, the lots located within the surrounding area have only one residence per lot.

The existing Victorian house presents a single-family character to the street in a manner that staff believes is highly compatible with the surrounding area, albeit the house has been altered in ways that have diminished the

historic character. The detached garage building is larger and taller than allowed by the Zoning Ordinance for single-family residences in the R-1-8 Residential Zoning district. However, to the limited visibility of the detached structure tucked behind the Victorian staff believes that it is compatible with the surrounding area. Staff believes that the large paved area behind the existing house, while facilitating access to the existing five-car garage, is out of character with the neighborhood. In an effort to provide adequate parking for the three units, the applicant is proposing to increase this large paved area to provide two additional uncovered spaces in addition to the five garage spaces. Staff believes that the project site design would be more appropriate and compatible with the single-family character of the area if only two units were approved, instead of three. This recommendation is reflected in the Draft Development Standards prepared by staff with a parking requirement of five spaces to serve the recommended two units. Given that guest parking is a community concern, staff supports the provision of a parking space between the garage and the house, since this paved area would have minimal visibility from adjoining sites and the street.

### **Exceptional Design**

Staff has reviewed the project for any elements of exceptional design. Staff has analyzed the project under the most relevant sections of the Residential Design Guidelines to determine conformance, including parking, landscaped areas, common and private open space, and building design. The plan set reflects the three-unit project as proposed by the applicant. The Draft Development Standards reflect a two-unit project as proposed by staff. Because staff is not supportive of the applicant's proposal to retain three units on the site, the Draft Development Standards and the discussion below are crafted to reflect the staff's recommendation to retain only two units on the site: the historic Victorian single-family residence and the studio apartment located above the detached garage.

The Residential Design Guidelines recommend that single-family detached residences be provided with at least 400 square feet of private open space, and duplex residences should provide 300 square feet of private open space per unit. Private open space is to be directly accessible from the unit it serves. The proposal does not conform with the Guidelines in that it proposes inadequate private open space for the units housed within the Victorian structure (88 and 253 square feet of private open space). The studio apartment would be provided 627 square feet of private open space area within the existing rear yard of the subject site. In contrast to the applicant's proposed private open space areas (as discussed under 'Project Description'), staff is recommending that at least 400 square feet of private open space be provided over the garage for the Victorian house historic resource and that at 300 feet of private open space area be provided for the studio apartment. Because this is a project of less than 20 units, common open space is not required.

### **Conformance with the Zoning Ordinance and Adopted Design Guidelines**

While the project as proposed by the applicant lacks adequate open space and includes excessive paving, the existing development generally meets the recommended perimeter setbacks of the Residential Design Guidelines. The existing detached garage/studio unit is taller than allowed by the Zoning Ordinance in the R-1-8 Residence Zoning district as discussed above, staff is supportive of retaining the garage as is, with the second story apartment, due to its placement behind the existing structure with adequate setbacks from adjacent sites.

The existing three-unit development violates the Zoning Ordinance in terms of the number of units, and the height, location, and size of the living area. As discussed at length in the background section, the applicant is requesting the subject Planned Development Rezoning to legalize an existing situation. Staff does not believe that the "Two Acre Rule" is intended to facilitate the legalization of an existing development that exceeds the density specified by the General Plan and which neither meets nor exceeds all of the City's design guidelines.

## **Historic Preservation**

City guidelines, policies, and ordinances are generally designed to protect and preserve historic resources. In the case of this project, the existing historic resource (house) has been modified without permits but still retains enough character and has a significant association with the history of San Jose that it qualifies as a Structure of Merit. A two-unit project, as recommended by staff, would require restoration of the house to one residence and would allow staff to work with the applicant during the Planned Development permit stage to evaluate what measures could be undertaken to restore the architectural integrity of the historic residence. The Draft Development Standards reflect the existing height of each structure and would not allow for a height increase on either building.

To encourage preservation of the historic structure, language has been included in the Draft Development Standards requiring all future major modifications, alterations and repairs proposed for the Victorian house to meet the Secretary of the Interior Standards for rehabilitation and be processed with a Planned Development Permit Amendment. Should someone wish to demolish the historic structure in the future, it would be necessary to rezone the site. The proposed Draft Development Standards have been written to match the existing building outlines and setbacks and represent the present configuration of the site.

## **Conclusion**

As stated above, a project with three units does not conform to the General Plan Land Use Designation of Medium Low Density Residential (8 DU/AC). Staff does not believe that this three-unit project, as proposed by the applicant, has a level of design expected of projects for which General Plan conformance requires use of the Two-Acre Rule in that it is not an exceptional design, does not meet or exceed the recommendations of the Residential Design Guidelines, and is not compatible with the surrounding single-family neighborhood.

Staff concludes that if the proposal were revised per staff's recommendation, two units on this site would conform to the General Plan and these two units would be compatible with the surrounding neighborhood. Additionally, this Planned Development Rezoning would facilitate the preservation and restoration of the existing historic resource.

## **RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend that the City Council approve the subject Planned Development Rezoning to allow up to two residential units on the site for the following reasons:

1. The proposed project would be consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC).
2. The proposed rezoning would allow development that is compatible with the surrounding land uses, and the existing single-family residence on-site, and facilitate preservation of the existing historic resource.

### Attachments:

Historic Report  
Correspondence from the public  
Location Map  
Draft Development Standards  
Department of Public Works Final Memo  
Exemption  
Plans

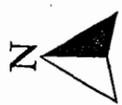


File No: PDC06-028

District: 6

Quad No: 99

Scale: 1"= 200'  
Noticing Radius: 500 feet



Map Created On:  
04/27/2006

The following development standards shall be placed on the Land Use Plan of the General Development Plan set after the rezoning has been approved by the City Council. All other development standards shall be removed from the plan set.

**PDC06-028**  
**Development Standards**

**PLANNED DEVELOPMENT PERMIT REQUIRED:**

- A Planned Development Permit is required in accordance with Section 20.100.910 of Title 20, as amended.
- All major modifications to the Historic Residence require approval of a Planned Development Permit Amendment. All minor modifications and repairs to the historic residence require approval of a Historic Preservation Permit Adjustment.
- All modifications proposed to the Historic Structure shall meet or exceed the Secretary of the Interior Standards for Rehabilitation as outline in “Your Old House: Guide for Preserving San Jose Homes” as amended and as by Title 13, as amended, of the San Jose Municipal Code.
- All major modifications to the studio apartment attached above a five-car detached 116’ garage require approval of a Planned Development Permit Amendment. All minor modifications and repairs to the studio apartment attached above a five-car detached garage require approval of a Planned Development Permit Adjustment.

**PERMITTED USES:**

- Permitted uses of the R-1-8 Single-Family Residence District, as amended, unless otherwise specified in these development standards. Uses identified as “conditional uses” may be considered for approval through the Planned Development Permit or Amendment process.

**MAXIMUM NUMBER OF UNITS:**

- Up to two (2) detached residential units as indicated below:
  - **Unit One:** Historic Residence: Up to one detached residential unit in the Historic Residence
  - **Unit Two:** Studio Apartment Above the Detached Five-Car Garage: Up to one studio apartment above the five car garage

**MINIMUM LOT SIZE:**

- 12,903 square feet

**BUILDING HEIGHT:**

- **Unit One: Historic Residence**
  - The existing height of thirty-one feet (31’) shall not be altered without a Planned Development Permit Amendment.
  - The maximum height limit for the historic resource is thirty-five feet (35’).
- **Unit Two: Studio Apartment Above Five-Car Detached Garage**
  - The maximum building height shall not exceed twenty-five feet (25’)

**PERIMETER SETBACKS:**

**UNIT ONE: HISTORIC RESIDENCE:**

- **Front Setback** - measured from westerly property line parallel to Bird Avenue: Forty Feet (40')
- **Side Setback** – measured from the northerly property line: Twenty-four Feet (24')
- **Rear Setback** – measured from the easterly property line: Ninety-Five Feet (95')
- **Side Setback** – measured from the southerly property line: Nineteen Feet (19')

**Projections Into Setback Areas:**

- The front deck and stairs may extend into the front setback area for a distance no greater than fourteen feet (14'). The front bay windows and the front porch may extend into the front setback area for a distance no greater than three feet (3').
- The rear deck may extend into the rear setback area for a distance no greater than nine feet (9'). Rear bay windows may extend into the rear setback area for a distance no greater than three feet (3')
- Except as otherwise expressly and specifically provided, every part of every setback area shall be kept open, unobstructed, and unoccupied on the surface of the ground above the surface of the ground and below the surface of the ground by all buildings or structures.
- All architectural and building features must meet Building and Fire Code Requirements.

