

City Council Resolution 2007-027

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE DENYING WITHOUT PREJUDICE THE APPEAL BY THE APPLICANT AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF: HDP97-06 ERIC STRAND (APPLICANT & OWNER), LR-10 ZONING: Request for: (1) Hillside Development Permit pursuant to Section 6-2015 of the Lafayette Municipal Code (LMC), (2) Design Review approval pursuant to Section 6-1903 LMC, and (3) Grading permit pursuant to Chapter 3-7 LMC to construct a new, approximately 4,000 sq.ft. one-story single-family residence with basement with a maximum ridge height of approximately 29-ft. above existing grade on a 5.3-acre vacant parcel in the Hillside Overlay District on Burton Ridge at 10 Vista del Valle off Michael Lane. APN 238-080-035 (Reference siting determination application HDP70-04 and previously withdrawn single-family residence application HDP83-05).

RECITALS

- A. On March 8, 2007 the Planning Commission denied the subject application for Hillside Development Permit and adopted Resolution 2007-08 (Attachment 1).
- B. On March 13, 2007 Erik Strand appealed the decision of the Planning Commission to the City Council. Pursuant to §6-233 of the Lafayette Municipal Code, the City Council considered the matter as a *de novo* public hearing on April 23, 2007, May 21, 2007, June 11, 2007 and July 9, 2007.
- C. On April 23, 2007 the Council received testimony from the applicant and public, as well as oral and written staff reports including minutes and staff reports from Planning Commission meetings. The applicant presented exhibits at the meeting showing a siting and design that had not previously been submitted for review by either the Design Review Commission or Planning Commission. The Council found that there was not adequate information contained in those exhibits to overturn the Planning Commission's denial and approve the project outright, as requested by the applicant. However, the Council articulated its desire to work with the applicant toward an approvable project and expressed interest visiting the property to gain an appreciation for the site, to determine the most appropriate location on which to build a house, and to allow the applicant additional time to submit a complete application showing his proposed revisions.
- D. On May 21, 2007 City Council Members Anderson, Andersson, and Federighi conducted a site visit where the public had received prior written notice and was invited to attend. Roughly one dozen members of the public attended as well as members of the Planning Commission and Design Review Commission and Planning staff. All attendees walked the site and reviewed the story poles erected by the applicant representing a one-story, approximately 3,800 gross square foot house (~3,300 sq.ft. living area, ~500 sq.ft. garage). The purpose of the site visit was to familiarize the Council Members with the site and to gather information. Considering the logistics of taking minutes and lack of a public address system, the Council Members present did not deliberate on the matter nor was their public testimony for the record. The matter was placed on the June 11, 2007 agenda as a public hearing for the City Council to discuss its findings from the site visit and take further testimony from the applicant and public.

- E. On May 29, 2007 Planning staff visited the site with City Council Member Anduri and the City Attorney, reviewing the same story poles as those reviewed by Council Members the week prior. Council Member Tatzin visited the site independently prior to June 11, 2007.
- F. On June 11, 2007 the City Council considered the matter at the continued public hearing. The Council discussed that if the house were located higher than what the story poles illustrated, it would silhouette above the ridgeline more. If the house were moved lower, the knoll drops off faster and the house would become more visible to the south/southwest. Since the driveway needs to drop from the private road to the garage, the higher the garage is, the less grading and lower the retaining walls will need to be. Where the garage was shown by the story poles appears to be the best location. With respect to views from below looking eastward – the square footage behind the west façade would be minimally visible because of the angle looking upward. The consensus was that the 3,600 sq.ft. design is not more visible than the 2,400 sq.ft. design.

The Council discussed sending the matter back to the Planning Commission, indicating that the house is in the right footprint, that the proposed 3,600 sq.ft. appears to have the same visibility as the smaller 2,400 sq.ft. design, and there remain concerns related to off site visibility of site development including the driveway, retaining walls and yard area. The Council articulated that, for the *de novo* hearing, the applicant had not provided a complete application for a Hillside Development Permit based on his latest proposed house location and design.

The Council voted 5-0 to continue the matter to June 26, 2007 directing staff to prepare a resolution denying the appeal without prejudice, waiving fees for the same applicant for up to two years, and articulating for the benefit of the applicant and the Planning Commission, the Council's findings with respect to the proposed location, square footage, and site development.

- G. On June 25, 2007 the City Council continued the matter, without deliberation, to July 9, 2007 at the request of staff, to allow additional time to prepare the requested resolution.
- H. On July 9, 2007 the City Council held a public hearing where it considered a draft Resolution 2007-027 denying the application without prejudice and including, for the benefit of the applicant and the Planning Commission, positive findings related to the proposed location, square footage and site development.

NOW, THEREFORE, the City Council of the City of Lafayette, California finds and determines as follows:

1. All the facts contained in the staff reports for the City Council meetings listed above are hereby adopted as the Council's own findings of fact and incorporated into this resolution by reference.
2. The changes proposed by the applicant in terms of revised siting and building design, presented at the two public hearings before the City Council, do not constitute a complete application for Hillside Development Permit. The sketch design drawings received June 4, 2007 are highly schematic and lack even very basic information such as a scale, north arrow, date, address, APN, drawn by, sheet number, labels, etc. They appear to show schematic designs for a 2,400 sq.ft. and a 3,600 sq.ft. design (this deduced from the floor plans on the third sheet, the elevations drawings are not labeled). Little-to-no information was submitted on site development (grading for the driveway and outdoor living area/yard, retaining wall locations and heights, etc.) and the off site visibility thereof as required by the submittal requirements checklist for a Hillside Development

Permit. This information is critical because the grading and retaining walls necessary to build the driveway could likely be the most visible elements of the project, more visible than the home itself.

3. The City Council concurs with the Planning Commission's evaluation of the required findings for the requested Hillside Development Permit as set forth in §6-2071 of the Lafayette Municipal Code for the project presented to and acted upon by the Planning Commission, as follow:

§6-2071 Findings required for approval of a hillside development permit on an existing lot of record.

The hearing authority may approve an application for a hillside development permit on an existing lot of record in the hillside overlay district only after making the following findings:

- (a) The development is consistent with the applicable goals and policies of the general plan and is in conformance with applicable zoning regulations;
The project does not preserve and enhance the semi-rural character of Lafayette, by preserving its uncluttered hillsides and ridgelines to the maximum extent feasible. A smaller home sited on the site determined by the Planning Commission would preserve the semi-rural character of Lafayette and its uncluttered hillsides and ridgelines to a greater degree by reducing off site visibility on this highly visible site with steep topography and little vegetation that could provide screening for new structures.
- (b) The development will preserve open space and physical features, including rock outcroppings and other prominent geological features, streams, streambeds, ponds, drainage swales, native vegetation, native riparian vegetation, animal habitats and other natural features;
The project would generally preserve open space – i.e. the remainder of the 5.3-acre parcel not being impacted by the development. A smaller home would have less impacts on open space. There are no rock outcroppings, streams, ponds, or native riparian vegetation in the vicinity of the project.
- (c) Structures in the hillside overlay district will, to the extent feasible, be located away from prominent locations such as ridgelines, hilltops, knolls and open slopes;
The proposed ~4,000 sq.ft. residence is located in the middle of a prominent open slope that contains little existing vegetation, and is visible to thousands of residents in Burton Valley. A smaller home on the site determined by the Planning Commission would be less visible on the open slope.
- (d) The development, including site design and the location and massing of all structures and improvements will, to the extent feasible:
 - (1) Minimize the loss of privacy to surrounding residents and not unduly impact, restrict or block significant views;
The proposed ~4,000 sq.ft. residence would have a significant negative effect on views of Burton Ridge enjoyed by thousands of Burton Valley residents. A smaller home on the site determined by the Planning Commission would preserve the uncluttered hillside to a greater degree and would have less impact on significant views enjoyed by the residents of Burton Valley and the public.

- (2) Not have a significant visual impact when viewed from lower elevations from public places, using the viewing evaluation map as a guide to establish locations from which views are considered; and

The proposed ~4,000 sq.ft. residence would have a significant visual impact when viewed from lower elevations from public places, using the viewing evaluation map as a guide. A thorough off-site visibility analysis was prepared when siting was under consideration by the Planning Commission and is part of the administrative record. Many photographs were taken showing the visibility of the story poles for the proposed residence. A smaller home on the site determined by the Planning Commission with less grading would have less visual impacts when viewed from lower elevations on the viewing evaluation map.

- (3) Not interfere with a ridgeline trail corridor or compromise the open space or scenic character of the corridor.

The East Bay Regional Park District 'Calaveras Trail' corridor crosses the subject property along the ridge. The proposed ~4,000 sq.ft. residence would not interfere with the ridgeline trail corridor or compromise the open space or scenic character of the corridor. The property owner has stated on the record that he is willing to provide a formal trail easement across his property along the ridge if and when he is approved to build.

