

DATE ISSUED: May 12, 2006 **REPORT NO. PC-06-158**

ATTENTION: **Planning Commission, Agenda of May 18, 2006**

SUBJECT: APPEAL OF THE HEARING OFFICER'S DECISION TO APPROVE
6TH AND UPAS MAP WAIVER - PROJECT NO. 73941.
PROCESS THREE

REFERENCE: Report to the Hearing Officer No. HO-06-058 Attachment 11)

OWNERS: Mi Arbolito, LLC

APPLICANT: Flores Lund Consultants

SUMMARY

Issue(s): Should the Planning Commission approve or deny the appeal of the Hearing Officer's March 8, 2006, decision to approve a Map Waiver to waive the requirements for a tentative map to create 14 residential condominium units (under construction) within the Uptown Community Plan area?

Staff Recommendation: **Deny** the appeal and **Approve** Map Waiver No. 230729

Community Planning Group Recommendation: This project was originally scheduled to be heard by the Uptown Community Planning Group December 6, 2005, however, the item was continued until February 7, 2006. At the February 7, 2006 meeting, the project was tabled indefinitely. Therefore, there is no formal recommendation from the Uptown Community Planning Group (Attachment 8).

Environmental Review: The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 32, Infill Development.

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 creation of 14 condominiums units there would be a gain of 14 for-sale units on this currently vacant site .

BACKGROUND

The 0.24-acre project site is located at 3415 6th Avenue in the MR -400 Zone of the Mid-City Communities Planned District, within the Transit Area Overlay Zone and the Uptown Community Plan (Attachment 2). The MR-400 Zone allows for multi-family development at a rate of one dwelling unit for every 400 square-feet of lot area, or 26 dwelling units allowed on this site. The Community Plan also designates the site for multi-family development at a rate of 73-110 dwelling units per acre, or 17 to 26 dwelling units allowed on this site. The project is bordered by multi-family development to the west, north and east and Balboa Park to the south.

Building Permit Approval No. 21521 (Project No. 11489) was issued for the pad footings associated with the underground parking and 14-story residential structure and construction/excavation is currently underway. Combination Building Permit Approval Nos. 36902, 37763, 37764 and 37766 (Project No. 15900), which would allow for the construction of the remainder of the structure are currently in review. The project site is located in the Transit Area Overlay Zone, which requires 1.75 parking spaces for each two-bedroom unit or a total requirement of 25 spaces for this project. The project consists of 14, two-bedroom units and the project would provide two parking spaces per unit for a total of 28 underground spaces onsite. The project has been designed to comply with all current density, parking and development regulations associated with this site and no deviations are being requested.

Hearing Officer Decision

This Map Waiver project was approved by the Hearing Officer on March 8, 2006 as recommended by staff. There was one speaker in opposition at this hearing: Sandra Lawhon, representing the “Banker’s Hill, Hillcrest, Park West Community Preservation Group.” Ms. Lawhon spoke regarding her reasons for opposition, citing building design and placement issues, conformance with the Uptown Community Plan, ongoing litigation, CEQA conformance, and noticing concerns. The Hearing Officer clarified the only issue under consideration was the subdivision, not the building or design, and that the Uptown Planners had received the project and that the current zone and applicable regulations would allow the development. The noticing procedure was explained and confirmed to have been properly followed. Any litigation was not before the Hearing Officer and did not affect the proposed request.

Also speaking at the Hearing Officer hearing was Jim Dawe, the attorney representing the applicant. Mr. Dawe indicated the project scope outlined by staff and the Hearing Officer was correct, and discussed the essentials of the litigation referenced above. The ministerial building permit for the construction was determined to be exempt under CEQA. That determination was

appealed to the City Council, which upheld the exemption determination. The trial courts also upheld the determination, and that decision is pending appeal. The trial court declined to enjoin the construction from proceeding during the appeal.

After summarizing the project scope again, the Hearing Officer approved the proposed as recommended by staff with no additional conditions or modifications.

