

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 6-9-2004 Item 4.g.

File Number
PDA 01-101-01

STAFF REPORT

Application Type
Appeal of the Director's Decision to
approved a Planned Development
Permit Amendment

Council District
6

Planning Area
West Valley

Assessor's Parcel Number(s)
277-40-020

PROJECT DESCRIPTION

Completed by: Erin Morris

Location: East side of Winchester Boulevard approximately 400 feet northerly of Tisch Way (Santana Row)

Gross Acreage: 1.78

Net Acreage: 1.78

Net Density: n/a

Existing Zoning: A(PD) Planned
Development

Existing Use: Commercial uses and park

Proposed Zoning: n/a

Proposed Use: No change

GENERAL PLAN

Completed by: ELM

Land Use/Transportation Diagram Designation
Regional Commercial with Intensification Corridor Overlay

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: ELM

North: Commercial

A(PD) Planned Development

East: Mixed Use

A(PD) Planned Development

South: Mixed Use

A(PD) Planned Development

West: Commercial

CG Commercial General

ENVIRONMENTAL STATUS

Completed by: ELM

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

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: ELM

Annexation Title: Maypark No_1

Date: February 18, 1954

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: June 2, 2004

Approved by: _____
 Action
 Recommendation

APPLICANT/OWNER/DEVELOPER

FRIT San José Town and Country Village LLC
Attn: Bruce Armiger
355 Santana Row, Suite 2000
San José, CA 95128

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: ELM

Department of Public WorksNone received

Other Departments and AgenciesNone received

GENERAL CORRESPONDENCE

See attached Notice of Appeal filed by Richard Cuevas on April 5, 2004. See correspondence from Catherine Dwyer dated March 23, 2004; California Oaks Foundation dated March 23, 2004; Friends of the Urban Forest, San Francisco dated May 20, 2004.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is an appeal of the Planning Director's decision to approve a Planned Development Permit Amendment (File No. PDA01-101-01) to allow removal of two dead Coast Live Oak trees that were removed without the benefit of a permit (see attached permit). The subject Planned Development Permit Amendment application was heard at the March 24, 2004, Director's Hearing and approved by the Planning Director on March 26, 2004, requiring mitigation of eight 36-inch box trees to be planted on the site.

The site, known as Santana Row, is zoned A(PD) Planned Development. In Planned Development Zoning districts, a Planned Development Permit Amendment functions as the Tree Removal Permit. The larger of the subject trees, approximately 88 inches in circumference, was located in Park Valencia near the intersection of Piazza di Valencia and Olin Avenue. The second tree, approximately 63 inches in circumference, was located on the northwest corner of Tatum Lane and Piazza di Valencia.

The trees were among 13 mature Coast Live Oaks that were the subject of an extensive mitigation program implemented during the redevelopment of the Santana Row site. This program involved transplanting the mature trees into 12X17-foot boxes and replanting them on the site once construction was complete. Unprecedented in the history of development in San José, the mitigation program has resulted in the survival of 10 of the original trees, a survival rate which the consulting arborist, Barrie Coate, has indicated is within the expected range for the transplanting of very large specimens.

On April 5, 2004, Richard Cuevas, who owns property within 1000 feet of the project site, filed an appeal of the Director's decision to approve the subject Planned Development Permit Amendment (see attached letter). A response to Mr. Cuevas' appeal is provided in the Analysis section below.

ENVIRONMENTAL REVIEW

This project has been determined to be exempt from environmental review under Section 15304. The exemption applies to this project because it involves a minor alteration of vegetation, i.e. the removal of two dead trees.

GENERAL PLAN CONFORMANCE

The project site has a designation of *Regional Commercial with Transit Corridor Overlay* on the San José 2020 General Plan Land Use/Transportation Diagram. The existing mixed use development on the site is consistent with that designation.

The General Plan Urban Forest Policy specifies that development projects should preserve ordinance-sized trees. As discussed in the Analysis section below, the two trees addressed in this Permit were the subject of an extensive preservation program prepared during the development review process for the Santana Row development. The subject trees were removed from the site after the full implementation of the mitigation program failed to ensure their survival.

COMMUNITY OUTREACH

Public hearing notices for the proposed Planned Development Permit Amendment and the subsequent appeal were mailed to all property owners and tenants within 500 feet of the subject site. The subject Planned Development Permit Amendment was considered at a public Director's Hearing conducted on March 24, 2004. Staff has been available to discuss the project with interested members of the public.

ANALYSIS

Tree Removal Controls

In order to grant a Tree Removal Permit, the Director (or the Commission on appeal) must make one or more of the following findings:

1. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010; or
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
3. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

Analysis of Required Findings for Tree Removal

The subject trees were removed without the benefit of permits on December 22, 2003. The unpermitted tree removal was brought to the City's attention through a complaint to the Code Enforcement Division filed in January 2004. At the request of the City, the applicant filed the subject Planned Development Permit Amendment to obtain after-the-fact approval of the tree removals on February 12, 2004. The applicant provided reports from two arborists (see

from the arborist indicated that both of the subject trees were dead and recommended for immediate removal based on the imminent danger caused by the unstable condition of the trees.

Based on review of the arborist's report, Planning staff concluded that the required findings could be made for removal of the tree in that the trees were dead.

Appeal

The issues raised in the letter of Appeal are presented below, followed by a staff response.