- (e) Within 100 feet of a restricted ridgeline area, or when an exception to a ridgeline setback has been granted, the development will result in each structure being substantially concealed by terrain or vegetation when viewed from lower elevations from public places, using the viewing evaluation map as a guide to establish locations from which views are considered;

The proposed ~4,000 sq.ft. residence is within 100-ft. of a Class I ridgeline setback. The development would not result in the residence being substantially concealed by terrain or vegetation when viewed from lower elevations from public places, using the viewing evaluation map as a guide. A thorough off-site visibility analysis was performed when the Planning Commission was considering siting, was reviewed by the City Council, and is part of the record. Further, many photographs were taken showing the visibility of the story poles for the proposed residence. A smaller house sited on the site determined by the Planning Commission would be concealed to a greater degree.

- (f) Development grading will be minimized to limit scarring and cutting of hillsides especially for long roads or driveways, preserve existing geologic features, topographic conditions and existing vegetation, reduce short and long-term erosion, slides and flooding, and abate visual impacts;

Development grading will not be minimized to limit scarring and cutting of hillsides. The schematic site plans show significant grading is proposed, however specific quantities of cut, fill, import and off haul have not been provided by the applicant. The proposed grading will generally preserve existing geologic features, and existing vegetation, but will not serve to abate the visual impacts of the driveway, fire district turnaround or residence. A smaller home on the site determined by the Planning Commission could result in a shorter driveway, reduced grading impacts and less cutting and scarring of the hillside.

- (g) The development provides adequate emergency vehicle access, including turn-around space, to the building site and surrounding on-site undeveloped or isolated areas;

The development proposes a fire district turnaround adjacent to the residence. The existing

emergency vehicle access to the property and surrounding on-site undeveloped or isolated areas would not be affected.

- (h) Each structure and proposed landscaping complies with the city's residential design guidelines; *The proposed residence and landscaping generally comply with the city's residential design guidelines. Low roof pitch, deep overhangs and dark colors and materials are proposed. A native plant palette is proposed in naturalized groupings, however few in number.*
- (i) The new or replacement vegetation for the development is native to the surrounding area in areas abutting open space and natural areas, such as oak woodland, chaparral, grassland and riparian areas, and conforms to the policies of Section 6-2051; and *New vegetation for the development is native to the surrounding area, and conforms to the policies of Section 6-2051.*
- (j) The development will not create a nuisance, hazard or enforcement problem within the neighborhood or the city, nor require the city to provide an unusual or disproportionate level of public services. *There is no evidence in the record to suggest that the development will create a nuisance, hazard or enforcement problem within the neighborhood or the city, or require the city to provide an unusual or disproportionate level of public services.*

4. The City Council concurs with the Planning Commission's evaluation of the required findings for the requested design review as set forth in §6-275 of the Lafayette Municipal Code for the project presented to and acted upon by the Planning Commission, as follow:

§6-275 Specific findings required for design review.

- 1. Every provision of this chapter is complied with; *The applicant complied with the applications requirements set forth for submitting an application for design review. However, the City Council finds that the proposed house site is not consistent with that determined by the Planning Commission on May 19, 2005.*
- 2. The approval of the plan is in the best interest of the public health, safety and general welfare; *The project does not comply with the findings required for grant of a Hillside Development Permit, including but not limited to minimizing off-site visual impacts on a prominent hillside. Therefore, the project is not in the best interest of the general welfare of the citizens of Lafayette and the public at large.*
- 3. General site considerations, including site layout, open space and topography, orientation and location of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, public safety and similar elements have been designed to provide a desirable environment for the development; *The home site presented to the Planning Commission is not consistent with the siting determination made by the Commission on May 19, 2005. Siting should be consistent with the Planning Commission's determination and layout, open space, orientation, location, circulation and parking, walls and fences could be designed to have less off site visual impact and thus provide a more desirable environment for the neighborhood.*
- 4. General architectural considerations, including the character, scale and quality of the design, the architectural relationship with the site and other buildings, building materials, colors,

screening of exterior appurtenances, exterior lighting and signing and similar elements have been incorporated in order to ensure the compatibility of this development with its design concept and the character of adjacent buildings; and

The architectural style is generally compatible with the site. The scale and relationship with the site are not compatible with existing development on properties that will view the project from lower elevations. The project is far enough from other residences where the architectural compatibility is not an issue.

5. General landscape considerations, including the location, type, size, color, texture and coverage of plant materials, provisions for irrigation, maintenance and protection of landscaped areas and similar elements have been considered to ensure visual relief, to complement buildings and structures and to provide an attractive environment for the enjoyment of the public.

