



Staff Report

APPEAL OF THE PLANNING COMMISSION DECISION TO DENY A FLOOR AREA EXCEPTION, VARIANCE, CONDITIONAL USE PERMIT, AND SINGLE FAMILY DESIGN REVIEW PERMIT AT 2700 MONSERAT AVENUE

Honorable Mayor and Council Members:

Summary

On August 16, 2005, by a 7-0 vote, the Planning Commission adopted Resolution 2005-31 denying a Floor Area Exception (FAE), Variance, Conditional Use Permit, and Single Family Design Review permit to allow a 1,415 square foot addition to the existing 2,670 square foot residence for a total of 4,085 square feet that exceeds the zoning district maximum for the site. A copy of the staff report and minutes from the 8/16/05 Planning Commission hearing on the item is attached.

On August 25, 2005, Craig Howard, property owner, submitted an appeal of the Planning Commission decision (see Attachment B). The matter was continued from the 11/9/05 Council meeting to appropriately include additional information submitted by the appellant on October 17 & 26, 2005 (see Attachments C & D) in this Council report on the appeal.

Based on a review of the appeal, subsequent submittal information, and the Commission's action, staff recommends that the City Council deny the appeal and uphold the Planning Commission's decision to deny the project.

Site History/Project Description

The lot was established in 1925 as part of the Belmont Country Club Subdivision No. 5, and the single-family residence was completed in 1980. In 1978, the City Council approved a permanent encroachment permit for the subject property allowing a 19' 3" encroachment of the dwelling driveway into the public right-of-way.

In June 2004, the City verified that the proposed additions for the dwelling had been constructed without the required building permits. Through action from the Building & Planning Divisions, the required Floor Area Exception, Variance, Conditional Use Permit, and Single Family Design Review application for the existing non-permitted construction was submitted to the City in March 2005. There have been no other planning actions for this property.

Site Conditions

The 7,780 square foot irregularly-shaped interior lot is situated on the southern downslope section of Monserrat Avenue and has an average slope of 45%. The lot has a consistent steep downslope from the front (north) of the property to the rear (south). The site includes front entry decks, landings, and stairs traversing down the west side yard of the property leading to the lowest level of the dwelling. The site was developed with a three-story, four bedroom/2.5 bathroom house. The two-car driveway (21 ft. width x 33 ft. depth within the property) lends access to the two-car garage from the street.

Existing Dwelling Floor Area/Layout

The existing 2,670 square foot residence consists of a garage (at street level), and living, dining, and family rooms, and kitchen and half bathroom for the main level of the dwelling. The garage has an interior clear dimension of 20.5’ width x 20’ depth. A lower (middle) level for the dwelling includes four bedrooms, two bathrooms, and a laundry area.

Proposed Main Level Addition

The applicant proposes a 446 square foot addition for the main level to include a bedroom, bathroom, and storage area. The proposed addition would be located within the crawlspace area directly below the garage for the dwelling.

Proposed Lower Level Addition

The applicant proposes a 341 square foot addition for the lower level to expand the master bedroom, bathroom, and closet area for this room. Two existing bedrooms would be converted into a den area, and an additional bedroom would be converted to a home theatre room. Laundry area modifications are also proposed for this level.

Proposed Basement Level Addition/New Secondary Dwelling Unit

The applicant also proposes to construct a new 628 square foot secondary dwelling unit for the basement (bottom) level of the dwelling. This studio unit (no separate bedroom) also includes a full bathroom and utility access area. Access to this level is provided only via exterior stairs from the west side yard of the dwelling. No other significant changes (besides landscaping and minor groundwork) are proposed for the site.

Dwelling Floor Area Summary	
Square Footage	Existing Layout/Proposed Additions
Existing Street, Main, & Lower Level – 2,670 Sq. Ft.	<u>Street Level</u> – Two-car garage <u>Main Level</u> - Living, dining, and family rooms, kitchen, bathroom (existing); New bedroom, bathroom, storage area (proposed)
New Floor Area – main level – 446 sq. ft. New Floor Area – lower level – 341 sq. ft.	<u>Lower Level</u> - four bedrooms, two bathrooms, laundry area (existing); master suite expansion, laundry area expansion (proposed)
New Basement Level Addition – 628 Sq. Ft.	New Secondary dwelling unit, storage area
Total – 4,085 sq. ft.	

Project Data

Criteria	Existing	Proposed	Required or Max. Allowed
Lot Size	7,780 sq. ft.	No Change	No Change
Slope	45%	No Change	No Change
FAR	0.343	0.525	0.267 (Corresponds to max allowed of 2,077 sq. ft.)
Square Footage	2,670 sq. ft.	4,085 sq. ft.	2,670 sq. ft.
Parking	Two-car garage (20.5 ft. X 20 ft.) Two uncovered	No Change	Two-car garage (17 ft. X 18 ft.) Two uncovered
Setbacks:			
Front (north)	33 ft.	No Change	15 ft.-30 ft.*
Side (right - east)	3 ft. dwelling 2.5 ft. deck	3 ft. dwelling (requires Variance) 2.5 ft. deck (requires Variance)	6 ft.
Side (left - west)	6.5 ft. dwelling 2 ft. stairs	6.5 ft. dwelling (no change) 2 ft. stairs (requires Variance)	6 ft.
Rear (south)	37 ft.	No Change	15 ft.
Driveway length	33 ft.	No Change	18 ft.
Height	37 ft.	No Change	28 ft.

*The provisions of Section 9.7.4(a) were not evaluated, as no additions are proposed in the front of the dwelling. The project maintains the existing front yard setback (33 feet from face of garage).

General Plan Conformance

The proposed additions for the single-family residence conform to the land use designation for the site. The proposal is consistent with the low-density residential designation.

Zoning Conformance

The following sections of the BZO addresses elements of the existing site/dwelling and proposed addition:

1. The proposed additions result in a total floor area of 4,085 square feet for the dwelling. The maximum permitted for this site in the R-1B zoning district is 2,670 square feet (dwelling size as built in 1980), thus requiring a Floor Area Exception for the project.
2. The existing height of the dwelling is 37 feet and is nonconforming; the proposed additions will not increase the existing dwelling height.
3. The west side yard setback for a proposed exterior stairway (2 ft. proposed, 6 ft required) is nonconforming and requires a Variance as per Section 9.7.1(b)¹. Two windows installed

¹ 9.7.1 PERMITTED IN ANY YARD - (b) Unroofed exterior stairs, landings and decks of open design required by law which do not extend above the ground floor entrance except for the railing. No such stairs, landings or decks shall

along this side of the building also require Variance approval as per Sections 4.2.5(a) & 9.7.2(a)². The east side yard setback for the proposed dwelling extension into this area is nonconforming and requires a Variance (3 ft. proposed, 6 ft. required) as per Section 4.2.5(a). A proposed deck extension along the east side yard also requires a Variance as per Section 9.7.1(b).

4. The proposed secondary dwelling unit requires approval of a Conditional Use Permit by the Planning Commission as per Section 24.3(b)³ as the existing lot is less than 8,000 square feet.
5. A Variance is also required for the proposed secondary dwelling unit as per Section 24.3(a)⁴. As such, the dwelling is currently nonconforming relating to the current building height (37 feet existing, 28 ft. is the R-1B standard), and the proposed floor area (requested via the floor area exception) for the property, and nonconforming setbacks for the property.

Environmental Clearance (CEQA)

The proposed addition to the single-family home is categorically exempt from the provisions of the California Environmental Quality Act pursuant to Section 15301, Class 1 (e)(2)(a & b):

“Additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet if:

- (a) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and*
- (b) The area in which the project is located is not environmentally sensitive.*

The existing residence and proposed additions meets the above requirements for CEQA exemption.

Discussion

Belmont’s Ordinances Regarding Floor Area Exception entitlements

project more than six (6) feet into the required front or rear yard, and in no case should they encroach into the side yard setback.

² 4.2.5 SIDE YARD - *(a) For a one family dwelling, the minimum width of the side yard on interior lot lines shall be 15 feet in the R-1E Districts; in the R-1A, R-1B, R-1C and R-1H Districts side yard setbacks shall be ten (10) percent of the lot width with a minimum setback of six (6) feet and a maximum setback of nine (9) feet.*

9.7.2 PERMITTED IN FRONT AND REAR YARDS

(a) One story bay windows projecting not more than three feet into the yard.

³ 24.3 Property Development Standards. *A secondary dwelling unit shall be allowed only if it can exist in compliance with the following standards:*

(b) Lot Size. The minimum lot size for a secondary dwelling unit shall be 5,000 square feet. Conditional Use Permit approval by the Planning Commission shall be required for all properties having less than 8,000 square feet of total area.

⁴ 24.3(a) Zoning Requirements. *All site area, density, height and yard area standards of the R-1 zoning districts shall apply to the property proposed for conversion. Both the principal and secondary dwelling must conform to these zoning requirements.*

Belmont Zoning Ordinance Section 4.2.10 provides:

4.2.10 EXCEPTIONS TO SINGLE FAMILY FLOOR AREA STANDARDS.

A. PURPOSE - Exceptions to single family floor area standards may be granted to prevent or lessen inconsistencies in floor area ratio standards among neighboring properties and to assist in providing adequate off street parking, or when no significant increase in building bulk results; provided such exceptions would not be a grant of special privilege or be inconsistent with the intent of the General Plan or Zoning Ordinance.

D. PLANNING COMMISSION REVIEW REQUIRED - All applications for exceptions to floor area standards, except administrative exceptions, shall be considered by the Planning Commission in a public hearing noticed in the manner set forth in Section 11.4.1.

