

City Clerk Joanne Robbins opened the envelope of formal protest and confirmed it was a formal written letter of protest received from Brad and Cathy Farber and entered it into the record.

ACTION: It was M/S/C (Tatzin/Anderson) to close the public hearing portion of the matter and continue the item until after the ballots were tabulated. Vote: 5-0 (Ayes: Federighi, Anderson, Andersson, Anduri and Tatzin; Noes: None).

9. PUBLIC HEARINGS

A. Greg Wolff, Senior Planner

APPEAL BY THE APPLICANT OF 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 APN 238-080-035 (Reference siting determination application HDP70-04 and previously withdrawn single-family residence application HDP83-05).

Recommendation: Adopt Resolution 2007-27

Planning and Building Services Manager Niroop Srivatsa said the Council considered the appeal on June 11th and offered direction to the applicant indicated that that since the application was not complete, the Council would deny the appeal without prejudice and directed staff to draft a resolution. The Council also asked that the resolution and a separate memo contain clear direction to the Planning Commission on what the Council would like to see as an application. The resolution as attached to the staff report has on page 7 of 8 the Council's comments about the subject application and provides direction to the Planning Commission on the location of the proposed house where the garage needs to be located and the signs of the house. Staff asks that the Council adopt Resolution 2007-027 denying the appeal without prejudice. She noted Mr. Strand had submitted an email asking for one change to the resolution which was his preference to take the matter directly to the Planning Commission and not to the Design Review Commission for additional review.

Councilmember Tatzin said as a matter of form, he questioned if it would make sense to add to the title of the resolution something that references page 7 since it was a bit more than a denial of the appeal because it goes further in laying out guidelines for re-application. Also, he asked if staff could consistently using insets, parenthesis, and numbering in the resolution and also thanked Councilmember Andersson and staff work working out the language on page 7.

Mayor Federighi referred to page 2 of 8, Item F, the end of the first paragraph, "The consensus was that the 3,600 sq.ft. design is not more visible than the 2,400 sq.ft. design, and suggested adding the word, "...is not significantly more visible..."

She referred to the next sentence; "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 virtually the same visibility as the smaller 2,400 sq.ft. design,"

She referred to page 7 of 8, Item e, last sentence, “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 significantly greater impact.”

Councilmember Anduri said he realizes in the discussion the Council did not come down to agree on the nuances, and felt it was a good effort. However, he disagreed with what was in the resolution. He referred to page 2 of 8, Item F, the last sentence of first paragraph; “The consensus was that the 3,600 sq.ft. design is not more visible than the 2,400 sq.ft. design.” And he thinks it was stronger than what the Council said. He suggested, “...should not be more visible...” as he felt the Council was only giving guidance and could not say for certainty that it was or was not.

He referred to the next paragraph, ““The Council discussed sending the matter back to the Planning Commission, indicating that the house is in the right footprint...” and said he did not remember talking about footprint and asked to substitute it with “location.”

He referred to page 7 of 8, he agreed with items a-c and d, but noted a typographical error in the third line, after the word “analysis” and staff should delete the word “of.”

Regarding page 7 of 8, Item e, he asked to amend; “Given the acceptability of the proposed location of the west façade and the general location of the garage...” He felt the Council did not identify the proposed location of the garage, but only talked about the general location, and he felt it was also referenced somewhere else in the materials. Also in continuing on in the item; “...a stepped, one-story structure connecting the two may not be visible from most vantage points...” So, this would delete the words, “would minimize visual impacts”. “This may 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 may meet the test set out by the Planning Commission...”

Vice Mayor Anderson said he was generally making things softer, but felt the applicant did follow the concept of the test in showing the structure that was smaller and then showing one of larger square footage in the same location. For him, he did not see a great deal of difference between the two facades which were reviewed. He was comfortable with the last sentence of “e” with the modification of the word “significantly” being added and on the first sentence, “...connecting the two would have minimal visual impacts fro most vantage points...” He felt the effort came from the Council’s request that the appellant follow through on what had been requested by the Planning Commission, and he felt he did.

Councilmember Tatzin asked whether the decision the Council is making is basically putting itself in the place of the Planning Commission in regards to house siting. He sensed there was a majority for this and if so, he felt the resolution should reflect this opinion. The way Councilmember Anduri has suggested rewording, the Planning Commission member would be inclined to go back and ask the applicant to prove that the 2,500 square foot house has no greater impacts than the larger house; there was a majority of the Council that said the applicant had already done this and wanted the Commission to accept that determination.

