

City of Albany
Planning and Zoning Commission
MEMORANDUM

Meeting Date: October 28, 2008

Agenda Item: 6b

Subject: 423-427 Talbot

Recommendation: Approve

Background:

This item was previously scheduled for a public hearing of the Planning and Zoning Commission hearing on Tuesday, October 14, 2008. The public hearing on the project was opened; however the project was continued to a date certain of October 28, 2008. The staff report has remained unchanged since its distribution on October 10, 2008.

During the public hearing on October 14, 2008 neighbors stated that they had concerns about increased traffic, pedestrian safety due to increased traffic, loss of parking, view obstruction and loss of the "small town character." There is a letter from a member of the public that has been received since the last hearing date and is attached after the staff report.

City of Albany
Planning and Zoning Commission
Staff Report

Meeting Date: October 14, 2008

Prepared by: AC

Agenda Item: 4a

Reviewed by: JB

Subject: 423 and 427 Talbot Avenue. Continuation of Planning Application 08-037. **Parking Exception. Design Review.** Request for Design Review approval on an application to construct a new twelve-unit, three-story, multi-family building. A parking exception is also requested to allow a reduced number of parking spaces.

**Applicant/
Owner:** Erin Duncan with Charles Kahn for Rolf Bell

Recommendation

Staff recommends that the Planning and Zoning Commission approve the parking exception and design review elements of the application, subject to the attached draft findings and conditions of approval, including deferral of review of compliance with the Art in Public Places Requirements, Green Building Program, Inclusionary Housing Program, and Subdivision Map Act requirements.

Project Description

The subject property currently consists of two lots, each 5,000sq.ft. in size, each containing a single family home. The applicant is proposing to demolish the two homes and construct a new twelve-unit, three-story, multi-family building. If approved the two lots must be merged. The applicant also intends to sell the units individually thus future approval of a condominium subdivision map will be required.

The applicant is requesting approval for two discretionary items: 1) Parking Exception to allow 18 parking spaces where 24 are required; and 2) Design Review for the architectural style and integrity of the building. There is a garage, located on the first floor that provides 18 parking spaces that are a mix of parking lifts, and standard spaces. The maximum height of the building is 35', which is the maximum permitted in the R-3 district. The building is consistent with the Mediterranean Revival architectural style with stucco finish, arched windows, wood accented balconies and other architectural details. Instead of a traditional tile roof, a metal standing seam roof is proposed. The required open space is provided in a combined form of a roof top deck at the second-floor and private balconies for most of the units.

Background on Application

The application was received on May 30, 2008. A study session was held on June 10, 2008 where preliminary comments were provided (see "Attachment 4" for the Staff Report and Minutes from the hearing). The project was revised to better meet City development requirements and was heard as a regularly scheduled item on September 9, 2008. A second public hearing was held on September 9, 2008 to review revised drawings (see "Attachment 5" for Staff Report and Minutes from the hearing).

Environmental Analysis

Staff has determined that the proposed project is categorically exempt from the requirements of CEQA per Section 15332 of the CEQA Guidelines, which exempts infill development.

Addressing Issues from September 9, 2008 Public Hearing

At the previous hearing, the Commission expressed support for the project's concept and believed the building's design to be attractive. See "Attachment 5" for discussion of Key Issues (i.e. Design Review, Open Space, Floor-Area-Ratio, etc.).

One Commissioner recommended that the plate heights be lowered to 8' to reduce the height of the building. Three of the Commissioners concurred that restricting the use of the parking lifts for storage could be incorporated into the CC&Rs; Chair Panian and Commissioner Maass concurred. All of the Commissioners were in support of additional parking counts being conducted on weekends and evening to provide a larger sampling in discussing the request for a parking exception. They also concurred that reviewing the building permit application would be an appropriate condition of approval. Finally, a Commissioner recommended that the project be reviewed in a comprehensive package, as opposed to piecemealing, which is not preferable.

The design of the project is unchanged from the previous public hearing; however, additional information has been provided and is discussed in further detail below.

Parking Exception

Per the City's parking standards, each unit requires two parking spaces, thus the total project should have 24 off-street parking spaces. Planning and Zoning Code Section 20.28.040(A3) states that the Commission may reduce the number of required parking spaces for a residential development to 1-1/2 parking spaces per dwelling unit (18 spaces), upon making the finding that the existing on-street parking is sufficient to justify a reduction. To staff's knowledge, this is the first application to have requested this reduction.

In order to provide the Commission with information to potentially support the required finding, a parking survey was conducted within a 500-foot radius around the proposed project at 423/427 Talbot. Three different parking counts were taken, on different days and times. See "Attachment 5" for a more detailed discussion about parking counts conducted for the September 9, 2008 public hearing.

Previous Parking Counts, conducted prior to the September 9, 2008 Public Hearing

Thursday, July 10, 2008--12:30 pm % Occupied	Friday, July 11, 2008--9:30 am % Occupied	Tuesday, July 22, 2008--6:00 pm % Occupied
55%	56%	58%

Additional Parking Counts, conducted after the September 9, 2008 Public Hearing

Saturday, October 7, 2008 – 2:30pm % Occupied	Saturday, October 7, 2008 – 9:00pm % Occupied	Tuesday, October 11, 2008 – 9:00pm % Occupied
69%	75%	73%

The additional parking counts show that parking is less available on evenings and weekend hours, which is not surprising with the standard commute, work and recreational hours during the weekdays. In general, when a parking area is 85% occupied, it is considered to be at capacity. Staff found that areas that were most heavily occupied were those closest to El Cerrito Plaza at all times that parking counts were conducted. The corridor along Brighton Avenue appeared to have more vacancies as well than the side streets.

Staff would like to note that this is one of the largest requests for a reduction in residential parking requirements. With the increase in requests for multi-family developments in the R-3 corridor of Brighton Avenue and the increased development of El Cerrito Plaza the parking conditions may change in the future. Based on current conditions, observed through the parking counts, staff believes that the parking there is street parking available that is needed to support a parking exception.

Although not specifically relevant to the parking reduction process, it should be noted that one of the principles of sustainable development is to encourage the use of transit and car-pooling by limiting the availability of parking. This approach can be particularly effective in locations such as the subject property that are within walking distance of BART and the San Pablo Avenue transit corridor.

Affordable Housing

The City's Inclusionary Housing program (Planning and Zoning Code , Section 20.40.030) requires that at least one inclusionary housing unit be provided for developments with seven to thirteen units. The one unit would be priced to be affordable to a household whose gross income is no greater than 80% of County median income. The applicant has indicated an interest in exploring City financial assistance as part of an affordable housing agreement.

Ultimately the City Council takes action on the affordable housing aspects of the project, based on a recommendation from the Commission. Staff suggests that the Commission defer making a recommendation to the City Council on the affordable housing aspects of the project until the

terms of the affordable housing are agreed upon. A condition of approval has been added detailing the requirements of the City ordinance and requiring City Council approval and recordation of the affordable housing agreement before accepting an application for a building permit as complete.

Subdivision

The applicant is ultimately seeking to develop the project as a condominium. Thus future Commission and City Council action will be required pursuant to the Municipal Code and the California Subdivision Map Act. Neither allows subdivision approval with out submission of a tentative map and discretionary approval. Staff does not foresee any concerns or hindrance to supporting the future application for the subdivision of the proposed project. Required public improvements associated with the subdivision process will be identified at the time of submittal of the subdivision map application.

Public Art Requirement

The proposed project is subject to the City's new Art in Public Places Program. Pursuant to the Ordinance, the project should either include public art, or pay an in-lieu fee to fulfill the requirement. On sites of 10,000 square feet or more, the City has discretion on whether to require the art be included in the project, or accept payment of the fee.

The Arts Committee is scheduled to discuss the project at its meeting on Monday, October 13, 2008. The staff report to the Arts Committee is attached and provides background and context for the public art elements of the project. The public art related findings and draft conditions of approval have been incorporated into the Commission's draft findings and conditions of approval.

Green Building Standards

The City's Green Building Standards of Compliance requires the use of the Build it Green Multi-family Green Building Guidelines, with the project required to achieve the "minimum points standard." Staff is working on updating the City's standards of compliance, and suggests that proposes to use the recently released 2008 version of the Guidelines for evaluating this project.

Other Considerations

A landscaping and lighting plan has not been provided. See "Attachment 5" for full discussion about relevancy of the landscape and lighting plan. Staff continues to recommend that a condition of approval be added requiring that the lighting and landscape plan be reviewed and approved by the Commission, prior to accepting an application for a building permit as complete.

Conclusion

There are attractive features of the project and if approved would provide more housing in an area where there are few opportunities for such a development with the limited multi-family districts in the City. The location of the building is in a central location, close to schools, transit and services.

The applicant has also incorporated early planning efforts into the green building program, which is consistent with City policies. Staff, therefore, recommends approval of the project with an additional condition of approval requiring that the applicant consider providing a shared electric car for tenants of the project and that report showing the findings for such a program be reviewed by the Commission during review of the building permit plans. Finally, staff continues to believe that increased articulation on the side elevations are appropriate, regardless of the size and mass of adjacent buildings, they will be visible for both vehicles and pedestrians traveling on Talbot.

Appeals:

The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 days of the date of action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

Attachments:

1. Analysis of Zoning Requirements
2. Findings
3. Conditions of Approval
4. Project Application, Plans and Details
5. Green Building Checklist
6. Fire Department Requirements, dated August 21, 2008
7. Staff Report and Minutes from June 10, 2008
8. Staff Report and Minutes from September 9, 2008
9. Proposed Public Art and Staff Report to Arts Committee from October 13, 2008
10. Draft Affordable Housing Agreement

20.24.050 Floor-Area-Ratio.

	Proposed	Requirement
Lot Size	10,000 (combined)	9,585
Floor Area		
Garage	6,274	--
Second-Floor	5,145	
Third-Floor	4,908	
Total	16,327	--
Total Counted	16,327	--
Floor Area Ratio	1.63*	1.5/1.75

* Municipal Code Section 20.14.020 that the FAR may increase from 1.5 to 1.75 when twice the amount of open space is provided.

