



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** April 8, 2010

**COUNCIL DISTRICT:** 3  
**SNI AREA:** 13<sup>th</sup> Street

**SUBJECT: PDC08-033. PLANNED DEVELOPMENT REZONING FROM THE R-M MULTIPLE RESIDENCE ZONING DISTRICT TO THE A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO SIX RESIDENTIAL UNITS WITHIN THE EXISTING STRUCTURE(S) ON A 0.17 GROSS ACRE SITE.**

## RECOMMENDATION

The Planning Commission voted 5-2-0 (Do and Jensen opposed) to recommend that the City Council adopt an ordinance to approve the subject Planned Development Rezoning from the R-M Multiple Residence District to the A(PD) Planned Development Zoning District to allow up to three residential units in the main structure and one residential unit in the carriage house on a 0.17 gross acre site, located on the west side of N. Third Street, approximately 340 feet south of Hensley Street (405 N. Third Street).

## OUTCOME

Should the City Council approve the Planned Development Rezoning as recommended by the Planning Commission, the applicant would be limited to the three legal units within the main structure, and parking to the rear of the main structure, and be able to move forward with a Planned Development Permit and subsequent building permits to allow for the construction of one additional unit in the carriage house, consistent with development standards to be approved.

Should the City Council deny the Planned Development Rezoning as recommended by the Director of Planning, the applicant would be limited to the three legal units within the main structure and the parking to the rear of the structure and continue to be able to utilize the existing carriage house for accessory uses as allowed per Title 20.

## BACKGROUND

On April 7, 2010, the Planning Commission held a public hearing to consider the proposed Planned Development Rezoning. Staff provided a report recommending denial of the rezoning on the basis that 1) the proposed density of 35.29 DU/AC is not consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Density Residential MDR

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(8-16 DU/AC) for the site, 2) the project does not further the goals and policies of the San Jose 2020 General Plan with respect to Housing and Urban Conservation/Preservation, and 3) does not meet the minimum standards of the Residential Design Guidelines for parking and open space.

The property owners, Bill Priest and Sharon Layne, spoke on behalf of the project. Mr. Priest emphasized the economic hardship of maintaining the small three-unit project allowed to be reconstructed after the fire in 1990. He indicated that at the time of reconstruction he inquired about the six units and was directed to the PD Zoning process but chose not to endure the time involved in getting approval for the additional units. Mr. Priest also identified the two "mitigations" he proposed to staff to compensate for the impacts in the area of density and parking, more specifically the possibility of dedicating low income units and restricting vehicle ownership in the leases and that staff was not receptive to these measures..

Community members Joe Pate, Brian Hunter and Dave Dudek spoke about the severe impact the additional units would have related to the lack off-street parking in the neighborhood and that even with the existing three-unit development they are deficient in on-site parking. Parking in the front yard is not an acceptable alternative and would set a dangerous precedent in the neighborhood. Community member Lenora Porcella spoke in support of adaptive re-use of the historic carriage house.

The Planning Commission then closed the public hearing. Commissioner Jensen recognized neighborhood leaders, noting that the community is interested in returning to single-family uses, but also in working with the owners to allow re-use of the historic carriage house. Commissioner Jensen then suggested that the owners consider maintaining two units in the main structure and developing one unit in the carriage house. Commissioner Jensen made a motion to recommend denial of the Planned Development Rezoning. The motion failed for lack of a second.

Another motion was then made to allow up to four units, three units in the main structure and one unit in the carriage house; with the condition that if the carriage house could not be legally developed as a unit then only three units continue to be allowed in the main structure; a fourth parking space be provided in the rear yard; and the front tandem parking spaces be removed and returned to landscaping. Commissioner Jensen expressed concern about lack of open space and the high number of units. Chair Do expressed concern with the reduced parking for the number of units. The motion passed 5-2-0 (Commissioners Do and Jensen opposed).

### **ANALYSIS**

For complete analysis please see the original Staff Report (see attached).

### **EVALUATION AND FOLLOW-UP**

The applicant will be required to resolve the Code Compliance order by abandoning or developing the property in a manner consistent with any Planned Development Rezoning approval or denial.

### **POLICY ALTERNATIVES**

Not Applicable.

### **PUBLIC OUTREACH/INTEREST**

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

A notice of this Planning Commission public hearing and subsequent City Council hearing was mailed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. This staff report is also posted on the Planning division website and staff has been available to respond to questions from the public.

A community meeting was held for this project on August 21, 2008 at the regularly scheduled 13<sup>th</sup> Street Neighborhood Advisory Committee meeting. Several concerns were raised during the community meeting, which had an attendance of approximately 35 individuals from the public. The community was concerned with the lack of parking provided on the site, the overflow parking in the front yard, the lack of open space, the paved rear yard, the number of units proposed on the site, and the fact that three units have already been constructed without benefit of permits.

### **COORDINATION**

This project was coordinated with the City Attorney's Office, Department of Public Works, Building Department, Environmental Services Department, Fire Department, Department of Transportation, San José Police Department, and San José Water Company.