Regarding Mr. Strand’s request to not have this go to Design Review but to the Planning Commission, he felt the request was complicated because if the Council’s action was to remove the role of the Planning Commission that designs the site the to fit into the best location, it would make more sense for it to go to Design Review and not Planning Commission, but he was not sure this was legally possible.

City Attorney Mala Subramanian said the direction staff received was to uphold the appeal and deny the application. What is being suggested now is not necessarily the same course. It is taking preliminary steps to approve the siting and in some sense direct this application to go to Design Review to move forward for consideration as opposed to denial. She noted that was not how the resolution was drafted; it is drafted more as a denial and with a recommendation in the event that the appellant returns with a new application.

Vice Mayor Anderson felt the problem with the entire process is that the Council received information from the appellant that the Planning Commission and Design Review Commission never saw. So, they have gone down a completely separate process, yet the Council is doing an appeal process for denial that was for something that they never really looked at. So, the language is complicated to follow, because one represents a denial of another project and this represents the Council's hope to facilitate a process that got gummed up with Planning Commission and revealed some of the success in discussions with the appellant, who did do what they had hoped for to show us something that went from a small footprint to a large footprint. So, he felt it was complicated.

City Attorney Subramanian agreed, and further complicated was that the new application was not a complete application. So, she felt staff could fine-tune the resolution, as it attempts to deny it for two reasons; an incomplete application, and also it was not the application that was considered by the Planning Commission, with the guideline that if the appellant were to bring back a new application, the Council feels the siting is appropriate.

Mayor Federighi believed the Council did want to be clear that we thought it was the appropriate location; that the applicant passed the test the Planning Commission had asked him to do. City Attorney Subramanian asked if the applicant should then move forward with Design Review and possibly not Planning Commission, but continue to hold the application outstanding, upholding the Commission's appeal that recognizing it as a de novo hearing process. She got the impression the Council did not want to have to revisit it.

Councilmember Andersson said it was his understanding that the Council was denying the appeal and putting out some Council consensus for discussion for any future application that was made rather than sending it the Planning Commission with direction, and providing consensus remarks for the Planning Commission's benefit. With respect to the definitiveness of visibility, he drafted this page and he recalled that his impression was that the Council had discussed the fact that it had met the Planning Commission's test, and since the test was no greater impact, that is how he wrote it.

Also, there was concern when the Council decided to take this course, that the Council not leave the Planning Commission with the feeling that the decision has already been made, and as he read this it seemed to come out more that way than he had expected. His thought was not to have it less definitive, but in fact, to caveat it, by stating; "The Planning Commission should note this consensus is based on preliminary information and is advisory and not determinative" to let them know this is what the Council thought about the preliminary information it had and hope it is helpful to them.

Councilmember Anduri felt all the Council could do was deny the application and explaining what Council consensus is because there is no complete application before the Council. For the Council to make a finding of any sort could not be done.

Councilmember Tatzin said what he had envisioned for page 7 is that it be put in the form of a letter in the file for the parcel, as opposed to being placed into the resolution and suggested the Council's thoughts be conveyed in another way.

Mayor Federighi suggested it be a letter, but she was concerned it could get buried and separated from the denial and not have the same impact.

Vice Mayor Anderson referred to page 2, the third paragraph in F and suggested it be left in given what was just suggested; "The vote 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." If this paragraph is left in, it may be strong enough to at least reference the letter or note for the record.

Councilmember Tatzin felt if it is left in the resolution, the title of the resolution should be changed to make it clear it is coming, or otherwise have something the Council can all vote on in the form of a letter.

Councilmember Andersson said given the informal nature of recommendations of the Council's consensus and the impact it might have on a future unfilled application, he believed the applicant would make copies of the letter and secure it faithfully, as there were important conclusions drawn and it would be useful for a future application to know what the Council was thinking at the time. Councilmember Tatzin felt that if he were a Planning Commissioner and he read this, it was pretty definitive.

ACTION: It was M/SC (Tatzin/Anderson) to open the public hearing. Vote: 5-0 (Ayes: Federighi, Anderson, Andersson, Anduri and Tatzin; Noes: None).

ERIC STRAND, applicant, said the Planning Commission took the word, "significant" and they would not take it out. He said he was a new builder, he learned a lesson and noted he had unfortunately followed his architect blindly and wish he had shown the stepped house the first time. He wanted the Council to be direct with the Planning Commission, noted Commissioner Holt said he wanted no impacts at all and humbly said he would receive whatever direction the Council could give him and be thankful. He confirmed with the Mayor that he was amenable to inserting the word, "significantly".