Appeal Issues

On March 22, 2006, Sandra Lawhon, representing the “Banker’s Hill, Hillcrest, Park West Community Preservation Group,” filed an appeal of the decision citing “Factual Error” and “Findings Not Supported” as the bases for appeal (Attachment 7).

DISCUSSION

While the appeal itself is lengthy, staff has summarized the main points below and in response to the concerns raised by the appellant in the March 22, 2006, appeal, staff has determined the following:

1. *Failure to comply with CEQA* The proposed Map Waiver was reviewed in accordance with the California Environmental Quality Act (CEQA), and was determined to be categorically exempt from CEQA pursuant to Article 19, Section §3 32, Infill Development.
2. *Granting the application for a Map Waiver would be in violation of the Subdivision Map Act and the San Diego Municipal Code.* The requested Map Waiver primarily represents a change in ownership, allowing the individual units to be sold as property. The San Diego Municipal Code permits the processing of such requests, which is clarified in the “Project Description,” below.
3. *The project is inconsistent with the Uptown Community Plan.* The proposed Map Waiver is consistent with the community plan. The proposed design and placement of the building is not within the scope of the Map Waiver request. As discussed above, the building has been designed in accordance with the applicable underlying zone requirements, and therefore conforms with the Uptown Community Plan.
4. *The project will have negative aesthetic impacts.* As indicated above, and clarified by the Hearing Officer, the design and placement of the building are not within the scope of this proposed Map Waiver request.
5. *The project will be detrimental to public safety.* As indicated above, and clarified by the Hearing Officer, the design and placement of the building are not within the scope of this proposed Map Waiver request. No deviations or variances are requested with this

proposed project and the building has been designed to conform with all current development and San Diego Municipal Code regulations.

Project Description:

The project is requesting a Map Waiver to waive the requirements of a tentative map for the creation of 14 residential condominium units. The requested Map Waiver primarily represents a change in ownership, allowing the individual units to be sold as property. 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 Tentative Map for condominium conversion on one parcel. The waiver process provides a process for a condominium conversion on one 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 14 existing residential units (under construction) on one parcel, the project is eligible for a Process Three Map Waiver.

Community Planning Group Recommendation

On November 21, 2005, the Uptown Community Planning Group's Design Review Subcommittee (DRS) voted to 6-1-1 to approve the project with the group's five standard conditions. On December 6, 2005, the Uptown Community Planning Group voted to continue the project until the February 7, 2006 meeting. At the February 7, 2006 meeting, the Uptown Community Planning Group voted to table the item indefinitely (Attachment 8).

Other Project Issues

The project proposes the conversion of 14 residential units under construction into for-sale condominiums. All condominium conversion projects Deemed Complete on or after February 7, 2004, must conform with the new regulations regarding inclusionary housing adopted by the City Council on March 15, 2004. The applicant will be required to pay the 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). This

fee will be paid with the issuance of Combination Building Permit Nos. 36902, 37763, 37764 and 37766 (Project No. 15900). No tenant relocation benefits are required since there are no tenants currently residing within this project under construction

Conclusion:

Staff has reviewed the application for the map waiver. 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 (Attachment 6). The proposed project was reviewed and exempted from the California Environmental Quality Act and as an infill development the project is Categorical Exempt from further environmental review. Staff believes the required findings can be made to support the project. Therefore, staff recommends that the Planning Commission deny the appeal and approve the map waiver.

ALTERNATIVES

1. **Deny** the appeal and **Approve** Map Waiver No. 230729 **with modifications.**
2. **Uphold** the appeal and **Deny** Map Waiver No. 230729 **if the findings required to approve the project cannot be affirmed.**

Respectfully submitted,

Mike Westlake
Program Manager
Development Services Department

Paul B. Godwin
Development Project Manager
Development Services Department

WESTLAKE/PBG

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 minutes

9. Ownership Disclosure Statement
10. Project Chronology
11. Report to the Hearing Officer No. HO-06-058