



COUNCIL AGENDA: 11/17/20
FILE: 20-1449
ITEM: 10.2

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: November 5, 2020

Approved

Date

11/6/20

COUNCIL DISTRICT: 10

SUBJECT: ADMINISTRATIVE HEARING ON THE APPEALS OF THE PLANNING DIRECTOR'S (i) APPROVAL OF THE TENTATIVE SUBDIVISION MAP FILE NO. T19-033; AND (ii) APPROVAL OF THE SITE DEVELOPMENT PERMIT FILE NO. H19-039 FOR THE SIX-LOT SINGLE-FAMILY SUBDIVISION PROJECT

RECOMMENDATION

1. Consider the exemption under pursuant to Section 15332 of the Guidelines to the California Environmental Quality Act (CEQA) for in-fill development projects.
2. Conduct an Administrative Hearing to consider the Appeals of the Planning Director's approvals of (i) the Tentative Subdivision Map File No. T19-033, and (ii) the Site Development Permit File No. H19-039. The Tentative Subdivision Map approves the subdivision of one parcel into six parcels on an approximately 1.3-gross acre site; while the Site Development Permit approves the demolition of an approximately 2,154-square foot single-family residence, a detached secondary unit, multiple sheds, and a swimming pool for the construction of six single-family homes, and the removal of 13 ordinance sized trees located on the West side of Almaden Road, approximately 150 feet northerly of Corvallis Drive (6805 Almaden Road).
3. Adopt a resolution denying the permit appeal and approving, subject to conditions, Tentative Map File No. T19-033, to subdivide one lot into six lots on an approximately 1.3-gross acre site located on the West side of Almaden Road, approximately 150 feet northerly of Corvallis Drive (6805 Almaden Road).
4. Adopt a resolution denying the permit appeal and approving, subject to conditions, Site Development Permit File No. H19-039, to allow the demolition of an approximately 2,154-square foot single-family residence, a detached secondary unit, multiple sheds, and

a swimming pool for the construction of six single-family homes, the removal of 13 ordinance sized trees on an approximately 1.3- gross acre site located on the West side of Almaden Road, approximately 150 feet northerly of Corvallis Drive (6805 Almaden Road).

OUTCOME

Denial of the appeal and approval of the tentative subdivision map would allow the project applicant to move forward to obtain final subdivision map approval to divide the one parcel into six parcels. Denial of the appeal and approval of the site development permit would allow the permittee to proceed to the building permit phase of the project to construct the project on an approximately 1.3-gross acre site.

The City Council is hearing the project approvals de novo (anew), so it is required to make the findings required in the Municipal Code to deny the tentative subdivision map and the site development permit. If the City Council makes findings to deny the tentative subdivision map, the parcel could not be subdivided and the permit which relies on the subdivision of the parcel into six parcels could not be approved. If the City Council makes the findings to approve the tentative subdivision map and makes findings to deny the permit, such City Council action would result in the subdivision of the land only without any approval of a project to be constructed on those parcels. If either the tentative subdivision map or both the tentative map and permit are denied, the project could only be reconsidered if the project applicant submits a new or revised map application and site plan. Alternatively, the applicant could choose not to pursue the project at all.

EXECUTIVE SUMMARY

The project site, located at 6805 Almaden Road, is currently used for residential purposes. Existing development on the site includes an approximately 2,154-square foot single-family residence, a detached secondary unit, multiple sheds, and a swimming pool. The Tentative Subdivision Map File No. T19-033, the Site Development Permit File No.H19-039, and the environmental exemption for the proposed project were considered and approved at the Director's Hearing on September 16, 2020.

The proposed project includes the subdivision of one parcel into six parcels and the demolition of an approximately 2,154-square foot single-family residence, a detached secondary unit, multiple sheds, and a swimming pool for the construction of six single-family homes, the removal of 13 ordinance sized trees located on the West side of Almaden Road, approximately 150 feet northerly of Corvallis Drive (6805 Almaden Road).

A timely appeal (Exhibit C) of the Tentative Subdivision Map and Site Development was filed on September 23, 2020, by Lance and Karen Danbe. The Tentative Subdivision Map and Site Development Permit appeal identifies the following grounds for appeal:

- Conformance with “Residential Neighborhood” section of the 2040 General Plan
- Layout of the proposed six-lot subdivision results in the creation of a “key lot” (Lot 6) which is inconsistent with the “pattern” of the neighborhood
- Lot 6 does not improve and/or enhance existing neighborhood conditions as it places a new two-story residence five feet from the property line resulting in loss of privacy for swimming pool and deck area
- Four design alternatives submitted by the appellant received little/no feedback from the applicant
- Request to revise the project to show a 20-foot setback for Lot 6 opposite of 1107 Corvallis Drive

The appealed Tentative Subdivision Map and Site Development Permit analysis in this memorandum outlines the project’s conformance with the General Plan designation and compliance with Municipal Code requirements. Therefore, staff recommends denial of the Tentative Subdivision Map and Site Development Permit appeal. The comments raised in the appeals do not raise any issues that support the denial of the Tentative Subdivision Map and Site Development Permit because the required findings for the approval of the proposed project can be made, and the project is consistent with the goals and policies of the General Plan, the Subdivision Ordinance (Municipal Code Title 19), and the R-1-5 Single-Family Residence Zoning District.

BACKGROUND

Appeal Hearing Body

Pursuant to Municipal Code Section 19.12.230, if an appeal is filed with respect to a tentative subdivision map, the hearing body shall be the City Council in accordance with the provisions of the Subdivision Ordinance (San Jose Municipal Code section 19.12.230) and the Subdivision Map Act (Government Code section 66452.5).

Site Location

As shown on the attached aerial map (Figure 1), the subject site is located on the west side of Almaden Road, approximately 150 feet northerly of Corvallis Dive (6805 Almaden Road). The site is adjacent to single-family residential on the north, south, and west. Almaden Road and Almaden Expressway are located east of the site.

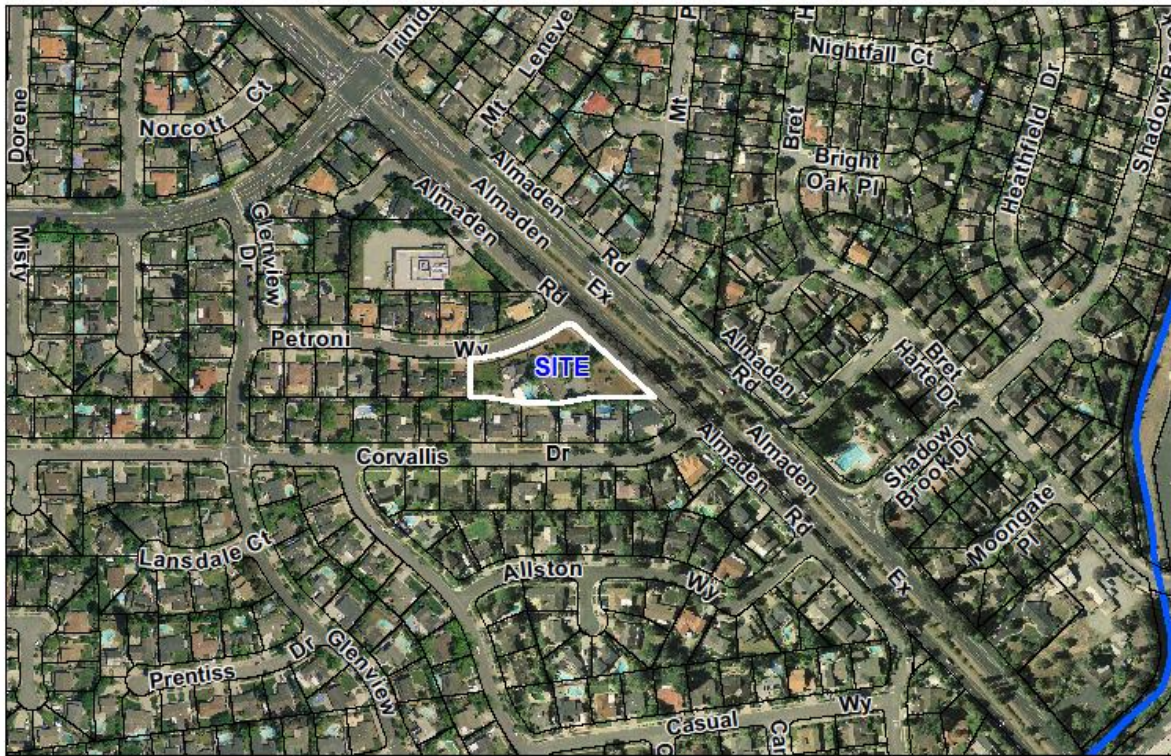


Figure 1: Aerial

Proposed Project

The subject applications were filed by John Moniz on behalf of R & J Properties on September 10, 2019, to approve a Tentative Subdivision Map to subdivide one parcel into six parcels on an approximately 1.3-gross acre site and approve a Site Development Permit to allow the demolition of an approximately 2,154-square foot single-family residence, a detached secondary unit, multiple sheds, and a swimming pool for the construction of six single-family homes and the removal of 13 ordinance sized trees.(Exhibits A & B).

Envision San José 2040 General Plan Conformance

Land Use Designation and General Plan Policies

As shown in the attached General Plan map (Figure 2), the subject site has an Envision San Jose 2040 General Plan designation of Residential Neighborhood. This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise much of its developed land. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern.

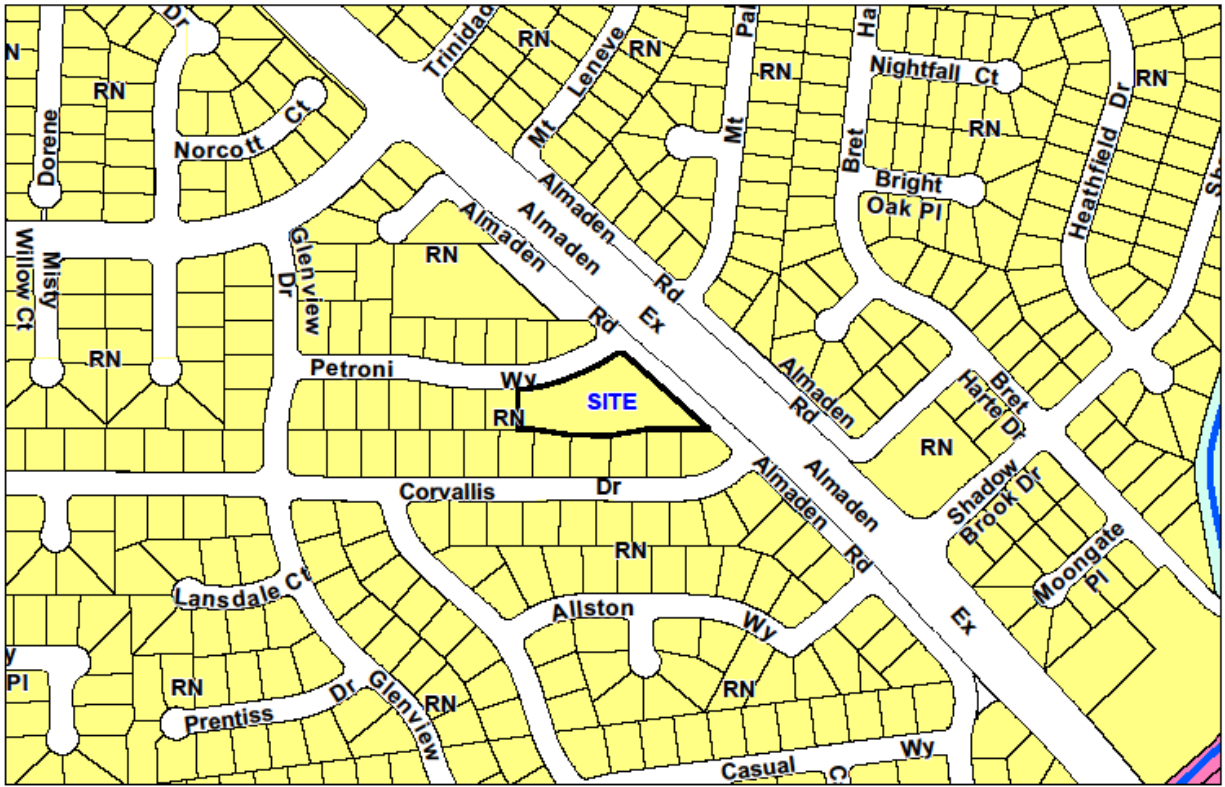


Figure 2: General Plan Map

The project conforms to the following General Plan policy:

- Land Use Policy LU-11.6: For new infill development, match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project. As an exception, for parcels already developed with more than one dwelling unit, new development may include up to the same number of dwelling units as the existing condition. The form of such new development should be compatible with and, to the degree feasible, consistent with the form of the surrounding neighborhood pattern.

Analysis: The project is consistent with the Residential Neighborhood land use designation and policies described above by providing an infill development and subdivision within an existing neighborhood for similar single-family residences. As defined by density, lot size and shape compared to other development that fronts onto the same public street, the nearby development maintains consistency with the area. The nearby development has an average lot frontage of approximately 78 feet. The average lot size is approximately 9,032 square feet. Combined with the proposed project, the average width of lots for the neighborhood would be approximately 76 feet with an average lot size of 9,230 square feet. Additionally, the average density of the existing

neighborhood is 4.87 dwelling units per acre (DU/AC). Combined with the proposed project, the average density is approximately 4.7 DU/AC.

As shown on the development plan set, all units from the project share architectural characteristics and similar materials to the existing development and the project provides similar second-story stepbacks as exhibited with nearby existing development. Additionally, all units are below 45 percent floor area ratio (FAR) which is also consistent with the surrounding development. Therefore, the project is consistent with the General Plan designation of Residential Neighborhood and Land Use Policy LU-11.6.

Zoning Ordinance Conformance

As shown in the Zoning District map (Figure 3), The subject site is located in the R-1-5 Single-Family Residence Zoning District. This single-family residence district is primarily reserved land for the construction, use and occupancy of single-family subdivisions.