Mayor Federighi asked why did Mr. Strand object to the application going to Design Review Commission, and Mr. Strand said it was strictly due to timing, and he would agree with the proposal being reviewed by both commissions.

CLIFF TONG said he was glad the Council had the initial discussion, said he respectfully disagrees with the presumption that the Council followed the Planning Commission's directions on this proposal, as the direction was to first design a 2,500 square foot house, get it approved so that it meets the findings and then see if any increases to the size of it resulted in marginal increases in the visual impact. He did not believe that a 2,500 square foot design has ever been submitted to the Planning Commission by the applicant nor the Design Review Commission, nor the Council. So, until this is done, the Council cannot really say the process has been followed. In looking at the story poles and schematics presented as part of the appeal process, he disagreed that the process was properly followed. His concerns was that he disagreed that the level of information was reviewed to be able to reach the conclusion that there is no visual

impact difference or no significant or minimal difference. He felt it was not comprehensive and accurate information without detailed design plans and without grading plans that show the difference of how far back into the hill it might need to be cut, retaining wall sizes and other things that might have an impact. So, he asked the Council to reconsider or go back and ask the Planning Commission what they really intended if you wanted to really follow that process, or you could go back and say are we willing to make as strong a statement to say we feel confident that there was no difference or a very minimal difference between 2,500 and 3,600 square feet, or go back and ask the applicant to actually submit detailed plans that would allow the Council to make that determination. So, one of those three things should happen. Regarding the Planning Commission versus Design Review Commission issue, he feels more comfortable with the siting and believes that location was probably the best, and if that is all that is going to be relied upon by the Planning Commission, it does not make sense for it to go back to them. So, it would probably be more expedient to send it to the Design Review Commission because they will need to review it anyway.

Councilmember Andersson asked Mr. Tong if his interpretation of the Planning Commission's request of the applicant was to get a 2,500 square foot application approved and then come back with a 3600 square foot design, and Mr. Tong said he wouldn't use the word, "approved", but a design should at least be submitted for a 2,500 square foot proposal that could actually be evaluated by the Design Review Commission, have them effectively approve it and then have it come back to the Planning Commission.

Mayor Federighi said the Council read many sets of minutes and felt Mr. Tong over interpreted this. What they did not think was following their direction was cutting out the basement which did not show anything and then calling it a 2,500 square foot house. This way, a 2,500 square foot house was designed, granted in rough form, but still was designed. It was a workable plan, and then the applicant showed how it increased it by 3,600 and its view and siting was not an impact.

Mr. Tong felt "approved" is too strong a word in assessment of this, but the exercise of showing a reasonably detailed 2,500 square foot design that does stand a chance of at least meeting the findings and in comparison to a larger design, he did not believe it has ever been evaluated by the Design Review or Planning Commission. The only thing that was reviewed was the 3,600 square foot with a basement.

SHERRY HOOVER appreciates the thoughtful consideration of what the Council did for recommendations to the Planning Commission and reiterated that the Council not make final recommendations without a complete set of plans. Once the complete plans are done on the new location, then the Council can relay its support, but without the plans, she felt uncomfortable with saying yes because they do not know.

Rebuttal

Mr. Strand provided no rebuttal.

ACTION: It was M/S/C (Tatzin/Andersson) to close the public hearing. Vote: 5-0 (Ayes: Federighi, Anderson, Andersson, Anduri and Tatzin; Noes: None).

Councilmember Anduri felt there was something to be said about Mr. Tong's comments, but the problem with the Planning Commission not having a full application is that and the Council could not fully evaluate whether the 2,500 square foot design met the criteria. All they have in the

findings is for a 3,600 square foot design. The Planning Commission wants someone to come in, present a design where they can make all findings on that design, which the Council has not done. Once they have that design, then the applicant can change it, make it 3,600 square feet and prove there is no significant or greater impact than the 2,500 square foot design, and this was his understanding of what the Planning Commission wanted to do. Otherwise, it does not make any sense and he questioned what would be the test.

Councilmember Andersson said he was not fond of the Planning Commission's test, felt it was an impossible test the way it was presented, thinks part of the assessment of it as significant or complete required an impossible response. And, he felt a reasonable response would have no effect. The key thing here is that the Council is not making an approval, is not directing the Planning Commission to make an approval, but is saying it was incomplete as presented to the Council so they upheld the denial of the appeal. But, when and if the project comes back, the Council did see some things in the preliminary information presented in the new proposal that the Council believes would be useful in deliberations of other bodies when a new application is presented. This was why the list of conclusions should be prefaced with a statement that it is not a determinant conclusion; just useful, and that it was important to pass the information along to the Planning Commission.

