



MEMORANDUM

DATE: January 3, 2013
TO: Planning Commission
FROM: Mike Moore, Planning and Building Director
SUBJECT: Requested Status Updates and Design Review Considerations

Happy New Year to you all. 2013 will be a busy year for the Commission. In addition to reviewing and acting on new and pending development applications, this year will also include hearings on the new draft General Plan and continuing updates of the Zoning Ordinance. We will need to allocate time on an upcoming agenda in January or February to discuss the hearing schedule and other details related to the General Plan and Zoning Ordinance.

At the December 10 meeting, Commissioner Richardson requested an update from staff on changes to the Zoning Administrator process and the status of the Commission's recommendations on FAR and Second Units. In addition, subsequent Commission deliberations on the design review application for 410 Magee raised several issues that are also included in this memo and may require further discussion and direction by the Commission so that we may be able to provide better guidance to applicants as they develop their projects.

REQUESTED STATUS UPDATES

Zoning Administrator

Chapter 20.62 of the Zoning Ordinance establishes the authority and procedures for the Zoning Administrator (ZA). The Planning and Building Director is designated as Zoning Administrator and the chapter establishes the types of projects over which the ZA has the ability to make decisions. Traditionally, the vast majority of projects coming before the Zoning Administrator have been design review applications, with an occasional periodic review or proposed amendment of an existing conditional use permit or variance. The design review applications are remodels or additions to existing residences that are large enough to trigger design review (based on the design review thresholds established in Chapter 20.66), but not considered significant enough to require Planning Commission review, unless it appears likely that the decision will be appealed to the Planning Commission. In those rare instances, we will skip the ZA process all together and schedule the item for a Planning Commission hearing.

Until recently, applications to the Zoning Administrator followed the same procedural steps as applications to the Planning Commission: public notice, preparation of a staff report, preparation

of a meeting agenda, established meeting date and time and preparation of meeting minutes. However, since Amber El-Hajj left the City in mid-October of last year, the Zoning Administrator procedures have been minimized in order to more effectively use our remaining staff resources for more critical tasks. The most significant change to the ZA process is that we are no longer holding regular Zoning Administrator meetings, which means that we are no longer preparing agendas, staff reports or minutes. Instead, as an application comes in for review, we still do the standard routing to other City departments for completeness and conditions of approval and we also provide the required notice to the public at the appropriate time. The public notice allows 10 days during which anyone receiving a notice can comment on the project. If we do not receive any comments during that 10-day period, then we issue an approval letter to the applicant which includes all conditions of approval. If we do receive comments, and the comments are substantive, then we will work with the applicant and the commenter to address the issues and condition the project approval, accordingly. Applicants or members of the public not satisfied with the outcome still maintain the right to appeal the decision to the Planning Commission.

As with any other design review related application that comes to the City, we work with an applicant prior to the actual application process to advise them of any potential conflicts with the City's design guidelines and development standards and strongly encourage outreach to surrounding neighbors. Our experience has been that any issues with adjoining neighbors are typically worked out by the time the application is submitted and the remainder of the ZA process goes smoothly. That's why we felt confident that the new process would still be effective, while reducing the amount of staff time and resources necessary to evaluate and process applications subject to the Zoning Administrator.

FAR/Second Unit Status

On June 25, 2012, the Planning Commission held a public hearing, concluded its deliberations and made a final recommendation to the Planning Commission on amendments to the City's Zoning Ordinance for the definition of Floor Area Ratio (FAR) and other related definitions (e.g., "Basement") and to Chapter 20.90, Residential Second Units. In addition to these changes, the Commission was also considering amendments to the City's commercial zoning regulations as part of the current round of Zoning Ordinance updates. The Commission last held a public hearing on the commercial zoning amendments on September 24, 2012, at which time staff was directed to survey downtown building space in order to provide better information on which to consider an appropriate size that might trigger the need for a conditional use permit. A subsequent hearing has not been yet been scheduled.

Staff did not schedule the FAR/Second Unit amendments for a hearing before the City Council in 2012 because we thought the hearings on the proposed commercial revisions might be completed and could also be brought to the Council for hearing at the same time. It is clear now that is not going to be the case. As such, we will schedule the hearing on the FAR/Second Unit amendments for one of the regular City Council meetings in February.

RECOMMENDATIONS FOR FURTHER DISCUSSION

There were several issues that came up during the Commission deliberations on the 410 Magee application on December 10 that, I believe, warrant further discussion in order to clarify the Commission's position. These issues are not specific to the 410 Magee project, and since that

project is still pending before the Commission, care should be taken to not discuss the particulars of that project in the course of any future conversations. Even though one or more of these issues have arisen in other recent projects, the 410 Magee deliberations, from staff's perspective, seemed to raise them to a level that suggested that it might be time for the Commission to take a step back and address them as matters of design review policy, rather than in the context of an individual project application. The issues are: 1) whether or not Study Sessions are optional; 2) "off-haul" as a component of Design Guideline 10 ("residential projects should be designed to minimize cut and fill and on/off-haul") or as a specific development standard (e.g., no more than 150 cubic yards to be removed from the site); 3) defining "lantern effect" and what that means relative to the use of glass and lighting in new building design; and 4) the 500 square foot lawn limitation.