20.24.060 Setback Areas, Encroachments.

Not applicable.

20.24.100 Distances Between Structures.

Not applicable.

20.24.110 Fences, Landscaping, Screening.

See discussion of key issues.

20.24.130 Accessory Buildings.

Not applicable.

20.28 Off-Street Parking Requirement.

See discussion of key issues.

20.40 Housing Provisions

Not applicable.

20.44 Non-conforming Uses, Structures and Lot

Not applicable.

20.48 Removal of Trees

Not applicable.

20.52 Flood Damage Prevention Regulations

Not applicable.

20.100.030 Use Permits.

Not applicable.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on October 3, 2008 in the form of mailed notice to property owners and occupants within a 300-foot radius, and posted in three locations.

20.100.050 Design Review.

See Summary of Key Issues.

Green Building

See attachments.

Amber Curl

From: Rose Chiu [coolrose6@yahoo.com]
Sent: Thursday, October 23, 2008 1:37 PM
To: Amber Curl
Subject: 423 and 427 Talbot Avenue

Dear Amber:

Thank you for your notification of a public hearing scheduled for Oct.28, 2008. Unfortunately we will not be able to attend.

We would like to make a comment on 423 and 427 Talbot: If 24 spaces are required, then the developer should observe the regulation and the City should enforce it. Just look 15-20 years from now, we do not want to become like SF where parking is so scarce. Nowadays, people in one household often owns more than one car. Street parkings are becoming more and more of a problem too, especially during days when everybody seems to be home.

Of course as long as El Cerrito has not carried out their big plans for the Plaza yet, we get to park there in case we run out of street parkings. But that is just for right now.

OR: Tell the developer that if they only want to provide 18 parking spaces, then they should only construct 9 units, instead of 12.

Sincerely
Rose Chiu
400 block on Evelyn

10/23/2008

ATTACHMENT 2 - FINDINGS

Findings for Design Review approval (Per section 20.100.050.E of the AMC)

Required Finding	Explanation
<p>1. <i>The project conforms to the General Plan, any applicable specific plan, applicable design guidelines adopted by the City of Albany, and all applicable provisions of this Chapter.</i></p>	<p>The General Plan designates this area for multi-family, residential development. Additionally, the project meets City zoning standards for location, intensity and type of development.</p>
<p>2. <i>Approval of project design is consistent with the purpose and intent of this section, which states "designs of projects...will result in improvements that are visually and functionally appropriate to their site conditions and harmonious with their surroundings, including natural landforms and vegetation. Additional purposes of design review include (but are not limited to): that retention and maintenance of existing buildings and landscape features are considered; and that site access and vehicular parking are sufficient."</i></p>	<p>The proposal is in scale and harmony with existing development in the vicinity of the site. The architectural style, design and building materials are consistent with the City's Residential Design Guidelines. The proposed project will provide safe and convenient access to the property for both vehicles and pedestrians. The project will not remove any significant vegetation and will not require significant grading. The project will not create a visual detriment at the site or the neighborhood.</p> <p>The subject properties are already developed with two-single family homes. The lots are flat and will require little grading or disruption of grounds. A few trees will be removed as a result of the project; however, none are protected and a landscape plan is required for future planting. There are eighteen parking spaces provided, which are accessed by one driveway, which is preferable in requiring only one additional curb cut.</p> <p>There are attractive architectural features of the project and provides additional housing in an area where there are few opportunities for such a development with the limited multi-family districts in the City. The location of the building is in a central location, close to schools, transit and services. A green building program has also been provided, which is consistent with City policies.</p>
<p>3. <i>Approval of the project is in the interest of public health, safety and general welfare.</i></p>	<p>The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact property, improvements or potential future</p>

	<p>development in the area.</p> <p>The project provides additional housing in an area where there are few opportunities for such a development with the limited multi-family districts in the City. The location of the building is in a central location, close to schools, transit and services. A green building program has also been provided, which is consistent with City policies.</p>
<p>4. <i>The project is in substantial compliance with applicable general and specific Standards for Review stated in Subsection 20.100.050.D.</i></p>	<p>The project as designed is in substantial compliance with the standards as stated, including access, architecture, natural features, coordination of design details, and privacy. A current parking count has shown that adequate street parking is available to support a parking exception .</p>

Findings for Special Parking Reduction approval (Per section 20.28.040.A3 of the AMC)

Parking surveys were conducted, within a 500-foot radius around the project area, at various times throughout the week, evenings and weekends. Approximately 46% of the parking spaces within the 500-foot radius were vacant during the weekdays and 27% were vacant during the weekends. Based on current conditions, observed through the parking counts, there appears to be adequate street parking available to allow the reduction of required parking spaces from 24 to 18.

Draft Findings of Approval Related to the Art in Public Places Program

Required Finding	<i>DRAFT</i> Explanation
<p>1. The proposed Public Art Feature is consistent with any applicable design review standards or guidelines adopted by the City;</p>	<p>The proposed mosaic tiles and metal sculpture materials and colors are visually harmonious with the architecture of the building and the surrounding environment pursuant to Planning and Zoning Code 20.100.050 D.1.e.</p>
<p>2. The Public Art Feature is an original work of high aesthetic quality;</p>	<p><i>Explanation to be provided by the Arts Committee</i></p>
<p>3. The Public Art Feature is designed and constructed, in a manner and with materials that are adequate for the long-term integrity of the art and that will require a low level</p>	<p>The proposed mosaic tiles and metal sculpture materials, if properly installed and maintained, are suitable for the proposed location. Normal changes over</p>

Required Finding	<i>DRAFT</i> Explanation
of maintenance to ensure that it remains in good condition for the intended life of the public art feature;	time in other physical elements of the project such as painting and landscaping should not change the appearance of the artwork.
4. The scale, material, form, color, and content of the proposed Public Art Feature is compatible and in harmony with the its location and its surroundings; and	The use of tree and vine concepts complements the architectural style of the proposed project. It does not create a visual or physical safety hazard.
5. There is reasonable public accessibility or visibility to the Public Art Feature.	The proposed public art features will be fully visible to pedestrians from the public right of way on Talbot Avenue.

ATTACHMENT 3 - CONDITIONS OF APPROVAL

GENERAL PROJECT CONDITIONS

- Gen-1 Project Approval. This Design Review and Parking Exception approval is for property at 423-427 Talbot Avenue, as substantially shown and described on the project plans, except as may be modified by conditions herein. Future modifications include compliance with Art in Public Places program, Inclusionary Housing program, Green Building program, and State and City Subdivision requirements. Approved plans include preliminary master site plan prepared by Kahn Design Associates date received August 20, 2008, architectural plans (project perspectives, building sections, and floor plans, all as presented to the Planning and Zoning Commission on October 14, 2008]. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.
- GEN-2 Project Approval Expiration. This Design Review and Parking Exception approval expire on October 28, 2009 (one year from the date on which this approval becomes effective) or at an alternate time specified as a condition of approval, unless [a building permit has been issued and construction diligently pursued; a certificate of occupancy has been issued; the use is established; the use permit, variance or design review approval is renewed]. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days prior to expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.
- Gen-3 **Fees.** The applicant shall pay any and all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.
- GEN-4 **Appeals.** The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080. The City Clerk will then schedule the matter for the next available City Council meeting.

- GEN-5 **Requirement for Building Permit.** Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
- GEN-6 **Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.
- GEN-7 **Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.
- GEN-8 **Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.
- GEN-9 **Archeological Remains.** In the event subsurface archeological remains are discovered during any construction or preconstruction activities on the site, all land alteration work within 100 feet of the find shall be halted, the Community Development Department notified, and a professional archeologist, certified by the Society of California Archeology and/or the Society of Professional Archeology, shall be notified. Site work in this area shall not occur until the archeologist has had an opportunity to evaluate the significance of the find and to outline appropriate mitigation measures, if deemed necessary. If prehistoric archeological deposits are discovered during development of the site, local Native American organizations shall be consulted and involved in making resource management decisions.
- GEN-10 **Modifications to Approved Plans.** The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per MC 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.
- GEN-11 **Hold Harmless Agreement.** Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will

promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.

- GEN-12 **Public Improvements Standards.** Public improvements shall be designed and constructed in accordance with the City's Standard Specifications and Standard Details, unless specifically waived in writing by the City Engineer.
- GEN-13 **Title 24 Accessibility Standards.** All construction shall be designed and built in accordance with California Title 24 handicap accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.
- GEN-14 **Title 24 Energy Conservation Standards.** All buildings shall be designed in accordance with the State of California Title 24 energy conservation standards for non-residential buildings. The necessary plans and documentation shall be submitted at time of building permit application.

ARCHITECTURE CONDITIONS

- ARCH-1 **Material Samples.** Samples of final exterior materials and the proposed color palette shall be submitted for review and approval by the Community Development Department as part of building permit application.
- ARCH-2 **Final Architectural Drawings.** The applicant shall submit final architectural elevations, details and revisions for the review and approval of the Community Development Department as part of building permit application.
- ARCH-3 **Window Recess.** All new windows shall be recessed two inches from face of building to provide adequate shade and shadow and to promote visual relief. Final window details shall be submitted for review and approval at the time of building permit application.
- ARCH-4 **Non-Reflective Glazing.** Any glazing material shall be non-reflective.

LIGHTING CONDITIONS

- LGHT-1 **Exterior Lighting.** All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way. If required, exterior light fixtures shall be equipped with "cut off" lenses to minimize light and glare spill over onto adjacent properties.
- LGHT-2 **Shielding of Lighting.** Prior to the certificate of occupancy all accent lighting shall be directed downward and, if necessary, fixed with cut-off lenses to ensure that no glare spills onto neighboring properties.

LANDSCAPING CONDITIONS

- LNDSC-1 **Street Tree Requirement.** The applicant shall apply for one street tree prior to the issuance of the building permit. The City's Environmental Resource Assistance will determine the type and location of the tree and may waive this requirement if site conditions will not reasonably support establishment of a new tree.
- LNDSC-2 A lighting and landscape plan shall be reviewed and approved by the Commission, prior to processing a building permit application.