**UNIT TWO: STUDIO APARTMENT ATTACHED ABOVE A FIVE CAR DETACHED GARAGE:**

- **Front Setback** - measured from westerly property line parallel to Bird Avenue: One hundred and sixteen feet (116')
- **Side Setback** – measured from the northerly property line: Thirty-six feet (36')
- **Rear Setback** – measured from the easterly property line: Nineteen feet (19')
- **Side Setback** – measured from the southerly property line: Five feet (5')
- **Projections Into Setback Areas:**
- **From the Ground Level** – Access stair to the studio apartment located above the five car detached garage may extend into the front setback area for a distance no greater than fifteen feet (15'). A five-foot by ten-foot (5' x 10') entry deck is permitted at the top of the access stairs to the studio apartment.

**ACCESSORY STRUCTURES AND BUILDINGS:**

- No additional Accessory Structures or Buildings, as outlined by Zoning Ordinance Section 20.30.500 as amended, shall be permitted on the subject site.

**FENCING:**

- All fencing on the subject site shall meet the requirements of Zoning Ordinance Section 20.30.600, as amended.

**PRIVATE DRIVEWAY:**

- Maximum one hundred and eighty-eight feet (188')
- Maximum fourteen-foot width (14')
- A minimum five-foot (5') wide landscaping strip is required along the northerly edge of the driveway and the southern boundaries of the site.

**PARKING:**

- **Single Family Residence: Unit 1:** Two (2) garage parking spaces
- **Studio Apartment: Unit 2:** Two (2) garage parking spaces
- **Guest Parking:** One (1) on-site guest parking space shall be provided.
- Up to one open parking space is allowed between unit one and unit two. This parking space shall abut the westerly elevation of the existing five-car garage.
- Each parking space shall provide a maximum of twenty-four feet (24') of backout area.
- All areas not covered by buildings, driveways and parking spaces shall be landscaped.
- At least one large canopy shade tree shall be planted in landscaped area located in front of the open parking spaces.

**PRIVATE OPEN SPACE:****UNIT ONE: HISTORIC RESIDENCE**

- A minimum of 400 square feet of private open space with a minimum dimension of fifteen feet (15') shall be provided.

**UNIT TWO: STUDIO APARTMENT ATTACHED ABOVE A FIVE CAR DETACHED GARAGE**

- A minimum of 300 square feet of private open space with a minimum dimension of fifteen feet (15') shall be provided.

**GATES**

- Gates that limit/restrict vehicular access to the site are not permitted.

**DEMOLITION**

- The existing historic structure shall not be demolished without the approval of a new Planned Development Zoning District by the City Council. Prior to any public hearing before the Planning Commission and the City Council, any proposal that includes demolition of the historic resource shall require approval from the Historic Landmarks Commission. The existing historic structure, the Historic Residence, shall not be demolished without the approval of a new Planned Development Zoning District by the City Council.

**COMMON IMPROVEMENTS:**

- All structures on the site, driveways, parking spaces, common landscaped areas, private open space areas, paseos, easement areas, perimeter fencing and stormwater control measures shall be maintained by the owner of Unit 1.

**WATER POLLUTION CONTROL PLANT NOTICE:**

- Pursuant to part 2.75 of chapter 15.12 of the San Jose Municipal Code, no vested right to a building permit shall accrue as the result of the granting of any land development approvals and applications when and if the City Manager makes a determination that the cumulative sewage treatment demand on the San Jose – Santa Clara water plant will cause the total sewage treatment demand to meet or exceed the capacity of the San Jose – Santa Clara water pollution control plant to treat such sewage adequately and within the discharge standards imposed on the city by the state of California regional water control board for the San Francisco Bay region. The approving authority may impose substantive conditions designed to decrease sanitary sewage associated with any land use approval.

**PUBLIC OFF-SITE IMPROVEMENTS:**

- All public off-site improvements shall be implemented to the satisfaction of the Director of Public Works. Prior to the issuance of building permit(s), the applicant shall be required to obtain a Public Works clearance. Said clearance will require the execution of a Construction Agreement that guarantees the completion of the public improvements.

**STORMWATER RUNOFF POLLUTION CONTROL MEASURES:**

- This project must comply with the City’s Post-Construction Urban Runoff Management Policy (Policy 6-29), which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures shall meet the numeric sizing design criteria specified in City Policy 6-29.

**WATER QUALITY:**

- Prior to commencement of construction activities, including, but not limited to grading, the project developer shall file for and obtain a National Pollutant Discharge Elimination System (NPDES) Permit from the State Water Resource Control Board.

**STREET TREES:**

- The Public right-of-way shall be planted with street trees as directed by the City Arborist.

**PARK IMPACT FEES & PARKLAND DEDICATION ORDINANCE:**

- The applicant shall comply with the requirements of the Park Impact Ordinances, pursuant to Ordinance 24172 (Chapter 14.25 of Title 14 of the San Jose, Municipal Code) and the project shall comply with the Parkland Dedication Ordinance.

**TREE REMOVALS**

- **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Planned Development Permit Amendment issued by the Director of Planning.
- Any future trees that are to be removed shall be replaced at the following ratios:

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	

18 inches or greater	5:1	4:1	3:1	24-inch box
12 - 18 inches	3:1	2:1	none	24-inch box
less than 12 inches	1:1	1:1	none	15-gallon container

# Memorandum

**TO:** Rebekah Ross  
Planning and Building

**FROM:** Michael Liw  
Public Works

**SUBJECT: FINAL RESPONSE TO  
DEVELOPMENT APPLICATION**

**DATE:** 08/21/06

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**PLANNING NO.:** PDC06-028  
**DESCRIPTION:** Planned Development Rezoning from R-1-8 Residential Zoning District to the A(PD) Planned Development District to allow three single-family residences (one detached and two attached) constructed without benefit of permits on a 0.30 gross acre site  
**LOCATION:** East side of Bird Avenue approximately 200 feet north of Willow Street  
**P.W. NUMBER:** 3-05238

Public Works received the subject project on 08/21/06 and submits the following comments and requirements.

## **Project Conditions:**

**Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

1. **Sewage and Park Fees:** Sewage fees in the amount of \$1,002.50 and park fees in the amount of \$27,050 are due. Prior to the project being cleared for the hearing and approval process, a sum of **\$28,052.50** shall be paid to the Development Services Cashier using the attached invoice(s).
2. **Transportation:** This project is exempt from the Level of Service (LOS) Policy, and no further LOS analysis is required because the project proposes 1 unit of Single Family detached and 2 units of Single Family attached.
3. **Geology:** The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.

4. **Flood: Zone AO, Depth 1'**

The project is proposing to legalize 1) an existing basement conversion to a residential unit (Unit B) under an existing 2-story residential unit (Unit A); and 2) an existing second unit (Unit C) above the garage.

- a) Project must comply with the City's Substantial Improvement Policy for improvements to existing structures in a Special Flood Hazard Area.
- b) For Units A & B: The existing structure is listed in the City's Historic Resources Inventory as a "contributing site/structure" or "historic structure". Any alteration to this structure will not be considered a "substantial improvement" provided that the alteration will not preclude the structure's continued designation as a "historic structure" per City Ordinance #27630.
- c) For Unit C: If the cost of the improvements to this structure exceed 50% of the market value of the existing structure, it will be considered a substantial improvement and the existing structure and addition must fully comply with the following City Floodplain Management requirements at Building Permit stage:
  - i) Provide vent openings for the at-grade garage enclosure which is below the base flood elevation. The design must either be certified by a registered professional engineer or meet the following requirements: Provide vent openings on at least two exterior walls of each enclosure to automatically equalize the lateral pressure of the floodwaters. The bottom of each opening shall be no higher than twelve inches above the exterior adjacent grade. Provide a minimum of two vent openings having a total net area of not less than one square inch per one square foot of enclosed area.
  - ii) An Elevation Certificate (FEMA Form 81-31) based on construction drawings is required prior to issuance of a building permit. Consequently, another Elevation Certificate is required prior to issuance of an occupancy permit.
  - iii) Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.