### **FISCAL/POLICY ALIGNMENT**

This project is not consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Density Residential MDR (8-16 DU/AC) for the site, and does not meet the minimum standards of the Residential Design Guidelines for parking and open space, as further discussed in attached staff report.

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**COST SUMMARY/IMPLICATIONS**

Not applicable.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

CEQA: Exempt

  
For JOSEPH HORWEDEL, SECRETARY  
Planning Commission

For questions please contact Jeannie Hamilton at 408-535-7850.

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.:** PDC08-033

**Submitted:** 6/13/08

**PROJECT DESCRIPTION:** Planned Development Rezoning from the R-M Multiple Residence Zoning District to the A(PD) Planned Development Zoning District to allow up to six residential units within the existing structure(s) on a 0.17 gross acre site.

**LOCATION:** West side of N. Third Street, approximately 340 feet south of Hensley Street (405 N. Third Street)

Zoning	R-M Multiple Residence
General Plan	Medium Density Residential (8-16 DU/AC)
Council District	3
Annexation Date	Original City 1850
Historic District	Hensley Historic District
Historic Resource	Reconstructed CS
Redevelopment Area	13 <sup>th</sup> Street SNI
Specific Plan	N/A

**Aerial Photo**



### General Plan



### Zoning



## **RECOMMENDATION**

Planning staff recommends denial of the proposed Planned Development Rezoning for the following reasons:

1. The proposed project is not consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Density Residential MDR (8-16 DU/AC).
2. The proposed project does not further the objectives of the goals and policies of the San José 2020 General Plan with respect to Housing and Urban Conservation/Preservation.

## **BACKGROUND**

Following a fire in 1990, the Director of Planning issued a Historic Preservation Permit (File No. HP90-002) to allow the reconstruction of the Contributing Structure with three residential units, located on the subject site within the Hensley Historic District. In January 2007 a Code Enforcement case was opened for the construction of two additional residential units in the basement of the main structure and one additional residential unit in the detached carriage house/accessory structure at the rear of the property, all built without the benefit of permits. Also in January 2007, a Preliminary Review application was filed to receive feedback on the potential to support the units involved in the Code Compliance Order. Information was provided to the applicant regarding the non-compliance of the proposal with both the existing Zoning District and General Plan Land Use Designation for the site. The applicant was advised that: 1) the density proposed far exceeded the maximum density planned for the neighborhood, and 2) any proposed increase in density at the site would need to provide adequate parking and open space, because without adequate parking and open space, the preliminary proposal did not conform with the General Plan and 13<sup>th</sup> Street Neighborhood Improvement Plan. On June 13, 2008, Ruth and Going, Inc., on behalf of owner Bill Priest, filed a Planned Development Rezoning application from R-M Multiple Residence to A(PD) Planned Development for the proposed project to allow up to six residential units within the existing structure(s) on the subject site.

### **Site and Surrounding Uses**

The project site consists of one 0.17 gross acre parcel, rectangular in shape, located at the west side of N. Third Street, approximately 340 feet south of Hensley Street (405 N. Third Street) within the Hensley City Landmark Historic District and the 13<sup>th</sup> Street Strong Neighborhoods Initiative Redevelopment Area. The site is currently developed with three permitted residential units and three additional residential units built without benefit of permits.

The project site is bordered to the west, north, and across N. Third Street to the east by single and multi-family residential uses; and to the south by parking and artist loft uses. It is anticipated that future development within the Hensley Historic District neighborhood would allow a mixture of single and multi-family residential uses, subject to the provisions of the General Plan, Historic Preservation Ordinance, and Residential Design Guidelines.

## Project Description

The subject Planned Development Zoning proposes up to six residential units on the site including: the three existing permitted residential units on the first and second floors of the main structure; as well as the two additional units in the basement of the main structure and one additional unit in the carriage house/accessory structure built without the benefit of permits.

According to information and analysis provided in the Historic Preservation Permit, the reconstructed residential structure is considered a two story building sheathed in shiplap horizontal wood siding, with an attic under a mansard bay roof shingled in composition shingles. Because the finished first floor is more than six feet above grade, the basement is technically considered to be a story of the building. The reconstruction was designed to be as close as possible to the original design of the building, and utilized architectural details salvaged from the original Contributing Structure to the Hensley Historic District, destroyed by fire in 1990. The structure was found to be sensitive to maintaining the character of the original building and in keeping with the neighborhood and historic district. Conversion of the basement to residential units, undertaken since issuance of the Historic Preservation (HP) Permit, did not involve significant exterior alterations to the main structure. While the HP Permit did not permit demolition or new construction in the historic accessory structure/carriage house, conversion of the carriage house without benefit of permits to a residential unit undertaken since issuance of the HP Permit has retained the form of the structure while altering the siding and openings.

Access to parking is proposed via an existing driveway at the northern edge of the site leading to open parking in the rear yard, and an existing substandard curb cut and driveway at the southern edge of the site leading with two tandem parking spaces. Common open space for the units is provided in a 270 square foot space in the southwest corner of the rear yard located between the parking, accessory structure, and fence. No private open space is proposed for the units.

## ANALYSIS

The analysis section of this report focuses on the following key topics: 1) conformance to the General Plan, 2) conformance to the Residential Design Guidelines, 3) conformance to the 13<sup>th</sup> Street SNI Neighborhood Improvement Plan, and 4) conformance to the California Environmental Quality Act (CEQA).

### General Plan Conformance

The subject site is located within the Hensley City Landmark Historic District and the 13<sup>th</sup> Street Strong Neighborhoods Initiative area, with a General Plan Land Use/Transportation Diagram designation of Medium Density Residential (8-16 DU/AC). This density allows for a mixture of single-family, two-family and multi-family units; subject to overall density limits. It has been planned as a transition between higher intensity downtown uses to the south and lower intensity one and two-family neighborhoods to the north.

Currently, there are three permitted units on the site at an existing density of 17.6 DU/AC. The existing development can be found to be in conformance as a developed parcel of two acres or less. Since parcels of two acres and less in size may be too small to be separately identified on a map of the scale of the official Land Use/Transportation Diagram, any legally developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of its designated density or use. The project proposes

to add an additional three units at a proposed density of 35.29 DU/AC, however, which would constitute more than double the maximum designated density for this site.

#### Alternate Discretionary Use Policies

General Plan land use designations are intended to reflect the goals and policies of the Plan, including policies intended to protect existing residential neighborhoods from the encroachment of incompatible land uses. In order to meet these broader goals, the General Plan Discretionary Alternate Use Policies specify conditions under which an alternative density to that allowed in a particular designation may be determined to be in conformance with the General Plan.

To further the objective of encouraging innovative infill development, existing parcels of two acres or less may be developed at a higher or lower density range under the *Two Acre Rule*. The alternate density allowed by this policy should be compatible with existing and planned uses on neighboring properties. In addition, projects proposed under this policy should exceed the minimum standards of the Zoning Ordinance and adopted design guidelines. Because the proposed increase in density far exceeds the planned maximum densities of the neighborhood and the project does not propose any enhancement of parking or open space, the project does not exceed minimum standards of the Zoning Ordinance and adopted design guidelines, and therefore does not meet the conditions under which an alternative density can be determined to be in conformance with the General Plan.

Alternate densities may also be allowed on sites under the *Structures of Significant Historical or Architectural Merit* policy, if to do so would enhance the likelihood that the historic qualities of the historic site or district would be preserved, and the use would not otherwise be incompatible with the surrounding area. While the reconstruction of the Contributing Structure within the original footprint and envelope of the historic structure has been found to be compatible with the Historic District, the house itself does not retain enough fabric to qualify as an individually significant historical resource. The preservation of the district does not depend on the request for increased density on the site, and to the contrary, the lack of new enhanced parking or open space within the project would be incompatible with the character of the surrounding neighborhood. For these reasons, the project does not meet the conditions under which the request for increased density can be determined to be in conformance with the General Plan under this Alternate Discretionary Use Policy.

#### Major Strategies, Goals and Policies

The Housing Major Strategy works with the Growth Management Major Strategy to provide a variety of housing opportunities to meet the needs of the community in neighborhoods which are stable and have adequate urban services. For those households that need help in finding affordable housing, the housing strategy includes financial assistance and other measures to encourage the construction, rehabilitation and conservation of affordable housing. To achieve this objective, the City's housing strategy includes careful planning for residential land uses at appropriate locations and densities. Adopted design guidelines are used to ensure that infill housing provides a high quality of life for residents and neighbors alike. While the proposed use is well located to take advantage of commercial services, transit opportunities and other downtown amenities, the project does not further the objectives of the strategy in that it does not propose to provide affordable housing, and it does not conform to adopted design guidelines regarding parking and open space.

**Conformance to the Residential Design Guidelines**

This project would be subject to Chapter 23 (Cluster Housing) of the Residential Design Guidelines. The Guidelines note that while San Jose is too large and heterogeneous for guidelines to have a specific stylistic intent, the Guidelines specifically address the relationships of projects to their surroundings: existing and developing neighborhoods, public streets, and public open spaces. The project was evaluated for conformance to the Guidelines for its relationship to surroundings, circulation, parking and amount of open space.

As noted in the project description, the street interface of the existing residential structure has been found to be compatible with the rhythm and character of existing development in the historic district in terms of setbacks, orientation, and massing, as well as materials.

The project proposes to locate four parking spaces in the rear yard and two tandem spaces in an existing second driveway at the southern edge of the property. A second driveway may be permitted for mid block residential lots if the length of the frontage is 90 feet or more. The length of the frontage for this property is 54.33 feet. The Public Works memorandum includes a condition to remove this substandard driveway. In addition ordinances and policies would not support the location of parking within the front yard of a residential property. Therefore, the project could effectively provide four parking spaces in the rear yard, while decreasing the potential common open space available to residents.