PARKING CONDITIONS

- PARL-1 All parking solutions shall conform to the approved plans as shown in the plans, as described in condition GEN-1 and maintained available for parking as shown on approved plans.
- PARK-2 The applicant consider providing a shared electric car for tenants of the project and that report showing the findings for such a program be reviewed by the Commission during review of the building permit plans.

SIGN CONDITIONS

- SIGN -1 **Signage Design Review Approval.** All construction/installation of signage shall be subject to Planning Department review and approval.

PUBLIC WORKS DEPARTMENT CONDITIONS

GENERAL ENGINEERING CONDITIONS

- ENGR-1 **Title Report.** A recent preliminary title report for the property, prepared within six months of the date of application, shall be submitted to the City Engineer for review. If any interior lot line(s) exist, the applicant must obtain approval of a minor lot line adjustment from the City to remove the interior lot line(s), and cause that lot line adjustment to be recorded before any building permits will be issued.
- ENGR-2 **Geo-Technical Report.** The applicant shall submit, as part of a building permit application, a geotechnical investigation report prepared by a California certified engineering geologist and geotechnical engineer. The investigation shall specifically address any hazards of surface fault rupture in accordance with the Alquist-Priolo Special Study Zones Act. Any mitigation measures or conditions requiring further review noted during the Planning process shall be fully addressed prior to plan check.
- ENGR-3 **Backflow Device.** Any required water service for fire protection purposes shall be equipped with a City approved backflow device. Services for irrigation purposes also require a separate City approved backflow prevention device.

GRADING CONDITIONS

- GRAD-1 **Grading Permit.** Any grading required in association with the project shall require a grading permit from the Community Development Department. To obtain this permit, the applicant shall submit a grading plan, indicating the extent and volumes of earth proposed to be moved. A grading permit is subject to 2001 California Building, Appendix 33.
- GRAD-2 **Demolition Permit.** Site demolition shall not occur until construction permits are issued for the development project. All demolition shall be in accordance with permits issued by the City and Bay Area Air Quality Management District (BAAQMD).
- GRAD-3 **Water on Site.** The site shall be graded so as to prevent rainfall runoff originating from improved areas on the project site from crossing onto adjoining private property. Building floor elevations shall be above the FEMA-mapped 100-year flood plain as established by a licensed civil engineer. Provide the elevation and compaction certificates during and upon the completion of grading required by the Uniform Building Code and in conformance with the recommendations of the geotechnical engineer's report. Shore and dewater all excavations in accordance with the requirements of the geotechnical engineer's report.
- GRAD-4 **Flooding Damages.** The project developer shall execute an assumption of risk, indemnification and hold harmless agreement as required by the City. The agreement, in substance, shall state that the project developer, and any successor in interest, shall assume all risk for damages to the project and to project improvements, flooding caused by surface water intrusion, stormwater runoff, or water under the ground surface pressing on or flowing or seeping through foundations, walls, floors, or paved surfaces, basements, whether paved or not, or windows, doors or other openings, and shall indemnify and hold the City harmless from any claims of such damages, including third-party claims, of such damage or of such damages or of damages arising from rainfall runoff which is not prevented from leaving the project site in violation of Condition GRAD-3.
- GRAD-5 **Dust Control Program.** A dust control program shall be prepared by the project developer and approved by the Community Development Department and City Engineer prior to issuance of a grading permit. The dust control plan shall address such items as covering stockpiled material, frequent watering of graded areas, revegetating graded areas, speed limits for grading equipment and similar items.
- GRAD-6 **Stormwater Pollution Prevention Plan.** The project developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for review by the City prior to the issuance of a building or grading and/or building permit. The SWPPP shall be consistent with standards adopted by the Regional Water Quality Control Board and the City of Albany Clean Water Program and implemented by the project

general contractor, all subcontractors and suppliers of material and equipment. Construction site cleanup and control of construction shall also be addressed in the SWPPP. The project developer shall be responsible for SWPPP compliance. A copy of the SWPPP shall be kept at the construction site at all times.

GRAD-7 **Erosion Control Plan.** As part of a building permit application, the project developer shall submit a construction grading/erosion control plan which shall include detailed design, location and maintenance criteria of all erosion and sediment control measures. The plans shall provide, to the maximum extent practical, that no increase in sediment or pollution from the site will occur, including local creeks and bodies of water.

GRAD-8 **Notice of Intent.** Prior to the commencement of site grading or excavation resulting in a land disturbance of five acres or greater, the project developer shall provide evidence that a Notice of Intent (NOI) has been sent to the California State Water Resources Control Board.

INFRASTRUCTURE CONDITIONS

INFR-1 **Sewer System Requirements.** The sewer system for the subject building shall be in compliance with Chapter 15 of the Albany Municipal Code and to the satisfaction of the City Engineer prior to Final Inspection approval of the construction permit.

INFR-2 **Two-Way Cleanout.** Installation of a two-way curbside cleanout shall be required per Chapter 15 of the Albany City Code. This applies to all properties, including properties with a valid upper sewer lateral certificate of compliance. All 2-way curbside clean outs shall be fitted with a loose cap in accordance with the City's standard detail SS6.

INFR-3 **Property Run-off Requirements.** All runoff from impervious surfaces shall be intercepted at the project boundary and shall be collected and conducted via an approved drainage system through the project site to an approved storm drain facility, as determined by the City Engineer. Development that contributes additional water to the existing drainage system shall be required to complete a hydraulic study and make improvements to the system as required to accommodate the expected ultimate peak water flow and to stabilize erosive banks that could be impacted by additional storm water flow.

INFR-4 **Roof Drainage.** Roof drainage from the structure shall be collected via a closed pipe and conveyed to an approved storm drain system off the street curb. No concentrated drainage of surface flow across sidewalks shall be permitted. Alternative natural treatment measures are subject review and approval by the City Engineer.

- INFR-5 **Hydraulic Calculations.** The applicant shall submit hydraulic calculations, prepared by a California licensed civil engineer, necessary to determine if the existing water and sewer mains that serve this lot have available capacity for the addition of the proposed development. If capacity is not available, sewer and water mains of adequate size shall be designed and secured prior to issuance of building permits and constructed in a manner acceptable to the City Engineer prior to occupancy release, unless determined otherwise by the City Engineer.
- INFR-6 **Undergrounding of Utilities.** Electrical, gas, telephone and all other services and utilities shall be provided underground to each lot. All utilities shall be located and provided within public utility easements and sized to meet utility company standards.
- INFR-7 **EMBUD Water Service.** The applicant shall provide the City Engineer with a letter from East Bay Municipal Utility District stating that the District has agreed to furnish water service to the project.
- INFR-8 **EBMUD Approval.** East Bay Municipal Utility District shall review and approve the improvement plans as evidenced on their signature on the Title Sheet of the improvement plans.
- INFR-8 **EBMUD Requirements.** The discharge of any chemicals into the sanitary sewer system is subject to the requirements and approval of the East Bay Municipal Utility District.
- INFR-19 **Completion of Off-Site Improvements.** Off-site improvements shall be determined by the City Engineer and completed prior to issuance of a Certificate of Occupancy unless alternatives are approved in writing by the Albany City Engineer.

PUBLIC IMPROVEMENTS CONDITIONS

- PUBIM-1 **Encroachment Permit.** The applicant shall obtain an encroachment permit from the Engineering Division prior to commencing any construction activities within any public right-of-way or easement.
- PUBIM-2 **Debris Removal.** All mud, dirt or construction debris carried off the construction site onto adjacent streets shall be removed each day. No materials shall be discharged onto a sidewalk, street, gutter, storm drain or creek.
- PUBIM-3 **Damage to Street Improvements.** Any damage to street improvements now existing or done during construction on or adjacent to the subject property shall be repaired to the satisfaction of the City Engineer at the full expense of the applicant. This shall include sidewalk repair, slurry seal, street reconstruction or others, as may be required by the City Engineer.

PUBIM-4

Right-of-Way Construction Standards. All improvements within the public right-of-way, including curb, gutter, sidewalks, driveways, paving and utilities, shall be reconstructed in accordance with approved standards and/or plans and shall comply with the standard plans and specification of the Community Development Department and Chapter 14 of the City Code.

FIRE DEPARTMENT CONDITIONS

FIRE-1

Fire Safety Requirements. The applicant shall comply with all requirements set forth by the Battalion Chief/Fire Marshall in a letter dated August 21, 2008.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM CONDITIONS

STRUCTURAL CONTROL CONDITIONS

STRUC-1

Illegal Dumping to Storm Drain Inlets and Waterways. On-site storm drain inlets shall be clearly marked with the words "No Dumping! Flows to Bay," or equivalent, using methods approved by the City of Albany.

STRUC-2

Interior Floor Drains. Interior floor drains shall be plumbed to the sanitary sewer system and shall not be connected to storm drains. The applicant shall contact the City Engineer for specific connection and discharge requirements.

STRUC-3

Parking Lots. Interior level parking garage floor drains shall be connected to [a water treatment device approved by the City of Albany prior to discharging to] the sanitary sewer system. The applicant shall contact the City Engineer for specific connection and discharge requirements.

STRUC-4

Pesticide/Fertilizer Application. Landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution. If a landscaping plan is required as part of a development project application, the plan shall meet the following conditions related to reduction of pesticide use on the project site:

- a) Where feasible, landscaping shall be designed and operated to treat stormwater runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.
- b) Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.
- c) Existing native trees, shrubs, and ground cover shall be retained and incorporated into the landscape plan to the maximum extent practicable.

- d) Proper maintenance of landscaping, with minimal pesticide use, shall be the responsibility of the property owner.

OPERATIONAL BEST MANAGEMENT PRACTICES (BMPs)

- BMP-GEN1 **Stormwater Pollution Prevention Control Measures.** The project plans shall include stormwater pollution prevention and control measures for the operation and maintenance of the project during and after construction for the review and approval of the City or County Engineer. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site in order to limit to the maximum extent practicable the entry of pollutants into stormwater runoff.
- BMP-GEN2 **Erosion Control Measures.** The project plan shall also include erosion control measures to prevent soil, dirt and debris from entering the storm drain system, in accordance with the practices outlined in the *ABAG Erosion and Sediment Control Handbook*, *California Storm Water Best Management Practice Handbooks*, and *Regional Water Quality Control Board's Erosion and Sediment Control Field Manual*
- BMP-GEN3 **Responsibility of Contractors.** The applicant is responsible for ensuring that all contractors and subcontractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations and/or a project stop order.
- BMP-1 **Paved Sidewalks and Parking Lots.** Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. Debris resulting from pressure washing shall be trapped and collected to prevent entry into the storm drain system. Washwater containing any soap, cleaning agent or degreaser shall be collected and discharged to the sanitary sewer and shall not be discharged to a storm drain. The applicant shall contact the City Engineer for specific connection and discharge requirements.
- BMP-2A **Property Owners Association Responsibilities for Maintenance.** For residential developments, a property owners association shall be created and shall be responsible for maintaining all private streets and private utilities and other privately owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing and maintaining stormwater BMPs associated with improvements and landscaping. CC&R's creating the association shall be reviewed and approved by the City Attorney prior to the recordation of the Final Map and recorded prior to the sale of the first residential unit. The CC&R's shall describe how the stormwater BMPs associated with privately owned improvements and landscaping shall be maintained by the association.

- BMP-3A **Vehicle/Equipment Repair and Maintenance.** No person shall dispose of, nor permit the disposal, directly or indirectly, of vehicle fluids, hazardous materials, or rinsewater from parts cleaning operations into storm drains.
- BMP-3B **Prohibited Vehicle Fluid Removal Areas.** No vehicle fluid removal shall be performed outside a building, nor on asphalt or ground surfaces, whether inside or outside a building, except in such a manner as to ensure that any spilled fluid will be in an area of secondary containment. Leaking vehicle fluids shall be contained or drained from the vehicle immediately.
- BMP-3C **Unattended Drip Parts.** No person shall leave unattended drip parts or other open containers containing vehicle fluid, unless such containers are in use or in an area of secondary containment
- BMP-4 **Fueling Areas Cleaning.** The property owner shall dry sweep the fueling area and spot clean leaks and drips routinely. Fueling areas shall not be washed down with water unless the wash water is collected and disposed of properly (i.e., not in the storm drain).
- BMP-5 **Loading Docks.** The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill clean-up.
- BMP-6 **On-Site Storm Drains.** All on-site storm drains must be cleaned at least once a year immediately prior to the rainy season. Additional cleaning may be required by the City of Albany.

GENERAL CONSTRUCTION BEST MANAGEMENT CONDITIONS

- BMP-CNST1 **Construction Access Routes.** Construction access routes shall be limited to those approved by the City Engineer and shall be shown on the approval grading plan.
- BMP-CNST2 **Collection of Construction Debris.** Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
- BMP-CNST3 **Removal of Waste.** Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
- BMP-CNST4 **Sweeping of Public Right-of-Way.** Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked on mud or dirt shall be scraped from these areas before sweeping.

- BMP-CNST5 **Filter Materials at Storm Drain Inlet.** Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to:
- a) start of the rainy season (October 1);
 - b) site dewatering activities;
 - c) street washing activities;
 - d) saw cutting asphalt or concrete; and
 - e) order to retain any debris or dirt flowing into the City storm drain system.
- Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash.
- BMP-CNST6 **Containment of Materials.** Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by wind or in the event of a material spill.
- BMP-CNST7 **Cleaning of Equipment.** Never clean machinery, tools, brushes, etc. or rinse containers into a street, gutter, storm drain or stream. See the *Building Maintenance/ Remodeling* flyer for more information.
- BMP-CNST8 **Minimize Removal of Natural Vegetation.** Minimize removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Replant the area as soon as possible. All cut and fill slopes shall be stabilized as soon as possible after grading is completed. No site grading shall occur between October 1 and April 15 unless approved erosion and sedimentation control measures are in place.

SPECIAL, PROJECT-SPECIFIC CONDITIONS

- ART-1 The Arts Committee and Planning Zoning Commission review of the public art elements of the design review may be deferred to a future date. The applicant shall submit for Planning and Zoning Commission an amendment to their Design Review approval incorporating a public art elements of the project prior to processing as complete an application for a building permit.
- ART-2 Following future design review approval of the public art elements, the applicant shall prepare detailed plans and specifications related the public art components of the project ("Detailed Art Submittal"). The Detailed Art Submittal shall include:
- a. Detailed plans and specifications related to the public art elements of the project, including plan and elevation drawings at a scale sufficient for the City to evaluate the precise location and detailed elements of the art work, structural support, description of materials, plumbing plans, and electrical plans as applicable. Such plans shall be reviewed and stamped by the architect or engineer of record before submittal to the City.
 - b. Detailed instructions to the contractor for installation of the public art.

- c. Detailed instructions to the contractor for protection of the art installation while the project is under construction.
- d. Detailed instructions to the owner or home owners association for long term maintenance instructions.
- e. Written documentation of the value of the Public Art Features. Such documentation shall be provided by an independent third party with qualifications acceptable to the Community Development Director. The cost of services or utilities necessary to operate or maintain the artwork over time shall not be included in the valuation of the Public Art Feature.

ART-3 In the event the Detailed Art Submittal varies substantially from design review approval of the public art elements of the project, including if there is a change in the artists commissioned to prepare the art works, the Community Development Director shall determine if the revised plans constitute an amendment to Design Review approval, and shall determine if the proposed changes shall be referred to the Arts Committee and the Planning and Zoning Commission.

ART-4 The "Detailed Art Submittal" shall be prepared by the applicant and reviewed by the City for compliance with City standards and requirements, including the California Building Code. Any building permit application that does not include the Detailed Art Submittal shall be deemed incomplete and will not be processed through the plan check process.

ART-5 City processing of the Detailed Art Submittal may include scheduling public hearings before the Planning and Zoning Commission and/or the Arts Committee.

ART-6 In the event of delays beyond the reasonable control of the applicant, the Building Official may issue a certificate of occupancy if the applicant provides financial security in a form acceptable to the Community Development Director, which is equivalent to the valuation of the approved Public Art Feature.

HOUSING -1 The applicant shall comply with the requirements of the City's inclusionary housing ordinance (Planning and Zoning Code Section 20.40.030), which specifies that one unit of the project shall be made available in perpetuity to low income household.

HOUSING-2 The Planning Zoning Commission review and City Council action on an affordable housing agreement may be deferred to a future date. The applicant, however, shall enter into an affordable housing agreement with the city and the City shall record the agreement prior to processing as complete an application for a building permit.

GREEN-1 The applicant shall submit for Planning and Zoning Commission an amendment to their Design Review approval incorporating a Build-It-Green Multi-family Greenpoints Checklist agreement prior to processing as complete an application for a building permit.

Appeals: The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

City of Albany
Planning and Zoning Commission
Staff Report

Meeting Date: September 23, 2008

Prepared by: BG

Agenda Item: 6e

Reviewed by: JB

Subject:

Resolution of Intention of the Planning and Zoning Commission to Initiate Amendments to the Planning and Zoning Code to Correct and Clarify Development Regulations

Recommendation

Review the staff report and provide initial comments and recommendations to assist staff in drafting potential zoning ordinance revisions based on comments received during Planning and Zoning Commission meetings and in the "Zoning Ordinance Comments & Suggestions" notebook.

Background

As part of the Planning and Zoning Code ordinance revision in 2004, the Community Development Department provided a "Zoning Ordinance Comments & Suggestions" notebook for members of the public, the Commission and staff to insert comments and suggestions regarding potential revisions to the revised ordinance. Topics for further discussion have also been identified during Planning and Zoning Commission meetings.

Following is a discussion of each of the topic areas. The discussion review follows the order of the zoning ordinance. Any recommended changes to the text of the zoning ordinance have been shown in red, underlined text.

§ 20.08.020 DEFINITIONS (A-Z)

Background/Comments

In an application filed in 2007, the applicant at 1260 Brighton requested a variance to allow construction of a 6-foot tall wrought iron fence. The property is on a corner lot, and the fence was proposed to be constructed in what was considered the front yard, even though the existing building fronted on what is considered the side yard. The Commission asked that the question of front yards on corner lots be brought forward as part of any future Zoning Ordinance Amendments.

Zoning Ordinance Language

§20.08.020 Yard, front means a yard of uniform depth extending across the full width of the lot inward from the front lot line. The front yard of a corner lot is the yard adjacent to the shorter street front.

Discussion

Currently, the definition of a front yard on a corner lot does not allow for any flexibility. In the case of the application at 1260 Brighton, this resulted in the applicant having to request a variance for the fence height, even though the area in question functions as a side yard for the existing building.

Following are two options for how the definition for a front yard of a corner lot could be altered to allow for pre-existing conditions.

Option 1. The front yard of a corner lot is the yard adjacent to the shorter street front. However, if a corner lot has an existing main structure with the primary entrance oriented towards the longer street front, the longer street front shall be considered the front yard.

Option 2. The front yard of a corner lot will be determined by the Community Development Director. (Example from City of Maple Grove.)

§ 20.12.040 TABLE 1 & § 20.20.020.B - FAMILY DAY CARE HOMES

Background/Comment

From: Staff

In §20.12.040-Table 1 "Permitted Land Uses by District", Large Family Day Care Home, Residential is listed as requiring a Use Permit in the R-1 zoning district. However, §20.20.20.B has more specific regulations for Family Day Care Homes that are not in agreement with and supersede Table 1. The specific regulation states:

§20.20.020.B.2 Large (Family Day Care Homes). State-licensed facilities that exceed the permitted occupancy of Small Family Day Care Homes may accommodate up to fourteen (14) children of less than eighteen (18) years of age, subject to approval of a Minor Use Permit.

Large Family Day Care should be subject to a Minor Use Permit, not a Major Use Permit. This discrepancy can be corrected with the addition of the "-M" to signify that the use requires a minor use permit. Also, note 19 would reference the section regarding Community Care Facilities.

Zoning Ordinance Language

Land Use	R-1	R-2	R-3	R-4	RHD	SC	SPC	CMX	PF	WF
b) Large Family ¹⁹	UP-M	UP-M	UP-M	UP-M	UP-M	-	-	-	-	-

19. Refer to Section 20.20.020.B.2.d. for special process of notice and hearing.

§ 20.20.130 – ENTERTAINMENT PERMITS

Background/Comment

Currently, an Entertainment Permit requires approval by the City Council, per §5-11 of the Municipal Code, “Amusement and Entertainment Permits”. Such permits are a type of land-use control, and therefore it would be more appropriate that these applications come under the purview of the Planning and Zoning Commission. Staff is recommending that a new section be added under §20.20 of the Zoning Ordinance, “Regulations of Specific Land Uses.” This new subsection would state that an Entertainment Permit would require a major use permit, and would reference the regulations of §5-11.

Zoning Ordinance Language

§20.20.130 Entertainment Permits

A. Purpose. This section establishes regulations for the granting of an entertainment permit. The standards are in addition to the requirements of Albany Municipal Code section 5-11.

B. Use Permit Required. A major use permit shall be required for any place where entertainment is provided within a bar, cocktail lounge, tavern, café, restaurant, hotel, motel, shall or public place where food, alcoholic or other beverages, or other refreshments are served.

Municipal Code Language

Note: The following revisions would need to be made to §5-11. Only subsections where revisions are necessary are shown.

5-11.6 Entertainment Permits Required in Place Serving Food or Refreshments. No person shall provide or permit any entertainment in a bar, cocktail lounge, tavern, café, restaurant, hotel, motel, hall or public place where food, alcoholic or other beverages, or

other refreshments are served, unless such person shall first obtain a major use permit to do so from the Planning and Zoning Commission City Council as hereinafter provided.

5-11.7 Application for Entertainment Permits. Applicants for entertainment permits shall file a written and signed application with the Community Development Department City Clerk showing the following:

b. A reasonable description of the entertainment, including type of entertainment, approximate number of persons engaged in the entertainment, and any further information about the entertainment and/or entertainers as the Planning and Zoning Commission City Council may deem necessary.

f. Such other reasonable information as to the identity or character of the person or persons having the management or supervision of applicant's business, as the Planning and Zoning Commission City Council or License Collector may deem necessary.

5-11.9 Administration; Rules and Regulations; Adoption of Rules and Regulations. The Planning and Zoning Commission City Council or their duly authorized representative,...

5-11.12 Exception, Application to Commission Council. Any person who shall desire to carry on or conduct any amusement or entertainment or dance during the hours prohibited by subsection 5-11.10 and for a longer period than one (1) night, shall file a written application therefore with the Community Development Department City Clerk for presentation to the Planning and Zoning Commission City Council. Such application shall contain a detailed statement of the type of amusement or entertainment or dance which the applicant desires to carry on or conduct and a statement of the reasons which, in the applicant's opinion, warrant the granting of same. Such application shall be filed with the Community Development Department City Clerk at least fourteen (14) days prior to the date upon which the applicant desires the granting of such permission. Thereupon, the Community Development Department City Clerk shall refer the application to the Chief of Police or his agent for investigation pursuant to subsection 5-11.8 and his recommendation to the . The Commission Council may grant such permission to applicant when, in its discretion...

§ 20.24.020. - TABLE 2.A, NOTE 14 AND TABLE 2.B, NOTE 4 - MAXIMUM BLDG HEIGHT

Background/Comment

From: Clay Larson, 8/18/08

"The current Zoning Ordinance sets the maximum height for an R-2 or R-3 building at "three stories or 35 feet above grade." For the SPC district, the maximum building height is "three stories or 38 feet above grade." ...staff and the P&Z Commission have chosen to simply ignore the references to "three stories." If the developer can squeeze four stories into

the allowed height limit, that is now acceptable. I don't think that this was the intent of the language of the current zoning ordinance. I think that the obvious intent here was to limit the maximum number of building stories allowed. Part of the problem here is that we don't seem to have a good definition of what a story is. Staff reports refer to 3 ½ story projects or projects with 3 stories over parking. Commission members have also expressed confusion here."

"I think that three-story maximum is appropriate for Albany in our residential districts and for our San Pablo and also Solano Commercial areas. I think that we should clearly define a building story and set a three-story height limit based on this. (Note: a suitable definition of floor taken from the APA Planners Dictionary is, "That portion of a building included between the upper surface of any floor and the upper surface of the floor next above except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above.")"

Zoning Ordinance Language

§20.24.020. Table 2.A. Note 14. Maximum building height is three stories, or 35 feet, above grade, except that the maximum height at the front setback line shall be 28 feet plus a 45-degree daylight plane. (See subsection 20.24.070.B)

§20.24.020. Table 2.B. Note 4. Maximum building height is three stories, or 38 feet, above grade, except that where the rear property line abuts a residential district, the maximum height or at the rear setback line shall be 20 feet plus a 45 degree daylight plane, or at the rear property line shall be 12 feet plus a 45 degree daylight plane. (See subsection 20.24.070.A)

Discussion

As Mr. Larson states above, one possible intent of these stipulations was to limit development to no more than three stories, but the language as written can be interpreted differently. This is due to the wording "or 35 feet", which implies a choice. If a developer were able to fit four stories within the 35-foot height limit, staff believes that the proposed project would meet the parameters set by the ordinance language. If the Commission prefers to limit development to no more than three stories, staff would recommend that the wording of the stipulation be revised.

"Maximum building height is 35 (38) feet, not to exceed 3 stories, above grade, except that...."

It could also be argued that the "or 35 feet" language was included purposefully. One of the most important changes in the zoning ordinance was the reduction in maximum heights in both the San Pablo Commercial district (from 45 ft to 38 ft) and the Solano Commercial, R-3

and R-2 districts (from 38 ft to 35 ft). With these changes, the building envelope would be reduced in size, regardless of the number of stories. Therefore, the language could also be interpreted to state a preference for three stories, but the "or 35 feet" would allow a project to have more stories as long as the maximum height was not exceeded.

§ 20.24.020. - TABLE 2.A, NOTE 19 - CONDITIONAL USE PERMIT FOR EXTENDING NON-CONFORMING WALLS

Background/Comment

From: Evan Flavell, P&Z Commissioner, 2/24/05

"Strictly read, the P&Z use permit setback exception for additions only applies to second story additions, i.e. 'which build over an existing wall or foundations.' and NOT, for example, to other new expansion such as rear-yard additions on new foundations."

"The 'horizontal' exemption was added about 10 years ago to broaden the applicability of the exception, and it has, in practice, been applied to such expansions. The regulation may, however, be construed to mean horizontal expansion of an existing second story above the existing footprint only."

"Is it appropriate to 'force' a jog in the wall line in rear yard additions where the main structure is non-conforming? If so, wouldn't this encourage building 'up' rather than 'back' into typically limited rear-yard open space?"

"If the intent is to allow rear-yard additions to extend non-conforming setbacks, the Ordinance needs revision on this point. It does not allow this now...."

Zoning Ordinance Language

§20.24.020. Table 2.A. Note 19. Exceptions to setback requirements may be made in the case of a second story addition to a single-family dwelling, as follows:

- a) A second story addition may be built which builds over an existing wall or foundation which does not conform to the required setbacks, subject to design review by the Planning and Zoning Commission and obtaining a use permit. Existing walls which do not conform to the existing side or rear yard setbacks may be extended in an existing vertical or horizontal plane, subject to design review by the Planning and Zoning Commission and a use permit. Such extensions shall not further encroach on any required setback, (i.e., a nonconforming wall which encroaches one (1) foot into a required setback shall not be permitted to encroach two (2) feet) nor shall any extension create a new encroachment in another direction.

Discussion

The "and Zoning" language is proposed to be added for consistency with the remainder of the ordinance.

Historically, the Commission has attempted to require applicants to meet the minimum setback requirements when possible, allowing an extension of a non-conforming setback only in special circumstances. This is in keeping with the intent of the zoning ordinance, which establishes minimum setbacks for development to ensure open space between properties and uses.

In its basic form, this issue can be considered a question of design versus separation of structures. The primary reason to allow the extension of a non-conforming setback is so that a new addition is aesthetically in keeping with the existing structure. The primary reason to require that a new addition meet the minimum setback is to ensure adequate separation between adjacent structures. Any revisions to the zoning ordinance should be based on which of these two aspects, design or separation of structures, the Commission believes is more of a priority.

§ 20.24.050 - FLOOR-AREA RATIOS (GENERAL)

Background/Comments

The floor area ratio (FAR) requirements for single-family residences include a provision that any deck, patio or other usable open area with 3 or more sides (including a roof) shall be included in the calculation of gross square footage. However, the FAR requirements for multi-family residences and other developments do not include this provision, and therefore open areas with 3 or more sides could be excluded from the FAR calculations for any non-single-family developments.

Zoning Ordinance Language

§ 20.24.050.B.1.d. Decks, 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.)

Discussion

To make this standard universal, staff would recommend creating a new subsection before "B. Single-Family Residences" with provisions that would apply to all developments.

20.24.050.B. Applicable to All Buildings.

1. Gross square footage shall include all covered space located on the site.

2. Decks, patios, courtyards 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.)
3. Any interior space with a ceiling height equaling two (2) stories shall be doubled for purposes of calculating gross square footage. Exceptions may be made for stairwells with no habitable space above or below the stairs, and for a maximum of sixty (60) square feet of additional space, such as in an entry foyer, an internal atrium, or a study loft.

20.24.050.C Single-Family Residences. (Delete provisions 1.a, d and e from this section.)

§ 20.24.050 - FLOOR-AREA RATIOS (SINGLE-FAMILY RESIDENCES)

Background/Comments

The FAR calculations contain a provision that allows basement space to be excluded from the gross square footage calculation if the average height of the basement at the exterior (measured from natural grade) is less than 6 feet. As written, the provision is unclear as to where the measurements should occur. There is also concern that the 6-foot threshold might be too high, allowing a significant amount of building area that adds to the overall massing of the structure to be exempted.