5. **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.

6. **Parks:** In accordance with the Parkland Dedication and Park Impact Ordinances (SJMC 19.38/14.25), the park impact fee is due for the additional living units that are built.

7. **Street Improvements:** Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.

8. **Street Trees:**

- a) Installation of street trees along project frontage is required.
- b) Contact the City Arborist at (408) 277-2756 for the designated street tree.

- c) Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in park strip. Obtain a DOT street tree planting permit for any proposed street tree plantings.

Please contact the Project Engineer, Mirabel Aguilar, at (408) 535-6822 if you have any questions.



Michael Liw

Senior Civil Engineer

Transportation and Development Services Division

ML:MA:jl

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**CITY OF SAN JOSÉ, CALIFORNIA  
DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT  
STATEMENT OF EXEMPTION**

**FILE NO.** PDC06-028

**LOCATION OF PROPERTY** East side of Bird Avenue, approximately 200 feet north of Willow Street (1070 Bird Avenue)

**PROJECT DESCRIPTION** Planned Development Rezoning from R-1-8 Residential Zoning District to the A(PD) Planned Development District to allow three single-family residences (one detached and two attached) constructed without benefit of permits on a 0.30 gross acre site

**ASSESSOR'S PARCEL NUMBER** 264-50-047

**CERTIFICATION**

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.

**Section 15303.**

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:

**15303(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.

Joseph Horwedel, Acting Director  
Planning, Building and Code Enforcement



Deputy

Date May 26, 2006

Project Manager: Rebekah Ross

(Rev. 10/23/02)

1070 Bird Avenue

DUPLICATE CARD (orig lost)

Tract No. \_\_\_\_\_ Lot No. \_\_\_\_\_ Permit No. 41483  
CITY OF SAN JOSE BUILDING DEPARTMENT  
APPLICATION FOR BUILDING PERMIT P.C. No. \_\_\_\_\_  
Application Date \_\_\_\_\_, 19\_\_\_\_ Permit Date 1-17, 19 84

Application is hereby made for a permit to garage to rear  
a 1 story, Type B1 Building Use Zone R-1  
at 1070 Bird Avenue Occupancy M  
to be occupied only as Garage Sq. feet 1456

in accordance with Plans, Specifications and Plot-plan filed herewith. Fire Sprinkler \_\_\_\_\_  
Estimated Value of Improvements, \$ 17,472 Emer. Elect. \_\_\_\_\_  
 I certify that in the performance of the work for which this permit is issued I shall not employ any person

DUPLICATE

Owner Pat DeRosa Address 1070 Bird Avenue  
By \_\_\_\_\_ Address \_\_\_\_\_

This permit shall expire and become null and void if the work authorized by it is not commenced within 120 days from the date issued or if the work is suspended or abandoned for a period of 120 days after commencement.

FINAL INSPECTION S. Troyer 10/16/89 by  
Rub

280-601 N  
REV. 1/4/84

Building Permits  
from 1984  
for the construction  
of a 1456 square  
foot garage.

E-83

1070 BIRD AVE.

Tract No. \_\_\_\_\_ Lot No. \_\_\_\_\_

CITY OF SAN JOSE

BUILDING DEPARTMENT

9-19-83 P.C. Date

APPLICATION FOR BUILDING PERMIT

Date 1-17, 19 84

Permit No. 41483

Application is hereby made for a permit to Add GARAGE TO REAR

a 1 story, Type B1 Building ACC.

Use Zone R-1

at 1070 BIRD Ave

Occupancy M

to be occupied only as GARAGE (1 room)

Sq. feet 1456

in accordance with Plans, Specifications and Plot-plan filed herewith. Parking Space 1456/3

Estimated Value of Improvements, \$ 19472 19472

Fire Sprinkler \_\_\_\_\_

Emer. Elect. \_\_\_\_\_

I certify that in the performance of the work for which this permit is issued I shall not employ any person

Owner Pat DeLore

Address 1070 Bird Ave

By \_\_\_\_\_

Address \_\_\_\_\_

This permit shall expire and become null and void if the work authorized by it is not commenced within 120 days from the date issued or if the work is suspended or abandoned for a period of 120 days after commencement.

FINAL INSPECTION \_\_\_\_\_

280-601N  
Rev. 8/78

26089 S

1070 Bird

De Rosa



CITY OF SAN JOSÉ, CALIFORNIA

801 NORTH FIRST STREET, Room 308
SAN JOSE, CALIFORNIA 95110
PHONE (408) 277-5161
FAX (408) 277-3879

DEPARTMENT OF PUBLIC WORKS
RALPH A. DUALLS, JR., DIRECTOR

DEVELOPMENT CLEARANCE

Project Location: 1070 Bird Ave.

Project Description: Basement remodel (665 SE)

Project Type:

[X] Single Family Home Improvement/Addition
TRACT \_\_\_\_\_ LOT \_\_\_\_\_

[ ] Tenant Improvement/Interior Alteration

Tenant's Name: \_\_\_\_\_

Plan Check No. \_\_\_\_\_

[ ] Development Permit

TRACT No.: \_\_\_\_\_

Planning No. \_\_\_\_\_

Plan Check No. \_\_\_\_\_

Building Permits
to remodel
basement to an
art studio in
1997.

9761107

Public Works Number: 3-5238

Assessor's Parcel Number: 264-50-47

AF Number: AF-5238

This is to certify that the above project has satisfied all Department of Public Works requirements and applicable fees. This Clearance does not cover Geologic Hazard Clearance or Flood Plain requirements. If the project is located within a Geologic Hazard Zone or a Flood Plain, a separate clearance will be required.

Signed: Crater Flores

Date: 6/19/97



City of San Jose

Building Division

OFFICE OF CHIEF BUILDING OFFICIAL
DEPARTMENT OF CITY PLANNING AND BUILDING
801 NORTH FIRST STREET, ROOM 200
SAN JOSE, CA 95110
(408) 277-4541 FAX (408) 277-2920

Application for Permits

WHEN THE PERMIT ON THE BACK SIDE IS PROPERLY FILLED OUT AND SIGNED THIS WILL BE YOUR APPLICATION FOR A PERMIT

APPLICANT MUST ACKNOWLEDGE READING BY SIGNING BELOW.

THIS PERMIT WILL EXPIRE IF WORK IS NOT STARTED IN 180 DAYS FROM THE DATE OF ISSUANCE AND IF SUBSTANTIAL PROGRESS HAS NOT BEEN MADE AND VERIFIED BY AN INSPECTION EVERY 180 DAYS. DO NOT CONCEAL OR COVER ANY CONSTRUCTION UNTIL THE WORK IS INSPECTED AND WRITTEN APPROVAL HAS BEEN DOCUMENTED ON THE APPLICANT'S COPY OF THIS PERMIT.