Study Sessions

Back in 2010, when the Commission last addressed and substantially changed the Study Session process, the Commission position at that time was that Study Sessions, although strongly encouraged, were optional. The intent of the Study Session has always been to facilitate the approval process and reduce the number of times a project might need to come before the Commission for subsequent reviews and final approval. While most applicants do make use of the Study Session because they believe that there are certain aspects of their project that would benefit from the input the Study Session provides, there have been applicants that choose not to go through that step. Typically, these have been projects that on their face comply with the City's basic development standards, do not require a variance of any kind, comply with the City's design guidelines and are generally supported by adjacent neighbors.

The broader question seems to be not whether Study Sessions should be optional, but how many meetings does the Commission need to approve a project? If the Commission's position is that it needs a minimum of two meetings to approve a project, then it would make sense to make Study Sessions mandatory and make sure applicants are aware of that from the outset. If the Commission believes and supports a principle that a project can (or even should) be approved in one meeting, whenever possible and circumstances warrant, then the Study Session can remain optional and applicants can decide accordingly whether or not their project should proceed without a Study Session.

Off-Haul

This is an issue that frequently leads the Commission into a level of project detail that seems well beyond the intent of Design Guideline 10 and the design review process. The overall intent of Guidelines 10 through 12 is to minimize grading and encourage working with the characteristics of the site. Guideline 10 does state that "on/off-haul is discouraged, especially in locations of limited or difficult access"; however, that is not a statement that on its face should compel the Commission to either determine a maximum number of cubic yards that could be removed from the site, or to understand the geotechnical and soil characteristics sufficiently to know whether or not the soil to be off-hauled is suitable to be used elsewhere on the site.

The City's Residential Design Guidelines, including Guideline 10, rarely express a specific construction standard, but instead provide a qualitative framework for determining overall design consistency. There is no established hierarchy that makes one Guideline pre-eminent among all others. They are applied broadly and collectively to insure that a given project is responsive to all

that apply in a manner that reflects good design principles and community expectations. If applied in this manner, they provide the Commission with broad discretion to address the unique characteristics of each project in the unique context of each project site. That is the essence of the discretionary design review process. As such, there may be instances where off-haul, even in “locations of limited or difficult access” may be perfectly appropriate and desirable because in the context of other applicable guidelines and site characteristics – slope, vegetation, access, building design, proximity of adjacent neighbors, etc. – it makes good design sense and results in a good design review decision for the applicant and the community.

The Commission often expresses its concern about off-haul in terms of inconvenience to the surrounding neighbors and residents along the route of the dump trucks, or that proximity to major arterial streets and the freeway somehow makes it less of an inconvenience. The construction process, generally, is an inconvenience to neighboring properties. Most of the complaints that we receive about construction projects are related to contractor parking, working before or after hours and work beyond the approved scope of the project. While there are occasional complaints about truck traffic, they are very rarely associated specifically with the number or frequency of trucks hauling soil and materials to or from the site.

“Lantern Effect”

This is a term that the Commission has applied to several recent projects, but is not specifically called out or defined in either the Zoning Ordinance or the Design Guidelines. Guideline 19 states that “to the extent consistent with other design considerations, the placement and size of windows and skylights should minimize light pollution and/or glare.” The use of the term “lantern effect” seems to take the statement in Guideline 19 a step further to suggest that there should be little, if any light emanating from a new residence at night. That’s probably not the Commission’s intent, but as with off-haul, if the “lantern effect” becomes a singular emphasis outside of consistency with “other design considerations”, and continues to be used without definition or refinement, then it starts to evolve into a specific standard on a case-by-case basis and an applicant’s design options and the Commission’s design review discretion becomes more limited in order to address that particular concern.

Lawn

The Commission’s 500 square foot limitation on lawn area is an example of a standard that has evolved without any consideration of a given project or site. Guideline 5 speaks to minimizing water use and in that context further states that “turf areas should be minimized because of their high water and chemical requirements.” The Guideline statement related to turf neither says “shall”, nor establishes a specific numerical limit. While the Commission’s intent is clear, the broader question is again one of design options for the applicant and design review discretion by the Commission. The Design Review Guidelines are intended to provide a consistent, programmatic approach to new residential development in Mill Valley, but with few exceptions where a specific standard is identified (e.g., retaining wall height), leave it to creative design professionals to express how applicable guidelines are addressed, and leave wide discretion to the Commission to determine whether or not the project is consistent with those guidelines. The lawn standard places one specific aspect of an overall approach to landscape design above all others and presumes that that standard conforms to the Guideline without reviewing any other information about how the size or characteristics of other aspects of the landscape plan use water or chemicals. The City’s water provider, Marin Municipal Water District (MMWD), achieves

water conservation compliance through residential landscape standards that establish an overall water use budget for landscape architects and designers to work within, rather than limit specific features of the landscape without regard to the others.

Recommendation

This memo is being provided to you now in anticipation of a discussion item on the January 14 Planning Commission agenda. As stated previously, the issues identified above have been elements of prior Commission deliberations and action without the benefit of a full airing of the broader policy and process implications. The lack of a clear policy basis and direction makes it difficult for us to advise potential applicants and to be fully responsive in our analysis and recommendations to the Commission. I think it is important and timely to consider the policy questions that have been raised in this memo (and any additional considerations that you may wish to raise) as part of what should be on-going improvements to the efficiency and effectiveness of the design review process.

It's unlikely that we will be able to address these issues in sufficient depth on January 14 due to the other items on that agenda. As a result it is likely that the time to complete any discussion may need to occur over several regular meetings, or the Commission may wish to schedule a special meeting on these items in the coming weeks.

I look forward to our upcoming conversation. If you have any questions, please contact me.