



## **STAFF REPORT**

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### **APPEAL OF THE PLANNING COMMISSION DECISION TO DENY A CONDITIONAL USE PERMIT, TENTATIVE PARCEL MAP, GRADING PLAN & SINGLE FAMILY DESIGN REVIEW AT 2884 WAKEFIELD DRIVE**

Honorable Mayor and Council members:

#### **SUMMARY**

On July 1, 2003, by a 5-0 vote, the Planning Commission adopted Resolution 2003-40 denying a Conditional Use Permit, Tentative Parcel Map, Grading Plan, and Single-Family Design Review for 2884 Wakefield Drive. The applicant sought to subdivide an existing lot into two lots and to construct a new single-family residence on one of the new lots at 2884 Wakefield Drive. A transcript of the 7/1/03 Planning Commission hearing is attached.

On July 11, 2003, Mr. Marvin Bergloff, applicant/owner, submitted an appeal of the Planning Commission decision. The appeal was previously scheduled for City Council review at the 12/9/03 Council meeting. At that time, staff requested continuance of the item to reevaluate the required findings for the project.

Staff has assessed the appeal and recommends the City Council direct the matter back to the Planning Commission for subsequent review.

#### **PROJECT DESCRIPTION**

The original request was to allow subdivision of an existing 17,712 square foot lot into two lots and construction of a new two-story 2,660 square foot single-family residence on one of the lots. The proposed minor subdivision would have created a 10,110 square foot parcel containing an existing single family residence and a 7,602 square foot parcel where the proposed new single family dwelling would be located.

#### **BACKGROUND**

In 1971, the site was rezoned, along with a large portion of the Western Hills Area, from R-1E and R-1A to Planned Development (PD). The Conceptual Development Plan (CDP) approved as part of the rezoning allowed a maximum of 72 units for the Hallmark West Unit #1 Planned Development. In 1972, a Detailed Development Plan (DDP), approved as part of this

subdivision, set final development standards for the Planned Development. This DDP included a reduction in the total allowable number of units for the Hallmark West Unit #1 development from 72 to 70. Staff has provided the approved Planned Development DDP standards as part of the report materials (See Attachment III).

The Commission reviewed and denied a similar proposal for the subject site in November 2001. The applicant appealed the decision of the Commission on November 30, 2001. Prior to a Council hearing on the appeal, the applicant asked to postpone the appeal hearing to revise the proposal. As indicated above, the revised project was also rejected by the Planning Commission on 7/1/03 and is the subject of the present appeal.

### **ENVIRONMENTAL CLEARANCE (CEQA)**

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act as per Section 15303, Class 3 (a):

*“Construction and location of limited numbers of new, small facilities or structures...”  
(a) One single-family residence, or a second dwelling unit in a residential zone.*

The proposed project meets the above requirements for CEQA exemption.

### **DISCUSSION**

#### **Belmont’s Ordinances Regarding Planned Developments**

As discussed earlier, the subject property is located in a PD (Planned Development) zoning district. According to Section 12.9 of the Belmont Zoning Ordinance (BZO), amendments to an approved Detailed Development Plan (DDP) for a Planned Development require approval of a Conditional Use Permit.

In reviewing applications made pursuant to Section 12.9, the Planning Commission must consider all testimony offered and grant a Conditional Use Permit to amend the DDP when it finds evidence to support all four required findings of BZO Section 11.5.1 a-d<sup>1</sup> (Conditional Use Permits).

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<sup>1</sup> 11.5.1 – Commission Action – Findings

- a. The location of the proposed use is compatible to other land uses in the general neighborhood and does not place an undue burden on existing transportation, utilities and services in the vicinity.*
- b. The site is of sufficient size to accommodate the proposed use together with all yards, open spaces, walls, fences, parking and loading facilities, landscaping and such other provisions as required by the Zoning Ordinance.*
- c. The site will be served by streets of capacity sufficient to carry the traffic generated by the proposed use.*
- d. The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity or the general welfare of the City.*

### **Planning Commission Action**

The Planning Commission denied the project because it could not make several findings required for the Conditional Use Permit and Tentative Parcel Map. The Planning Commission's resolution is attached to this staff report

#### Conditional Use Permit

At the conclusion of the 7/1/03 public hearing, the Planning Commission rejected the CUP on the basis of findings (b) and (d) required by Section 11.5.1, as follows:

- b. The site is of sufficient size to accommodate the proposed use together with all yards, open spaces, walls, fences, parking and loading facilities, landscaping and such other provisions as required by the Zoning Ordinance.*

The subject site is sufficient in size to accommodate the single-family residential use. All setbacks, floor area ratio, parking, and building height requirements are met in accordance with the approved Detailed Development Plan. However, the number of proposed lots exceeds the maximum allowable for the Hallmark Unit # 1 Subdivision. In addition, the net density proposed for the new subdivision would be further increased from the maximum allowable density approved as part of the original subdivision. Furthermore, the proposed retaining walls (1-12 feet in height) adjacent to the driveway exceed the maximum height (six feet) allowed for the DDP.