Zoning Ordinance Language

20.24.050.B.1.c. Any covered area on or below the first or main floor, for which the average height of the four (4) corners is greater than six (6) feet above the natural grade at the exterior, shall be included in the calculation of gross square footage, except a single parking area may be excluded as provided in paragraph a.1(b) above.

Discussion

The first revision that staff would recommend would be to insert language that stipulates where the measurement of the exterior basement height should occur. One potential change:

"Any basement area for which the average height of the four (4) corners is greater than four (4) feet from grade to finished floor of the story above, shall be included in the calculation of gross square footage, except a single parking area may be excluded as provided in paragraph a.1(b) above. Measurement of height shall be taken from the lower of natural or finished grade to the top of finished floor of the first or main story."

This example stipulates exactly where the measurements are taken from (finished floor and grade). The language regarding the lower of either natural or finished grade is intended to take into account both flat and sloped lots. If the definition were limited to only "natural"

grade, a development on a sloped lot could cut into the lot and have a finished grade that was lower than the natural grade, and therefore the measured height would be less than the actual height. This would result in a condition opposite to the intent of the provision. Looking at the other extreme, if the definition were limited to only "finished" grade, a development on a flat lot could build up the finished grade of the property, resulting in a taller structure.

A second area of discussion is the appropriate height at which basement space should be excluded. As currently written, the allowance of partial basements that can be excluded from the square footage calculations if the exterior height is 5 feet 11 inches or less can encourage taller buildings.

To make this provision more restrictive, staff would recommend that the height be reduced from six feet to four feet, as indicated in the draft definition above. This alteration would continue to meet the intent of the provision, but result in a smaller increase to the overall massing of a building.

§ 20.24.050 - FLOOR-AREA RATIOS (CALCULATION OF ENCLOSED PARKING AREA)

Background/Comments

For Commercial, Multifamily and Mixed Uses, subsection C.1 states that enclosed parking areas must be located entirely below grade to be excluded from FAR calculations. The intent of this provision was to encourage parking for these uses to be located in an area that would not add to the overall massing of these larger projects. However, because of the small length of the majority of lots in Albany (typically 100 feet), it would not be possible to provide a ramp from street grade to the floor of a entirely below grade basement level that would also allow an adequate turning radius to access parking.

One way to make below ground parking areas practical would be to allow a portion of the area to be above ground. Staff would recommend that the allowance be set at the same level as suggested for single-family basement space, four feet above grade.

Zoning Ordinance Language

20.24.050.C.1. Enclosed parking areas for which the average height of the four (4) corners is less than four (4) feet from grade to finished floor of the story above that are located entirely below grade shall not be included in calculating the Floor Area Ratio of a development project. Measurement of height shall be taken from the lower of natural or finished grade to the top of finished floor of the first or main story.

§ 20.24.070 - SETBACKS WITH DAYLIGHT PLANES

Background/Comment

From: Clay Larson, 8/18/08

"I think that we need to reestablish the rear setback requirements where a commercial parcel abuts residential in the San Pablo Commercial (SPC) and Solano Commercial (SC) districts. These requirements existed with the previous zoning ordinance. I think that a case could be made that the setback requirements still exist with the current ordinance, but staff and the commission have concluded that the separate daylight plane calculations eliminate the need for any setback."

"A rear setback requirement in SPC and SC is critical to minimize the impact of large-scale commercial or mixed-use projects on adjoining residential districts. There needs to be a separation, a buffer, between these very large projects and neighboring residential parcels. I believe that most if not all neighboring cities impose setback requirements under these circumstances. It would be helpful if staff reviewed the requirements of other cities here and report their findings to the Commission. I think that the recent 934 San Pablo Ave. proposal, which would put decks and people at the rear property line, 12' - 15' above and overlooking the adjacent Adams St. parcels should be reviewed as an example of the problems associated with the lack of any setback. I think that Commissioner Moss's recent comments about building to the lot lines and the problems that this can create during construction and maintenance should also be considered. I think that the P&Z Commission should consider these points and carefully review the need for rear setbacks where commercial and residential districts meet."

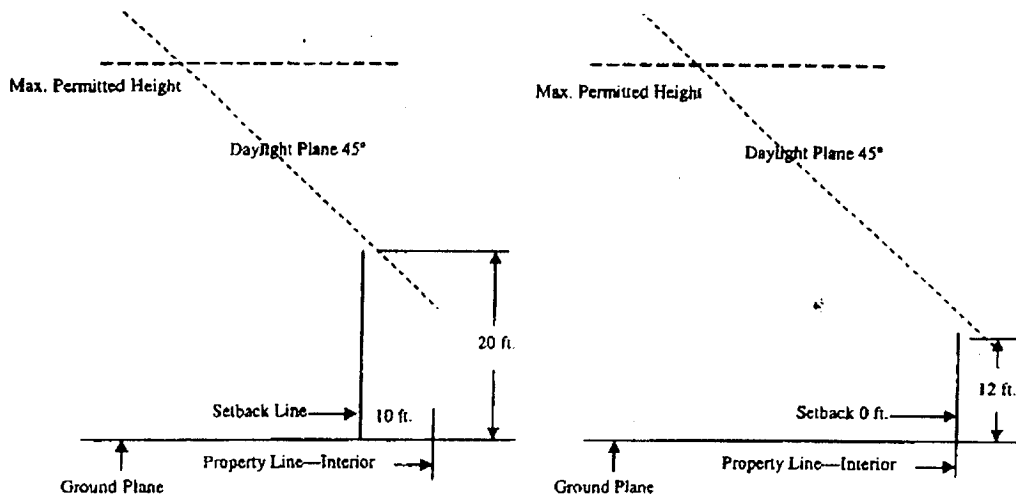
"The basic purpose of the daylight plane requirement is to minimize the impact of a building's shadows on adjacent properties. Daylight plane requirements limit the maximum building height by imposing additional setbacks for portions of the building that exceed some threshold height. Section 20.24.070.A. describes the procedures for calculating daylight plane requirements in SC and SPC for interior property lines (rear and side) that abut a residential district. Two procedures are described. The first defines the daylight plane as a 45 deg plane drawn from a base point located 20 feet above the ground plane at the minimum required setback. This definition is completely consistent with the initial language of §20.24.070.A, which specifies the required "minimum setback" and then describes an "additional setback for any portion of any structure extending above twenty (20) feet in height..." The definition is also consistent with the basic definition of a daylight plane in the ZO, i.e., "'Daylight Plane' means a tilted plane that connects a vertical plane with a horizontal plane for the purpose of supplementing applicable setback" (§20.08.020)."

"Section 20.24.070.A. provides an alternative definition of the daylight plane, which locates the base point of the plane at the rear property line 12 feet above the ground plane. This

definition is not consistent with the rest of the section in that it doesn't describe an "additional setback." Instead, it completely eliminates the minimum setback! The second definition also slides the daylight plane back two feet thus increasing the shadowing impact on the adjacent parcel. The second definition of the daylight plane is not an "alternative," it's a substitute definition. We should delete this second definition and use the first definition."

Zoning Ordinance Language

Note: Subsection A of this section provides daylight plane requirements that are applicable to specific interior property lines. As Mr. Larson notes above, the standards offer two separate options. The first option requires a 10-foot setback from the property line, with the daylight plane beginning at a height of 20 feet. The second option does not require a setback from the property line, and the daylight plane begins at a height of 12 feet.



Discussion/ Questions

In application, the use of the second option allows a larger building envelope than the first option. Therefore, as written, the ordinance does not give any incentive for a development to be setback from the property line.

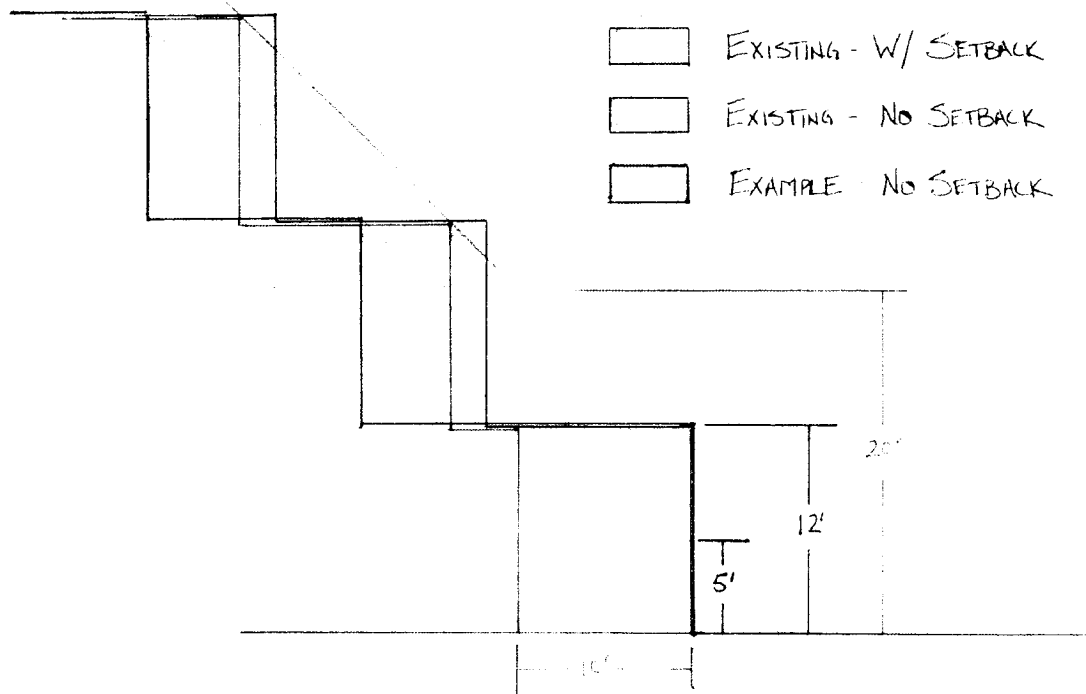
If the Commission were of the opinion that a minimum rear yard setback should be required for all parcels, then staff would agree with Mr. Larson's recommendation that the second option be deleted from the zoning ordinance.