When approving or conditionally approving or denying any application for an exception the Commission shall consider whether the findings set forth below are supported by the request. The Commission shall deny any application not meeting all of these findings:

- 1. The granting of the exception will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*
- 2. The addition will not adversely affect the views or privacy of adjacent property.*
- 3. The addition is compatible with the existing residence and neighboring properties.*
- 4. The exception would not result in excessive grading or tree removal.*

In rendering its decision pursuant to Section 4.2.10D(1-4), the Planning Commission must consider all testimony offered and grant a Floor Area Exception (FAE) only when it finds evidence to support the required FAE findings described above. Each of these findings must be made in the affirmative if the FAE is to be granted.

Planning Commission Action

At the conclusion of the public hearing, the Planning Commission determined that it could not make all of the findings required by Section 4.2.10D(1-4) (See Attachment F - Planning Commission Resolution 2005-31). The Floor Area Exception (FAE) was the core entitlement of the applicant's request. Because the Commission determined that three of the required four FAE findings could not be met, 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. Howard's appeal. Attached to this staff report are the minutes & staff report for the 8/16/05 Planning Commission hearing, the Planning Commission Resolution denying the requested entitlements, and Mr. Howard's appeal. The City Council, during its public hearing, is required to receive and consider this information and any additional evidence submitted prior to the conclusion of the Council's public hearing.

Appeal Analysis

Staff has reviewed the basis for the submitted 8/25/05 appeal and has provided the following responses:

Appeal Argument #1

Appellant: *"The Commission erred by adopting a resolution stating that Applicant's request is to build a 4,085 square foot residence. This is wrong. Applicant seeks a Floor Area Exception to legalize the primary unit at its present size of 3,497 square feet. There is a separate request for a Conditional Use Permit to develop a 554 square feet secondary unit, clearly not part of the primary unit. The application contains no request to build a 4,085 square foot residence. The Commission erred by not questioning and resolving these and other major discrepancies between square footage figures included with Applicant's submitted plans and staff calculations included in the Staff Report.*

The Commission erred by adopting a resolution stating that Applicant seeks permission for a 1,415 square foot addition. This is wrong. Applicant seeks a Floor Area Exception to legalize 633 square feet of expansion added by the previous owner. Applicant makes a separate request for a Conditional Use Permit to develop a 554 square feet secondary unit. There is no request for a 1,415 square foot addition.

The Commission erred when it failed to review the request for a Conditional Use Permit for a secondary unit. The City of Belmont planning staff has stated that "With a longstanding emphasis on creating new secondary dwelling units in Belmont, the housing element's direction must be considered when a proposal to create a secondary unit is submitted to the City. In evaluating any individual project, staff believes that the benefit toward fulfilling our housing

element production goals should be included in the weighing of the findings for an individual project." Since the Commission had the discretion to grant the Floor Area Exception, it should have considered the housing element and the benefit to the City of the secondary unit in deciding how to analyze this application. The Staff Report was devoid of any discussion of City policy regarding secondary units and the Commission erred when it declined to request information on this issue."

Staff Response: Planning Commission Resolution 2005-0031 does not state that the applicant seeks to "build" a 4,085 square foot residence but describes that the applicant seeks permission to allow "a 1,415 square foot addition to the existing 2,670 square foot residence for a total of 4,085 square feet" that exceeds the R-1B Zoning District permitted maximum (see Attachment F for full text of Planning Commission Resolution 2005-0031).

City staff maintains the position that floor area added without the benefit of a permit is deemed not to exist. The City does have approved permits on file to construct the original (1980) dwelling at an approximate 2,670 sq. ft. size. There are no subsequently approved permits for this property to add **any** floor area over and above the originally approved size. The new floor area that the appellant claims was added by the prior owner was done so without permits and constructed illegally. Thus, the City treats this new floor area as "an addition" to the originally approved (1980 sized) dwelling.

Irrespective of how the appellant chooses to describe their request, the project before the Commission was the request for allowance of new unpermitted floor area on three levels of the dwelling, and conversion of the lowest level floor area to a secondary dwelling unit. The proposal requires approval of a Floor Area Exception (FAE) for the total floor area that would result for the dwelling. As discussed earlier, the Commission was unable to make findings to approve the FAE request.

While the Commission had discretion to grant the Floor Area Exception, it was unable to do so based upon the totality of the floor area request. The Commission believed that the project (in total) would unreasonably increase the intensity of use for the site, overtax on-site parking availability for the dwelling, and have adverse off-site parking impacts on the public street adjacent to the subject property. The City does not typically review "half projects" or "partial or separate requests"; the Commission evaluated the "project" that was before them, a 1,415 sq. ft. Floor Area Exception, irrespective of whether a new secondary unit was included as part of that request. The floor area exception request cannot be separated or parceled out from the new secondary unit request – they are explicitly linked due to the fact that all floor area added to the dwelling was new floor area not previously approved by the City. Staff maintains that the Commission was not required to separately review the secondary unit request until a decision was made on the total floor area to be allowed for the dwelling. The Commission could have reviewed a modified (i.e. reduced floor area) request, but that was not presented to them at the 8/16/05 meeting. Such a modified request (10/17/05) has been presented as part of the subsequent appeal information presented by Mr. Howard (see discussion further in report) – please note, however, that it appears that this request has been superseded by a supplemental "Appellant's Statement" that was presented to the City on 10/26/05.

Because the only project before the Commission on 8/16/05 was the request to allow 1,415 sq. ft. of additional floor area to be permitted for this dwelling, and the Commission was unable to make findings to approve such a floor area increase, all additional entitlements were appropriately denied. Overall, the Appellant's arguments to the contrary are not supported by the evidence and do not constitute grounds to overturn the Planning Commission's decision.

Appeal Argument #2

Appellant: *“The Commission abused its discretion by denying Applicant's application because of the commissioners' belief that Applicant had knowingly disregarded city permit requirements in doing post-purchase work on the property. The commissioners focused almost exclusively on this point as they questioned Applicant at the hearing, even though the issue had no connection with the application before them. One commissioner even stated that she had "lost sympathy" for Applicant when she heard he had done work without permits. The commissioners directed repeated sarcastic remarks toward Applicant and questioned his credibility. Regardless of the stated reasons for the commissioners' decision, their actual reason, as can be readily ascertained from a review of the hearing tapes, was their dislike of what they thought Applicant had done, and this was a clear abuse of discretion. The Commission completely lost track of the Floor Area Exception request before it.*

Further, the Commission abused its discretion by not giving adequate consideration and weight to the structural engineer's report concerning the subject property. The area that could provide a secondary unit was created when necessary structural bracing was installed below the primary unit. This bracing cannot be removed without negatively impacting the structural integrity and safety of the house. A copy of this report is submitted herewith.”

Staff Response: In the review of all projects, the Commission has the opportunity to ask questions of staff, the applicant, and other speakers to gather information in reference to a project. The Commission considers the staff analysis, and such public testimony before rendering a decision on the project. While a structural engineer's report was provided to the Commission, the project before the Commission did not request that should the Floor Area Exception requested be denied, such “necessary structural bracing” be allowed for the dwelling. Structural bracing of the dwelling can be performed without adding floor area (or secondary unit for that matter) on the lowest portion of the dwelling. The action of seismically strengthening a dwelling within the interior walls of such a dwelling (without adding “new” floor area) is a ministerial act requiring only the approval of associated building permits. The appellant did not seek such a request, but packaged the structural report as part of background information for the Floor Area Exception request. Contrary to Appellant's Argument #2, the Planning Commission's decision in this regard is supported by substantial evidence. The Appellant has failed to demonstrate that the Commission abused its discretion.

Appeal Argument #3

Appellant: *“The evidence in the record, including photographs, does not support the Commission's finding that granting of the floor area exception will be detrimental to the*

public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity. The subject property is of the same size and in the same location as it was when Applicant bought it and as it had been for many years before then. The evidence in the record does not support the Commission's finding that the house adversely affects the views or privacy of adjacent property. The evidence in the record does not support the Commission's finding that the floor area exception, which would merely legalize what is already there, would be incompatible with the existing residence and neighboring properties. Photographs of the subject property are submitted herewith. The Commission had to affirmatively ignore the evidence in the record in order to reach the decision it did; in the alternative, the commissioners may have improperly taken into consideration facts, information, or comments not included in the record.”

Staff Response: In its review of the project, including project plans, photographs, staff analysis, and public testimony, the Commission believed the resulting narrow width and siting of the existing dwelling and unpermitted extension into the east sideyard setback areas (including associated stairways, landings, and decks) would result in privacy impacts to the adjacent property to the east. This is due to the proposed intensification of use for multiple levels (three) of the dwelling.

The proposed modifications for the property (as presented to the Commission) would not meet required side yard setbacks and requires Variance approval for extension of the dwelling and decks into the east side yard and construction of an exterior stairway, and bay windows into the west side yard. As such, the Commission further believed the Floor Area Exception request before them would unreasonably increase the permitted dwelling floor area and allow a structure which, because of its size and location, that would be detrimental to the public health, safety, and welfare and be materially injurious to adjacent properties of the site.

When the appellant purchased this property, he became responsible for the illegalities that were created (i.e. unpermitted floor area additions) without the benefit of approved permits by the City; such floor area additions in total (and as presented to the Commission) require approval of a Floor Area Exception (FAE). As discussed earlier, the Commission was unable to make all required findings to approve the requested FAE for the project. The Appellant’s assertion that “merely legalizing what is already there” does not provide any basis on which to approve the requested FAE for the dwelling. The Appellant’s arguments to the contrary are not supported by the evidence in the record and do not constitute grounds to overturn the Planning Commission’s decision.

As the Council will note from the Neighboring Property Floor Area table provided as part of the 8/16/05 Commission report (see Pg. 7), the proposed square footage (4,085 sq. ft.) for 2700 Monserrat would result in the largest home of the surveyed properties, by a significant margin. The proposed FAR (.525) for the dwelling would also result in the highest FAR of the 17 surveyed properties. In a follow-up to a request from the appellant in mid-September 2005, staff has expanded the floor area chart (over and above the list of 17 properties surveyed as part of the 8/16/05 Commission Staff Report) to include properties across the street – see below.

Address	Lot Size (Sq. Ft.)	Floor Area	FAR
2624 Monserat Ave.	7,840	3,007	.386
2626 Monserat Ave.	10,540	3,212	.305
2628 Monserat Ave.	17,728	2,390	.139
2630 Monserat Ave.	12,096	2,900	.240
2632 Monserat Ave.	11,500	2,410	.210
2634 Monserat Ave.	8,400	2,920	.348
2636 Monserat Ave.	8,800	2,764	.314
2638 Monserat Ave.	8,425	3,088	.367
2700 Monserat Ave. (Permitted)	7,780	2,670	.343
2700 Monserat Ave. (Proposed)	7,780	4,085	.525
2702 Monserat Ave.	8,480	2,420	.285
2704 Monserat Ave.	9,750	1,540	.158
2706 Monserat Ave.	9,225	2,120	.230
2708 Monserat Ave.	9,800	2,652	.271
2710 Monserat Ave.	9,050	2,480	.274
2712 Monserat Ave.	9,570	2,786	.291
2714 Monserat Ave.	7,550	2,160	.286
2716 Monserat Ave.	7,339	2,699	.368
2611 Monserat Ave.	5,500	1,610	.293
2613 Monserat Ave.	5,350	1,350	.252
2615 Monserat Ave.	5,818	1,520	.261
2617 Monserat Ave.	5,997	1,680	.280
2703 Monserat Ave.	7,344	2,040	.278
2705 Monserat Ave.	7,335	2,379	.324
2707 Monserat Ave.	6,704	2,500	.373
2709 Monserat Ave.	7,344	1,760	.240
2711 Monserat Ave.	5,700	2,690	.472
2713 Monserat Ave.	5,500	1,710	.311
2715 Monserat Ave.	5,284	2,605	.493
2717 Monserat Ave.	5,250	1,741	.332
2719 Monserat Ave.	10,000	3,238	.324
2723 Monserat Ave.	10,000	2,894	.289

Source: MetroScan & City Building Permit files

Staff obtained the above information from MetroScan and City building permit files on such neighboring properties in the R-1B zoning district that are located along Monserat Avenue in proximity to the subject site. MetroScan does not include garage space in the dwelling square footage; it does indicate the number of car spaces in a garage. Therefore, staff included 200 square feet per car space for those dwellings shown by MetroScan to include garage space(s).

The above table illustrates the range in lot sizes and floor areas of the surveyed properties. The minimum lot size for the R-1B district is 6,000 square feet. Based on this information, staff notes:

- Of the 31 properties surveyed for this report, lot sizes range from 5,250 square feet to 17,728 square feet; the subject property (7,780 sq. ft.) is within a low to middle range of the surveyed size of lots.
- The square footage (4,085) for 2700 Monserat would continue to result in the largest home of the surveyed properties, by a significant amount. An existing home at 2719 Monserat is currently is the largest (3,238 sq. ft.) dwelling of the expanded survey group.
- The proposed FAR (.525) for 2700 Monserat would continue to result in the highest FAR of the 31 surveyed properties.

Revised proposal provided by Appellant’s Representative (10/17/05)

After the appeal was filed, Susan Cohn, representing Mr. Howard, submitted a letter to the City (10/17/05) describing a potential alternative to the floor area exception request. This alternative centered on a reduction to the total floor area sought for the dwelling. In brief, the letter outlines that the appellant would be willing to:

- Seek legalization of only the “new” floor area added on the main entry level (approximately 446 square feet). This floor area is concentrated directly below the garage.
- Remove the entire “new” floor area added on the middle level (approximately 240 sq. ft.) and restore the original (1980) building envelope.
- Legalize an approximate 100 square foot area within the middle level crawlspace for a laundry room.
- Withdraw the application for a Conditional Use Permit, and remove all “new” floor area added (approximately 628 sq. ft.) on the bottom level for the previously proposed conversion of the space to a secondary dwelling unit.
- Rebuild eastside decks/landings to remove any of the current projections into the side setback area.

The total amount of “new” floor area would be approximately 546 sq. ft.; taken together with the existing 2,670 sq. ft. dwelling, total floor area would be approximately 3,216 sq. ft for the dwelling. The letter is not specific as to status or remedy to address the unpermitted construction of stairs and two windows on the west side of the dwelling which encroach into the sideyard setback. Despite an invitation to do so, this proposal was never formally submitted by the appellant for the Commission’s review. However, it appears that this proposal has been supplanted by the appellant’s subsequent actions – see below.

“Applicant’s Statement” provided by Appellant’s Representative (10/26/05)

Susan Cohn, on behalf of Mr. Howard, submitted an “Applicant’s Statement” letter to the City (10/26/05), which encapsulated their requests for this property in light of the appeal before the Council (See Attachment D). The statement appears to represent a reversal from the 10/17/05 letter, in that the appellants are back to seeking approval of the full Floor Area Exception request, Conditional Use Permit for the proposed secondary unit, and other required entitlements for the property.

The statement provides the following (excerpt from Page 1):

“...Mr. and Mrs. Craig Howard, the owners of the single family residence at 2700 Monserat Avenue, Belmont, request a Conditional Use Permit so they can build a secondary unit on that property. They seek a Floor Area Exception to legalize their house at the size it was when they bought it in April 2002. (The previous owner improperly expanded the house beginning in the mid-1980's, but the Howards themselves never added any square footage to the house nor knew of problems with the size of the house when they bought it.) Finally, the Howards seek variances to regularize an exterior stairway, a side yard line and two side windows.”

The statement also outlines the following (excerpt from Pages 6 & 7):

“...The Howards do not want to enlarge their house; they do not wish to build an addition. They wish only to legalize their house at its present size rather than spend hundreds of thousands of dollars to rip out parts of the house added by a previous owner. The evidence in the record does not support a finding that granting of the floor area exception will be detrimental to the public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity. The house does not adversely affect the views or privacy of adjacent property. The house is not incompatible with neighboring properties as the photographs submitted herewith show. There need be no speculation about the impact this house will have on the neighboring properties because the house is the same size and in the same location as it was when the Howards bought it and as it has been for many years before then. As a fully separate proposal, the Howards wish to develop a secondary unit on their property. No secondary unit presently exists at 2700 Monserat Avenue....”

Staff Response: It is clear that while the 10/17/05 letter has been included as an attachment to their statement, it is the appellant’s intention to seek approval of all floor area that has been “added” without the benefit of a permit for this dwelling (since original construction in 1980). As discussed earlier, there are no approved permits for this property to add more floor area than the (1980) originally approved 2,670 sq. ft. sized dwelling. The new floor area that the appellant claims was added by the prior owner was done so without permits and constructed illegally.

A key discussion point in the appellant’s 10/26/05 statement is the necessity or “requirement” to evaluate a Conditional Use Permit to allow a secondary unit for the property, irrespective of the full floor area request that was before the Commission. To this end, the appellant’s statement outlines the following (excerpt from Pages 2 & 3):

“...The Howards' request to construct a secondary unit where one does not exist should not be treated as a request to expand a single family dwelling. It is a request separate and apart from their attempt to legalize the size of their house and should be considered in a manner consistent with that followed in the Ponce application. It should be viewed both as a positive offer on the Howards' part to share the space on which they will live and as an opportunity for the City of Belmont to add to its stock of affordable housing.

Belmont could grant the Howards' application for a secondary unit on their property while denying their other requests. Denial of the Floor Area Exceptions and the Variances does not necessitate denial of the Conditional Use Permit. If the City of Belmont chooses to reject the Howards' request for a conditional use permit to create a secondary unit, it would be acting in opposition to clear state and local policies favoring the creation of such units. The State has made it incumbent on local governments not to put undue restrictions on homeowner's rights to build secondary units. Restrictions so severe or arbitrary as to essentially eliminate the possibility of secondary units would be illegal.

For these reasons, Belmont must clearly set forth the basis for a rejection of a Conditional Use Permit for a secondary unit, articulating its findings on the record prior to its final decision and establishing the reasoning actually engaged in before the decision was reached. The Administrative Record must clearly set forth findings that "bridge that analytic gap between the raw evidence and the [local agency's] ultimate decision...." (Topanga Assoc. for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d 506, 514-515). The findings should be case specific and not merely rote, since perfunctory finding do not make clear the analytic basis for the action chosen. (City of Carmel v. Board of Supervisors (1977) 71 Cal. App. 3d 84, 91.) A mere reference to "findings as presented by staff" will not suffice if the staff findings themselves contain no reasoned discussion of the subject..."

Staff Response: As discussed earlier, the City does not typically review “half projects” or “partial or separate requests”. The “project” that was before the Commission was, principally a 1,415 sq. ft. Floor Area Exception (FAE), irrespective that a new secondary unit was included as part of that request. Staff maintains that the Commission was not “required” to separately review the Conditional Use Permit (CUP) for the secondary unit request until a decision was made on the total floor area to be allowed for the dwelling. The CUP request cannot be reviewed in a vacuum. The FAE and CUP requests are connected due to the fact that all “added” floor area being sought for the dwelling was new floor area not previously approved by the City.

In any case, staff is providing findings for the Conditional Use Permit, in light of the information discussed in the appeal (see discussion below). Please note, however, that a Variance must also

be approved to allow the secondary unit as per Section 24.3(a)⁵. As such, the dwelling is currently nonconforming relating to: the current building height (37 feet existing, 28 ft. is the R-1B standard), the proposed floor area which would exceed the allowable limits for the property (requested via the floor area exception), and nonconforming sideyard setbacks for the existing illegally expanded dwelling, decks, landings, and windows for the property.

Staff has not prepared specific Variance findings; however, staff does not believe the strict or literal interpretation and enforcement of the specified regulations would result in practical difficulty or unnecessary physical hardship for the property. Staff also believes that there are no exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that would provide the key basis to affirm all required Variance findings to approve the secondary unit request.

To approve a Conditional Use Permit for the secondary dwelling unit, the following findings of Section 11.4.1 (a-d) must be made in the affirmative.

(a) The location of the proposed use is compatible to other land uses in the general neighborhood area and does not place an undue burden on existing transportation, utilities and service facilities in the vicinity.

In connection with the total Floor Area Exception request for the property (increasing the approved 2,670 sq. ft. dwelling size to an approximate 4,085 sq. ft. size), the project will unreasonably increase the intensity of use for the site by adding floor area on three levels of the dwelling, potentially overtax on-site parking availability for the dwelling, and have adverse off-site parking impacts on the public street adjacent to the subject property. This finding **cannot** be made in the affirmative.

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

The proposed use meets the parking requirements for a single-family residence with a second unit per Section 24.1(e) of the Zoning Code (Secondary Units). However, the dwelling is currently nonconforming relating to the current building height (37 feet existing, 28 ft. is the R-1B standard), and the existing structure (as illegally modified), decks, landings, and windows encroach onto sideyard setbacks for the property. The proposed secondary unit, in connection with the Floor Area Exception being sought for the property would greatly exceed the allowable limits for the R-1B Zoning District. This finding **cannot** be made in the affirmative.

(c) The site will be served by streets of capacity sufficient to carry the traffic generated by the proposed use.

⁵ 24.3(a) Zoning Requirements. All site area, density, height and yard area standards of the R-1 zoning districts shall apply to the property proposed for conversion. Both the principal and secondary dwelling must conform to these zoning requirements.

The site is served by fully improved residential public streets of sufficient capacity to carry traffic generated by a single-family home and potential secondary dwelling unit use. However, the unreasonable increase in floor area intensity on three levels of the dwelling in connection with the secondary unit request may potentially overtax on-site parking availability for the dwelling, and have adverse off-site parking impacts on the public street adjacent to the subject property. This finding **cannot** be made in the affirmative.

(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 secondary unit request in conjunction with the proposed Floor Area Exception would increase the permitted floor area for the dwelling and allow a structure which, because of its size and location, that would be detrimental to the public health, safety, and welfare and be materially injurious to adjacent properties of the site. The total scope of the proposed modifications for the property would not meet required side yard setbacks and requires Variance approval for unpermitted extension of the dwelling and decks into the east side yard and construction of an exterior stairway, and bay windows into the west side yard. The resulting narrow width and siting of the existing dwelling (and unpermitted extension), and associated stairways, landings, and decks for the lot would result in privacy impacts to the adjacent property to the east due to the proposed intensification of use for multiple (three) levels of the dwelling. This finding **cannot** be made in the affirmative.

Conclusion

Staff recommends that the City Council deny the appeal in its entirety (based upon the 10/26/05 request for “legalization” of all existing floor area for the dwelling – approximately 4,085 sq. ft. total). The Appellant has not, in his appeal, demonstrated that the Planning Commission abused its discretion in denying the Floor Area Exception request. He has been unable to do so because the record contains substantial evidence to support the Planning Commission’s decision that it could not make Floor Area Exception findings 4.2.10D(1-3). Absent this showing, there is not sufficient basis upon which the City Council should overturn the Planning Commission’s decision.

Fiscal Impact

None.

Public Contact

1. The City Council is required to hold a public hearing for review of the subject Variance request. The City placed a public notice display ad in the local newspaper of general circulation (San Mateo Times) for a minimum 10-day period for the previously scheduled

11/9/05 hearing. At that meeting, the item was continued to a date certain (1/10/06 hearing). The City also mailed the appeal hearing public notice on 12/29/05 to all property owners within 300 feet of the subject site and other interested parties to inform such persons of the rescheduled appeal hearing.

2. The appellant and their representatives were also informed of the public hearing.

Recommendation

Staff does not find sufficient basis in the Appellant submittal to overturn the Planning Commission's decision and recommends the City Council adopt the attached resolution upholding the Planning Commission's decision to deny the Floor Area Exception, Variance(s), Conditional Use Permit, and Single Family Design Review to permit floor area additions for the existing single family dwelling at 2700 Monserat Avenue.