Based on extensive surveys, the intent of the parking chapter of the Residential Design Guidelines is to establish design standards to ensure that projects provide sufficient parking. The proposed rezoning would not conform to the adopted Residential Design Guidelines by providing a ratio of one parking space per each 2 bedroom unit, and .5 spaces per each 1 bedroom unit for a total of four spaces located in the rear yard, or sixty percent less than the ten spaces required under the Residential Design Guidelines. Alternatively, the project has not proposed a parking analysis or Travel Demand Management (TDM) program or off-site parking agreement in order to provide evidence that parking demand could be reduced.

Existing Units	Open Parking Permitted	Proposed Units	Open Parking Required	Open Parking Proposed
Two 2 Bedrm	2	Two (e) 2 Bedrm @ 1.8	3.6	2
One 1 Bedrm	1	One (e) 1 Bedrm @1.5	1.5	.5
		Three(n) 1 Bedrm @1.5	4.5	1.5
	3 rear		10 rear	4 rear

Based on the City of San Jose Zoning Ordinance requirements, a multi-family residential development such as this would also provide a minimum of one bicycle parking space per every four units, for a minimum of two spaces.

The Residential Design Guidelines include minimum private and common open space standards to allow adequate access for residents to usable outdoor areas, for recreation and social activities. Projects with restricted private open space areas should include usable common open space recreation facilities. Areas of decorative planting are not considered to be usable common open space. Cluster Housing is

recommended to provide a minimum of 60 square feet of private open space and 200 square feet of common open space for each unit. However, projects with fewer than eight units, such as this project, would not be required to provide any common open space provided that each ground floor unit has at least 120 square feet of private open space. Including the proposed basement units, the project would propose five ground floor units, with no private open space provided. The currently permitted three unit building provides common open space in the form of a 143 square foot patio adjacent to the rear of the main structure and a 270 square foot space in the southwest corner of the rear yard situated between a parking space, the accessory structure and a good neighbor fence. With the project proposal to locate one more parking space in the rear yard, the project now proposes to reduce available common open space to the 270 square foot open space in the southwest corner of the rear yard, for a total of only 45 square feet of common open space per unit. The project does not meet either the basic or alternative open space recommendations of the Residential Design Guidelines.

### **Strong Neighborhoods Initiative Neighborhood Improvement Plan**

The Strong Neighborhoods Initiative (SNI) is a partnership of the City of San Jose, San Jose Redevelopment Agency, and the community to build clean, safe, and attractive neighborhoods with independent and capable neighborhood organizations. The Thirteenth Street Neighborhood Improvement Plan is one of 22 plans prepared or updated as the first step in the Strong Neighborhood Initiative process. The Plan documents the community's objectives and priorities and provides guidance to the City, Redevelopment Agency and neighborhood stakeholders for implementation. The Plan envisions revitalization of the 13th Street Neighborhoods, including protecting and enhancing neighborhood character, condition, appearance and safety, while ensuring the availability of neighborhood services and amenities, for a diverse and vital residential population. Two overall concepts emerged from the community in discussions: strengthening neighborhood residential fabric, and supporting new, compatible development in focused areas. One of three Plan Concepts, Conservation and Development, focuses on managing parking on streets and within private development areas in the 13th Street neighborhoods so that parking for local residents and neighborhood businesses is improved. While the project as proposed would retain the existing structure, the lack of parking management and open space provisions would not conform to the community objectives of supporting new, compatible development while managing parking.

### **Environmental Review**

Under the provisions of Section 15303 (New Construction or Conversion of Small Structures) of the State Guidelines for Implementation of the California Environmental Quality Act, this project can be 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, in that the project proposes a multi-family residential structure designed for not more than six dwelling units.

### **PUBLIC OUTREACH**

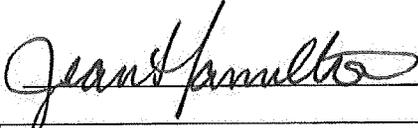
A community meeting was held for this project on August 21, 2008 at the regularly scheduled 13<sup>th</sup> Street Neighborhood Advisory Committee meeting. Several concerns were raised during the community meeting, which had an attendance of approximately 35 individuals from the public. The community was concerned with the lack of parking provided on the site, the overflow parking in the front yard, the lack of open space, the paved rear yard, the number of units proposed on the site, and the fact that three units

have already been constructed without benefit of permits. In response to comments made at the community meeting, the applicant submitted a letter, included in the project file and attached to this staff report.

In conformance with the Public Outreach Policy, the property owners and occupants within a 500-foot radius were sent public hearing notices for the Planning Commission and City Council hearings. This staff report has been posted on the City's web site. Signage has been posted at the site to inform the public about the proposed rezoning and staff has been available to discuss the proposal with interested members of the public.

**CONCLUSION**

As discussed in the above analysis, the subject Planned Development rezoning because is not consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Density Residential MDR (8-16 DU/AC) for the site, and does not further the objectives of General Plan goals and policies. In addition, the proposed project does not meet the minimum standards of the Residential Design Guidelines for parking and open space, and does not further the objectives of the SNI Neighborhood Improvement Plan. Given the lack of conformance to the City's General Plan and Residential Design Guidelines, staff is recommending denial of the proposed Planned Development Rezoning from the R-M Multiple Residence Zoning District to the A(PD) Planned Development Zoning District to allow up to six residential units within on the subject site.

**Project Manager:** Sally Zarnowitz **Approved by:**  **Date:** 3/22/10

<b>Owner/Applicant</b> Bill Priest 28 N. First Street San Jose CA 95112  Gerry De Young Ruth and Going, Inc. P.O. Box 26460 San Jose CA 95159	<b>Attachments:</b> Final Public Works Memorandum Plans Correspondence
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# Memorandum

**TO:** Licinia McMorrow  
Planning and Building

**FROM:** Ryan Do  
Public Works

**SUBJECT: FINAL RESPONSE TO  
DEVELOPMENT APPLICATION**

**DATE:** 07/31/08

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**PLANNING NO.:** PDC08-033  
**DESCRIPTION:** Planned Development Rezoning from R-M to A(PD) to authorize the conversion of a carriage house to residential use on a 0.17 gross acre site  
**LOCATION:** West side N 3rd St, 340 ft south of Hensley St  
**P.W. NUMBER:** 3-09762

Public Works received the subject project on 06/16/08 and submits the following comments and requirements.

## **Project Conditions:**

**Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, 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. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
2. **Transportation:** This project is exempt from the Level of Service (LOS) Policy, and no further LOS analysis is required because the project proposes an increase of 15 units of Single Family detached or less.
3. **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.
4. **Parks:** In accordance with the Parkland Dedication and Park Impact Ordinances (SJMC 19.38/14.25), the park impact fee will be due for any additional living units that are built.

5. **Undergrounding:** The In Lieu Undergrounding Fee may be required by the City for all or part of frontage adjacent to North 3<sup>rd</sup> Street prior to issuance of a Public Works clearance. (Currently, the base fee is \$224 per linear foot of frontage. However, the base fee will be increased to \$395 starting August 18, 2008.)
6. **Street Improvements:**
  - a) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
  - b) Close unused driveway cut(s).
  - c) Proposed driveway width to be 26'.
7. **SNI:** This project is located within the Thirteenth Street SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.

Please contact me at 535-6897 or Asad Rajbhoy at 535-7878 if you have any questions.



Ryan Do  
Acting Senior Engineer  
Transportation and Development Services Division

WILLIAM G. PRIEST, JR.  
and SHARON J. LAYNE  
28 N. FIRST STREET, SUITE 100  
SAN JOSE, CALIFORNIA 95113  
(408) 279-3450

December 8, 2008

RECEIVED  
DEC 12 2008  
CITY OF SAN JOSE  
DEVELOPMENT SERVICES

Joseph Horwedel, Director  
City of San Jose Department of  
Planning, Building & Code Enforcement  
City Hall 200 East Santa Clara Street  
Tower, 3<sup>rd</sup> Floor  
San Jose, CA 95113-1905

RE: Rezoning Application: PDC07-011

Dear Mr. Horwedel:

We have an application for rezoning (referenced above) of the property located at 405 N. Third Street, San Jose, pending with your Department. On August 21, 2008, the assigned Planning Department representative, a Ms. McMorrow; undertook a scheduled public presentation of the project before the 13<sup>th</sup> Street NAC meeting held at the public library on East Taylor Street. As we understood the purpose of the meeting, it was to present the project to the community and seek initial input from them. The meeting was attended by approximately 35 or so residents, as well as representatives of the Police Department, your Department, and other agencies.

In presenting our project, Ms. McMorrow described it as "an application to 'legalize' a six-unit building which was only permitted for three," in a neighborhood of "single-family residences and duplexes," which would cause the density to be "32 units per acre, a huge increase." In making the presentation, she made it clear that, according to her, the Planning Department was strongly opposed to such a Rezoning, and that she considered the application frivolous and hopelessly devoid of merit; her tone was that of ridicule and obvious disapproval, and she actually laughed at the proposal when describing the density increase. My wife and I were shocked, embarrassed, and very surprised that a City official would be permitted to, or would, subject an applicant to public ridicule and attempt to influence the opinions of those whose input she was supposedly seeking objectively.

Aside from the serious attitude issue presented by Ms. McMorrow, she entirely misrepresented the nature of the neighborhood. The project is located next to a twelve-unit artist loft apartment complex which is adjacent to the railroad tracks; the neighborhood, from the tracks north to Empire Street, actually consists of 35 residential structures, of which eight are single-family, eight are duplexes, three are tri-plexes, and the remaining 16 consist of four or more living units (10 are five or more units, up to twelve). Mischaracterizing the nature of the neighborhood by Ms. McMorrow unfairly prejudices the analysis, and the opinions of those whose input was being sought. She also misrepresented the number of on-site parking spaces available on the property (claiming three, when there are actually seven); in any event, parking is said to be a big issue, despite the fact

that virtually all of the multi-family buildings in the neighborhood provide one or fewer parking spaces per unit (which is easily demonstrable, as is the lack of any serious parking "problems" in the immediate neighborhood).