DATE: 6/13/97 SIG: Mark S. Tierman
PRINT: MARK S. TIERMAN

FOR OFFICE USE ONLY BELOW

SITUS INFORMATION: BARCLAY MAP COORDINATES PG 43 VT 38 HZ 65
ADDRESS IS IN CITY ( ) YES ( ) NO USE ZONE R-1
ANNEXATION No. 4 APN No.
INSPECTION AREA 4 TRACT No. LOT No.
( ) ENTERPRISE ZONE ( ) FLOOD ZONE ( ) GEO-HAZARD ( ) HISTORICAL
( ) EASEMENT: FRONT BACK: NA SIDES INITIALS: JG

BUILDING PERMIT CONFIRMED ( ) # ( ) NOT REQ'D
SPECIAL CONDITIONS:

REMODEL EXISTING BASEMENT
APPROX 665 SQ. FT. (STUDIO/CRAFT AREA, LAUNDRY, BATHROOM)

PERMIT FEE CALCULATION VALUATION \$ 22,500.00

( ) NEW (X) SFR STORIES 2
( ) FINISH INTERIOR ( ) DUPLEX OCC. GROUP R3
( ) ADDITION ( ) TOWNHOMES CONST. TYPE JEN
(X) ALTERATION ( ) CONDOMINIUM ( ) AFES
( ) REPAIR ( ) APARTMENT ( ) EMERGENCY ELECTRIC
( ) MOVE ( ) COMMERCIAL ( ) SPECIAL INSPECTION.
( ) DEMOLISH ( ) INDUSTRIAL ( ) FULL HC ( ) EQ HC
( ) INST/EDUC ( ) HARSHIP

PLANNING FILE #
APPLICABLE CODES: UBC, UPC, UMC 1994 NEC 1993
ENERGY DIS ACCESS

PERMITS FOR: (X) BLDG (X) PLUMB (X) MECH ( ) ELECT
AUTHORIZED BY: [Signature]

ISSUED BY: PRINT: KEN TRAN sig: Ken Tran

APPLICATION DATE: PC No.
PERMIT DATE: 7/10/97 PERMIT No. R19976110
FINALED DATE: 2/9/98 BY: [Signature]

APPLICANT MUST COMPLETE ALL APPLICABLE ITEMS BELOW

PROJECT ADDRESS: 1070 BIRD AVE 95125
BLDG # APT/SUITE # ZIP CODE
OWNER: LINDA GILAI / JEFF WILLIAMS PERMITEE: DAVIS & TIERMAN
DESCRIBE SCOPE OF WORK: REMODEL OF EXISTING PERMITTED WORK: ORIGINAL PERMIT # 212180 - # 21305
USE OF BUILDING: RESIDENCE / TENANT
TOTAL VALUATION (INCLUDING LABOR, MATERIALS, ETC.): 22,500.00
LIST SQ FT OF FLOOR AREAS: OCCUPIED GARAGE OTHER #BDRMS #UNITS SPACES

Table with columns: NUMBER, PLUMBING PERMIT ITEMIZATION, NUMBER. Includes items like FIXTURES, WATER CLOSETS, WATER HEATERS, etc.

Table with columns: NUMBER, MECHANICAL PERMIT ITEMIZATION, NUMBER. Includes items like BOILER, FURNACE/HEATER, AC COOLING SYS., etc.

Table with columns: NUMBER, ELECTRICAL PERMIT ITEMIZATION, NUMBER. Includes items like SWITCHES, RECEPTACLES-120V, INCAND FIXTURES, etc.

ADDRESS: 1070 BIRD AVE
PERMIT NO: R199761107-4

Revised 9/6/96

OFFICE COPY

**BASEMENT REMODEL - GILA / WILLIAMS RESIDENCE**

**OWNER:** LINDA GILA  
JEFF WILLIAMS  
1070 BIRD AVENUE  
SAN JOSE, CA 95125

**CONTRACTOR:** DAVIS & TIERNAN  
CONSTRUCTION  
12378 SARATOGA-  
SUNNYVALE RD, #14  
SARATOGA, CA  
95070

**DESIGNER:** PATRICK J. TOUCHET  
ARCHITECT  
975 30TH AVENUE  
SANTA CRUZ, CA 95062

**DRAWING INDEX**

1. SITE PLAN
2. FLOOR PLAN
3. CEILING PLAN / FINISHES
4. SCHEDULES
5. DETAILS

CITY OF SAN JOSE  
BUILDING DEPT.

DATE 7/3/97

DATE 7/3/97 LBC EDITION 1994

ZONING R-1 P.D. OR H.# 4

CONSTRUCTION TYPES VN AREA 4

OCCUPANCY GROUPS R3

ENERGY PACKAGE M HEAT SOURCE NO

COMPACTION REPORT REQUIRED YES

SPECIAL INSPECTION REQUIRED YES

HISTORICAL Y FLOOD ZONE NO

GEOLOGICAL HAZARD AREA Y

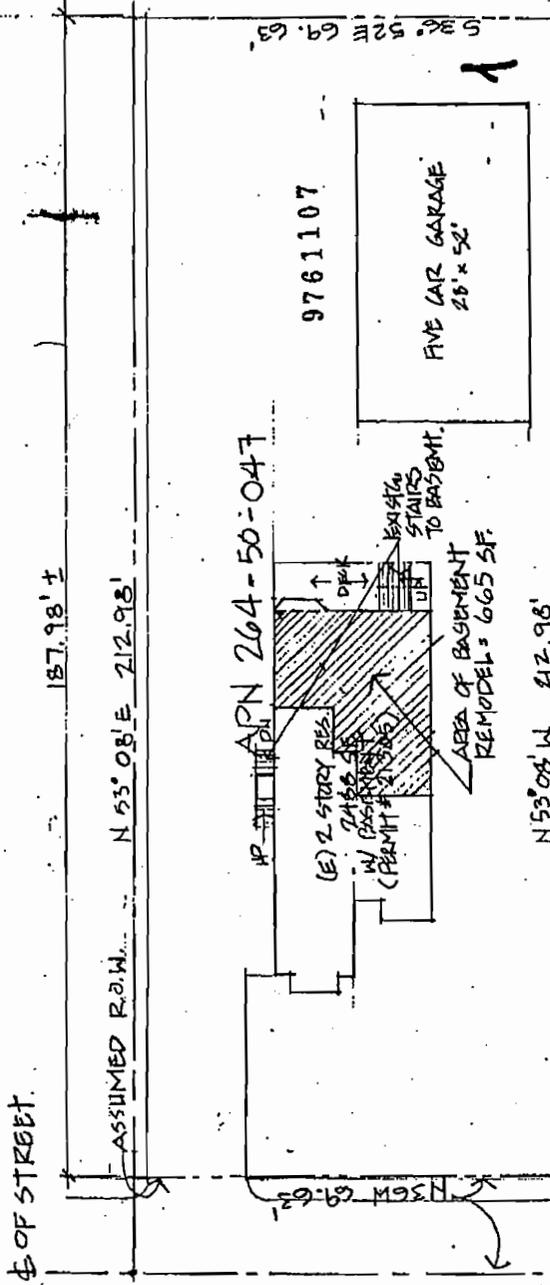
PLAN CHECKER S. STENDER ENGINEER NO

**EXEMPT PER D. TANNER**

**EXEMPT PER D. TANNER**

**EXEMPT PER D. TANNER**

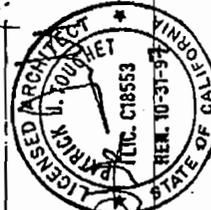
\$ OF STREET.



**SITE PLAN**

1" = 20'-0"