- d. The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity or the general welfare of the City.*

The proposed use does not meet the aforementioned *finding b* required for the Planning Commission to recommend approval of the Conditional Use Permit. The project does not comply with the approved Detailed Development Plan for the Hallmark Unit # 1 Subdivision which restricts the total number of lots to 70, whereas the proposed subdivision would increase the total number to 71. In addition, the subdivision would further increase the net density (from 4.27 d.u./acre to 4.33 d.u./acre) above the maximum allowable density (3.4 d.u./acre) approved as part of the original Planned Development subdivision. In addition, a proposed retaining wall ranging from one to twelve feet in height adjacent to the driveway exceeds the six-foot maximum height limit allowed for the DDP.

#### Tentative Parcel Map

The Planning Commission also determined that it could not make findings 11.4 (a), (b), (c), (d), and 5.1 required for approval of a Tentative Parcel Map per Sections 11.4 and 5.1 of the Subdivision Ordinance<sup>2</sup>, as follows:

#### Section 11.4

*a. The proposed map is consistent with the applicable general and specific plans.*

The project is not in compliance with the approved Detailed Development Plan for the site, as the number of units was restricted to 70 at the time of original approval. The density of the development would not exceed that set by the General Plan designation for the site - *Low-Density Residential* which allows a range of 1-7 dwelling units per acre. The existing development is at 4.27 dwelling units per acre, and the additional unit proposed would increase the density to 4.33 dwelling units per acre; still within the range allowed by the General Plan. However, based on the proposed number of units and density increase exceeding the maximum allowed by the Hallmark Estates Unit # 1 Planned Development, this finding cannot be made in the affirmative.

*b. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.*

The proposed design of the residence is generally in compliance with the other residences in the area. The split-level style design is seen throughout the neighborhood, and other many other residences are two stories. The exterior stucco finish and hip-style roof is in character with other homes in the neighborhood.

However, the Planned Development designation, with its associated Detailed Development Plan, is considered a specific plan, establishing neighborhood-specific development standards and

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<sup>2</sup> 11.4 – Planning Commission Action on Tentative Parcel Maps – Findings

- a. The proposed map is consistent with the applicable general and specific plans.*
- b. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.*
- c. The site is physically suitable for the type of development.*
- d. The site is physically suitable for the proposed density of development.*
- e. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish and wildlife or their habitat.*
- f. The design of the subdivision or the type of improvements is not likely to cause serious public health problems.*
- g. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

#### 5.1 – Planned Unit Development Subdivisions – Finding

- 1. The Tentative Parcel Map conforms to the approved Detail Development Plan and shall constitute approval of any and all deviations from standards contained in this Ordinance.*

guidelines for a particular area. From that point of view, the proposal does not meet the standards set forth in the Planned Development. Some of the standards established are not met (minimum lot dimensions/size, maximum height of walls and fences) and the applicant is seeking to modify the original density standard by increasing the number of lots allowed in the development.

*c. The site is physically suitable for the type of development.*

Development standards, such as building height and setbacks, are met with the proposal. However, the layout and topography of the site presents constraints to create at grade driveway/vehicular access without the construction of retaining walls adjacent to the driveway. Because the subject site is steeply sloped from the street to the area proposed for the garage entrance, the driveway is proposed to extend from the street level at a 16% downslope to the garage, located on the second story of the residence. The site contains a 25% cross slope with proposed grading and site improvements required to stabilize the driveway area. Overall, the Planning Commission believes the site is not physically suitable because development as proposed is only possible with construction of 12-foot high retaining walls.

*d. The site is physically suitable for the proposed density of development.*

The proposed new residence would meet the density standards in the General Plan, but would exceed the maximum allowable number of units and density set forth by the Detailed Development Plan. The Detailed Development Plan restricts the total number of lots in the development to 70, and the subdivision would increase the total number to 71.