Another option would be to make the daylight plane for a development that has no setback requirement more stringent than the daylight plane with the setback requirement. One adjustment that could be made to result in a more equally sized building envelope would be to lower the height at which the 45 degree angle daylight plane begins in the second option.

By reducing the starting point from 12 feet to 5 feet, the resulting building envelopes would more closely match. The diagram below shows the basic effect of the change.

Figure 1 - Daylight Plane Comparison

The basic outline of each of the daylight planes, shown for 12-foot stories.



Other potential solutions include:

- Lowering the angle of the daylight plane for the second option, resulting in larger setbacks between stories.
- Raising the height of the point at which the daylight plane is measured in the first option (i.e. from 20 feet to 24 feet), though this could be argued to result in negating the intent of the daylight plane requirement.

In addition, Attachment A gives examples of rear yard setback requirements for commercial districts that abut residential districts. All five jurisdictions examined (Berkeley, El Cerrito, Richmond, Emeryville and Oakland) have some minimum setback requirement.

§ 20.24.070 -DAYLIGHT PLANES, WHERE APPLICABLE

Background/Comment

From: Clay Larson, 8/18/08

"Besides the daylight plane requirements for interior lot lines in SC and SPC, there are several other references to daylight planes in the ZO. For the most part, the requirements are clear here except for the front setbacks in R2 and R3. Section 20.24.020, Table 2A, Footnote 14, sets maximum building heights and includes daylight plane requirements at the front setback for multifamily units. The procedure for calculating the additional required setback is apparently described under §20.24.070.B.2., except that this section specifically references R2/R3 parcels fronting on Kains and Adams. These specific references are obviously incorrect since the requirements apply to any R2/R3 district. The references to Kains and Adams should be deleted under §20.24.070.B.2."

"In addition to the above, I think that we should expand the daylight plane requirements to include any instance where a residential high-density or medium density district project abuts a residential parcel at its rear lot line. The impacts here are identical to those in SC and SPC. Even though a longer, 15' rear set-back requirement exists in R2/R3, the impact of shadowing should still be limited by imposing the additional setback requirements for the taller portions of a building. Applying the basic day-light plane geometry in this case would mean that the maximum height at the 15' rear set-back would be 25'."

Zoning Ordinance Language

20.24.070.B.2 Where a property in a Residential Medium Density District (R-2) or a Residential High Density District (R-3) has an exterior lot line on either Kains Avenue or Adams Street, the minimum setback from such lot line shall be fifteen (15) feet...

Discussion

As Mr. Larson states above, the inclusion of Kains Ave and Adams St results in the regulations not being applied in the same way to all R-2 and R-3 districts, even though the impacts would be similar. Therefore, staff would recommend that the reference to Kains and Adams be deleted:

“Where a property in a Residential Medium Density District (R-2) or a Residential High Density District (R-3) has an exterior lot line that abuts a residential district, ~~on either Kains Avenue or Adams Street~~, the minimum setback from such lot line shall be fifteen (15) feet...”

Staff also agrees with Mr. Larson’s assessment regarding the impacts of higher density residential districts that abut lower density residential districts. This could be dealt with by splitting subsection A into two separate regulations, the first being the existing regulation pertaining to the SC and SPC districts, and the second pertaining to all other districts.

20.24.070.A.2. The minimum setback where an interior lot line of a property in a higher density residential district abuts a lower density residential district shall be five (5) feet on the side and fifteen (15) feet on the rear. An additional setback for any portion of any structure extending above twenty (20) feet in height, up to the maximum height permitted in the district, shall be defined by a daylight plane extending from a base point located twenty (20) feet above the ground plane at the line of the minimum required setback, inclined away from the vertical at a forty-five (45°) degree angle.

§ 20.24.080 - HEIGHT LIMITS AND EXCEPTIONS

Background/Comments

Subsection B of this section lists architectural features (such as towers, chimneys and similar structures) that can be allowed to exceed the district height limit. Currently, allowing such a general exception would be subject to a use permit, as well as design review. Staff believes that this provision could be simplified so that these general exceptions are subject to design review approval only. The revised language would read as stated below.

Zoning Ordinance Language

20.24.080.B. General Exceptions. Subject to approval of a use permit, towers, spires, cupolas, chimneys, elevator penthouses, water tanks, monuments, flagpoles, theater scenery storage structures, fire towers, and similar structures may be erected to a height not more than ten (10) feet above the height limit prescribed by the regulations for the district in which the site is located, provided that no such structure shall be used for habitable space or advertising purposes, and provided that the aggregate of such structures does not cover more than ten

(10%) percent of the roof area of the top floor of the structure to which they are attached. All structures that exceed the district height limit shall be subject to design review.

Discussion

Staff believes that this provision could be simplified so that these general exceptions are subject to design review approval only. The changes would include replacing "use permit" with "design review" and removing the last sentence of the section, which will become redundant as a result of the inclusion of "design review".

~~"Subject to design review approval of a use permit, towers, spires... All structures that exceed the district height limit shall be subject to design review.~~

§ 20.24.110 - FENCES, LANDSCAPING, SCREENING

Background/Comments

Subsection C.2 of this section references the granting of a "zoning permit", which is not discussed anywhere else in the zoning ordinance, and therefore there are no procedures in place for its implementation.

Zoning Ordinance Language

§ 20.24.110.C.2. Paragraph 2. Exception to height limit in front yard: a structure designed to provide a decorative gateway, such as an arbor, trellis or pergola, may occupy an area not to exceed twenty (20) square feet, with a maximum horizontal dimension of six (6) feet and a maximum vertical dimension of ten (10) feet, subject to granting of a *zoning permit* based on all of the following findings:

Discussion

Rather than create a new procedure that would require a more substantial renumbering of the Procedures section of 20.100, staff would recommend that the term "zoning permit" be replaced with a procedure that is already in place, such as administrative design review. The ordinance language would be revised as such:

~~"subject to granting of a zoning permit~~ administrative design review approval based on all of the following findings:"

Requiring administrative design review approval would have subsequent benefits, including allowing for adjacent owners and tenants to be notified and for a public hearing to be held before approval.

§ 20.24.130.H - ACCESSORY BUILDING SETBACKS

Background/Comments

From: Evan Flavell, P&Z Commissioner, 9/12/05

"§ 20.24.130.H. sets out the setback requirements for accessory buildings, where

§ 20.24.230.H.3. Accessory buildings on the interior side yard shall not encroach into the required side yard setback."

"It is argued that this provision is subordinate to the section heading at H., which more specifically outlines requirements for accessory buildings located in the rear setback area, and thus there are no setbacks required for side yard locations."

"The language was placed at H. for economy of space. There is no side yard in a rear yard, and setbacks were intended to apply in actual sideyard locations. The meaning would be clarified by amending to include the language "generally applicable to all accessory buildings" at the end of H."

Zoning Ordinance Language

§ 20.24.130.H. Setbacks. Accessory buildings located in rear setback areas shall be within six (6") inches of the side or rear lot line, or shall be set back at least three (3') feet, and shall be subject to the following provisions generally applicable to all accessory buildings:

1. Accessory buildings shall not have openings (windows, doors, and vents) within three (3) feet of the property line. This includes openings on walls that are perpendicular to a property line. An exception shall be made for garage (vehicle) doors.
2. Accessory buildings located on the street side yard of corner lots are required to meet the minimum setback requirements for the main building.
3. Accessory buildings on the interior side yard shall not encroach into the required side yard setback.

Discussion

Former Commissioner Flavell believes that this discrepancy can be corrected with the addition of the language "generally applicable to all accessory buildings" at the end of the section.

Another option would be to delete the reference to the "rear setback area" in the opening paragraph of 20.24.130.H. In this way, the opening paragraph would set the general setback parameters for all accessory buildings, and the provisions that follow the opening paragraph

would stipulate parameters that are more specific. Provision number 3 would no longer be needed in this scenario. The resulting ordinance language would appear as follows:

§ 20.24.130.H. Setbacks. Accessory buildings ~~located in rear setback areas~~ shall be within six (6") inches of the side or rear lot line, or shall be set back at least three (3') feet, and shall be subject to the following provisions:

1. Accessory buildings shall not have openings (windows, doors, and vents) within three (3) feet of the property line. This includes openings on walls that are perpendicular to a property line. An exception shall be made for garage (vehicle) doors.
2. Accessory buildings located on the street side yard of corner lots are required to meet the minimum setback requirements for the main building.
3. ~~Accessory buildings on the interior side yard shall not encroach into the required side yard setback.~~

§ 20.28.020 - GENERAL REGULATIONS (In regards to Carports)

Background/Comment

From: Evan Flavell, P&Z Commissioner, 2/24/05

"Citizens fill their garages with 'stowage', gate off their driveways, then desire protection for their vehicles parked in the front yard. A variety of cheap shelters are contrived, some made of PVC pipe. Some performance standards were added in the new ordinance at 20.28.020.I. to control paving and parking in front yards. Consider expanding this or adding another to impose limitations on such 'temporary' carport structures in driveways. Also, how do we feel about canvas car covers and tarps, as well?"

Zoning Ordinance Language

§20.28.020.I. Limitation on Paved Area of Front Yards. Any paved area between the front property line and the front of a building shall be limited to a walkway for entry access, and a driveway not to exceed sixteen (16) feet in width, that forms a direct route from the street to a garage or other parking space deemed acceptable by the Community Development Director. The Planning and Zoning Commission may grant an exception to this limitation, based on unusual conditions of the site, such as topography, size, location or visibility. No parking of vehicles shall occur in any unpaved portion of a front yard.

Discussion

Does the Commission believe that this section should be expanded to cover carport structures and the like?