**- OFFICE COPY -**



*(Large handwritten signature/initials)*

DAVIS & TIERNAN  
CONSTRUCTION  
12378 SARATOGA-  
SUNNYVALE RD, #14  
SARATOGA, CA 95070

PATRICK J. TOUCHET  
ARCHITECT  
975 30TH AVENUE  
SANTA CRUZ, CA 95062

DATE 7/3/97

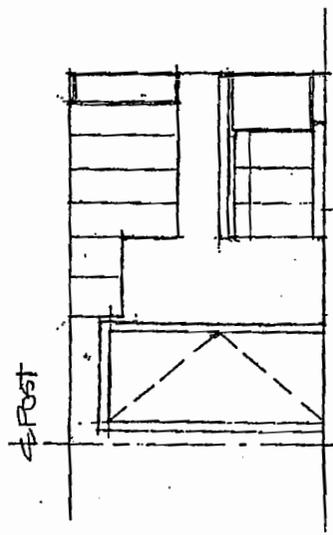
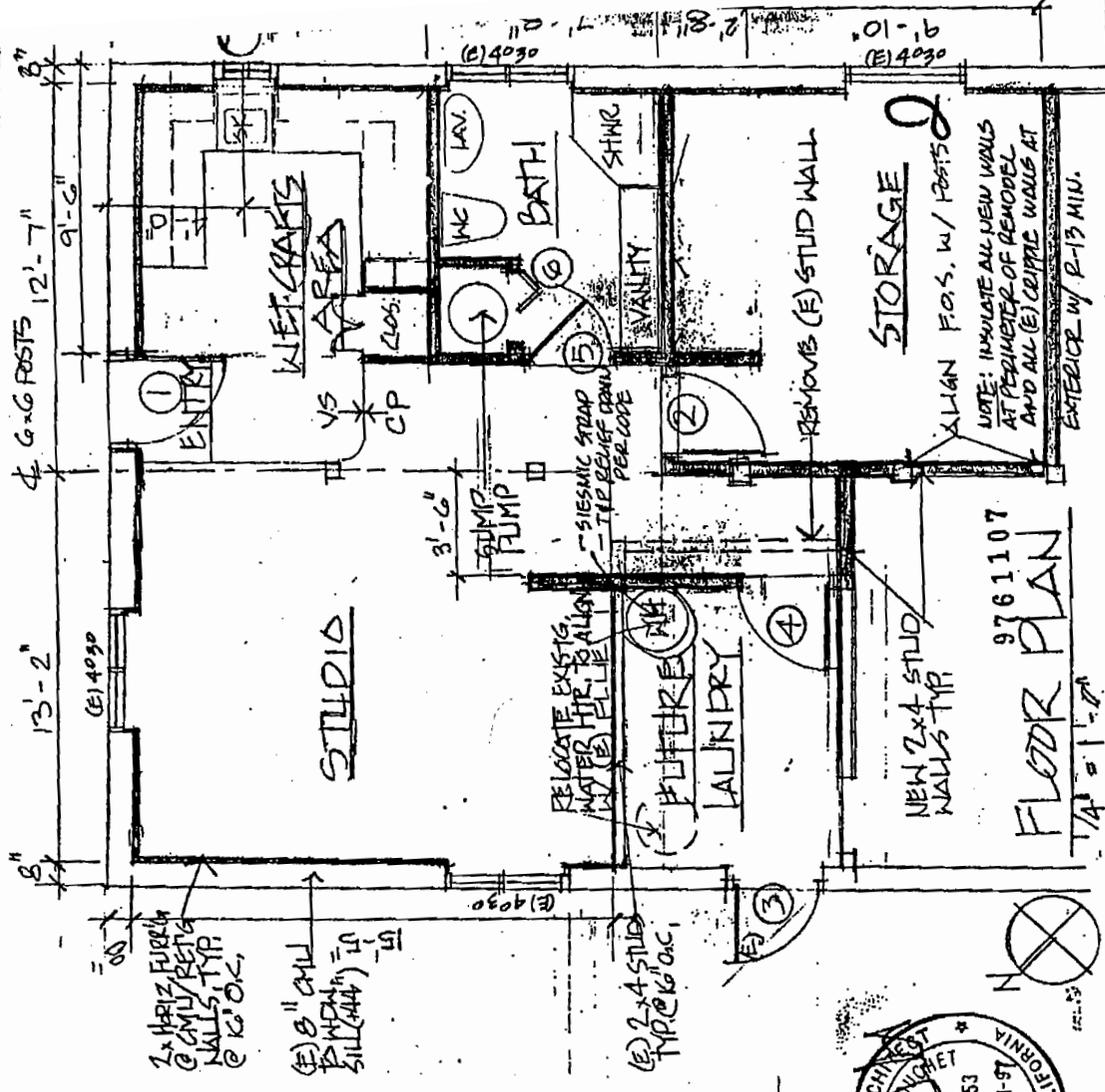
PROJECT NO. 1137

ADDRESS 1070 BIRD AVENUE

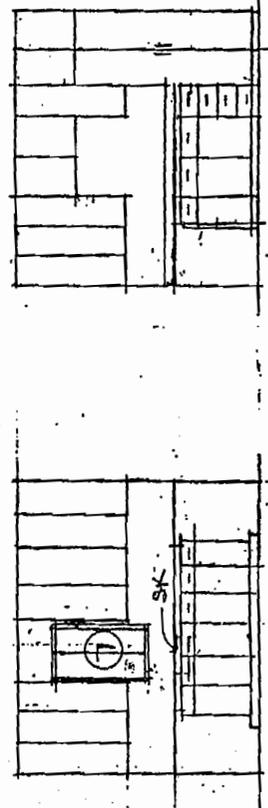
CITY SAN JOSE

STATE CA

ZIP 95125



NE. ELEV. 1/4" = 1'-0" TYP.



SW. ELEV.



9761107  
FLOOR PLAN  
1/4" = 1'-0"

DAVIS & TIERNAN CONSTRUCTION 12378 SARATOGA SUNNYVALE RD. #14 SARATOGA, CA 95070	P.J.T. ARCHITECT 975 30TH AVENUE SANTA CRUZ, CA 95062	GILA / WILLIAMS RESIDENCE BASEMENT REMODEL	9702 AS NOTED 2 of 5	6/13/97 ADD15X11.DGN
-------------------------------------------------------------------------------------------------	----------------------------------------------------------------	-----------------------------------------------	----------------------------	-------------------------

CITY OF SAN JOSE  
 BUILDING DEPT.  
 Address 5-5-7/3/97

Primary # \_\_\_\_\_  
 HRI # \_\_\_\_\_  
 Trinomial \_\_\_\_\_  
 NRHP Status Code \_\_\_\_\_ NA

Other Listings \_\_\_\_\_  
 Review Code \_\_\_\_\_ Reviewer \_\_\_\_\_ Date \_\_\_\_\_

Page 1 of 4

Resource Name or #: (Assigned by recorder) 1070 Bird Avenue

**P1. Other Identifier:**

**P2. Location:**  Not for Publication  Unrestricted a. County Santa Clara  
 and (P2b and P2c or P2d. Attach a Location Map as necessary.)  
 b. USGS 7.5' Quad San Jose West Date 1980 T ; R ; 1/4 of 1/4 of Sec ; E  
 c. Address: ? Bird City San Jose Zip 95125  
 d. UTM: (Give more than one for large and/linear resources) ; mE/ mN  
 e. Other Locational Data (Enter Parcel #, legal description, directions to resource, elevation, etc., as appropriate)

Parcel No. 264-50-047

**P3. Description (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)**

The house at 1070 Bird Avenue is a single story transitional Queen Anne Cottage on .29 acre. The house exhibits elements of the original Stick Style in the square bay and vertical trim elements of the front facade. Raised one-half story above ground level, the front facade exhibits a projecting square bay that is the focal element of the house. This tall element starts at the ground with a basement window (metal) set in a frame (new but, sympathetic to the original above) and continues with vertical grooved boards at the corners of the wall, meets the base of the brackets above that extend the gable beyond the width of the projecting element, and are adjacent to the picture window, a large single pane on the bottom with a divided band of three panes above that may appear to be a modification. Constructed of wood, the building's original sheathing was horizontal drop siding. Subsequent remodeling has used horizontal board to continue the appearance. Elements of the Stick Style include a tall false gable, a wide band beneath the cornice with a half spindle wheel window in the center and scroll cut brackets on the sides and tall narrow windows on each side of the projecting bay that are similarly trimmed. A distinctive square-cut shingle pattern fills the pediment, including a decorative spindle burst in the peak. continued page 2

**P3b. Resource Attributes:** (List attributes and codes) HP2 - Single Family Property HP3 - Multiple Family Property

**P4. Resources Present**  Building  Structure  Object  Site  District  Element of District  Other (Isolates, etc.)

**P5a. Photograph or Drawing (Photograph required for buildings, structures, and objects)**



**P5b. Description of Photo:** (View, date, accession #)  
 Front Facade (View toward east). Photo No: 72506-1, 1/2006

**P6. Date Constructed/Age and Sources:**  
 Prehistoric  Historic  Both

Deed and City Directories

**P7. Owner and Address**

Norman Dreyer, Trust  
 1070 Bird Avenue  
 San Jose, CA 95125

**P8. Recorded by:** (Name, affiliation, and address)

Urban Programmers, 10710 Ridgeview Ave, San Jose CA 95127

**P9. Date Recorded:** 6/17/2006

**P10. Survey Type:** (Describe)

Project Specific

**P11. Report Citation:** (Cite survey report and other sources, or enter "none")

**Attachments**  NONE  Continuation Sheet  District Record  Rock Art Record  Other: (List)  
 Location Map  Building, Structure, and Object Record  Linear Feature Record  Artifact Record  
 Sketch Map  Archaeological Record  Milling Station Record  Photograph Record

