CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

# STAFF REPORT

Hearing Date/Agenda Number
C.C. 11-16-04 Item:

File Number
PT04-017

Application Type
Appeal of Tentative Map

Council District
6

Planning Area
Willow Glen

Assessor's Parcel Number(s)
455-31-015

PROJECT DESCRIPTION — Completed by: Ed Schreiner

Location: North side of Canoas Garden Avenue, 400 feet easterly of Almaden Road.

Gross Acreage: 0.33 Net Acreage: 0.32 Net Density: 15.8 DU/AC

Existing Zoning: A(PD) Planned Development Existing Use: Vacant

Proposed Zoning: No change Proposed Use: Single-Family Detached Residential

GENERAL PLAN — Completed by: ES

Land Use/Transportation Diagram Designation
High Density Residential (25-50 DU/AC)

Project Conformance:
[ x ] Yes [ ] No
[ x ] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING — Completed by: ES

| | | |
|---|---|---|
| North: | Multi-family Attached Residential | RM Residence |
| East: | Single-family Attached Residential | RM(PD) Planned Development |
| South: | Office | R-1-5 Residence |
| West: | Multi-family Attached Residential | RM Residence |

ENVIRONMENTAL STATUS — Completed by: ES

[ ] Environmental Impact Report certified
[ ] Negative Declaration circulated on
[ x ] Negative Declaration adopted on May 18, 2004

[ ] Exempt
[ ] Environmental Review Incomplete

FILE HISTORY — Completed by: ES

Annexation Title: Monterey Park No. 94 Date: February 1, 1986

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[ ] Approval
[ x ] Uphold Director's decision
[ ] Denial

Date: _____

Approved by: _____
[ x ] Action
[ ] Recommendation

APPLICANT/OWNER/APPELLANT

Shirley Lu Levitt
P.O. Box 53785
San Jose, CA 95153

**PUBLIC AGENCY COMMENTS RECEIVED** **Completed by: ES**

**Department of Public Works**

See attached.

**Other Departments and Agencies**

See attached memorandum from the Fire Department.

**GENERAL CORRESPONDENCE**

See Notice of Permit Appeal dated 9/10/04 and related correspondence dated 9/10/04 submitted by appellant and memorandum from Eduardo Martinez, dated October 8, 2004.

**ANALYSIS AND RECOMMENDATIONS**

## BACKGROUND

This is an appeal of the Director of Planning's decision to approve a Tentative Map Permit, with conditions, to allow subdivision of a single 0.33 acre lot into six lots (see attached Permit and Tentative Map). The Tentative Map implements Planned Development Zoning File No. PDC03-078, approved by the City Council on May 18, 2004 to allow a court home project. The Map provides for five single-family lots and a sixth "common area" lot consisting of an auto court and common open space.

On August 20, 2004, the Director of Planning approved the subject Tentative Map and the associated Planned Development Permit (File No. PD04-040), both with conditions requiring establishment of a homeowner's association for maintenance of all common areas. The site plan approved as part of the Planned Development Permit is attached.

On September 10, 2004, Shirley Lu Levitt, the owner of and applicant for the property, filed a Notice of Appeal for the Tentative Map. The Notice states that the Homeowner's Association (required by Condition No. 26 of the Tentative Map Permit) is unnecessary and burdensome. The appeal requests that this condition be removed. No appeal of the Planned Development Permit (which also requires a homeowner's association) was filed. On September 21, 2004, the applicant filed a Planned Development Permit Amendment to "amend conditions of the Permit for fence height and sidewalk setbacks". The application is unclear as to specifically what fence and setback changes are proposed to be amended under that separate application.

## ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration was adopted for this project based on an Initial Study for the original Rezoning (File No. PDC03-078), which concluded that the project would not result in a significant environmental impact.

## GENERAL PLAN CONFORMANCE

The subject site is designated High Density Residential (25-50 DU/AC) on the General Plan Land Use/Transportation Diagram. The applicant's proposal includes a density of approximately 15.8 units per acre, which is below the minimum density allowed under the existing General Plan designation.

The General Plan's Discretionary Alternate Use Policy, Two Acre Rule allows development of infill sites of less than two acres at a density range other than that specified by the General Plan designation, provided that the density is compatible with surrounding uses and the project is of exceptional design. At the Planned Development Zoning stage, the City Council found this project to be in conformance with the General Plan based on this Discretionary Alternative Use Policy and adopted the proposed Planned Development Rezoning for the subject property.

**ANALYSIS**

The appellant/applicant has requested that the requirement for a homeowner's association be removed from the conditions of the Tentative Map and has indicated that "…for a detached single family home development, the cost, bureaucracy, insurance and liability of a homeowner's association is completely unnecessary".

The Davis-Stirling Common Interest Development Act (Sections 1350 *et.seq.* of the California Civil Code) specifies that "a common interest subdivision" shall be managed by a homeowner's association, whether that association is incorporated or unincorporated. A common interest subdivision includes "…a planned development having a common area that is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area".

Staff has determined that the proposed project constitutes a "planned development" consistent with the above definition. The project is a court home development consisting of five residential lots (Lots 1-5) grouped around a private landscaped auto court (Lot 6) which provides access to the individual units, common guest parking and common open space. The Tentative Map designates the auto court as "common area", indicating that it is to be owned in common by all of the five property owners. Based on this information, staff concludes that the project is a "common interest subdivision" that is required to be managed by a homeowner's association. It is up to the appellant/applicant as to whether that association shall be incorporated or not.

The applicant appears now to be suggesting that Lot 6 be owned by one of the five individual property owners and that the remaining four property owners be granted access rights to Lot 6 via easements, despite the fact that this area has been designated as common area previously and in other applications from the appellant/applicant related to the property. Due to the multiple easements in favor of the remaining four property owners which could be enforced by any one of them, a "common interest" area would still exist on Lot 6, even if that commonly accessed area is owned by a single homeowner, and a homeowner's association would still be required to ensure the area is adequately maintained and accessible. The maintenance agreement now proposed by the applicant (see attached) would not suffice.

Public Works staff has indicated that the absence of a homeowner's association for shared improvements has, in the past, resulted in conflict among homeowners and increased complaints to the City. The required homeowner's association provides an appropriate vehicle for dealing with the use and maintenance of common facilities and for resolving conflicts, should they arise.

Based on this analysis, staff concludes that a homeowner's association is required by law for this development and that such an association offers benefits for the future residents of the project.

**COMMUNITY OUTREACH**

A community meeting was held for this project at the Planned Development Zoning stage. Notices of the community meeting, the Mitigated Negative Declaration and the public hearings for the Zoning, Planned Development Permit, Tentative Map and the appeal were mailed to all property owners and tenants within 500 feet of the subject site.

**COORDINATION**

This project has been coordinated with the Department of Public Works, the Fire Department and the City Attorney's Office.

**RECOMMENDATION**

Planning staff recommends that the City Council adopt a resolution upholding the Planning Director's decision to approve the Tentative Map as conditioned by the Director of Planning.

c: Eduardo Martinez
158 Sunnyside Avenue
Campbell, CA 95008