Staff did find one example of a city (Arlington, TX) that allows carports if 11 conditions can be met. Some of the conditions of interest include:

- Is the carport structurally integrated with the roof of the principle structure or less than 18 inches from the principle structure?
- Are the supports for the carport painted a color to match or replicate the color of the trim areas of the principle structure?
- Does the carport have a pitched roof that is either a closed gable or hip design that matches the existing pitch of the principal structure and utilizes shingles that substantially match the color of the shingles used on the principle structure?
- Is the carport 8 feet or less in height at its shortest wall?
- Are all sides of the carport that are within the required front yard open and unobstructed, except for support columns?
- Do the columns obstruct less than 15 percent of the area of any side?
- Does the carport cover an appropriate surface designed for vehicle storage?

If the Commission is of the belief that carports should be regulated, discuss which, if any, of the conditions of interest should be included in the new regulations.

§ 20.28.050 - PARKING AREA STANDARDS

Background/Comment

From: Evan Flavell, P&Z Commissioner, 1/26/05

"Our first application under the new ordinance (910 Santa Fe) involved removal of rear-yard parking and provision of two spaces in the side yard. The driveway width met the 10'-6" width requirements, except an existing bay window feature extends 1'-6" into a portion of the length of each of the proposed parking spaces provided."

"While the ordinance does provide for the Commission to allow for local obstructions in existing garages, no specific exception is provided for new spaces. The Commission approved the application, notwithstanding."

"While the bay does not block the vehicles themselves, it does somewhat limit access to them. Even this limited inconvenience may deter use of the spaces for parking as proposed. In similar situations, the requisite spaces are used for storage, and parking occurs in the front yard, usually one car only."

"Review the Parking Ordinance for specific consideration of local obstructions."

Zoning Ordinance Language

§20.28.040.A.6 Existing Garages. The Planning and Zoning Commission may find that an existing garage meets the requirements for an off-street parking space if the interior dimensions of such garage are not less than sixteen (16) feet in length, and eight (8) feet in width, for a single garage, or sixteen (16) feet in width for a double garage, and six (6) feet six (6) inches in height. The Planning and Zoning Commission *may allow a local obstruction (such as a chimney, stairs or other feature) to protrude into the required parking space dimension, upon finding that such obstruction does not impede the ability to park vehicles in the garage.*

Discussion/ Questions

One option for resolving this issue would be to remove the last sentence of the above referenced ordinance language, and create a new exception (#8) for "Local Obstructions". This change would make the "Local Obstructions" provision applicable to all garages and parking spaces, not just existing garages as currently written.

§20.28.040.A.8 Local Obstruction. The Planning and Zoning Commission may allow a local obstruction (such as a chimney, stairs or other feature) to protrude into the required parking space dimension, upon finding that such obstruction does not impede the ability to park vehicles in a required garage or open parking space.

§ 20.40 - HOUSING PROVISIONS

Background/ Comment

A "Law Alert" from Goldfarb Lipman Attorneys dated August 4, 2006 discussed a decision by a San Diego County Superior Court. The court "found that San Diego's inclusionary zoning ordinance constituted a 'taking' because of the lack of a properly drafted 'waiver' provision. An excerpt from the "Law Alert":

"Some builders and others have challenged the constitutionality of these (inclusionary) ordinances. In the only published California decision, the City of Napa's inclusionary housing ordinance withstood a court challenge (Home Builders Association of Northern California v. City of Napa, 90 Cal. App. 4th 188 (2002)). The Court of Appeal decided that the challenge could not be successful because Napa's ordinance included a "waiver" provision. The provision allowed developers to ask for a reduction in the ordinance's requirements if there was no "reasonable relationship" between the impact of development and the inclusionary requirement."

Goldfarb & Lipman LLP went on to advise that if cities want to protect themselves, they may want to ensure that their inclusionary ordinances include waiver provisions with wording

similar to that used by the City of Napa. Staff would recommend that the following section be added to the Housing Provisions chapter as §20.40.080.

Zoning Ordinance Language (from Napa Zoning Ordinance)

Adjustment.

- A. A developer of any project subject to the requirements in this chapter may appeal to the city council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirement.
- B. A developer subject to the requirements of this chapter who has received an approved tentative subdivision or parcel map, use permit or similar discretionary approval and who submits a new or revised tentative subdivision or parcel map, use permit or similar discretionary approval for the same property may appeal for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously approved.
- C. Any such appeal shall be made in writing and filed with the city clerk not later than ten (10) days before the first public hearing on any discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, then the appeal shall be filed within ten (10) days after payment of the fees objected to. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The city council shall consider the appeal at the public hearing on the permit application or at a separate hearing within sixty (60) days after the filing of substantial evidence to support the appeal including comparable technical information to support appellant's position. No waiver shall be approved by the city council for a new tentative subdivision or parcel map, user permit or similar discretionary approval on property with an approved tentative subdivision or parcel map, use permit or similar discretionary permit unless the council finds that the new tentative subdivision or parcel map, user permit or similar discretionary approval is superior to the approved project both in its design and its mitigation of environmental impacts. The decision of the council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement.

§ 20.100.010.E.4.B - NOTICE REQUIREMENTS FOR RESIDENTIAL DESIGN REVIEW

Background/Comment

California law requires that public notice be provided for specific projects, such as use permits and variances. This is referenced in the Zoning Ordinance under provision

20.100.010.E.1. "State Requirements", which states that "notice shall be provided in accord with the California Government Code, as stated in Sections 65090 and 65091 thereof." One of the provisions of these specific sections of the government code is that notice must be mailed or delivered to all property owners within 300 feet of the exterior boundary of the subject property.

Design Review approvals are not subject to the public notice requirements under California law, but the City of Albany has chosen to include its own noticing requirements for Design Review anyway, under subsection 20.100.010.E.4. This subsection states that public notice for Design Review is only required to be mailed or delivered to property owners within a 100-foot radius of the subject property, not the 300 foot requirement as stated in the government code.

As currently written, it could be argued that the language of subsection E.1, "State Requirements", including the 300-foot mailing radius requirement, should apply to all portions of E, including subsection E.4.

Zoning Ordinance Language

20.100.010.E.4.b. Mailing. The Community Development Department shall mail such notice to all owners of any property, any portion of which lies within one hundred (100) feet of the external boundaries of the project site, at least ten (10) calendar days prior to the meeting.

Discussion

To clearly differentiate the noticing requirements for residential design review, staff would recommend that additional language be added at the end of subsection E.4.b, as follows:

"...at least ten (10) calendar days prior to the meeting, notwithstanding California Government Code Sections 65090 and 65091."

§ 20.100.080.C.1 - ADMINISTRATIVE ACTIONS APPEALABLE

Background/Comment

The section on "Administrative Actions Appealable" references the ordinance incorrectly, using the wording "Code" rather than "chapter" as used throughout the remainder of the ordinance. Making the following minor wording revision would make the language consistent.

Zoning Ordinance Language

§20.100.080.C.1. Administrative Actions Appealable. Any person aggrieved by a decision to grant or deny a permit or action taken by the Planning staff or any other City Official under

the provisions of this chapter, or any person aggrieved by an administrative determination or interpretation made in conjunction with a decision to grant, deny or comply with a determination made pursuant to a provision of this Code chapter, may appeal such action to the Planning and Zoning Commission.

MISCELLANEOUS #1 - GREATER THAN 50% DEMOLITION OF BUILDING

Background/Comment

In 2005, the east wall of 1620 Sonoma, which was in a non-conforming location, was granted a use permit to allow the wall to remain in place and to be extended horizontally for a rearward extension of the ground floor by 8 feet, and vertically for the new second story. During construction, all of the interior and exterior walls of the existing one-story residence were demolished, leaving only the foundation and sub-floor in place. The applicant was allowed to build according to the approvals, but the Commission asked that this issue be brought forward as part of any future Zoning Ordinance Amendments.

Zoning Ordinance Language

The following section, under "Restoration of Damaged Structures", is not specific to the voluntary demolition of non-conforming walls, but staff believes that the implied intent of this section would be applicable.

20.44.050.A. Nonconforming Uses or Structures. A nonconforming structure, or a structure containing a nonconforming use, which is destroyed to the extent of not more than fifty (50%) percent of its replacement value by fire, wind, flood, earthquake or other calamity, may be restored to its prior condition and use provided that the restoration is started within twelve (12) months from the date destruction occurred and is diligently pursued to completion. If such damage or destruction (or voluntary or legally-mandated razing) exceeds fifty (50%) percent of the replacement value, then the structure and its use shall conform to the provisions of this Chapter.

Discussion/ Questions

Even though the above section deals with the restoration of damaged structures, staff believes that the language indirectly relates to the issue of demolishing non-conforming walls. The underlined section does mention "voluntary razing", with the requirement that if the razing exceeds 50% of the replacement value, the structure shall conform to the ordinance (which would include setback requirements).

However, §20.24.020. Table 2.A. Note 19 (a) states that "a second story addition may be built which builds over an existing wall or foundation". With that wording, does the continued

existence of the foundation at the nonconforming location allow the wall to be rebuilt above the foundation?

One potential requirement that could make this type of situation less likely in the future would be to require that a Structural Engineer submit signed correspondence that the wall and/or foundation for which a conditional use permit is being requested is structurally adequate to allow a vertical or horizontal expansion.

To help guide any future revisions to the ordinance in regards to demolition of nonconforming walls, staff requests that the Commission provide answers to the following questions:

- Should the re-construction now be required to meet the zoning setback if a certain percentage of the building is demolished?
- Because §20.24.020. Table 2.A. Note 19(a) says “over an existing wall or foundation”, does the continued existence of the foundation at the nonconforming location allow the wall to be rebuilt above the foundation?
- Is the physical continuity of the wall essential , or is it sufficient that a wall existed at the beginning of the project, and a wall will exist in the same location on completion of the project?
- In future cases of this type, should the use permit contain a condition that removal of the nonconforming wall will cause the use permit to terminate?
- Should the Zoning Ordinance be amended to specify that such a use permit can be granted only to accommodate the extension of an existing wall that will remain as part of the structure?
- Should applicants be required to establish integrity of existing walls before approving extensions of non-conforming setbacks?