



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: January 15, 2009

COUNCIL DISTRICT: 5
SNI AREA: N/A

SUBJECT: PDC06-063. PLANNED DEVELOPMENT REZONING FROM A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO 17 SINGLE-FAMILY DETACHED RESIDENCES ON A 26.4 GROSS ACRE SITE.

RECOMMENDATION

The Planning Commission voted 5-1-0 (Commissioner Jensen opposed) to recommend that the City Council approve a Planned Development Rezoning from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 17 single-family detached residences on a 26.4 gross acres site.

OUTCOME

Should the City Council approve the Planned Development Rezoning, up to 17 single-family detached residences may be built on the subject 26.4 gross acre site, consistent with the development standards for the subject rezoning. The proposed rezoning would allow ten units more than the existing Planned Development zoning (PDC93-027 approved March 1, 1994), which allows up to seven single-family detached residences at a density of 0.8 DU/AC. This future development would be subject to a Planned Development Permit.

BACKGROUND

On January 14, 2009, the Planning Commission held a public hearing to consider the proposed Planned Development Rezoning. The applicant's representative, Gerry DeYoung of Ruth & Going, Inc., was present and spoke in support of the project. There were no members of the community that spoke on the project. Staff indicated support for a modification to the draft Development Standards that would allow accessory structures on proposed Lot 8 outside the Urban Service Area, but limited to the flat portion of the site beneath the elevation of 342 feet.

January 15, 2009

Subject: PDC06-063

Page 2

Commissioner Jensen asked how the development would not encroach into the hillside. Gerry DeYoung explained the development is proposed to be on the flatter portions of the site and within the Urban Service Area (USA) except for accessory structures on Lot 8. He also indicated that the project was a speculative subdivision and that each lot would be developed separately and the new homeowners will be required to adhere to current City policies in regards to hillside development.

Commissioner Jensen then inquired as to if the proposed landscaping on the site is to consist of native plants. Gerry DeYoung told the Commission that the site is already covered with native plants and grasses, which would remain on most of the site through development.

Commissioner Do asked if the intent was to both subdivide and grade the site prior to selling individual lots. Gerry DeYoung explained that the intent is only to subdivide.

Commissioner Do wanted to know from staff how the development practices explained in the staff report, such as split pads on the sloped sites, would be implemented. Staff informed the Commission that a Master Planned Development Permit and Tentative Map would have to be approved in order for any of the lots to be subdivided and each residence would be required to go through a discretionary review process by means of a Planned Development Amendment to ensure that development on the hillside is appropriately done. Staff also explained that the accessory structures on Lot 8 located outside of the USA would not be allowed to connect to City services, such as water and sewer. Staff included that the Planning Commission may include additional conditions to the General Development Plan Notes to address these issues.

Commissioner Do stated that Lots 12 through 16 should have split pads to reduce the amount of grading.

Commissioner Jensen asked how the USA limitations would be enforced. Staff responded that those limitations can be zoned in through the General Development Plan Notes.

Commissioner Jensen then inquired about the available access required by the Fire Department.

Fire Marshall David Schoonover explained that the existing residents of the neighborhood had expressed concern about the Fire Department accessing their homes. He stated that the southwestern portion of Rosemar Avenue had been developed in the County of Santa Clara but that there is adequate space available in the public right-of-way for the fire trucks to get through.

Commissioner Campos made a motion to approve the proposed Planned Development Rezoning as recommended by staff and to include the grading requirements into the General Development Plan Notes.

Commissioner Jensen requested to add to the motion that the existing cul-de-sac should be kept in place and that the driveway for Lot 8 is located on Lot 7 with appropriate ingress/egress easements to reduce the amount of grading.

Commissioner Campos supported the motion amendment for the driveway easement on Lot 7 but not the motion amendment to keep the cul-de-sac in its current location.

Commissioner Kamkar informed Commissioner Jensen that any grading for a driveway to Lot 8 would be minimal.

Commissioner Zito recommended that staff carefully consider the manner of subdivision to keep grading to a minimum, even if it resulted in fewer lots.

The Planning Commission then voted 5-1-0 (Commissioner Jensen opposed) to forward a recommendation to approve the project with the development standards as recommended by staff. (See attached revised General Development Plan Notes as amended by Planning Commission.)

ANALYSIS

The proposed project, as recommended by staff, conforms to the General Plan land use designation for the site. See original staff report for additional discussion.

EVALUATION AND FOLLOW-UP

Should the rezoning be approved by the City Council, the applicant will be required to secure a Planned Development Permit from the Planning Director in order to implement the subject rezoning.

POLICY ALTERNATIVES

Denial of the subject rezoning would mean that the existing zoning, A(PD) Planned Development, would remain.

PUBLIC OUTREACH/INTEREST

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

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30; Public Outreach Policy. A sign was posted on-site to notify neighbors of the proposed development. The project was also published in a local newspaper, the Post Record.

A community meeting was held on September 30, 2008, and notices were sent to property owners and occupants within 500 feet of the subject property, and 15 members of the community

January 15, 2009

Subject: PDC06-063

Page 4

were in attendance. Major concerns included emergency vehicle access to the site by way of Rosemar Avenue, traffic impacts to the existing neighborhood, over-crowding within the new residences, on-street parking and design of the new residences.

This staff report is also posted on the City's Website. Staff has been available to respond to questions from the public. A notice of this Planning Commission public hearing and subsequent City Council hearing was mailed to the owners and tenants of all properties located within 1,000 feet of the project site.

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

CEQA: Mitigated Negative Declaration.



JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Darryl Boyd at 408-535-7800.

PDC06-063 General Development Plan Notes
(with changes as recommended by Planning Commission underlined)

Development Standards

Permitted Uses: Up to 17 single-family detached residential units (total) and those of the R-1-5 Single-Family Residence Zoning District, as amended. Conditional and Special uses of the R-1-5 Single-Family Residence Zoning District are allowed with the issuance of a Planned Development Permit.

Maximum Building Height: 30 feet and two (2) stories, as defined in the Zoning Ordinance, as amended.

Minimum Lot Size: 8,000 square feet

Parking Requirements: Two (2) covered spaces per unit

Setbacks:

Front Setback: 25 feet minimum, 45 feet maximum (except for lot 7 as shown on the conceptual grading plan, which as a maximum front setback of 75 feet)

Side Setback: 5 feet

Corner Side Setback: 12.5 feet

Rear Setback: 20 feet

Building Design: Future residential development shall conform to the standards of the Single-Family and Residential Design Guidelines, and will require issuance of a Planned Development Permit or Amendment. Specific architectural standards will be created during the Master Planned Development Permit stage.

Pad Design: Split level floors shall be encouraged for all main residential buildings and structures on sloping hills. Lots 12-16 shall have split level floors to reduce grading.

Accessory Structures & Buildings: No building or structure shall be erected, enlarged, or structurally altered for any portion of the site or any individual lot that is designated Non-Urban Hillside by the San Jose 2020 General Plan Land Use/Transportation Diagram. All other accessory structures and buildings shall meet the requirements of the Zoning Ordinance Section 20.30.500, as amended, except for Lot 8 in which accessory structures and buildings shall be allowed beyond the Urban Service Area with pads at an elevation of 432 feet or lower. Retaining walls shall not exceed 4 feet in height from grade to top of wall, and shall be setback from common property lines.

Lot 8 Driveway: The access for Lot 8 shall be located on Lot 7 with appropriate ingress/egress easements, or be established without the need for retaining walls.

Fencing: All fencing and gates on the subject site shall conform to the standards of the San Jose Zoning Ordinance, as amended.

Water Pollution Control Plant: 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. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approving authority.

Archaeology: Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

Tree Removals: Trees 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	
18 inches or greater	5:1	4:1	24-inch box
12 - 18 inches	3:1	2:1	24-inch box
less than 12 inches	1:1	1:1	15-gallon container
x:x = tree replacement to tree loss ratio			
Note: Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.			

The species and exact number of trees to be planted on the site will be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building, and Code Enforcement.

In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage.

Parkland Dedication Ordinance: The project shall conform to the requirements of the Parkland Dedication Ordinance.

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.

Environmental Mitigation:

1. **GEOLOGY AND SOILS** – Report was prepared for the site by ES Geohazard Technologies, Consulting Engineers and Geologists. A copy of the report, entitled Certificate of Geologic Hazard Clearance Proposed 16 Lot SFD Residential Development (PDC06-063), Rosemar Avenue East of Juliet Avenue, Project NO.: 3-16653 (07-027670), dated April 29, 2008, is included in Appendix A of the Initial Study.
 - a. All recommendations of the project's geotechnical and geologic report and geotechnical consultant must be followed. All geotechnical constraints and methods of geologic hazard mitigation identified in your reports must be implemented.
 - b. The conceptual grading plan, Reference 3 (the conceptual lotting/grading plan dated 6/08/06), shall be modified in accordance with Reference 2, the supplemental Geohazard Engineering Analysis, dated 3/31/08, above to include a retaining wall at the base of slopes on Lots 6 and 7 to mitigate earthquake induced landslide potential. The plan must also include a sub-drain system to mitigate the groundwater seep on Lot 9.
 - c. This Clearance applies only to the project specified in References 1 (Geological Hazards Evaluation and Soil Engineering Study, dated 8/20/07), 2 and 3 above. Any proposed changes in the geotechnical or civil engineering consultants of record, the approved reports or plans, or the project design, location, or concept must be reviewed by the City's Engineering Geologist. Significant changes may require a new Geologic Hazard Clearance.
 - d. All earthwork, foundation installation, drainage improvements, geologic/seismic hazard mitigation measures and related facilities shall be inspected by project Engineering Geologist and Geotechnical Engineer during each phase of site grading and construction, and documented by submission to the City of final geotechnical and geologic reports.
 - e. If any unanticipated hazardous geologic or subsurface conditions are encountered during the grading, or if there are any modifications in the grading or geologic hazard mitigation measures, the City's Engineering Geologist must be immediately notified. In such an event, a supplemental geologic/ geotechnical investigation must be performed and submitted to the City for review and approval prior to progressing further with the project.

- 2. HAZARDS AND HAZARDOUS MATERIALS** – Prior to the issuance of Public Works clearance, a remediation program for the on-site soil removal shall be submitted to the satisfaction of the Director of Planning, the Environmental Services Department and the Regional Water Quality Control Board. The applicant shall implement the approved plan to the satisfaction of the Director of Planning. Actions shall include, but will not be limited to, verification of suitability for development by documentation of the quality of soil used to replace excavated soils.

 - a.** As a part of project grading, the top two (2) feet of soils shall be replaced with clean soil, so as to avoid impacts from naturally occurring asbestos (NOA). The contaminated soils shall be removed and disposed of at an appropriate facility, to the satisfaction of the Director of Public Works.
 - b.** Future homeowners will be notified that they may encounter asbestos in any subsurface excavations greater than two feet in depth and that special precautions will be required to comply with adopted standards to reduce risks to an acceptable level. Future homeowners will also be advised of the excavation precautions necessary if they plan to install a spa or pool.
 - c.** A dust mitigation plan to minimize exposure to NOA (per the Bay Area Air Quality Management District regulations) shall be submitted to the Environmental Services Department.

- 3. NOISE** – The project shall incorporate building sound insulation to meet the requirements of the California Building Code to reduce interior noise levels to 45 dBA or lower, using standard construction techniques. Prior to issuance of occupancy permits, building plans for all units will be checked by a qualified acoustical consultant to ensure that noise levels are attenuated sufficiently. All units shall have forced air ventilation systems to allow the windows to remain closed so that an interior noise level of 45 dBA can be achieved.