Proposed landscaping (trees) is native to the area. Additional landscaping is not shown on the plans. The extent of proposed native trees intended to serve as screening for the residence is limited. Additional numbers and size of trees would be appropriate.

5. The City Council concurs with the Planning Commission's evaluation of the required findings for the requested grading permit as set forth in §6-3701 of the Lafayette Municipal Code for the project presented to and acted upon by the Planning Commission, as follow:

§3-701 Findings required for approval of grading exceeding 50 cubic yards

1. The grading will not endanger the stability of the site or adjacent property or pose a significant ground movement hazard to an adjacent property. The decision making authority may require the project geotechnical engineer to certify the suitability of the project supported by appropriate technical studies, including subsurface investigation;
2. The grading will not significantly increase erosion or flooding affecting the site or other property and will not cause impacts to riparian habitats, stream channel capacity or water quality that cannot be substantially mitigated;
3. The grading, when completed, will result in a building site that is visually compatible with the surrounding land;
4. The grading is sensitive to the existing landforms, topography and natural features on the site; and
5. The design of the project preserves existing trees on the site and trees on adjoining property to the extent possible.

The schematic site plans show significant grading is proposed, however specific quantities of cut, fill, import and off haul have not been provided by the applicant. The proposed grading has not been accurately shown on a plan developed by a licensed civil engineer, and thus the City Engineer has not had the opportunity to review the proposed grading and comment. The proposed 2:1 cut slopes may appear significantly visually different from the existing landforms depending on how the transitions are designed and executed, as well as how re-vegetation occurs. Absent specific information on how these and other issues related to grading and drainage will be handled, the findings for a grading permit cannot be made at this time.

6. In the course of its deliberations, the City Council reviewed preliminary proposals by the applicant that had not been submitted to the Planning Commission, including the home being placed at an alternate site on the property. These plans did not constitute a complete application for Hillside Development Permit as described in Item #2 above. While the City Council agreed that the proposal made to the Planning Commission was properly denied, the Council arrived at consensus on several significant issues based on the applicant's preliminary proposals, testimony and visits to the site and based on the current site characteristics and current land use regulations. The consensus conclusions are:
- a. Application fees are waived for re-application by the same applicant within two years of the adoption of this resolution, up to a maximum of five public hearings.
 - b. The site displayed in the preliminary proposal presented to the City Council (Attachment 2), and marked with story poles during the Council's site visits, is the appropriate site for the proposed residence for the purpose of minimizing the visual impact on existing homes throughout Burton Valley. Because the structure is proposed in a swale between two knolls, off-site visibility is minimized from the north, east, and south. The west façade of the house would be clearly visible from the west and northwest, but, because of the topography, this would be true of a structure placed anywhere on the site. Other sites would be more visible from a larger number of vantage points.
 - c. The location of the west façade of the structure is appropriate. To place it higher in the swale would obstruct more of the hillside and ridgeline from many of the visually impacted homes. To place it lower, in the steeper part of the swale, would result in the need for more grading to bring a driveway to it, resulting in more grading, higher retaining walls and additional visual impacts.
 - d. The location of the garage to the east of the residence would minimize the grading necessary to bring a driveway to the proposed residence. The precise location of the garage would require a more detailed analysis of to minimize the visual impact of both the structure and the driveway including the necessary grading and retaining walls.
 - e. Given the acceptability of the proposed location of the west façade and the garage, a stepped, one-story structure connecting the two would minimize visual impacts from most vantage points from existing residences in the area. This would be true whether the square footage of the proposed residence were 2,500 square feet or in the range of 3,600-3,800 square feet. The applicant has shown that a structure in this location meets the test set out by the Planning Commission, to begin with a 2,500 square foot proposal and show that a larger proposal would have no greater impact.
 - f. The City Council encourages the applicant to submit a new application for review by the Design Review Commission and Planning Commission, which responds to the comments expressed by the each Commission and City Council. The Council would be happy to send a representative to the Planning Commission if it would be useful to review the discussions leading to the consensus described in items a-e above.
7. Pursuant to Public Resources Code section 21080(b)(5) the California Environmental Quality Act (CEQA) does not apply because the City Council is denying the project.

8. Based on the inability to make the required findings listed above, the City Council hereby denies without prejudice the applications for hillside development permit, design review, and grading permit described in detail on page one of this resolution.

9. This resolution becomes effective upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a meeting held on July 9, 2007 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSE:

ATTEST:

Joanne Robbins, City Clerk

Carol Federighi, Mayor

ATTACHMENTS

1. Planning Commission Resolution 2007-08
2. Site plan presented to the City Council for the appeal of HDP97-06