Emails Received regarding agenda items

CITY OF ALBANY, CALIFORNIA

Albany City Hall
1000 San Pablo Avenue
Albany, California 94706

Agenda Item 9-2: Public Hearing
Appeal of P & Z Decision for 1115 Neilson

City Council Meeting
June 17, 2019

From:	Mark Wolfe
To:	Anne Hsu
Cc:	citycouncil
Subject:	Letter to City Council re: Appeal of PA #19-022 Design Review and Parking Reduction for a Second Story Addition at 1115 Neilson Street
Date:	Friday, June 14, 2019 9:51:46 AM
Attachments:	Letter to City Council_re PA 19-022_6-14-19.pdf

To the City Clerk:

Attached in PDF format please find a letter addressed to the City Council in support of the appeal of the Planning & Zoning Commission's approval of a proposed expansion of 1111-1115 Neilson Street. Please distribute copies to Council members in advance of the June 17, 2019 hearing on the matter.

I would be grateful if you could acknowledge receipt of this email and the attachment by reply.

Thank you very much.

_____

Mark R. Wolfe
M. R. Wolfe & Associates, P.C.
Land Use | Environmental Law | Elections
555 Sutter Street | Suite 405 | San Francisco, CA 94102
415.369.9400 | Fax: 415.369.9405 | www.mrwolfeassociates.com

m | r | wolfe
& associates, p.c.
attorneys-at-law

June 14, 2019

By Electronic Mail
Acknowledgement of Receipt Requested

Mayor Rochelle Nason
Members of the City Council
City of Albany
c/o Anne Hsu, City Clerk
1000 San Pablo Avenue
Albany, CA 94706
Email: ahsu@albanyca.org

Re: Appeal of Planning & Zoning Commission Approval of Design Review and Parking Reduction; 1111, 1113, 1115 Neilson Street [PA #19-022]

Dear Mayor Nason and Councilmembers:

On behalf of appellants Elisabeth Lhoest and Vincent Labiano Abello, who reside at 1117 Neilson Street, please accept and consider the following points in support of their appeal of the Planning & Zoning Commission's April 10, 2019 action approving design review and a parking reduction for the above-referenced property. As explained below, the property is a nonconforming use occupying a nonconforming structure in the R-1 zoning district, and as such may not be physically expanded in the manner proposed. The City Council should therefore uphold the Abellos' appeal and overturn the Planning & Zoning Commission's approval actions.

Project Description

The applicant proposes a two-level addition to an existing structure at 1111-1115 Neilson Street. The existing structure is a triplex that includes two 1 bedroom/1 bathroom units, plus a main dwelling with 2 bedrooms and 1 bathroom. The applicant seeks to expand the structure's main level and add a second story to accommodate an additional 2 bedroom/1 bathroom living space with a roof deck. This would result in a 4 bedroom, 2 bathroom, main dwelling with a maximum height of 28 feet. A Parking Reduction is required to waive one off-street parking space that would otherwise be required.

Zoning Analysis

The site is in the Residential Single-Family (R-1) Zoning District. The Albany Municipal Code ("AMC") establishes and designates zoning districts for the express purpose of "determin[ing] permitted land **uses** and conditionally permitted land **uses** which will be consistent with the General Plan and adopted specific plans." AMC § 20.12.010, emphasis added. AMC section 20.12.040 and its incorporated Table 20.12.040 list "Permitted Land Uses By District." Below is a relevant excerpt.

20.12.040 Permitted Land Uses by District.

Key to Table:
P = Permitted
UP = Use Permit Required
UP-M = Minor Use Permit Required[16, 17]
- = Not Permitted
Limits on authority for UP-M are indicated by * and **[16]

TABLE 1. 20.12.040 PERMITTED LAND USES BY DISTRICT

Land Use[1]	R-1	R-2	R-3	R-4	RHD	SC	SPC	CMX	PF	WF[11]
Residential										
Single-Family Dwelling	P	P	P	-	P	P[2]	P[3]	-	-	-
Two-Family Dwellings	-	P	P	-	UP	P[2]	P[3]	-	-	-
Multi-Family Dwellings (Ord. No. 2014-11)	-	P	P	P	UP	P[2]	P[3]	-	-	-
Live/Work Space	-	-	-	-	-	P[2]	UP	UP-M**	-	-
Rooming or Boarding House	-	-	P	-	-	-	-	-	-	-
Bed and Breakfast	UP	UP	UP	-	UP	-	-	-	-	-
Care Facility, Residential										
a) Small	P	P	P	P	P	P	P	-	-	-
b) Large	UP	UP	UP	UP	UP	UP[4]	UP[4]	-	-	-

As Table 20.12.040 establishes, "Single-Family Dwellings" are "Permitted" uses in the R-1 Zoning District. By contrast, "Two-Family Dwellings" and "Multi-Family Dwellings" are "Not Permitted" uses in the R-1 District.

AMC section 20.08 defines "Nonconforming use" as "any use which was legal when created and which is no longer itself a permitted or conditionally permitted use in the district in which it is located." The existing residence on the subject site is a

"Multi-Family Dwelling," specifically a triplex with three street addresses – 1111, 1113, and 1115 Neilson St. It is therefore a "nonconforming use" under the AMC.[1]

AMC section 20.08 similarly defines "Nonconforming structure" as "any legally created structure which no longer conforms to the density, height, coverage, yard, landscaping and screening, usable open space, sign, parking, loading or other requirements applied to structures by this Chapter." The existing multi-family dwelling is therefore also a "nonconforming structure" under the AMC.