San Jose Historic Resources Inventory

**CONTINUATION SHEET**

Page 2 of 4      Resource Name or #: (Assigned by recorder)      1070 Bird Avenue  
Recorded by: Bonnie Bamberg      Date 6/17/2006       Continuation     Update

**P3. Description**

The porch of the original house was small and set back from the front bay. The existing small recessed entry is likely the original plane of the door. The porch has been altered to create a wider front porch that has moved forward. It appears that the original windows, (double hung four pane) and siding were used to create the new front wall. The addition continues around the corner onto the side façade. The porch addition, railing and balustrade are not original, the baluster are cut shapes that have a "twisted ribbon" like appearance. Contemporary lattice screens cover the under porch area, and are also used in the garden area. The porch was reduced to a "corridor" and as the new wall extended to make the south façade even with the rest of the house, thus creating a room. These alterations can be seen in the under floor and structure of the house. The new side façade wall is made of five wood casement windows with six panes in each. A wide cornice with gutter over hangs the wall meeting the original wall of the house. From the side, a new hipped roof adds a second story to the house. The added space is also visible from the rear of the house. The upper story is accessed by a wood stair attached to the rear façade. . The new stair is constructed with turned wood baluster in a historicist "Victorian" style. The rear façade is completely altered from the original by extending the wall out to create interior space. The one window is a contemporary dark metal frame slider. As in the front, it appears the back door, accessed through a tunnel, is in the original location. An attempt to mimic the cut shingle pattern on the front gable is applied to the upper part of the rear façade wall. The south façade is relatively original on the first level, with only a window toward the rear. Above the cornice line the hip and peak of the new roof, with a window, can be seen. The Sanborn Map for 1915 updated to 1950 approximates the original plan for his house.

Behind the house, is a relatively new second building, that contains a five car garage with an apartment above. The building was constructed with a tall hipped roof and two steep dormers that are sympathetic to the elements of the older house. Landscaping is very pleasant and well tended with flowering bushes, paths through the lawn area, and mature trees.

In summary the building, although significantly altered, reflects elements of architecture from the turn of the century. The house and yard fit well within the neighborhood of mixed age homes, and contributes to the streetscape on this block of Bird Avenue.

Supplemental Photograph or Drawing



Description of Photo: (View, date, accession #)

Rear Facade - enlarged plan and roof line.  
(View toward west). Photo No: 72506-2,  
//2006

**BUILDING, STRUCTURE, AND OBJECT RECORD**

Resource Name or #: (Assigned by recorder) 1070 Bird Avenue

- B1. Historic Name: *W. Harris Prat Fleming House*
- B2. Common Name: *none*
- B3. Original Use: *residential -single family*
- B4. Present Use: *residential- multi family*
- B5. Architectural Style: *Queen Anne Cottage*
- B6. Construction History: (Construction date, alterations, and date of alterations)  
*c. 1990, Alterations c,1960-2004*

B7. Moved?  No  Yes  Unknown Date : Original Location:

B8. Related Features: *c. 2000 garage and landscaping*

B9a. Architect: *Unknown*

b. Builder: *Unknown*

B10. Significance: Theme: *Residential Architecture* Area: *San Jose*

Period of Significance: *1870-1919* Property Type: *house (apt's..)* Applicable Criteria: *NA*

(Discuss importance in terms of historical or architectural context as defined by theme, period and geographic scope. Also address integrity.)

*The house is not individually eligible for listing in the National Register of Historic Places or the California Register of Historic Resources because it is not directly associated with individuals or events that are significant in the history of San Jose and, because the house has substantial alterations that diminish the integrity of the original building. The property is of interest in local history as the residence of John Holmes, prior to his arrest and lynching in the Brooke Heart murder. The property rated 42.77 using the evaluation criteria of the San Jose Planning Department and is categorized as a Structure of Merit.*

*It appears the house was constructed for W. Harris Pratt Fleming and his wife Alice Northrup Fleming in c. 1889. Harris was the nephew of George A. Fleming an established fruit rancher and partner in G.A. Fleming & Company (fruit packers). Harris Fleming was born in Illinois and came to San Jose in 1890 to work for the Southern Pacific Railroad. Nine years later, he is listed in the City Director (1889-90) as married and an orchardist with his residence on Bird Avenue near Willow. In the next listing (1901), he is a carpenter at Anderson Prune Dipper Company, and a year later, foreman at Castle Bros ( packers and shippers of dried fruit located on Cinnabar near Montgomery). In 1905, Harris Fleming was made President of Allen's B.B.B. Flour Co. (Boston Brown Bread Flour), a position he held until 1920 when he retired. After a year, he was appointed an inspector for the Dried Fruit Association of California, a position he held until his death. The 1925 City Directory lists Alice Fleming (widow) living at 1070 Bird Avenue. The Flemings had two daughters, Beatrice, who became a teacher, and Evelyn who married John M. Holms, a salesman. The Holms lived with Alice Fleming at the property on Bird. Avenue.*

B11. Additional Resource Attributes: (List attributes and codes) *HP2 - Single Family Property HP3 - Multiple Family Property*

B12. References:

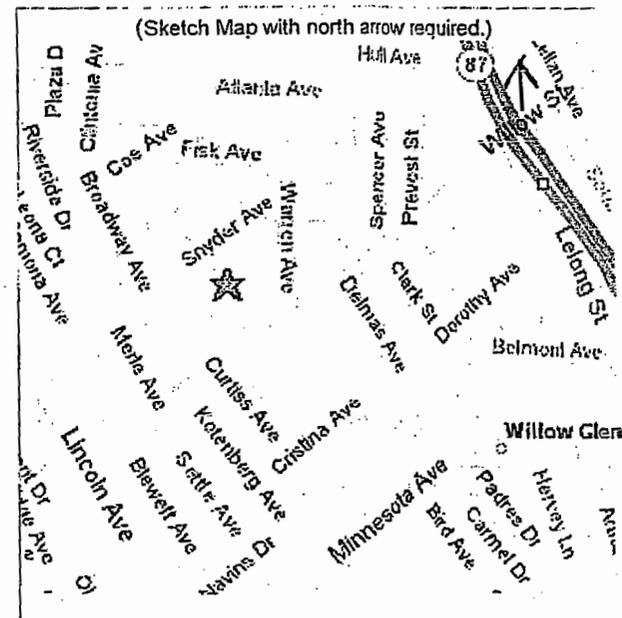
*Official Records, San Jose City Directories, Halberstadt, A. The Willow Glen Neighborhood-Then and Now, SJ 1997, US Census 1880, 1900,1930.*

B13. Remarks: *The small cottage has been altered and enlarged, retaining the Stick Style elements of the front projecting bay*

B14. Evaluator: *Bonnie Bamburg*

Date of Evaluation: *8/18/2006*

(This space reserved for official comments.)



**CONTINUATION SHEET**

Page 4 of 4      Resource Name or #: (Assigned by recorder)      1070 Bird Avenue  
Recorded by: Bonnie Bamberg      Date 6/17/2006       Continuation     Update

**B10. Significance**

*In 1933, John M. Holms was arrested with Thomas Herald Thurmond for the kidnapping and murder of Brooke Hart, son of a prominent family in San Jose. The atrocity of the kidnapping and murder lingered in the city for over two weeks as the kidnappers continued to ask the Hart family for ransom. Following phone calls, the two men, who were staying in different hotels, were arrested. On the night of their arrest an angry mob stormed the jail and took possession of the men, both of whom were dragged to St. James Park and lynched (hanged). Evelyn left San Jose after her husband was killed. Alice remained in the house two more years working as a seamstress then moved to San Mateo to live with her daughter Beatrice. In 1936, the house was occupied by G.H. Christensen, a mechanic at Garden City Chevrolet Co, and in 1939 by G.J. Weber a foreman with G.P. Peterson, Distributor of White and Indiana Trucks and Buses. The next year the occupant was McElmer Stewart. In 1941, Gladys Nicholson, a stenographer with Herbert Jones Lawyer lived for three years in the house, followed in 1944, by Robert M. Curl and his wife Lola. In 1945, the house sold to Clifford and Gwendolyn Yiskis, who operated a gas station at 808 The Alameda (corner of Wilson). After 1954, the house was owned by Gwendolyn, and her two sons. The Yiskis family owned the house into the 1980's.*

*The association with W. Harris Pratt Fleming and Alice Fleming is representative of many families where young relatives came to San Jose and created a home for their families. As he matured, he progressed to responsible management positions with medium size companies. The association to the infamous murder and lynching is interesting although the events did not occur in the house or on the property, it was his address of record. Subsequent occupants and owners were not significant to the history of San Jose.*

**Supplemental Photograph or Drawing**



Description of Photo: (View, date, accession#)

Garage and apartment c 1980 (View toward south). Photo No: 72506-3, //2006

August 24, 2006

Rebekah Ross  
City of San Jose – Planning Department  
200 West Santa Clara Street  
San Jose CA 95112

RE: 1070 Bird Avenue, San Jose  
The W. H. Fleming House  
PDC06-028

Dear Ms. Ross:

I am writing to you regarding the historical status of the 1070 Bird property (the W. H. Fleming house), the application for Planned Development status (PDC06-028) and the Historic Resource Evaluation of the property submitted to you by Bonnie Bamberg, consultant, on July 17, 2006. I intend this letter to be part of the public record on this project.

It is my position that the W. H. Fleming house is historically significant, contributes to a vintage neighborhood, and is worthy of preservation. Because the application for PD status does not advance the preservation of the house, but instead opens the way to further erosion or even demolition of the house, I urge the rejection of the application.

In a related vein, the application seeks to make legal a large number of non-permitted alterations to the original house, and in doing so uses these very alterations to justify the application. It is my position that to grant this application sets a bad precedent regarding historical preservation in San Jose.

I now have specific comments regarding the W. H. Fleming house and the Bamberg evaluation.

1) CONTRIBUTES TO STREETScape. Bamberg notes that the W. H. Fleming house, "although altered, reflects architecture of the 1890s, fits well in the neighborhood of mixed age homes, and contributes to the streetscape on this block of Bird Avenue." I agree. As a resident of the North Willow Glen neighborhood where the house is located, I walk by the W. H. Fleming house twice a week, and enjoy its singular contribution to the vintage ambiance of the neighborhood.

2) STRUCTURE OF MERIT. Bamberg notes that the W. H. Fleming house has been listed as a Structure of Merit on the San Jose Historic Resources Inventory. I support this distinction for this home. The front of the house, although altered,

retains most of the original elements that distinguish it as a high style Stick subtype of Queen Anne homes, and has an undeniable impact on the observer.

3) STREET OF CONTRIBUTING STRUCTURES. Bamberg does not note the context of the W. H. Fleming house: it is located on a street of historic structures. The San Jose Historic Resources Inventory lists 22 other significant houses in the short stretch of Bird Avenue between Coe and Willow. As part of this block, the W. H. Fleming house is part of what amounts to a lesson in vintage architecture and is prominently mentioned in the 2006 Willow Glen Walking Tours book to be published by the Willow Glen Neighborhood Association.

4) ASSOCIATION WITH HISTORY. Bamberg asserts that the W. H. Fleming house did not have any association with people or events in San Jose history, yet notes that "John M. Holms" (sic) lived there. John "Jack" Holmes was a principal in one of San Jose's most infamous historical events, the Depression-era kidnapping/murder of Brooke Hart and the citizen mob lynching of his alleged assailants, so I must reject Bamberg's assertion.

Original owner W. Harris Fleming and his wife Alice lived in the W. H. Fleming house. Jack Holms married Evelyn Fleming, one of their daughters, and the two lived with Alice (by then a widow) in the house. Jack plotted with Thomas Thurmond to kidnap Brooke Hart, a popular local youth of the family that owned the L. Hart and Son Department Store in downtown San Jose, at Market and Santa Clara, since 1866. The two kidnapped Hart, murdered him, and then demanded ransom. An enforcement effort that included the U.S. Division of Investigation (precursor to the FBI) caught Holmes and Thurmond, who confessed. Sparked by newspaper stories that the culprits would plead not guilty by reason of insanity, a mob of local citizenry gathered 5000-10,000 strong, and when police were unable or unwilling to disperse them, battered down the door to the jailhouse, took Holmes and Thurmond to St. James Park, and hanged them.

Coming as it did after the Lindbergh baby kidnapping, news and photos of the incident swept the nation and went around the world. In Germany, the Nazi regime used photos of the lynching as evidence of Jewish manipulation (Brooke Hart's father was Jewish) and American decadence. The account spawned several stories and novels which in turn sparked at least two major motion pictures: *Fury* (1936) starring Spencer Tracy and Sylvia Sydney, and *The Sound of Fury* (1950) a noir film with Lloyd Bridges and Kathleen Ryan. The story has also been the subject of TV movies, documentary TV and books. Even today, the incident personifies the sobering theme of rage lurking in quiet citizens of a peaceful town.

The incident also reverberated through U.S. law, as the Holmes family sued police, sheriffs and the governor for failing to protect Jack Holmes (Governor Rolph refused to send in troops to stop the mob and promised to pardon any lyncher). Alameda County District Attorney Earl Warren distinguished himself by

pushing ahead with prosecutions of lynchers, to uphold the rule of law; Earl Warren later served on the U.S. Supreme Court.

The significance of the incident is well known, although downplayed by Bamberg in her evaluation. Bamberg asserts "the association to the murder and lynching is not significant because the events did not occur in the house or on the property."

First, this is an assertion on her part. If she has evidence that Holmes and Thurmond did not plot the kidnapping in the house, or that Evelyn Holmes was not confronted by people or press in the house, she does not present it.

Second, this is specious reasoning in the context of history. Homes gain a historical context from the people who lived in them. Extending her logic, we could say that the Hart family home is also not historically significant, because Brooke Hart was not killed there. Or that Graceland is not historically significant, because Elvis Presley never recorded there.

Third, she is denying the need that communities have to create and maintain suitable markers for historic events. When I began exploring my neighborhood, one of the first historical facts I learned was that one of the Brooke Hart killers had lived in the house at 1070 Bird. As a new citizen of San Jose, that was my introduction to that bit of San Jose's history. I was surprised to find that someone who lived in such a fine home could have been part of such a sordid event. It gave me new perspectives on what living in a Depression may be like. By Bamberg logic, what is historically significant is the patch of muddy water under the Dumbarton Bridge, where Brooke Hart died. I do not think that that place is or can ever be as historically rich or as evocative as the W. H. Fleming house is today.

Fourth, Bamberg is, perhaps unwittingly, participating in the long-term history of the Brooke Hart murder and subsequent lynching – the desire of some people to pretend it never happened. We have seen this in recent controversies over publication of photos of the lynching in the *Mercury News*. It is history's highest calling to record what happens and to commemorate events so that we can learn from them – evil events as well as good.

For these reasons and others, I believe that the W. H. Fleming house has a solid connection to history and that the consultant is in error to say otherwise.

I feel it is in the best interests of the neighborhood and of the city to protect the W. H. Fleming house. The City's Historic Resources Inventory, the Bamberg evaluation and I as a neighborhood member all agree that the house in its present form contributes to its streetscape and its neighborhood. I note that the house in its present form serves as a link to a very important moment in San Jose history, a moment that had international reverberations and continues to be instructive (and controversial) today. I note that the house in its present form serves as a marker in our city's oral tradition.

Granting the house PD status will not only serve to reward past illegal degradations of the house, it will jeopardize the house in its present form. Although Bamberg states in her cover letter "It is my understanding that the proposed project is to retain the existing building," the PD status will clearly open the possibility of scraping the home in favor of a multi-unit dwelling. Until a proposal comes forward which does not open this possibility, I believe the neighborhood and indeed all preservation-minded citizens of San Jose must oppose the application. The city's highest use for the W. H. Fleming house is as a historic resource, and the application should recognize this goal and honor it, not explicitly deny it.

I hope that Planning and the applicants will work toward a revised application with these ideals in mind. I would be happy to assist as a neighborhood representative, or answer any questions regarding this submission. I would like to be kept informed of this application and its status.

Sincerely,

Ken Eklund  
North Willow Glen

526 Fuller Avenue  
San Jose CA 95125  
408-280-1441

**Ross, Rebekah**

**From:** CINDY ERCEG [vonerceg@sbcglobal.net]  
**Sent:** Thursday, August 31, 2006 9:56 PM  
**To:** Ross, Rebekah  
**Subject:** RE: PDC06-028 - The W. H. Fleming house at 1070 Bird

Ms. Ross --

As a North Willow Glen neighborhood leader and preservation advocate, I support Mr. Eklund's position and agree 100% with his thorough evaluation. I am shocked at Ms. Bamburg's assertion that the property is not historically significant because the actual lynching did not take place there.

Thank you,  
 Dan Erceg  
 Fuller Avenue  
 North Willow Glen

**"Ross, Rebekah"** <Rebekah.Ross@sanjoseca.gov> wrote:

Dear Mr. Eklund,  
 Thank you for your letter. I am forwarding your comments to the representative for City Council Member Ken Yeager, Tony Filice, to the applicant, to Ms. Bamburg and to our Historic Preservation Officer, Sally Notthoff-Zarnowitz.

Please note, we have scheduled this item to be heard by the Planning Commission on Wednesday, September 13th, as an informational item to the Historic Landmarks Commission on Wednesday, October 4th, and by the City Council on Tuesday, October 17th.

Staff will be drafting specific development standards designed preserve the historic residence and will not be including any standards encouraging demolition of the home. Additionally if in the future should someone would desire to redevelop the site, a new Planned Development Zoning would be required which would include a community meeting prior to additional Public Hearings.

Your letter has been included in the public record and will be attached to the Staff Report to the Planning Commission, Historic Landmarks Commission and to the City Council. Additionally staff will reference your letter in the oral staff report to the Planning Commission hearing.

Please let me know if you have any additional questions or concerns. Best Regards ~ Rebekah Ross 535-7842

-----Original Message-----  
**From:** Ken Eklund [mailto:writerguy@writerguy.com]  
**Sent:** Thursday, August 24, 2006 3:30 PM  
**To:** Rebekah Ross  
**Cc:** Dan Erceg; Harvey Darnell

9/1/2006

**From:** design [mailto:design@signwiz.com]  
**Sent:** Thursday, July 06, 2006 12:57 PM  
**To:** erin.morris@sanjoseca.gov  
**Subject:** 1070 BIRD AVENUE

Hello. As follow-up to the Meeting on June 29, 2006 regarding this property/bldg. permits; I am the person who arrived late and mentioned, in the past, of parking/visitor or such overflow onto our limited on-site parking spaces for our condominium complex -1090 Bird, corner Bird & Willow; adjacent to 1070 Bird property. My concern would be of adequate parking for residents/visitors on their own property, namely 1070 Bird. Name/address of our condo complex is Willow Gate HOA, 1090 Bird Avenue, #100, San Jose, CA 95125

Hope this helps as a reminder.

Thanks for your interest.

Hubert W. Jansen  
Resident and Property Mgr.  
for Willow Gate HOA

9/1/2006



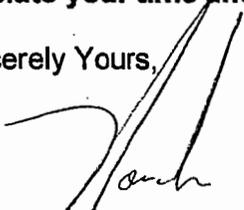
impact their situation, then efforts to legalize the existing uses might be more favorably considered.

Your support will help me legalize this pre-existing condition and allow me to move forward in restoring the Victorian structure. I have hired an Architect with a specialty in historic residential architecture and a historian to evaluate the history of the house to assure that the remodeled house will remain true to its original historic style.

By signing this letter of support below and returning it to me, you are indicating that you believe legalizing the three pre-existing dwelling units will not adversely affect the neighborhood and that you would enjoy the opportunity to see the structure evaluated and restored to a consistent style of Architecture.

**Letters of support should be returned to me by June 26 at the address below. I appreciate your time and consideration of my proposal.**

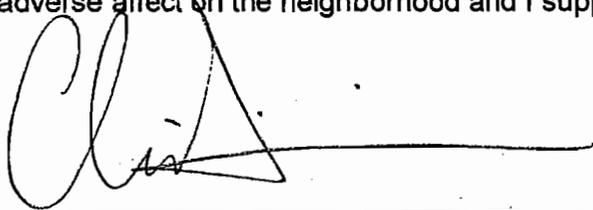
Sincerely Yours,



Norman Dreyer  
1070 Bird Avenue  
San Jose, CA 95125

---

I agree that the proposed legalizing of the existing three dwelling units will not have an adverse affect on the neighborhood and I support Mr. Dreyer in this project.



6/22/06

Signed

date

Address: 549 Snyder Ave  
SJ CA 95125

Best of Luck  

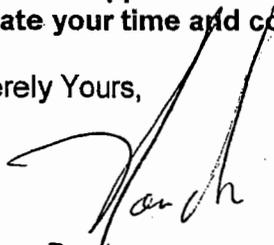

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Norman Dreyer  
1070 Bird Avenue  
San Jose, CA 95125

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Neer Dreyer                      6/29/06  
Signed                                              date

Address:  
1090 Bird Ave #103

774-8794

Have a great day! 202



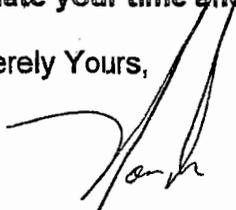
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1070 Bird Avenue  
San Jose, CA 95125

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 6-20-06  
Signed date

Address:

408 Iris Gardens Ct.  
San Jose, CA 95125

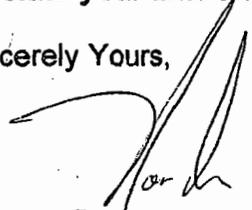
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Norman Dreyer  
1070 Bird Avenue  
San Jose, CA 95125

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6/24/06

Signed

Sarah M.A. Pitt

date  
6/24/06

Address:

555 Snyder Ave  
San Jose CA 95125

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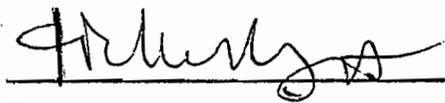
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Norman Dreyer  
1070 Bird Avenue  
San Jose, CA 95125

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Signed

6/23/06

date

Address:

1073 Bird Ave  
San Jose, CA  
95125

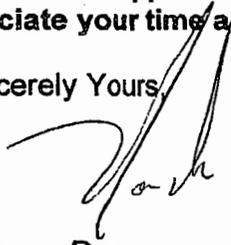
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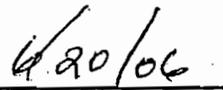


Norman Dreyer  
1070 Bird Avenue  
San Jose, CA 95125

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I agree that the proposed legalizing of the existing three dwelling units will not have an adverse affect on the neighborhood and I support Mr. Dreyer in this project.

  
Signed

  
date

Address: 413 Iris Gardens Ct.  
San Jose, CA 95125

I agree that the proposed legalizing of the existing three dwelling units will not have an adverse affect on the neighborhood and I support Mr. Dreyer in this project.

A handwritten signature in black ink, appearing to be 'D. P. Dreyer', written over a horizontal line.

Signed

6-21-06

date

Address: 1085 Bird Ave.  
SS. 95125

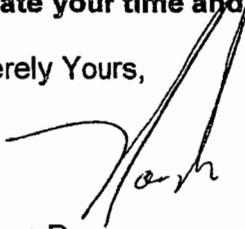
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Norman Dreyer  
1070 Bird Avenue  
San Jose, CA 95125

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20 JUNE 2006

Signed

date

702 IRIS GARDENS COURT

Address:

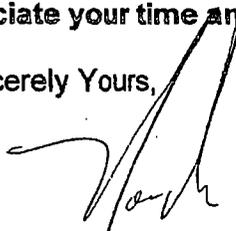
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Norman Dreyer  
1070 Bird Avenue  
San Jose, CA 95125

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Kenneth Caporale 6/26/06  
Signed \_\_\_\_\_ date  
1062 Bird Ave

Address: