

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113-1905

Hearing Date/Agenda Number
P.C. 12/06/06 Item: 4f

File Number
RA 02-002 (Appeal)

Application Type
Reasonable Accommodation Request

Council District
2

Planning Area
Edenvale

Assessor's Parcel Number(s)
704-41-028

STAFF REPORT

PROJECT DESCRIPTION:

Completed by: Jeff Roche

Location: Easterly side of Castillon Way, approximately 100 feet northerly of Kaneko Drive (185 Castillon Way)

Gross Acreage: 0.16

Net Acreage: 0.16

Net Density: N/A

Existing Zoning: R-1-8 Single-Family
Residence District

Existing Use: Residential service facility (Sober Living Environment) for up to (6) six residents.

Proposed Zoning: No Change

Proposed Use: To allow an increase in the allowable number of occupants from (6) six to (9) residents including one resident staff member for a residential service facility (Sober Living Environment).

GENERAL PLAN

Completed by: JR

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8.0 DU/AC)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JR

North: Single-Family Detached Residential

R-1-8 Single-Family Residence District

East: Single-Family Detached Residential

R-1-8 Single-Family Residence District

South: Single-Family Detached Residential

R-1-8 Single-Family Residence District

West: Single-Family Detached Residential

R-1-8 Single-Family Residence District

ENVIRONMENTAL STATUS

Completed by: JR

Environmental Impact Report found complete
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: JR

Annexation Title: Oak Grove No. 18

Date: March 23, 1966

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT/CONTACT
Jeffrey Macredes, ARH Recovery Homes, Inc.
1101 South Winchester Boulevard, Suite J-220
San Jose, CA 95128

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: **Jeff Roche**

Department of Public Works

No comments.

Other Departments and Agencies

No comments.

GENERAL CORRESPONDENCE

Copy of Appeal and all other prior correspondence.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

This is an appeal of the Director's decision to grant a Request for Reasonable Accommodation from Section 20.30.100 of the San Jose Municipal Code to allow an increase in the allowable number of occupants from six (6) to nine (9) residents, including one resident staff member, for a residential service facility. The facility is intended as a place of residence for persons in recovery from alcohol addiction and chemical dependency, generally known as sober living environments. Title 20 limits permitted uses in the R-1-8 Single Family Residence Zoning District to single-family residential uses and to residential care or service facilities for six or fewer persons with one or two resident staff as provided under state law.

The subject 0.16-gross-acre site at 185 Castillon Way is located in a single-family detached residential neighborhood. The facility is a single-story structure with four bedrooms, two bathrooms, a living room, a family room, a kitchen, and a dining room. The existing structure was built circa 1975. The site is surrounded by single-family detached residential uses on all sides.

On July 5, 2006, the Director of Planning issued a "Proposed Determination for Reasonable Accommodation" for a total of 9 residents, (including one resident staff) for the subject property. Based on the response from the neighborhood to the proposed Director's Decision and requesting a public hearing, the request for Reasonable Accommodation was scheduled for a Planning Director's Hearing.

The Director of Planning received public comment at the Director's Hearing on August 23, 2006. Area residents spoke in opposition to the proposed nine-resident facility, expressing concern regarding neighborhood safety, overcrowding of individuals within the household, lack of facilities and open space, the lack of adequate parking, occupant smoking habits, potential neighborhood 'incidents' caused by the residents at the subject site, and the erosion of quality of life. Jeffrey Macredes, representing the applicant, responded to neighborhood comments and concerns and answered questions posed by the Hearing Officer regarding the operation of the facility.

On September 18, 2006, the Director of Planning issued a Final Director's Decision granting Reasonable Accommodation to allow a total of (9) residents, including eight (8) residents and one (1) live-in resident staff.

Scott Neven, representing Allied Therapy Services, filed an Appeal of the Director's Final Decision on October 11, 2006. A copy of the appeal letter and all other prior correspondence is attached to this report. The stated grounds for the appeal are that staff has not adequately reviewed all of the necessary factors stipulated by the San Jose Municipal Code, that the City has failed to take into account "best recovery home standards" and the needs of the clients of these facilities and the rate of relapse of clients, and that the transient nature of the facility does not appear to be in keeping with the traditional use of a single-family dwelling.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from further environmental review pursuant to the California Environmental Quality Act since the proposal involves a small increase in the use of an existing facility.

GENERAL PLAN CONFORMANCE

The proposed request for Reasonable Accommodation for a clean and sober living environment is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8.0 DU/AC) in that no expansion of the existing structure or increase in the number of dwelling units is proposed, the proposal is consistent with the requirements of the Housing and Building Codes, and that the facility will operate as single-housekeeping unit.

ANALYSIS

Unlike many decisions made by the City affecting the use of private property, the granting of Requests for Reasonable Accommodation is not a discretionary land use permit. Several State and Federal laws limit the discretionary powers of local municipalities with regard to reasonable accommodations from land use requirements in order to make increased housing opportunities available to disabled persons. The analysis section of this report provides an overview of the regulations and relevant City ordinances and policies that provide the basis for decision-maker action on these matters.

This facility is currently certified by the District Attorney's Office. A Sober Living Environment is not currently required to obtain a license in California unless they offer licensable elements such as counseling. If the facility wishes to provide counseling and other alcohol and drug services, then a license is required from the California State Department of Alcohol and Drug Programs. The current request is only for a group living environment that is alcohol and drug free.

Overview of Laws Pertaining to Requests for Reasonable Accommodation

Federal Fair Housing Act. The Federal Fair Housing Act Amendments, adopted in 1988, prohibit housing discrimination based upon disabilities or handicaps. Recovering drug addicts and alcoholics are specifically included in the definition of "handicapped" under this law. Most residents of Residential Care Facilities and Residential Service Facilities fall within the protection of these laws. These laws drastically limit the ability of cities to use their discretionary land use authority to regulate group living arrangements involving disabled persons. Both federal and state laws expressly make it unlawful to discriminate through public or private land use practices, decisions, and authorizations. Discrimination includes restrictive covenants, zoning laws, denials of use permits, and other actions that make housing opportunities

unavailable. Under the Federal Fair Housing Act, local governments are required to make "reasonable accommodation" to the needs of persons with disabilities in the application of its policies, procedures and regulations.

Proposition 36. Proposition 36, also known as "The Substance Abuse and Crime Prevention Act", was passed by 61% of California voters on November 7, 2000 and became effective on July 1, 2001. The intent of this initiative is to divert first- and second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses, from incarceration by requiring residency in community-based substance abuse treatment programs. The passing of this initiative has created a greatly increased need for sober living environments (SLEs) on a statewide basis and has increased the number of Requests for Reasonable Accommodation in San Jose.

Group Home Ordinance. In 1998, the City Council adopted the "Group Home Ordinance" in order to bring the San Jose Municipal Code into compliance with federal and state legislation, which requires that local zoning regulations not discriminate against persons with disabilities. Section 20.160.010 of the Zoning Code states that it is the policy of the City of San Jose to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws, policies, and process. The principle of reasonable accommodation is an explicit requirement of the Federal Fair Housing Act.

The Zoning Code establishes the procedures for making a determination about the reasonableness of a requested accommodation and identifies the specific factors that must be considered prior to granting an accommodation.

Santa Clara County Alcohol & Drug Residential Facilities Certification. As a result of the passage of Proposition 36, facilities such as that requested in the current application are required to obtain approval from the District Attorney's (DA) Office under the Santa Clara County Alcohol & Drug Residential Facilities Certification Program. Under County certification, the DA's Office is responsible to monitor operation of the facility in order to assure compliance with applicable laws.

Jodi Thomas of the District Attorney's Office has indicated that this facility is certified, and has been certified since November 7, 2001. She has further stated that the Office of the District Attorney had not received any complaints from neighbors or clients (see attached e-mail dated, March 5, 2002).

Staff Response to Appeal of the Reasonable Accommodation Decision

The appellant's basis for the subject appeal is generally on the grounds that City staff has not adequately reviewed and considered all of the necessary factors that are listed to be considered for reasonable accommodation under Title 20 of the Municipal Code. The appellant also expressed concern that residents of a Sober Living Environment would typically be more "transient" than other potential residents of a single-family dwelling. Staff acknowledges that the City's review and discretionary land use power is limited by State and Federal laws described above with regard to Reasonable Accommodation, and as the Accommodation is not a land use permit, conditions to more directly respond to public input cannot be attached. Sober Living Environments, whose residents generally stay between three to six months, are determined to be single housekeeping units. Staff's review and analysis must be limited to assessment of eight factors related to factual characteristics only.

Since the appeal letter questions the adequacy or appropriateness of "considerations" that were identified in the Director's Final Determination of Reasonable Accommodation, this section of the report assesses the "eight consideration factors" (summarized below) for approval of an Accommodation with reference to

excerpts or summaries from the appeal letter that are relevant to each factor as appropriate. A complete copy of the letter of appeal is also attached.

Title 20 Requirements. Requests for Reasonable Accommodation are not Land Use permits and cannot be subject to conditions such as those included in Conditional Use Permits or other discretionary land use permits. For this reason, the Zoning Ordinance requires the “consideration” of certain factors rather than the making of specific findings before the granting of a request for reasonable accommodation.

The Zoning Code specifies consideration of the eight (8) factors noted below the factual basis for a decision regarding reasonable accommodation, and to provide a basic test for “reasonableness.” These factors are to be considered on a case-by-case basis prior to the granting of a Request for Reasonable Accommodation:

1. Special needs created by the disability.
2. Potential benefit to the residents that can be accommodated by the requested modification.
3. Potential impact on surrounding uses.
4. Physical attributes of the property and structure.
5. Alternative accommodations, which may provide an equivalent level of benefit to the applicant.
6. In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.
7. Whether the requested accommodation would impose an undue financial or administrative burden on the City.
8. Whether the requested accommodation would require a fundamental alteration in the nature of a City program.

Analysis of Factors Related to the Appeal

Factors 1 & 2: Special Needs and Benefits of the Accommodation

The appellant indicates that the “potential” benefit that can be accomplished by the requested modification is a factor in question. Based on the passage of Proposition 36, the voters of California have mandated the diversion of first- and second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses, from incarceration by requiring residency into community-based substance abuse treatment programs. Such eligible individuals are required to participate by residing at such facilities for periods up to about six months in order to achieve successful rehabilitation. The Director of Planning, Building and Code Enforcement has determined that there is the need for such facilities as the Sober Living Environment proposed, in order to provide supervised, short-term residential environments to comply with the mandate. Coupled with the fact that the Fair Housing Act recognizes that such individuals are determined to be “disabled”, the Director can adequately deem that appropriate consideration has been made in that special needs are created by the disability. Further, there is a benefit to the residents by the granting of the accommodation for this location by providing a housing opportunity that might otherwise not be as available or affordable. Persons recovering from substance abuse receive benefits from living together because residing together in groups is therapeutic, supportive, and the only way some people in recovery can reside in a single-family house and neighborhood. Provision of Sober Living Environments at locations throughout the City is a benefit for this group of “disabled” individuals.

Factor 3: Potential Impact on Surrounding Uses.

The appellant does not provide specific information about anticipated impacts to surrounding residences. The applicant has requested reasonable accommodation to allow an increase in the allowable number of occupants from six (6) to nine (9) residents including one resident staff member for a residential service facility (Sober Living Environment). In this case, the Director has determined that the project is not expected to result in parking impacts. The subject property can physically accommodate one parked car in the existing attached garage, one car on the driveway apron, and one car along the curb in front of the subject residence. The applicant has proposed to maintain the garage so that it is available for parking at all times and to restrict clients from keeping cars on site. The applicant has indicated that clients will be transferred or moved to another location that accommodates the parking of vehicles if the clients obtain a vehicle, to ensure that parking does not impact adjacent uses. Because of the nature of the proposed occupancy, many of the potential residents will not be able to drive, due either to the suspension of driver's licenses or inability to afford a private vehicle. The applicant has stated that the proposed restriction of occupancy does not pose any undue hardship on the operation of the facility.

Factor 4: Physical Attributes of the Property and Structure

The appellant comments that compliance with housing codes should not be used as the basis of an approval for this type of facility. As one of the considerations, the Director must consider the physical attributes of the property and structure to make a determination regarding the appropriateness of a facility for the number of requested residents.

The City's Housing Codes and the Uniform Building Codes identify the maximum number of occupants a residential structure may accommodate based on square footage. Based on a review of the project's floor plan and room size calculations provided by the applicant, the subject house can accommodate nine (9) residents. The Uniform Building Code establishes as minimum square footage requirements (excluding closets) 70 square feet of sleeping area for two persons, 120 square feet of sleeping area for three persons, 170 square feet of sleeping area for four persons and a requirement for an additional 50 square feet of sleeping area for each additional person. The subject property includes four (4) bedrooms consisting of 109, 109, 118, and 167 square feet, not including the closet areas. (Note – The square footages shown on the plans include closet areas, hence the difference in square footage).

The Housing Codes do not identify specific size requirements for the size of non-bedroom areas, but the subject house has a number of rooms for general living uses to accommodate 9 people, albeit not comfortably all at the same time in any single room. The residence also has a separate kitchen/dining area; two bathrooms in the home provide facilities for 4 to 5 persons per bathroom.

The City's Guidelines for Review of Requests for Reasonable Accommodation allow the City to deny a Request for Reasonable Accommodation if it is determined that the building or additions were constructed without benefit of permit. The subject application was referred to the Building Division and the Fire Department and no current code violations were found for the subject site. The relationship between the proposed number of residents and physical space of the house is not dissimilar to that of a large family. While the residence may not be "spacious", the above analysis concludes that that the required minimum standards would be met by this proposal.

The applicant has indicated that the garage door would be replaced and repainted (see correspondence dated July 21, 2006), yet on a recent site visit, staff observed that the garage door has not yet still has not been

replaced/ repainted.

Factor 5: Alternative accommodations that may provide an equivalent level of benefit to the applicant.

The appellant has not provided information that there are alternative accommodations which provide an equivalent level of benefit. Staff's evaluation is based on the fact that the proposed request for accommodation complies with the housing codes and provides adequate parking to avoid impacts to adjacent properties, and will provide a suitable alternative living environment for persons with the disability of prior addiction to drugs or alcohol. Discrimination under the Fair Housing Act and Americans with Disabilities Act includes failure to make "reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to allow such persons, equal opportunity to use and enjoy the dwelling". Staff does not monitor current demand levels for such facilities and is not charged to consider the probable economic viability of a facility in the assessment to grant Reasonable Accommodation. Staff believes that, similarly to review of other new housing developments in the City, providing a range of different facilities, which can be found to comport with these factors throughout the City is in keeping with the goal of providing equal opportunity to this group with disabilities under the Fair Housing Act.

Factor 6: In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.

The appellant has disputed, in his appeal, that the facility would be in keeping with the nature or traditional use of a single-family dwelling. Staff's evaluation has determined that under the proposed Accommodation, no physical modifications to the house are proposed in a manner that would alter its physical function as a single-family house capable of supporting a living arrangement other than a single-housekeeping unit as defined by the San Jose Municipal Code. Residents of this structure will share common facilities and living areas and household duties. Residents living together in the number and manner proposed for this facility could be considered a single-housekeeping unit even if the residents had no disability.

Factor 7: Whether the requested accommodation would impose an undue financial or administrative burden on the City.

The appellant has not identified an issue with regards to this consideration. Staff's review of this proposal has identified no evidence that the requested accommodation would impose an undue financial or administrative burden on the City.

Factor 8: Whether the requested accommodation would require a fundamental alteration in the nature of a City program.

The requested Reasonable Accommodation for 9 total residents (including one (1) resident staff member) will not require a fundamental alteration in the nature of a City program, will not violate either the Housing or Building Codes, will not require the modification of the existing structure and will provide parking sufficient for the requested residents given the restrictions on the number who will be allowed to drive.

CONCLUSION

Requests for Reasonable Accommodation, such as this one, can result in significant neighborhood concern. Because the proposed occupancy is a legitimately-identified protected class of “disabled” individuals as defined by the Federal and State Fair Housing Acts, the City has limited ability to condition the granting of such requests, and cannot always respond fully to neighborhood concerns. The City cannot deny a request for Reasonable Accommodation based on the concerns of a neighborhood about the potential “undesirable” nature or characteristics of prospective future occupants. The City’s research has confirmed that the Housing and Building Codes are properly met through this proposal with regards to the safe, maximum occupancy of a structure. The City may provide for reasonable safeguards to protect the surrounding residents from physical impacts such as excessive parking in the neighborhood as done with the limitation agreed to by the applicant on future drivers at this facility. The appellant has not provided any evidence that would indicate that the potential impacts of the proposed Request for Reasonable Accommodation are such that it would change the character of the existing single-family neighborhood.

PUBLIC OUTREACH

The notice of a Reasonable Accommodation request, along with the proposed and final Director’s decisions, were sent to adjoining property owners, in accordance with the Reasonable Accommodation noticing requirements contained in Zoning Code Section 20.160.040. In addition to the public hearing held before the Director of Planning, staff has been available to answer questions related to the request.

COORDINATION

Preparation of this staff report was coordinated with the City Attorney's Office, Code Enforcement Division, Building Division, Police Department and the Santa Clara County District Attorney’s Office.

RECOMMENDATION

Planning Staff recommends that the Planning Commission uphold the Director’s Final Determination and grant the Reasonable Accommodation Request for a Sober Living Environment to operate as described in the application for a total of 9 residents, comprised of eight (8) residents and one (1) live-in resident staff. A draft Resolution has been attached to this report that includes the appropriate facts and findings.

Attachments:

cc: Santa Clara District Attorney, Attn: Jodi Thomas, Bureau of Investigation, 70 West Hedding Street, West Wing, San Jose, CA 95110
Scott Neven, Allied Therapy Services, P.O. Box 53738, San Jose, CA 95153-0738
Scott and Ginger Neven, 180 Castillon Way, San Jose, CA 95119
David and Valeri Roark, 187 Castillon Way, San Jose, CA 95119
Lance Henderson (c/o wineandweb@sbcglobal.net)
John Sheffield (c/o sheffjr@yahoo.com)
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