The history of the property is very important to consider, and although it is true that we are, in effect, seeking to "legalize a previously unpermitted use," such use was and will remain discontinued until this matter is concluded, at which time we will comply with all City requirements. In 1986, we purchased and then restored The Hensley House, located at 3<sup>rd</sup> and Hensley, in terrible condition, in the then-blighted Hensley Historic District, and restored it to its present state, obtaining a re-zoning of the property to convert the residential use to a bed-and-breakfast inn which we operated for several years prior to selling it. The 405 N. Third Street property was purchased in 1987 as a somewhat run-down Victorian which fit well in the Hensley Historic District; it was four units when we purchased it, including the "carriage house" in the rear. Destroyed by fire in 1990, we re-built, replicating the Victorian design and incorporating much of the original "gingerbread" salvaged from the former structure. We have been repeatedly told by our neighbors and those active in the Historic District that it greatly enhanced the Victorian look-and-feel of this transitional neighborhood.

When the house was re-built, completed in 1992, it had three units in the main building (as prior), plus the carriage house; since the carriage house had been in use as a living unit for a number of years prior, and was not affected by the fire, we were not cognizant of the fact that we could not continue to use it for living purposes. After completion of our project, we rented the three units in the main house, and occupied the carriage house as our "in-town" residence. Over the next few years, because of family needs, we also completed two studios in the basement of the main building, one of which was occupied by my wife's disabled daughter. Because the property is only a five-minute walk from the Ayer Street Light Rail Station, ten minutes' walk from our office in downtown (near First and Santa Clara), and an easy walk to all of the downtown office buildings and San Jose State, we rent to singles and professional couples who utilize pedestrian or public transit, thereby effectively limiting the numbers of cars that park on our site, and provide affordable housing for the downtown, at less-than-market cost.

We feel that this project makes very good sense for its location, will impact the neighborhood only favorably if properly analyzed, and will promote the goals of the City in current and future planning. When we submitted the application (along with approximately \$15,000 in fees), we expected a fair, objective analysis with some constructive input from the Planning Department, but seem to have encountered a less-than-helpful response. We are prepared to go forward with this application, to the Planning Commission and the City Council, because our analysis will show that it is a benefit to the community. In the meantime, we respectfully request that your Department either counsel or elicit an attitude adjustment from the assigned planner, and provide some assurance that the proposal will receive serious and professional treatment from your staff. Thank you for your anticipated courtesy in this regard.

Yours very truly,



William G. Priest, Jr.

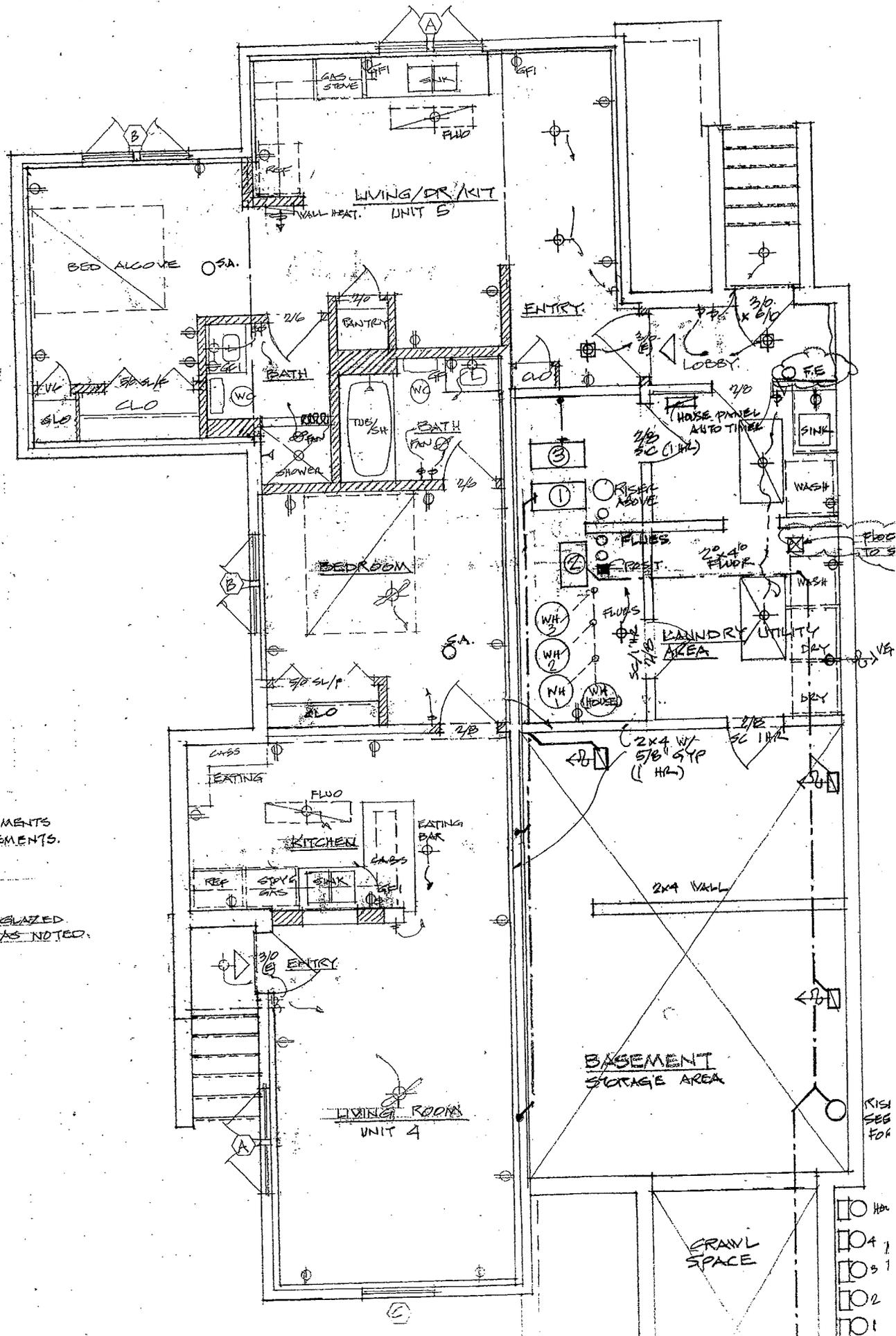
August 21, 2008

To Whom It May Concern:

405 North 3<sup>rd</sup> Street, San Jose, CA 95112

- Lot is 56 feet N to S and 137.5 feet E to W. According to the city ordinances this size of lot can accommodate 2.5 apartments.
- Each apartment is to have parking space for 1.5 vehicles.
- In the past one renter from 405 North 3<sup>rd</sup> Street grabbed another tenant by the throat over a parking dispute and it was necessary to call the police to break up this fight.
- This property is located in the Hensley Historic District so such a proposed zoning change is in total disregard to the design and plans for this historic neighborhood.
- The original house was built in the 1880's as a single family home.
- It was used as a triplex until 1980's when it was destroyed in a fire and then it was rebuilt a couple of years later.

A handwritten signature in black ink, appearing to be 'Jov' or similar, located below the list of points.



ELEMENTS  
 ELEMENTS.

GLAZED  
 AS NOTED.

N THIRD STREET ↓

- 4
- 3
- 2
- 1

## Neighborhood Analysis

For PDC08-033

During the initial discussions with the Planning staff at the Preliminary Review stage and continuing into the staff comments following submittal of the PD Zoning application, the neighborhood around the site has generally been characterized by staff as a typical suburban neighborhood. Therefore two issues of significance were raised. The first being the overall density/number of units of the proposed project and the second being the need to meet traditional parking requirements. Indirectly, the third issue has been the general character of the neighborhood.

The PD Zoning application was filed in order to allow the use of two basement rental units as well as the owner's use of the carriage house to the rear of the site as a living unit; in addition to the existing 3 permitted apartment units.

This letter presents the finding of our analysis of the "neighborhood", being defined as all the homes fronting on 2<sup>nd</sup> and 3<sup>rd</sup> Streets between Empire Street and the Railroad tracks to the south (see aerial - Figure 1). This area is comprised of a total of 66 parcels. Of the total, only 15 contain single family houses. The remainder contain a variety of numbers of rental units/rooms (see Figure 2). The analysis of the number of units per parcel was derived from visual observation of number of mailboxes/addresses for each parcel, and as such, it is not known whether the number of units/rooms have been permitted for each property. Two of the properties on the west side of N. 2<sup>nd</sup> Street in the neighborhood contain large condominium/apartment projects, and have been excluded from this analysis; although they certainly contribute to the ambience of the neighborhood.

Attached to this document is a series of photographs of representative examples of both the existing housing stock in the neighborhood as well as examples of parking supply and condition of parking areas. These photos include notations about the number of units at each property and the number of parking spaces provided. There are 5 properties shown for both 2<sup>nd</sup> and 3<sup>rd</sup> Streets and 1 property on 4<sup>th</sup> Street. The subject site is also shown for comparison (see Figure 3).

### *General Character of the Neighborhood*

The neighborhood described in this analysis is part of the Hensley Historic District. As such many of the structures were constructed early in the 20<sup>th</sup> century. However as with many of the "downtown" neighborhoods it is an eclectic mix of architectural styles and type and size of houses.

Beginning with the Great Depression in the 1930's and continuing into the 1940's and 1950's many of these historic homes were turned into boarding houses and converted into multiple living units. In the 1960's many of the larger homes in and around the downtown were razed to give way to apartment buildings and commercial endeavors. A renewed appreciation for the

remaining old homes led to a beginning of historic preservation efforts in the 1970's, and this continued into the 1980's with national recognition and city landmark status for the Hensley District.

In 1990 the original Victorian house that occupied the subject site was completely destroyed by an arsonist fire. The owners, and applicants of this project, reconstructed the house in keeping with the original house.