Alternatives

1. Direct staff to prepare a resolution based on findings provided by the City Council to grant the appeal, overturn or modify the decision of the Planning Commission, and approve some or all of the requested entitlements for property located at 2700 Monserat Avenue.
2. Continue the matter and direct staff to prepare an alternative course of action.

Attachments

- A. City Council Resolution Denying the Requested Entitlements and Upholding the Planning Commission Decision
- B. Appeal Application – August 25, 2005
- C. Supplemental Appellant Submittal – October 17, 2005
- D. Supplemental Appellant Submittal – October 26, 2005
- E. Subsequent Correspondence – Kallis & Cohn, and City Attorney's Office – October & November 2005
- F. August 16, 2005 Planning Commission Staff Report, Adopted Resolution 2005-31 Denying the requested entitlements, and Meeting Minutes
- G. Project Plans & Materials

Respectfully submitted,

Carlos de Melo
Community Development Director

Jack Crist
Interim City Manager

Staff Contact:

Carlos de Melo, Community Development Director
(650) 595-7440
cdemelo@belmont.gov

PLEASE NOTE:

Attachments B, C, D, E, F, & G 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.

RESOLUTION NO. _____

ATTACHMENT A

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
UPHOLDING THE PLANNING COMMISSION'S DECISION
TO DENY A FLOOR AREA EXCEPTION, VARIANCE, CONDITIONAL USE PERMIT
AND SINGLE FAMILY DESIGN REVIEW FOR 2700 MONSERAT AVENUE
(APPL. NO. 2005-0017)**

WHEREAS, Craig Howard and Shurong Niu, property owner(s), have requested Floor Area Exception, Variance, Conditional Use Permit, and Single Family Design Review approval to permit a 1,415 square foot addition to the existing 2,670 square foot single family residence for a total of 4,085 square feet that exceeds the R-1B Zoning District permitted maximum for property located at 2700 Monserat Avenue; and,

WHEREAS, a public hearing was duly noticed, held, and closed on January 10, 2006; and,

WHEREAS, the City Council of the City of Belmont finds the project to be categorically exempt pursuant to the California Environmental Quality Act, Section 15301, and,

WHEREAS, the City Council hereby adopts the staff report dated January 10, 2006 and the facts contained therein as its own findings of fact; and,

WHEREAS, the City Council did hear and use their independent judgment and considered all said reports, recommendations and testimony hereinabove set forth; and,

WHEREAS, the City Council finds the required Floor Area Exception findings (1), (2), and (3) of Section 4.2.10.D of the Zoning Ordinance cannot be made in the affirmative for the following reasons:

1. *The granting of the exception will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

The project proposed per the Floor Area Exception would increase the permitted floor area for the dwelling and allow a structure which, because of its size and location, that would be detrimental to the public health, safety, and welfare and be materially injurious to adjacent properties of the site. The Floor Area Exception would allow an additional 1,415 square feet of floor area for the existing 2,670 square foot residence for a total of 4,085 square feet. The project will unreasonably increase the intensity of use for the site, potentially overtax on-site parking availability for the dwelling, and have adverse off-site parking impacts on the public street adjacent to the subject property.

2. *The addition will not adversely affect the views or privacy of adjacent property.*

The proposed modifications for the property would not meet required side yard setbacks and requires Variance approval for extension of the dwelling and decks into the east side yard and construction of an exterior stairway, and bay windows into the west side yard. The resulting narrow width and siting of the existing dwelling (and proposed extension), and associated stairways, landings, and decks for the lot would result in privacy impacts to the adjacent property to the east due to the proposed intensification of use for multiple levels of the dwelling.

3. *The addition is compatible with the existing residence and neighboring properties.*

The proposed additions are designed in a manner that is consistent with the existing design and finish of the residence. The existing residence is also compatible in style and exterior finish (wood and stucco designs) with neighboring properties. The additions will generally not be visible from the front of the property, and will not increase the height of the dwelling. The proposed project would not result in a significant increase in building bulk for the dwelling.

However, the proposed floor area additions will result in the largest home and highest floor area ratio, by a significant margin, of the 31 properties surveyed. Thus, the proposed Floor Area Exception for the project will not be compatible with neighboring properties as surveyed in this report.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont hereby upholds the Planning Commission’s decision denying the Floor Area Exception, Variance, Conditional Use Permit, and Single Family Design Review to permit a 1,415 square foot addition to the existing 2,670 square foot single family residence for a total of 4,085 square feet for property located at 2700 Monserat Avenue, based on the aforementioned findings.

* * * * *

I hereby certify that the foregoing resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting held thereof held on January 10, 2006 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

RECUSED, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont

PLEASE NOTE:

Attachments B, C, D, E, F, & G 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.