#### Section 5.1

*1. The Tentative Parcel Map conforms to the approved Detail Development Plan and shall constitute approval of any and all deviations from standards contained in this Ordinance.*

The proposed number of lots exceeds the maximum allowable for the Hallmark Unit #1 Subdivision. The subdivision would increase the number of lots in this development to 71 where the Detailed Development Plan allows a maximum of 70 lots. In addition, the net density proposed for the new subdivision would be further increased from the maximum allowable density approved as part of the original subdivision. Furthermore, the proposed retaining walls (1-12 feet in height) adjacent to the driveway exceed the maximum height (six feet), and the minimum lot size and dimensions for the new parcel are smaller than allowed for the DDP.

Because the Commission determined that the proposed project could not meet all required CUP and Tentative Parcel Map findings for approval, the remaining entitlements were subsequently denied.

## **Belmont's Ordinance Regarding Appeals**

### SECTION 15 – APPEALS

15.10 ACTION BY COUNCIL – The Council shall hold a public hearing on an Appeal from a decision of the Commission or a review of proceedings upon its own initiation after notice thereof shall have been given as prescribed herein. All evidence submitted at such hearing, except original public records or certified copies thereof, may be given under oath administered by the Mayor or the Vice Mayor.

The Council may affirm, reverse or modify a decision of the Commission provided that if a decision for denial is reversed or a decision to grant is modified, the Council shall, on the basis of the record transmitted by the Zoning Administrator and such additional evidence as may be submitted, make the findings prerequisite to the granting prescribed in this Ordinance.

The City Council is required to conduct a public hearing on Mr. Bergloff's appeal. Attached to this staff report are the materials reviewed by the Planning Commission, the transcript of the Planning Commission hearing, the Planning Commission Resolution denying the entitlements, and Mr. Bergloff's appeal. The City Council, during its public hearing, is required to receive and consider those materials and any additional evidence submitted prior to the conclusion of the Council's public hearing.

### **Appeal Analysis**

Staff has reviewed the basis for the appeal and provides the following response:

**Appellant:** *The development where the subdivision was not granted only allowed 70 houses to be built. We are requesting to add one more home to the development.*

**Response:** This ground for appeal does not set forth an argument as to why the City Council should overturn the Planning Commission decision, but rather restates the applicant's request. In reviewing this appeal, staff took a comprehensive look at the history of this property and all factors appropriate for consideration by the Planning Commission in acting on the application for a CUP, Tentative Parcel Map, Grading Plan and Design Review. An analysis of all applicable findings is required because the City Council has a full range of options in reviewing Planning Commission appeals. The City Council may uphold the Planning Commission, overturn the Planning Commission action or modify the action taken by the Planning Commission. To do so, the City Council may consider the record and "such additional evidence as may be submitted."

Staff believes that it is necessary, for the proper processing of this appeal, that additional evidence be presented and examined. While staff supports the Commission's decision to deny

the project, we believe the basis of the Commission's denial did not adequately address several critical issues:

- Existing/resulting site slope
- Excessive grading
- Creation of a remainder lot where development as proposed is only possible with high retaining walls, or a driveway bridge in a PD where there are no other lots with driveway bridges.

The examination of additional evidence may be undertaken by either the City Council on appeal or through a referral back to the Planning Commission. Staff believes that a referral back to the Planning Commission is the more appropriate procedure because they are appointed to evaluate the type of issues which require further examination.

### **Fiscal Impact**

None.

### **Recommendation**

Direct the matter back to the Planning Commission to allow staff to present these issues to the Commission for its review and consideration.

### **Alternative**

1. Continue the matter with direction to staff to bring the matter back to the City Council for hearing of the appeal including full presentation of staff material on the above-referenced issues.

### **Public Contact**

1. The City Council is required to hold a public hearing on an appeal of a Planning Commission decision as per Section 15.10 (Appeals) of the BZO. The City placed a public notice display ad in the local newspaper of general circulation (San Mateo Times) for a minimum 10-day period beginning on April 17, 2004, for the scheduled public hearing by the City Council on April 27, 2004. The City also mailed the appeal hearing public notice to all property owners within 300 feet of the subject site and other interested parties to inform such persons of the scheduled appeal hearing.
2. Appellant was also informed of the appeal hearing.

### **Attachments**

- I. Appeal Application

- II. July 1, 2003 Planning Commission Staff Report, Resolution denying the Conditional Use Permit, Tentative Parcel Map, Grading Plan, and Single-Family Design Review, and Agenda Item Transcript
- III. Hallmark West Unit # 1 Planned Development DDP standards
- IV. Public Comment Letters Received

Respectfully submitted,

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Carlos de Melo  
Principal Planner

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Craig A. Ewing, AICP  
Community Development  
Director

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Jere A. Kersnar  
City Manager

***PLEASE NOTE:***

***Attachments I, II, III, and IV are not included as part of this document – please contact the City Clerk’s Office at (650) 595-7413 for further information on these attachments.***