*Neighborhood Density / Average number of units per lot*

On North Third Street (on which the subject project resides) 51% of the lots contain 3 or more units (herein units means either dwelling units or rooms for rent). Of the total number of 133 units 107 (80%) of them are in buildings of 3 units or greater. The average density of this street is approximately 22 du/ac. The individual block densities (rounded) are as follows:

<u>Empire to Hensley</u>		<u>Hensley to RR tracks</u>	
East side	26 du/ac	East side	18 du/ac
West side	17 du/ac	West side	27 du/ac

On North Second Street 46% of the lots contain 3 or more units. Of the total number of 76 units 56 (74%) of them are in buildings of 3 units or greater. The average density of this street is approximately 18 du/ac. The individual block densities (rounded) are as follows:

<u>Empire to Hensley</u>		<u>Hensley to RR-tracks</u>	
East side	16 du/ac	East side	20 du/ac
West side	20 du/ac	West side	16 du/ac

When taken as a whole the overall density of the area is about 20 dwelling units per acre.

It should be noted that this density analysis excludes the condominium/apartment developments on both sides of the southerly end of Second Street. The Ryland Mews condo project on the west side has a density of 56 du/ac. The apartment project on the east side has a density of 39 du/ac. Both of these projects are within 200 feet of the subject site. Including these two developments in the calculation increases the overall density of the neighborhood to approximately 38 dwelling units per acre.

*Parking Supply*

On North Third Street the parking provided for the 92 units in buildings of 3 units or greater is observed to be 86 spaces, or an average of .93 spaces/unit. When all the units, including single family and duplexes, and parking spaces are counted the supply of parking averages 1 space/unit.

On North Second Street the parking provided for these 56 units in buildings of 3 units or greater is estimated to be 45 spaces, or an average of .94 spaces/unit. When all the units, including single

family and duplexes, and parking spaces are counted the supply of parking averages .95 space/unit.

### *Conclusion*

The project site is within a neighborhood area where the number of units per lot is greater than a traditional suburban residential neighborhood with the average density about 20 units per acre. This is in a range that the City's General Plan would define as Medium High Density Residential (12-25 du/ac), even though the actual designation for the area is Medium Density Residential (8-16 du/ac).

Within the neighborhood, the highest density is found adjacent to the subject site to the south and within 200 feet of the site, to the south and west. These three condominium / apartment developments have densities of 30 du/ac, 39 du/ac and 56 du/ac.

On the same block of Third Street, immediately across the street from the subject site the two houses each contain 5 units. Thus the density on each lot is 36 du/ac. To the north of the site on the same side of the street are two houses containing a total of 18 rooms. The density of these lots is 36 du/ac and 50 du/ac.

The addition of three units to the subject site would result in a density of 35 du/ac. This is certainly not inconsistent with adjacent and nearby densities.

With regard to parking, the parking analysis presented above would indicate that the ratio of onsite parking is slightly less than 1 space per unit/room. Thus the parking that is being proposed for the subject site is consistent with this ratio.

**STATEMENT OF EXEMPTION**

**FILE NO.** PDC08-033

**LOCATION OF PROPERTY** West side of N. Third Street approximately 340 feet south of Hensley Street (405 N. Third Street)

**PROJECT DESCRIPTION** Planned Development Rezoning from R-M Multiple Residence Zoning District to A(PD) Planned Development Zoning District to allow up to six residential units within the existing structure(s) on a 0.17 gross acre site.

**ASSESSOR'S PARCEL NUMBER** 249-44-007

**CERTIFICATION**

Under the provisions of Section 15303 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.

**15303. New Construction or Conversion of Small Structures**

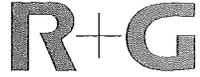
Class 3 consists of construction and location of limited numbers of new, small facilities or structures' installation of small new equipment and facilities in small structures; and the conversion of existing small structures form one use to another where only minor modifications are made in the exterior of the structure. The project consists of a multi-family residential structure in an urbanized area designed for not more than six dwelling units.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

Date: April 8, 2010

  
Deputy

4/27/10  
11.2



Ruth and Going, Inc.

Hand Delivered

April 9, 2010

Mayor Reed and City Council members  
City of San Jose  
200 E. Santa Clara Street  
San Jose, CA 95113

Attn: City Clerk

RE: PDC08-033

Dear Mayor Reed and City Council members;

The purpose of this letter is to request that the subject rezoning which has been noticed for the Council's April 27<sup>th</sup> evening agenda be deferred to the Council's first evening meeting in June.

This request, made on behalf of the applicant, is made necessary due to the fact that the applicant cannot be available for the April 27<sup>th</sup> hearing or any subsequent evening hearing dates in May.

Thank you for consideration of this request.

On behalf of the applicant,

A handwritten signature in black ink, appearing to read 'Gerry De Young', written over a printed name.

Gerry De Young

cc: Council member Liccardo  
Jeannie Hamilton, Planning Dept  
Bill Priest, applicant

Engineering  
Planning

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