- 1. In the public hearing, Santana Row used the Ice Skating Park as the reason for removing the tree because a limb was hanging over it. That skating rink was disputed when the planning director issued the permit and cancelled the public hearing without notifying the public. The tree could have been saved if the planning department would have allowed the public to appeal the skating rink.*

In written correspondence dated May 17, 2004, the applicant acknowledged that the dead oak trees were removed on December 22, 2004 after certified arborist Neil Woolner inspected the trees, determined that they were dead and that the trees posed an imminent danger. The circumstances of the skating rink are not relevant to the required findings for a tree removal.

- 2. In the public hearing, they said the other tree was on Tatum Road. I am not familiar with tree removal. The two trees I have in question are Plaza de Valencia and Hatton Street along the back wall.*

The trees that are the subject of the permit were located in Park Valencia and on the northwest corner of Tatum Lane and Piazza di Valencia.

- 3. 36-inch box is not equivalent and will not take as well as smaller trees.*

Planning staff is recommending a four to one replacement ratio for each tree, for a total of eight trees (36-inch box size) to be planted on the site. The replacement ratio is consistent with standard City requirements. The size of the trees has been increased from the standard 24-inch box size to provide an immediate aesthetic benefit to the site.

- 4. Business owners are now wise to the excuse of telling the planning commission that a branch would fall on someone.*

As stated above, certified arborist Neil Woolner advised Federal Realty that the trees posed an imminent danger (see attached report).

- 5. Planning notification was not adequate in the public hearing. Can planning prove the type and date of mailing?*

Notices were sent to owners and tenants within 500 feet of the subject site. A mailing list and an affidavit of mailing included in the project file document compliance with the noticing requirement for this project.

- 6. Planning said in the public hearing the trees were in decay. Public hearing notice said they were dead.*

Section 13.32.020B of the Municipal Code provided a definition of “dead tree.” Per the Code, “dead tree” means a tree that is no longer alive, has been removed beyond repair, or is in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs or branches exists to sustain life) and has been determined to be in such a state by a certified arborist during a non-dormant or other natural stage of the tree that would minimize the likelihood that the tree would be mistakenly identified as being in such a dead state. The report prepared by certified arborist Neil Woolner stated that the trees were dead.

7. *Were the trees heritage status? Because of the original site permit to save the trees. And the many community meetings and petitions people signed against Santana Row.*

The subject trees were not heritage trees as defined by Section 13.32.140 of the Municipal Code.

RECOMMENDATION

Planning staff recommends that the Planning Commission uphold the Director’s decision to approve the proposed Tree Removal Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project.

1. This site has a designation of *Regional Commercial with Intensification Corridor Overlay* on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is in the A(PD) Planned Development Zoning District.
3. This project has been determined to be exempt from environmental review under Section 15304. The exemption applies to this project because it involves a minor alteration of vegetation.
4. Existing uses surrounding the site include commercial uses to the north and south, commercial and single-family uses to the east, and the Santana Row mixed-use development to the west.
5. The permit will allow removal of two Coast Live Oak trees (63 and 88 inches in circumference) that were removed without the benefit of a permit and provide for mitigation of their removal.
6. The Planned Development Permit Amendment was heard at the March 24, 2004 Director’s Hearing and approved by the Planning Director on October 17, 2003.
7. On April 5, 2004, Richard Cuevas, who owns property within 1000 feet of the project site, filed an appeal of the Director’s decision to approve the subject Tree Removal Permit.
8. A report from a certified arborist stated that, “Both trees are dead and pose an imminent hazard.”
9. The trees were among 13 mature Coast Live Oaks that were the subject of an extensive

program involved transplanting the mature trees into 12X17-foot boxes and replanting them on the site once construction was complete. Unprecedented in the history of development in San José, the mitigation program has resulted in the survival of 10 of the original trees, a survival rate which the consulting arborist, Barrie Coate, has indicated is within the expected range for the transplanting of very large specimens.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The affected tree(s) is/are of a size, type and condition, and in such a location and in such surroundings that removal would not significantly frustrate the purposes of the Chapter as set forth in Section 13.32.010 of the San José Municipal Code in that the subject Coastal Live Oak trees were dead at the time of removal.
2. The Planned Development Permit Amendment, as issued, furthers the policies of the General Plan in that:
 - a. This Amendment allows plan changes only and does not affect the adherence of the Permit to General Plan Policies.
 - b. This Amendment allows removal of two trees and replacement with eight new trees, as shown on the approved plans.
3. The Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development zoning of the property in that this Amendment is for an allowed use and does not affect zoning conformance or conditions in any way.
4. The interrelationship between the orientation, location and mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious in that this amendment allows removal of two trees and replacement with eight new trees in the locations specified on the approved plans.

CONDITIONS PRECEDENT

1. **Permit Expiration.** This Planned Development Permit Amendment shall automatically expire two years from and after the date of issuance hereof by said Director, if within such two-year period, the proposed use of this site or construction of buildings is not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit Amendment. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Conformance with Plans.** Tree removal and replacement shall conform to approved Planned Development plans entitled, "Tree Removal for Santana Row," dated May 14, 2004, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Revocation.** This Planned Development Permit Amendment is subject to revocation for violation of any of its provisions or conditions.

4. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
5. **Acceptance.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning and Building within **60 days** from the date of issuance of permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.*
6. **Approved PD Permit.** This Planned Development Permit Amendment can only be implemented in conjunction with the full and complete implementation of the previously approved Planned Development Permit, File No. PDSH01-101.
7. **Previous Conditions.** All of the conditions of the previously approved Planned Development Permit Amendment shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted by this Amendment.