

**CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: December 2, 2005

TO: Members of the Planning Commission

FROM: Michelle Sokolowski, Development Project Manager

SUBJECT: PROJECT NO. 61175 – 4404 CLEVELAND MAP WAIVER

The above referenced project, an appeal of the Hearing Officer's decision to approve the 4404 Cleveland Map Waiver, was originally scheduled for a public hearing before the Planning Commission on November 10, 2005.

This item was continued indefinitely after the City Attorney's opinion regarding use of categorical exemptions from CEQA for condominium conversions was provided during the course of the Planning Commission Meeting.

At the November 17, 2005, hearing, after a discussion and public testimony, the Planning Commissioners indicated their agreement that requests for Tentative Maps for condominium conversions which were not pending appeal of the environmental determination could proceed through the Planning Commission hearing process.

Based on the above information, the 4404 Cleveland Map Waiver project has been rescheduled for the December 8, 2005, Planning Commission hearing. Accordingly, a Revised Notice of Public Hearing was distributed as required on November 23, 2005.

It should be noted that while this particular project is an Appeal of the Hearing Officer's decision to approve, it is not an appeal of the environmental determination. The environmental exemption determination for this project was made on February 7, 2005, and the opportunity to appeal that determination ended February 22, 2005.

The basis for appeal is discussed within Report to the Planning Commission No. PC-05-291.

Michelle Sokolowski
Development Project Manager
Development Services Department

DATE ISSUED: November 4, 2005 **REPORT NO. PC-05-291**

ATTENTION: **Planning Commission, Agenda of November 10, 2005**

SUBJECT: APPEAL OF THE HEARING OFFICER'S DECISION TO APPROVE
4404 CLEVELAND MAP WAIVER - PROJECT NO. 61175.
PROCESS THREE

REFERENCE: Report to the Hearing Officer No. HO-05-143 (Attachment 13)

OWNERS: GEORGE J. AND TOSHIKO T. DEGENHART

APPLICANT: STERLING LAND SERVICES, INC.

SUMMARY

Issue(s): Should the Planning Commission approve or deny the appeal of the Hearing Officer's August 17, 2005, decision to approve a Map Waiver to waive the requirements for a tentative map to convert two existing residential units into condominiums and a request to waive the requirement to underground existing overhead utilities for the site located at 4404 Cleveland and 1426 Meade Avenues within the Uptown Community Plan area?

Staff Recommendation: Deny the appeal and **Approve** Map Waiver No. 181383, including the request to waive the requirement to underground existing overhead utilities.

Community Planning Group Recommendation: The Uptown Planners considered the project on June 7, 2005, and voted 10-0-0 to recommend approval of the project, with their five standard recommendations, as discussed within this report (Attachment 8).

Environmental Review: This project is exempt from environmental review pursuant to Article 19, Section 15301(k), Existing Facilities, of the California Environmental Quality Act (CEQA).

Fiscal Impact Statement: None with this action. All costs associated with the processing of this project are paid by the applicant.

Code Enforcement Impact: None with this action.

Housing Impact Statement: With the proposed conversion of two existing units to condominiums, there would be a loss of two rental units and a gain of two for-sale units. This condominium conversion project was deemed complete on January 26, 2005, and is therefore subject to the new regulations regarding inclusionary housing and tenant relocation assistance.

BACKGROUND

The 0.16-acre project site is located at the northwest corner of Cleveland and Meade Avenues, addressed as 4404 Cleveland Avenue and 1426 Meade Avenue, in the MR-1500 Zone of the Mid-City Communities Planned District within the Uptown Community Plan (Attachment 3). The Community Plan designates the site for multi-family residential development (Attachment 2). The site is surrounded by multi-family residential development. An alley is located at the rear of the property.

The project site is located in the MR-1500 Zone of the Mid-City Communities Planned District established in May 1989. Prior to the MR-1500 Zone, the R-3 Zone was applied to the area in March 1976, with the R-4 Zone originating on the site in 1930. According to the applicant, the two unit residential project was constructed in 1924, prior to zoning being applied to the property. However, the R-4 Zone applied in 1930 would have permitted residential development, as does the current MR-1500 Zone. The project meets current density allowances (2 units where 5 are permitted), but deviates from current parking criteria. The 2-unit residential project has one unit at the corner of Cleveland and Meade Avenues at the front of the property with a two-car garage, and one unit at the rear property fronting on Meade Avenue with a one-car garage accessed from the alley at the rear. In 1924, and until 1960, there were no on-site parking requirements for multi-family residential development. While there are three off-street parking spaces located on site, current parking regulations would require a total of four off-street parking spaces. The project complies with current density criteria, but may not comply with all current development regulations. However, the project has previously conforming rights to be maintained as outlined in Chapter 12, Article 7, Division 1 of the Land Development Code.

Hearing Officer Decision

This Map Waiver project was approved by the Hearing Officer on August 17, 2005, as recommended by staff. There were three speakers in opposition at this hearing. Ronald Hull and Tom Swope represented the large condominium complex adjacent to this site, and were generally concerned with any proposed construction and wanted to ensure the utilities would be undergrounded in their regularly-scheduled timeframe. The Hearing Officer explained the proposal did not include construction and the undergrounding process was clarified. Both Mr.

Hull and Mr. Swope indicated their satisfaction with the explanation.

The third person speaking in opposition was E. Sylvia Ulman. Ms. Ulman stated she had “lived in the area her whole life and wished to be listed in opposition to the project.” She stated there were “financial and federal difficulties with immigration and labor” and stated her belief that the “project would impact the area by increasing the number of units in that it was established as a single-family residence.” The Hearing Officer reiterated the project scope, that there was no proposed increase in the amount of units, and requested Ms. Ulman clarify the relationship between her statement regarding financial and federal difficulties and the proposed project. Ms. Ulman restated the sentence and concluded her testimony.

After summarizing the project scope again, the Hearing Officer approved the proposed project and included an additional condition requiring the applicant to obtain an Encroachment Removal Maintenance Agreement for existing improvements within the public right-of-way along Meade Avenue.

Appeal Issues

On August 31, 2005, E. Sylvia Ulman filed an appeal of the decision citing the following (Attachment 7):

1. The property itself was donated by the previous owner, Robert LaLonde, to the Catholic church in its entirety.
2. There were no “variations” included in that the small cottage was established to house or provide a separate place for service or care.
3. The request for such a project indicates the continued mixed-use condition of the area and the neighborhood.
4. Valid precedents are rarely or never set.
5. These deviations cause density parking and traffic issues.

DISCUSSION

In response to the concerns raised by the appellant in the August 31, 2005, appeal, staff has determined the following:

1. *The property itself was donated by the previous owner, Robert LaLonde, to the Catholic Church in its entirety.* The prior ownership of the property is not relevant to the proposed project.
2. *There were no “variations” included in that the small cottage was established to house*

or provide a separate place for service or care. The meaning of this statement is unclear. The proposed structures were built as residential units and are continued to be used in that manner, consistent with zoning regulations. The project does not include a “waiver” to allow an alternative use.

3. *The request for such a project indicates the continued mixed-use condition of the area and the neighborhood.* Again, the meaning of this sentence is unclear. The proposed structures were built as residential units and are continued to be used in that manner, consistent with zoning regulations. The MR-1500 zone applied to the property allows multi-family residential use.
4. *Valid precedents are rarely or never set.* Again, the meaning of this sentence is unclear. This proposed project conforms with applicable regulations and no variances or deviations are requested.
5. *These deviations cause density, parking and traffic issues.* As indicated above, no deviations or variances are requested with this proposed project. The project does not include a request to construct additional units, however it is merely a request to change the property from one owner to two owners. The applicant has indicated his desire to proceed with this project because by doing so “it would be harder to tear down the existing homes and do new construction,” thereby preserving the lower density situation on this site.

Project Description:

The project is requesting a Map Waiver to waive the requirements of a tentative map for the subdivision of a 0.16-acre site into one lot for a 2-unit residential condominium development. Section 125.0410 of the San Diego Municipal Code requires that a Tentative Map be processed for the subdivision of land. The Tentative Map request is a Process Three Hearing Officer decision as outlined in San Diego Municipal Code Section 125.0430 (Decision Process for a Tentative Map). According to San Diego Municipal Code Section 125.0440, Findings for Tentative Maps, the decisionmaker may approve a Tentative Map if the decisionmaker finds that the proposed division of land complies with the requirements of the Subdivision Map Act and the San Diego Municipal Code. According to San Diego Municipal Code Section 144.0444, Findings for Tentative Maps for Condominium Conversion, the decisionmaker may approve a Tentative Map for the purposes of the conversion of residential property into a condominium project if the decisionmaker finds that the proposed conversion complies with the requirements of the Subdivision Map Act and the San Diego Municipal Code.

The Subdivision Map Act and the Land Development Code provide a process to waive the requirement for a Parcel Map and the associated Tentative Map for condominium conversion on a single parcel. The waiver process provides a process for a condominium conversion on a single parcel where the site was previously developed and no additional infrastructure is required. Since the subject project meets these requirements and includes the conversion of two existing

residential units on a single parcel, the project is eligible for a Process Three Map Waiver.

Underground Utility Waiver

San Diego Municipal Code Section 144.0240 allows the subdivider to apply for a waiver of the requirements to relocate the existing overhead utilities to an underground position within the boundary of the subdivision or within the abutting public rights of way. City staff has determined the undergrounding waiver request qualifies under the guidelines of Council Policy 600 25 (Underground Conversion of Utility Lines at the Developers Expense) in that the conversion involves a short span of overhead facility (less than 600 feet in length) and it has been determined that such conversion is not a part of a continuing effort to accomplish a total undergrounding within a specific street or area. The applicant would be required to underground any new service run to any new or proposed structures within the subdivision per Condition No. 4 of the draft resolution.

The neighborhood currently contains power poles and overhead utility lines along Meade Avenue and within the alley at the rear of the subject property. The City's Undergrounding Master Plan for Fiscal Year 2004 designates the site within Block 3W, and is proposed to be undergrounded in Fiscal Year 2010 (Attachment 11).

Community Planning Group Recommendation

The Uptown Planners recommended approval of the proposed project with their five standard recommendations (Attachment 8):

1. *No waiver or exemption from state and local requirements that existing utility services for this property be placed underground be granted.* Based on the preceding information regarding the undergrounding of the existing utilities, staff continues to support the undergrounding waiver request.
2. *The first right of refusal to purchase a unit be given to current tenants.* The Map Waiver resolution has been conditioned to provide the right of first refusal to the existing tenants, as required by the State Map Act, which is a standard condition for all conversion projects.
3. *Preserve historic sidewalk stamps and existing scoring of sidewalks.* The Land Development Code already requires the preservation of historic sidewalk stamps and scoring.

4. *Bring landscape into conformance with current regulations.* There is no construction proposed with this project, therefore no additional landscaping is required. As indicated above, the project has previously conforming rights to be maintained as outlined in Chapter 12, Article 7, Division 1 of the Land Development Code.
5. *Preserve current on-street parking and provide additional parking.* There is no construction proposed with this project, therefore no additional parking is required. As indicated above, the project has previously conforming rights to be maintained as outlined in Chapter 12, Article 7, Division 1 of the Land Development Code.

Other Project Issues

The project proposes the conversion of two existing residential apartment units into condominiums. All condominium conversion projects Deemed Complete on or after February 7, 2004, must conform with the new regulations regarding inclusionary housing and tenant relocation benefits adopted by the City Council on March 15, 2004. This proposed project was Deemed Completed on January 26, 2005, and is therefore subject to these new regulations. The project has been conditioned to require the subdivider pay an Inclusionary Affordable Housing In-Lieu Fee pursuant to the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code), and demonstrate conformance with the Municipal Code provisions for Tenant Relocation Benefits (Chapter 14, Article 4, Division 5), to the satisfaction of the City Manager and the Housing Commission, prior to the recordation of the Parcel Map.

Project-Related Issues:

The requested conversion of these residential units to condominiums represents primarily a change in ownership. The applicant has certified that the required 60-day Notices of Intent to Convert to Condominiums were provided to the tenants in the unit located at 1425 Meade Avenue on October 27, 2004 (Attachment 12). The property owner lives in the unit located at 4404 Cleveland Avenue.

Conclusion:

Staff has reviewed the application for the map waiver and the request to waive the requirement to underground the existing utility lines. Staff has determined that the proposed condominium conversion complies with the applicable sections of the Municipal Code. Staff believes the required findings can be made to support the project. The proposed project was reviewed and exempted from the California Environmental Quality Act and as an existing facility the project is Categorical Exempt from further environmental review. Therefore, staff recommends that the Planning Commission deny the appeal and approve the map waiver and waive the requirement to underground the overhead utilities.

ALTERNATIVES

1. **Deny** the appeal and **Approve** Map Waiver No. 181383, **with modifications**.
2. **Uphold** the appeal and **Deny** Map Waiver No. 181383, **if the findings required to approve the project cannot be affirmed**.

Respectfully submitted,

Jeffrey D. Strohminger
Acting Deputy Director, Customer Support and
Information Division
Development Services Department

Michelle Sokolowski
Customer Support and
Information Division
Development Services Department

STROHMINGER/MAS

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Map Waiver Exhibit
6. Draft Map Waiver Conditions and Subdivision Resolution
7. Copy of Appeal
8. Community Planning Group Recommendation
9. Ownership Disclosure Statement
10. Project Chronology
11. City's Undergrounding Master Plan – Map 3W
12. Copy of 60-Day Notice of Intent to Convert
13. Report to the Hearing Officer No. HO-05-143