Vice Mayor Anderson felt part of the issue was the resolution wording and felt it might need to be re-written to split out all components that deal with the item that was in the application in the first place and ended up being a demonstration of the possibility of another site that the Planning Commission had not even seen. If the Council could strip that out and at some level uphold the original denial of what the Planning Commission saw, which was what they were supposed to be doing and separately, whether it is a letter or a note in the file, it would set forward a recount of the value the Council got out of the field trip and some preliminary sketches that were presented by the appellant. The Council could attach that and send it back, agreed that the driveway would need work, all setbacks were not checked, but he felt those values could be brought out from the resolution to a formal statement.

Mayor Federighi asked if Vice Mayor Anderson was suggesting it go back for another attempt to separate wording for a letter out of the resolution, and Vice Mayor Anderson felt the resolution should be re-drafted that specifically addresses the actual appeal projects upholding that denial, and then separately formulate a note or attachment that relates the experience that the Planning Commission has not had yet.

Councilmember Andersson said he could work on re-drafting the wording again. He asked staff to separate out the information denial resolution upholding the appeal. He felt it would make it simpler and clearer in a separate document.

Mayor Federighi asked for the item to return on the Consent Calendar, and Councilmember Tatzin confirmed with Councilmember Andersson that his interpretation of section 6 on page 7 into three broad categories; Comments on location of the structure, comments on the footprint and the façade, and comments on size and the sense of design. Councilmember Andersson also felt by placing descriptive words in the beginning was important. Councilmember Tatzin said his sense is that the Council feels more strongly about this being the right location and was less sure about it being the right size. Councilmember Andersson said he preferred this being left to the Planning Commission. He felt that size and the visibility of size ties closely together and it seems to him that this was what they were most concerned about. He suggested indicating the Council's conclusions it drew and not weigh them particularly in any way.

Mayor Federighi confirmed there was general consensus to separate the items for Councilmember Andersson to redraft the guiding memo and forward it onto staff.

ACTION: It was M/S/C (Tatzin/Anderson) to continue the item to the July 23, 2007 meeting's Consent Calendar. Vote: 5-0 (Ayes: Federighi, Anderson, Andersson, Anduri and Tatzin; Noes: None).

**B. Tracy Robinson, Administrative Services Director
Proposed Increase to the Lafayette Landscape and Lighting District 1979-1.**

City Clerk Joanne Robbins said the vote was dollar weighted and reported the following results: \$37,695.56 voted yes; \$86,169.75 voted no. (30% yes votes and 70% no votes). There were a total of 197 valid ballots and 6 invalid ballots and she noted this information would go into the first Resolution.

Mayor Federighi confirmed the Council would adopt the first resolution with inclusion of the votes and figures, and Mr. McGuire said the other two resolutions would be brought back with changes. He asked for direction in terms of modifying the Engineer's Report and whether the Council would want to modify their budget.

Mayor Federighi confirmed with Ms. Robinson that the proposed budget did not assume the assessment would pass. She said the Council could certainly make a decision in light of the vote to change the budget.

ACTION: It was M/SC (Tatzin/Anderson) to adopt Resolution 2007-030 with the dollar amounts provided by the City Clerk, direct staff to bring back the other two resolutions assuming the current charges, and at that same meeting schedule an item on the agenda for reconsideration of the budget regarding general fund contributions to the core area. Vote: 5-0 (Ayes: Federighi, Anderson, Andersson, Anduri and Tatzin; Noes: None).

Councilmember Anduri thanked everyone for the efforts. He asked if there was any indication or comments from voters. Ms. Robinson said staff had support of large property owners, but the calls she received were generally negative, said Dennis Garrison and Steve Cortese tried to talk to property owners, but it was not completely unexpected. People did not like a 3% annual increase included, there were ballots where the assessment was actually being reduced and people still voted no, so this calls into question whether an education effort could have been more. However, she felt the ballots were clear.

Councilmember Anduri asked if the City could determine in terms of the dollar value, what percentage of the dollar value voted of the total number that could vote. Ms. Robinson said of the total number, it was about 50% and she could provide this information.

Councilmember Anduri said the raw numbers showed a 40% turn-out, which Mr. McGuire said is actually quite good, particularly given it was primarily commercial properties. He said given the fact that people were voting no for a decrease, he felt many people did not even know the assessment was on their tax bills and they simply do not understand these are their improvements and they are paying for them. Ms. Robinson said they also got resistance from people who did not feel residential properties should be included at all, and there were several single family residences included in the district, but it did not fail for that reason primarily.