

**DATE ISSUED:** February 16, 2006                      **REPORT NO. PC-06-036**

**ATTENTION:**                      **Planning Commission, Agenda of February 23, 2006**

**SUBJECT:**                      MULLINS RESIDENCE - PROJECT NO. 74203  
PROCESS NUMBER 2

**OWNER/APPLICANT:**      Nancy Mullins

**SUMMARY**

**Issue(s):** Should the Planning Commission approve or deny an appeal of a Process 2 decision to approve a Coastal Development Permit and Neighborhood Development Permit to reconstruct a previously conforming 512 square-foot single dwelling unit, on a site with another single dwelling unit located at 2234 Bolinas Street in the Peninsula Community Plan?

**Staff Recommendation:** Deny the appeal and uphold the staff decision to approve Coastal Development Permit No. 227687 and Neighborhood Development Permit No. 227773.

**Community Planning Group Recommendation:** On October 20, 2005 the Peninsula Community Planning Board voted to recommend approval of the project, however the motion failed by a vote of 2 in favor and 6 opposed, with 1 abstaining. A subsequent motion to deny the project was not proposed.

**Environmental Review:** This project is categorically exempt from the California Environmental Quality Act per Article 19, Section 15301(k), Existing Facilities.

**Fiscal Impact Statement:** None, the applicant is responsible for all processing costs associated with this project.

**Code Enforcement Impact:** There are no Code Enforcement violations associated with this project.

**Housing Impact Statement:** None with this action.

## **BACKGROUND**

The 4,000 square-foot site is located at 2234 Bolinas Street within the RS-1-7 Zone (Attachment 1). The project is within the Coastal Zone (non-appealable), Coastal Height Limit Zone, Airport Approach Zone, Airport Environs Zone and Parking Impact Overlay Zone. The property is within the Peninsula Community Plan and is designated for single family land use (Attachment 2.)

The site is developed with two detached residential units. One unit is approximately 800 square-feet, has two bedrooms and is located at the front of the property. The other unit has one bedroom, sits at the rear of the property and is approximately 527 square-feet.

The two dwelling units were constructed prior to 1930 under previous Zone A. On April 14, 1930, site zoning was changed to R-1 (currently designated RS-1-7), which allowed only single family development. Since these dwelling units were legally constructed prior to the zoning change, they have previously conforming rights. Properties directly to the north also had a change in zoning on April 14, 1930. Those properties changed from Zone A to R-2 (currently designated RM-1-1) which continues to allow multi-family development.

On October 27, 2004, building permits were issued for an addition to the residential unit at the front of the site, as well as termite damage repair and general maintenance for the unit at the rear of the property. Through the building permit review process it was determined that the scope of work for either structure did not exceed thresholds that would require discretionary action.

While under construction, the rear unit exceeded the scope of work shown on the approved building plans, as the entire structure was removed for complete reconstruction due to dry-rot and termite damage. Once aware of the unapproved work, the site building inspector issued a notice to the property owner requiring amended building plans, showing the additional construction. Since construction of the front unit was in conformance with the approved building plans, revised plans were not required for that structure.

Upon review of the amended building plans, staff determined that a Coastal Development Permit was required for reconstruction of the rear unit. This determination was based on the removal of more than 50% of the exterior walls. Additionally, staff determined that a Neighborhood Development Permit was required to maintain previously conforming rights.

On October 27, 2005, Coastal Development Permit No. 227268 and Neighborhood Development Permit No. 227773 were approved in accordance with a Process 2 decision making process pursuant to the Land Development Code, with the staff acting as the decision maker. The staff decision to approve the reconstruction of the rear unit was subsequently appealed to the Planning Commission (Attachment 8).

## **DISCUSSION**

### **Project Description:**

The project proposes a Coastal Development Permit to completely reconstruct a one-bedroom, single dwelling unit on a lot improved with another two bedroom single dwelling unit. Current site zoning is RS-1-7 which only allows single family development. As such, a Neighborhood Development Permit is required to allow the two units that existed on site to remain on site.

According to the provisions of Previously Conforming Premises and Uses, maintaining a previously conforming structure can be allowed if there is no expansion of the structural envelope. This project includes the removal of 87 square-feet from the rear of the dwelling and shifting 72 square-feet to the front of the dwelling. The overall volume of the original structure was used to determine the structural envelope and the proposed reallocation of space results in a reduction in overall volume. Development Services staff has determined that such reallocation is not considered an expansion of the structural envelope.

The reallocated portion includes the removal of a utility storage room, water heater enclosure, laundry room and enclosed deck from the rear of the building. These areas would be used as additional bedroom and closet space at the front of the building. The removed portions were located either at the rear property-line, or within one-foot of the rear property-line, whereas the reconstructed building will maintain four-feet from the rear property line. Current zoning would require a 13-foot minimum rear set-back. The project will also maintain the original placement of three-foot eight-inches from the side yard where currently zoning requires a minimum four-foot. All other development features will comply with current zoning requirements.

Current parking requirements for multi-family zones would necessitate a development such as this to have four off-street parking spaces. However, since this property lies within a single-family zone and has previously conforming rights, this project will maintain two off-street parking spaces.

**Community Plan Analysis:**

Although the project site is now designated for single-family residential development, the Peninsula Community Plan promotes rehabilitation of existing housing. Since the project site was improved with two legally developed residential units, constructed prior to the current single family designation, the property is entitled to previously conforming density. As no increase in density is proposed, the reconstructed dwelling is consistent with the land use standards within the Peninsula Community Plan.

**Appeal Issues:**

On November 9, 2005, the decision to approve the Coastal Development Permit and Neighborhood Development Permit was appealed (Attachment 8). Following is a summary of the appeal reasons and staff's response.

Appeal Reason 1      The original building permit was issued for only termite damage repair and general maintenance. However an entirely new structure was built.

Staff Response:      Although the original building permit was issued only for termite damage repair and general maintenance, the work performed went well beyond that scope. To correct this problem, the applicant has applied for and processed a Coastal Development Permit and Neighborhood Development Permit, which is the appropriate course of action. Also, as a condition of the Coastal Development Permit and Neighborhood Development Permit, the property owner would be required to obtain amended building permits for any work beyond what was allowed under the original building permit.

Appeal Reason 2: Reallocation of space is not allowed through previously conforming rights.

Staff Response: Development Services staff determined that the proposed reallocation of space is allowed under the provisions of Previously Conforming Premises and Uses. According to the Land Development Code, structures that do not conform to existing development requirements are allowed to be altered when not expanding the structural envelope. As the applicant is not proposing to expand the original building volume, or increase the degree of non-conformity, staff supports the reallocation.

Appeal Reason 3: Total building reconstruction is not allowed under previously conforming rights.

Staff Response: Land Development Code (LDC) Section 127.0103 Table 127-01B states that a Neighborhood Development Permit (NDP) is required to maintain previously conforming density when "maintenance, repair or alteration (greater than 50% of market value of entire structure or improvement) that does not expand the structural envelope" is proposed. LDC Section 113.0103 defines a Structural Envelope as a three-dimensional space enclosed by the exterior surfaces of a building or structure. As stated earlier, the overall volume of the structure was reduced by shifting building area from the rear to the front of the structure.

Once the process to maintain previously conforming rights for density had been established, the issue turned to development within the Coastal Zone. LDC Section 126.0704(a) (5), notes that a Coastal Development Permit (CDP) is required when development includes demolition or removal of 50% or more of the exterior walls of the existing structure. Further, LDC Section 127.0106(d), referring only to the Expansion or Enlargement of Previously Conforming Structures, states projects within the Coastal Overlay Zone proposing the removal of more than 50% of the exterior walls, loses previously conforming rights. Since this project did not propose an expansion or enlargement of the existing structural envelope, staff determined that it did not lose previously conforming rights.

Appeal Reason 4: The initial construction began without a building permit.

Staff Response: The appellant notes that initial construction began without a building permit. It is the property owner's obligation to obtain all appropriate permits and comply with all land development and building codes. Currently, the property owner has submitted documents necessary to obtain these permits.

Appeal Reason 5: The building owner intentionally violated the terms of the original building permit by demolishing the entire unit, thereby losing all previously conforming rights.

Staff Response: Whether the property owner intentionally violated the terms of the original building permit by demolishing the entire unit is immaterial to the required findings. An approved Neighborhood Development Permit would allow for the continuance of previously conforming rights and is the appropriate remedy pursuant to the Land Development Code. City staff reviewed and approved the Neighborhood Development Permit based on the merits of the proposed project.

Appeal Reason 6: Any new structure should comply with current zoning requirements, including set-backs.

Staff Response: The proposed project is not considered a new structure, but rather the reconstruction of an existing, previously conforming premise. As such, reconstruction can be allowed with a Neighborhood Development Permit. Additionally, the reconstructed building reduces the degree of non-conformity established by the original structure. Any new development on the property would have to comply with current development regulations.

### **Conclusion:**

Development Services staff has reviewed the Coastal Development Permit and Neighborhood Development Permit request and has determined that reconstruction of the single dwelling unit is warranted. This structure is over 70 years old and periodic renovation is expected. Moreover, the Land Development Code includes provisions for such redevelopment and specifically in this case, allows it through the Neighborhood Development Permit process.

Reconstruction of the unit is a benefit for public health and safety, by bringing it into compliance with current building codes. Since the building will be reconstructed in the same location, there will be no adverse environmental affects or impacts to the applicable land use plan. In fact, the Peninsula Community Plan promotes rehabilitation of existing housing, which is the result this action will achieve.

The project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15301, Existing Facilities. Staff has also determined that the development is consistent with the intent of the Peninsula Community Land Use Plan. Therefore, staff recommends the Planning Commission deny the appeal and uphold Coastal Development Permit No. 227268 and Neighborhood Development Permit No. 227773.

### **ALTERNATIVE**

1. Deny the appeal and uphold Coastal Development Permit No. 227268 and Neighborhood Development Permit No. 227773, with modifications.
2. Approve the appeal and overturn Coastal Development Permit No. 227268 and Neighborhood Development Permit No. 227773.

Respectfully submitted,

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Jeffrey Strohming  
Assistant Deputy Director,  
Customer Support and Information Division  
Development Services Department

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Peter Lynch  
Development Project Manager,  
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Development Services Department

**Attachments:**

1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photo
4. Project Data Sheet
5. Permit Exhibit
6. Draft Resolution with Findings
7. Draft Permit with Conditions
8. Letter of Appeal
9. Ownership Disclosure Statement
10. Project Chronology
11. Photo Survey