As both a nonconforming use and nonconforming structure, the property is subject to the strictures of AMC section 20.44.030 that govern proposed alterations and expansions of nonconforming uses, structures, and lots. AMC section 20.44.030(B) provides:

> Nonconforming Use: Enlargement. A nonconforming use **shall not be enlarged or extended in such a way as to occupy any part of the structure or site**, or another structure or site which it did not occupy at the time of adoption of this Chapter, or of the amendments thereto that caused the use to become a nonconforming use, or in such a way as to displace any conforming use occupying a structure or site, except as permitted in this section. [Emphasis added.]

The proposed expansion of the existing multi-family dwelling unit, a plainly nonconforming use in the R-1 District, is therefore prohibited under AMC section 20.44.030(B).

AMC section 20.44.030(C) similarly provides:

> Structure Containing a Nonconforming Use: Moving, Alteration or Enlargement. A structure, the use of which is nonconforming, shall not be moved, altered or enlarged unless required by law, or unless the moving, alteration or enlargement will result in the elimination of the nonconforming use.

The proposed expansion constitutes both an alteration and enlargement of a structure containing a nonconforming use, and will not eliminate the nonconforming use. It is therefore also prohibited under AMC section 20.44.030(C).

---

[1] Note the Albany General Plan's Housing Element specifically recognizes that multi-family dwellings situated in the R-1 Zoning District are "nonconforming uses" under the AMC. In its Housing Conservation Policy, the Housing Element provides: "Policy 1.6 allows the restoration **of non-conforming multi-family units in single family zones** if they are destroyed by fire or natural disasters." Emphasis added.

Finally, AMC section 20.44.030(D) provides:

> Nonconforming Structures: Additions and Enlargements. A nonconforming structure, or a structure located on a nonconforming lot, if such structure is used for residential purposes may be enlarged or extended, and the number of dwelling units may be increased to the maximum density allowed in the district, provided that no greater degree of nonconformity results with respect to the requirements of the district within which it is located and of this section, and that there is compliance with all applicable City building and housing codes. The preexisting portion of the facility need not be brought into conformance with this Chapter, except as herein provided.

Here, the maximum number of dwelling units allowed in the R-1 District is one. The existing triplex therefore already exceeds the maximum unit density allowable. Furthermore, as described below, the proposed addition violates the floor area ratio limitations established under the AMC, as well as applicable minimum parking requirements. Thus, the proposed expansion of the existing multi-family dwelling unit is impermissible under AMC section 20.44.030(D) notwithstanding the current use for residential purposes.

Floor Area Ratio Calculations

The City's development standards limit the floor area ration (FAR) of structures in the R-1 District to .55 (55%). AMC § 20.24.020; Table 2.A. This may be increased to .60 under certain circumstances. *See* Table 2.A, footnote 5. Here, the Applicant contends that the structure's floor-area-ratio (FAR) is proposed to increase from 40% (2,178/5,450) to 54% (2,979/5,450), just below the 55% cap.[2]

This calculation is incorrect. In calculating the FAR, both the Applicant and City staff excluded the square footage of the open patio/courtyard area that provides access to the three units. AMC section 20.24.050(B)(1)(d) provides that: "[d]ecks, patios or other usable open areas shall be excluded from calculation of gross square footage**, except where such element is enclosed on three (3) or more sides**. (Two (2) walls and a solid roof shall be counted as three (3) sides)." Emphasis added. As the building plans show, the structure's interior courtyard is enclosed on three sides by exterior walls. Its approximately 500 square feet of floor areas must therefore be included in the FAR calculations. Once the courtyard's square footage is included, the resulting FAR is .69, far exceeding the City's applicable standard of .55 increasable to .60.

---

[2] The FAR was calculated using the standards set out in AMC section 20.24.050(B), which apply to "Single-Family Residences." This structure is a multi-family residence, for which no FAR standards existing in the R-1 District.

Parking

AMC section 20.28.030 and its incorporated Table 20.28.030 together impose a one parking space per dwelling unit residential parking requirement for all multi-family dwellings. The existing triplex currently contains three dwelling units. Therefore, three off-street parking spaces are required.

Currently the Applicant maintains only two off-street spaces. Evidence was presented to the Planning & Zoning Commission that these spaces consist of padlocked garages that are not actually used for parking. Meanwhile, the 1100 block of Neilson Street is one of the narrowest streets in Albany. The street cannot accommodate two vehicles passing in opposite directions unless there is curb space for one vehicle to pull over. The proposed expansion of the existing multi-family dwelling would invite additional vehicles to be parked on an already over-crowded street. There is thus insufficient evidence to support any finding supporting the proposed reduction in the City's off-street parking requirement for this property under AMC section 20.28.040.

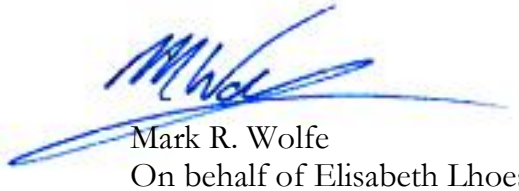
Conclusion

For the foregoing reasons, the proposed alteration and enlargement of an existing three-unit dwelling in the R-1 Zoning District, a plainly nonconforming use in a nonconforming structure, is categorically barred by the Albany Municipal Code. The City Council should UPHOLD the appeal and overturn the Planning & Zoning Commission's approval of design review and a parking reduction for the property.

Thank you for your consideration of these concerns.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



Mark R. Wolfe
On behalf of Elisabeth Lhoest and Vincent Labiano Abello

MRW: