

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

STAFF REPORT

Hearing Date/Agenda Number
P.C. 12-06-06, Item No.

File Number
CP06-034

Application Type
Conditional Use Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
249-46-053

PROJECT DESCRIPTION

Completed by: Michelle Stahlhut

Location: East side of N 5th Street approximately 500 feet south of Washington Street

Gross Acreage: 0.20

Net Acreage: 0.20

Net Density: n/a

Existing Zoning: R-M Residential
Multiple Zoning District

Existing Use: Single Family Residence

Proposed Zoning: No change

Proposed Use: Residential care facility with 12 beds and two residential managers

GENERAL PLAN

Land Use/Transportation Diagram Designation
Medium Density Residential (8-16 DU/AC)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

North: Single-family detached residence

R-M Multiple Residence Zoning District

East: Multi-Family Residence

R-M Multiple Residence Zoning District

South: Multi-Family Residence

R-M Multiple Residence Zoning District

West: Single-Family Residence

R-M Multiple Residence Zoning District

ENVIRONMENTAL STATUS

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

Exempt
 Environmental Review Incomplete

FILE HISTORY

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date:

Approved by: _____
 Action
 Recommendation

APPLICANT/OWNER/DEVELOPER

Okon and Ini Uboh
4209 St. Croix
San Jose, CA 95118

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Michelle Stahlhut

Department of Public Works

Attached.

Other Departments and Agencies

See attached memo from the Fire Department.

GENERAL CORRESPONDENCE

Attached.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Ini and Okon Uboh, are requesting the subject Conditional Use Permit to allow a Residential care facility with 12 beds and two residential managers in an existing single-family residence located on the east side of N. 5th Street approximately 500 feet south of Washington Street at 341 N. 5th Street

The subject site is zoned R-M Multiple Residence Zoning District. Per Table 20-50 of the San Jose Municipal Code, residential care facilities for seven or more residents require a Conditional Use Permit in the R-M Zoning District. A Residential Care Facility is defined in Municipal Code Section 20.200.1030 as a facility licensed by the State of California where care, services or treatment is provided to persons living in a community residential setting.

The subject site is located within the Hensley City Historic District. Any exterior work, except maintenance and repairs, performed on a property located in the Hensley City Historic District requires a Historic Preservation Permit pursuant to the Historic Preservation Ordinance.

Members of the surrounding neighborhood have expressed significant community interest in the proposed project. The community is very concerned about the over-concentration of such facilities in the Hensley neighborhood. Neighbors believe that rental units are less well cared for than owner occupied units. They also believe that residential care facilities create an additional demand for City services, and that existing residential care facilities in their neighborhood are poorly managed based on the behavior of their occupants. The neighborhood's concerns are expressed in attached correspondence (Attachment A13).

Site Conditions and Context

The proposed facility will be located within an existing 3,438 square-foot single-family residence on a 0.20 gross acre site located at 341 N. 5th Street. The subject site is currently developed with an existing residence and a fire-damaged, detached carriage house at the rear of the property. Both are unoccupied.

The existing single-family residence was constructed in 1905 and is listed as a Contributing Structure in the Hensley Historic District on the Historic Resources Inventory. The residence was illegally converted to an apartment use at an undetermined time, and has been used for up to six apartments since 1930. Other unpermitted changes include conversion of the attic to living space, and modifications to the first floor of the residence. The unpermitted conversion of the attic to living space resulted in the installation of windows without regard to their compatibility with the architectural design of the residence. The most recent use of the residence was a single-family dwelling.

The property includes a carriage house accessory structure located at the rear of the property which was severely damaged by fire in 2001, resulting in a loss of integrity (see attached pictures). Planning Staff inspected the accessory structure on August 21, 2006 and found the interior to be completely burned. Approximately 20 percent of the original building remains for salvage or reconstruction. The accessory structure was converted into a living unit sometime between 1915 and 1950, but has not been inhabited since the fire. Use of the accessory structure for conditioned living space is prohibited in the R-M Multiple Residence District

Single-family residential structures are located directly to the north and west on lots approximately 0.10 acres in size. The one-story detached homes range in condition from fair to average. They were all constructed in the early 20th century, and are referred to as California Craftsman, Neo-Classic, and Spanish Colonial Revival, and are listed on the Historic Resources Inventory as Contributing Structures to the Hensley Historic District.

Directly to the south of the subject site is a mid-century multi-family structure on a lot approximately 0.20 acres in size, and is referred to as a "Basic Box Apartment" on the Historic Resources Inventory. The 12-unit building is 2 stories tall with parking located at the rear of property, and is in fair condition. The multi-family development located across Fifth Street to the east is also a mid-century multi-family structure, and referred to as a "Basic Box Apartment" on the Historic Resources Inventory. Additionally, Mi Pueblo Foods is a large neighborhood commercial development also located to the east of the proposed project. Over half of N. Fifth Street between Julian and Washington is developed with multi-family uses.

A Black Acacia tree approximately 86" in circumference located at the rear of the property on the northern property line was damaged in a storm in late 2005. The applicant removed the tree without benefit of permits on the recommendation of an arborist, leaving an approximately 20-foot tall trunk. All other trees on the property will remain.

Project Description

The subject Conditional Use Permit would allow a residential care facility for 12 residents and two resident staff. A residential care facility allowing up to six residents is allowed by right in the R-M Multiple Residence Zoning District. The 3,438 square-foot facility has a total of 7 bedrooms, with six proposed to house two residents each, and one additional bedroom to house two staff, for a total of 14 persons, including staff. The State licensed adult residential care facility would offer 24-hour care for developmentally disabled ambulatory adults from 18 to 59 years old. Care provided includes assistance with daily living, exercise, and recreational activities. On-site staff live and work at the facility. The operator of the facility has included an operations plan, which includes a procedure for resolving neighborhood issues or complaints regarding the project. (See attached Management Plan).

The applicant has proposed four on-site parking spaces, and has indicated that residents will be transported by staff with use of a large passenger van. The applicant is proposing to landscape a portion of the existing rear parking area in lieu of providing additional parking spaces in order to provide common open space for residents.

A tree bordering the northern property line at the rear of the site has been removed with benefit of a permit within the last year. The Conditional Use Permit will serve as the Tree Removal Permit to legalize this tree removal.

As previously stated, the project is located in the Hensley Historic District, a City Landmark district that is listed on the National and California Registers. The site is listed on the Historic Resources Inventory as a Contributing Structure to the Hensley City Landmark Historic District. The original construction date of the residence is 1905, and is referred to as "Ecclectic Craftsman" on the National Register Nomination.

The project proposes removal of the windows from the gabled pediment on the front façade and the dormer on the north side of the dwelling as well as removal and reconstruction of the fire-damaged carriage house as an accessory structure. The carriage structure is proposed to be used for parking and storage.

GENERAL PLAN CONFORMANCE

The General Plan encourages infill development and the distribution of residential social service programs throughout the City, and to encourage the County and other social service licensing agencies to recognize and implement this policy (SJ2020, Residential Land Use Policy No. 8, Attachment A5). The proposed residential care facility has been issued a license from the Community Care Licensing Division, which requires a separation of 300 feet between licensed facilities. Although not a specific criteria imposed by the city, the proposed project is separated from other licensed facilities by more than 300 feet (See attachment A8), which meets the separation requirements for the state.

The General Plan also states that facilities for more than six persons should be located only in areas designated for residential densities exceeding 8 dwelling units per acre (SJ2020, Residential Land Use Policy No. 16, pg. 60). The proposed project is consistent with this policy because it is designated Medium Density Residential (8-16 DU/AC) on the City of San Jose's 2020 General Plan Land Use/Transportation Diagram.

Finally, the General Plan Housing Goal directs that the city should "Provide decent housing in a livable environment for all persons, including the homeless, regardless of such factors as age, race, sex, marital status, ethnic background, or income" (SJ2020, pg. 82). The proposed project is consistent with this goal because it increases the amount of housing available to developmentally disabled ambulatory adults between the ages of 18 and 59 years old.

ENVIRONMENTAL REVIEW

Pursuant to the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), is the Director of Planning found this project to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code,

implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303 exempts from environmental review the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed project is exempt because it proposes to convert an existing single-family residence to a residential care facility for 12 residents and two resident managers while removing one window from the front façade.

Additionally, the project proposes minor restoration of previous unpermitted changes to the historic structure as well as removal and reconstruction of the fire-damaged carriage house. Per CEQA Guidelines Section 15064.5, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties shall be considered as mitigated to a level of less than a significant impact on the historical resource. Restoration of unpermitted changes does not represent a significant impact to the historic structure because the changes will be required to follow the Secretary of the Interior's Standards for the Treatment of Historic Properties and will result in restoration of historic integrity to the residence.

The fire-damaged carriage house located at the rear of the property was severely damaged by fire in 2001, resulting in a loss of integrity. Approximately 20 percent of the original building remains for salvage or reconstruction. The applicant is proposing reconstruction of the carriage house, and will be required to follow the Secretary of the Interior's Standards for the Treatment of Historic Properties.

ANALYSIS

The key issues associated with the proposed project include: 1) distribution of residential care facilities throughout the City, 2) land use compatibility, 3) parking, 4) housing code compliance, 5) historic preservation, and 6) tree removal.

Distribution of Residential Care Facilities

Members of the community have expressed concern regarding the over-concentration of "group homes" in the Hensley Historic District and Downtown San Jose. There are several different types of group living facilities within the City of San Jose including residential care facilities, residential service facilities, single-room occupancy living units, guesthouses, sororities, fraternities and dormitories, and emergency residential shelters. These are generally permitted or conditional uses in R-M or R-MH residential zoning districts.

The State of California Community Care Licensing Division (CCLD) licenses residential care facilities such as the proposed project. When issuing a license for the residential care facility, the CCLD considers the presence of additional *licensed* facilities located within 300 feet of the proposed project. Child-care centers and emergency residential shelters are excluded from this requirement. The City of San Jose General Plan *encourages* infill development and the distribution of residential care facilities throughout the city, but does not have additional separation or distribution requirements. The state agency has analyzed the proposed project and determined that there are no other licensed facilities located within 300 feet of 341 N. 5th Street.

Much of the Hensley Historic District is zoned R-M Multiple Family Residence District, which allows multi-family dwellings. Many, *but not all*, multi-family residence uses require a development permit in this district. For example, residential care and service facilities for six or

fewer persons are permitted uses in all residence districts. These permitted uses as well as any uses operating without benefit of a permit from the City of San Jose may exist within the Hensley Historic District but would not be considered by CCLD in their distribution analysis.

Land Use Compatibility

The 0.20-acre site is ample in size and is comparable to surrounding lots to the south and east of the site. The single-family structures located to the north and west of the property are smaller in size at approximately 0.10 acres. The project is landscaped in the front, and proposes additional open space at the rear of the property. The structure itself is in good condition, and in similar condition to those properties that adjoin it.

The population proposed on the site is roughly equivalent to that of a 3-unit multi-family development with typically fewer associated automobile trips.

The proposed project occupancy and density is compatible with the area in that directly to the south of the subject site is a mid-century multi-family structure on a lot approximately 0.20 acres in size, and is referred to as a "Basic Box Apartment" on the Historic Resources Inventory. The 12-unit building is 2 stories tall with parking located at the rear of property, and is in fair condition. The multi-family development located across Fifth Street to the west is also a mid-century multi-family structure, and referred to as a "Basic Box Apartment" on the Historic Resources Inventory. Additionally, Mi Pueblo Foods is a large commercial development located just south and east of the proposed project. Over half of N. Fifth Street between Julian and Washington is developed with multi-family uses. The proposed project provides a transition from single-family uses to the north to more intense multi-family uses to the south on North Fifth Street.

Parking

The Zoning Code requirements for Residential Care facilities are 1 space per first 6 client beds, plus 1 additional space for up to 4 clients beds (or portion thereof) above the first six, plus 1 additional space for each additional four client beds (or portion thereof), plus 1 space for each employee or staff member. This brings the total required parking spaces for the proposed project to 5 parking spaces.

Additionally, the Municipal Code allows a reduction in required parking for Residential Care Facilities if all of the following requirements are met: (a) The provided parking spaces adequately meet the needs of the building and uses on the site; (b) The parking area will be maintained at the same location for the life of the building or the use; and (c) the parking facility is convenient and accessible to the building or uses to be served.

The project proposes a total of 4 parking spaces. Many of the project residents will probably not drive and/or own cars. The applicant also states that staff using a large passenger van will provide transportation for residents of the facility.

The proposed project adequately meets the parking requirements of the individual buildings and uses because the applicant is proposing to reduce parking

Table 20-190 Parking Spaces Required: Residential Care Facility		
Minimum Parking Required	# of Residents	Parking Required
1 per first six client beds	6	1
1 additional space for up to four client beds	4	1
1 additional space for each additional four (or portion thereof)	2	1
1 space for each employee or staff member	2	2
Total	12 residents / 2 staff	5 parking spaces

demand through use of a large passenger van to transport residents of the facility, as well as to use as personal transportation for staff at the facility. Visitor parking is available at the rear of the facility. Although not recognized toward meeting the parking requirement, curbside parking is available in front of the property.

The parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use because three of the spaces are contained in a permanent parking structure and the maintenance of the parking area is included as a condition of the permit.

The parking area is reasonably convenient and accessible to the building or use to be served because it located at the rear of the subject site and is located within 35 feet of the rear entrance to the facility.

The applicant has proposed to provided additional open space for residents at the rear of the property in lieu of a fifth parking space on the site.

Housing Code Compliance

The State of California Housing Code requires that all bedrooms have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area

Housing Code Requirements			
	Room size (sq. ft.)	Allowed Occupancy	Proposed Occupancy
Bedroom 1	234	5	2
2	168	3	2
3	118	2	2
4	230	5	2
5	152	3	2
6	190	4	2
7	188	4	2
Total		26	14

must be increased at the rate of fifty square feet for each occupant in excess of two. The project includes seven bedrooms ranging from 118 square feet to 234 square feet in size. According to the Housing Code, these bedrooms could accommodate from 2 to 5 residents each. While it

appears that the facility could accommodate up to 26 people and meet the Housing Code, the current proposal is to accommodate a total of 12 residents and 2 resident staff. This permit will limit the occupancy to 14 people. Every room of the facility exceeds the requirements of the Housing Code. Staff concludes that the project as proposed conforms to the room dimension minimums of the City's Housing Code.

Historic Preservation

The project proposes upgrades to the historic character of the property, including removal of unpermitted exterior changes to the residential structure, and reconstruction of the fire-damaged carriage house located at the rear of the property. Unpermitted exterior changes include removal of the small window from the gabled pediment on the front façade and the roof dormer from the north elevation.

Any exterior work performed on a property located in the Hensley City Landmark Historic District shall be governed by the provisions of Chapter 13.48 of Part 3 of Title 13 of the Municipal Code, the Historic Preservation Ordinance, that require issuance of a Historic Preservation Permit (HP Permit).

Exterior alterations to the house that have occurred in the past without benefit of permits which would be required to be corrected by filing a subsequent Historic Preservation Permit include the addition of a dormer on the north elevation and the installation of a rectangular window in the front gable resulting from illegal conversion of the attic into living space.

A carriage house located at the rear of the property was severely damaged by fire in 2001. Rehabilitation of the house and removal and reconstruction of the fire-damaged carriage house will be required to conform to the Secretary of the Interior's Standards for Rehabilitation. Staff will recommend as a condition of approval that the applicant secure and agree to implement the Historic Preservation Permit prior to issuance of occupancy of the main house for more than six residents. Staff has decided to process the Conditional Use Permit and Historic Preservation Permit sequentially as opposed to concurrently because the HP Permit will not be necessary if the CUP is not approved. There is considerable cost in the preparation of plans and securing of permits. The applicant has filed an HP permit, but is not moving forward with the process until action has been taken on the CUP. An adjustment to the Conditional Use Permit may be required if there are changes to the site as a result of the HP Permit process.

Tree Removal

A Black Acacia tree approximately 86 inches in circumference was located at the rear of the property at the northern property line. The applicant removed the tree without benefit of a Tree Removal Permit, leaving an approximately 20 foot tall trunk.

The applicant has submitted an arborist report dated January 9, 2006 stating that the tree had lost a major scaffold limb that would not heal and left the tree out of balance. The arborist recommended removal of the tree for safety reasons. Staff recommends approval of the Tree Removal Permit because the major limbs have been removed. Staff recommends the applicant compensate for the removal of an ordinance size tree greater than 56 inches in circumference by planting two 24-inch box trees in the City or by making a financial contribution to Our City Forest.

Conclusion

The key issues for this project include distribution of residential care facilities throughout the City, land use compatibility, parking, housing code compliance, and compatibility with the Hensley Historic District.

The state agency Community Care Licensing Division, analyzes proposed Residential Care facilities for overconcentration, and requires a separation between facilities of at least 300 feet. CCLD has analyzed the proposed project and found it to be in compliance with this requirement. The City of San Jose does not have additional separation requirements.

The project is located in the City Landmark Hensley Historic District, much of which is zoned for multi-family residential uses. Additionally, the project is located on a street where over half of the development is currently used for multi-family dwelling units, including neighboring development to the east and south of the project.

The project as proposed meets the requirements for the Zoning Code because a residential care facility is a Conditional Use in the R-M Zoning District. The project proposes four parking spaces, and provides common open space for the residents of the facility in lieu of a fifth parking space. Additionally, the size of the rooms and proposed occupancy exceed the minimum requirements for the Housing Code.

Finally, the project is required to restore historic integrity to the property through correction of unpermitted changes that have happened in the past, including reconstruction of a carriage house that has been damaged by fire in 2001. These proposed changes will be analyzed through the Historic Preservation Permit process.

COMMUNITY OUTREACH

A noticed community meeting for all residents within 1,000 feet of the project was held on August 24, 2006. Approximately 50 people attended the meeting held at City Hall.

Members of the surrounding neighborhood have expressed significant community interest in the proposed project. The community is very concerned about the over-concentration of such facilities in the Hensley neighborhood. Neighbors believe that rental units are less well cared for than owner occupied units. They also believe that residential care facilities create an additional demand for City services, and that existing residential care facilities in their neighborhood are poorly managed based on the behavior of their occupants.

The project was also reviewed by the Historic Landmarks Commission as an informational item on October 4, 2006. Speakers included 10 community members opposed to the project.

Comments and additional information received from the community has resulted in the applicant modifying the proposal to include the restoration of historic character of the house and reconstruction of the fire-damaged carriage house. These changes will be analyzed through the subsequent Historic Preservation Permit process, which has been included as a condition of this CUP.

Notices of the public hearings was distributed to the owners and tenants of all properties located within 1,000 feet of the project site. Staff has been available to discuss the project with interested members of the public.

RECOMMENDATION

Planning staff recommends approval of the subject Conditional Use Permit based on the facts, findings, and conditions noted in the attached resolution.

Attachments

- A1. Location Map
- A2. Environmental Exemption
- A3. Public Works Memo
- A4. Fire Memo
- A5. SJ2020 General Plan Residential Land Use Goal
- A6. Department of Social Services Community Care Licensing Division Memo
- A7. Tree Health Professionals, Inc. Arborist Report
- A8. CP06-034 Map of licensed Residential Care Facilities
- A9. Trinity Residential Care Program Management Description
- A10. Trinity Residential Care Neighborhood Complaint Policy
- A11. Photos of Project Site
- A12. CP06-034 Trinity Residential Care Community Meeting Notes
- A13. Community comments received