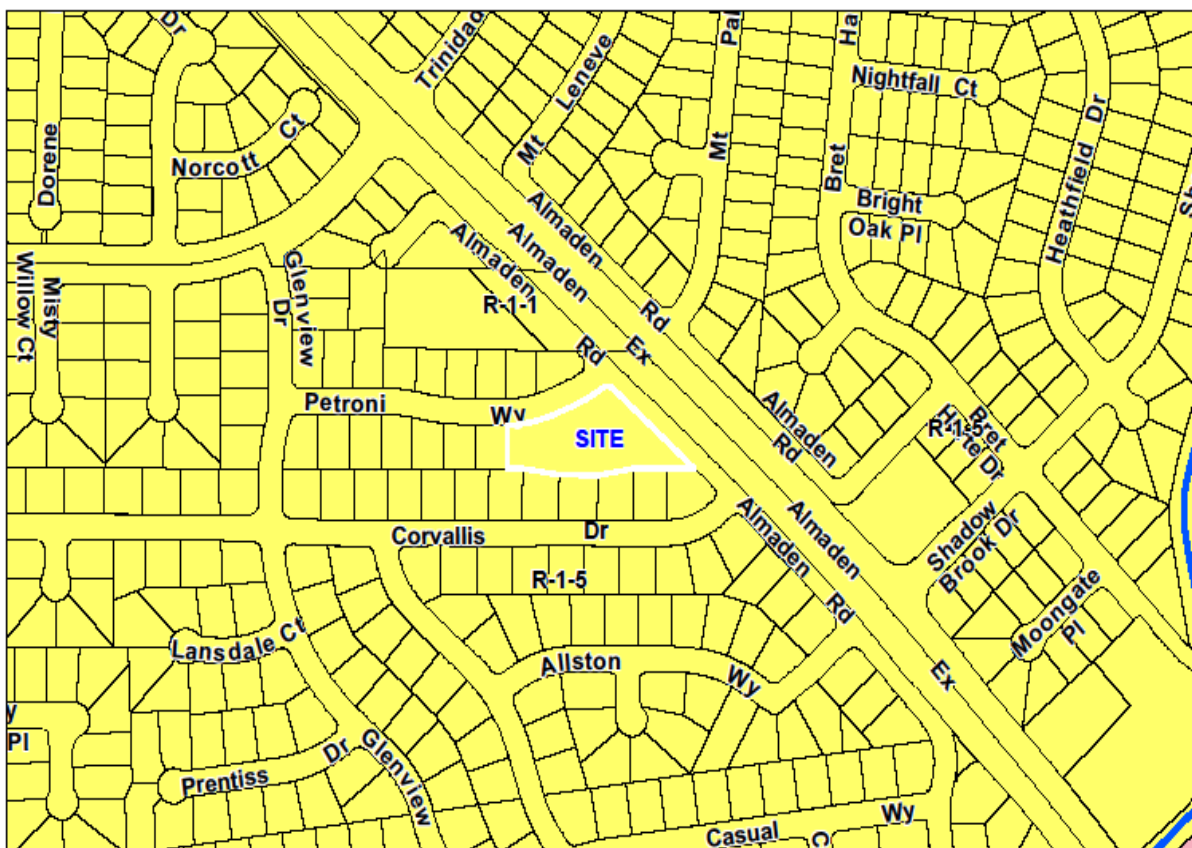


Figure 3: Zoning District Map

The project is subject to the following regulations of the Zoning Ordinance:

1. Minimum lot area (square feet or acreage): 8,000 square feet
 - a. The project includes six lots that are greater than 8,000 square feet. The size of the lots range from approximately 8,020 square feet up to 10,200 square feet. Therefore, the project includes six lots that are greater than 8,000 square feet.
2. Heights and Setbacks:

Minimum Front Setback	Minimum Side Interior Setback	Minimum Side Corner Setback	Minimum Rear Setback	Maximum Height
20 feet	5 feet	12.5 feet	20 feet	35 feet

- a. Heights: The maximum allowed height is 35 feet. The project includes varying height with the maximum heights of all homes at approximately 28 feet.
 - b. Setbacks: The project includes the following setbacks for each lot.

Lot Number	Front Setback	Side Setback	Rear Setback
1	Approx. 24 feet	At least 6.5 feet	Approx. 26.5 feet
2	Approx. 24.5 feet	At least 5.5 feet	Approx. 43 feet
3	Approx. 25 feet	At least 5.5 feet	Approx. 62.5 feet
4	Approx. 22.5 feet	Interior Setback (Approx. 5 feet), Corner Setback (Approx. 29 feet)	20 feet
5	Approx. 23.5 feet	Approx. 5 feet	Approx. 48 feet
6	Approx. 20 feet	Approx. 5 feet	Approx. 85.5 feet

- c. Vehicle Parking: Single family dwelling units are required to provide two covered vehicle parking space per unit. The project provides a two-vehicle garage for each unit.

Subdivision Map Act Findings

In accordance with Section 19.12.120 of the San Jose Municipal Code and Section 66474 of the Government Code of the State of California, the Director of Planning of the City of San José, in

consideration of the proposed subdivision shown on the Tentative Map with the imposed conditions, shall deny approval of a tentative map, if it makes any of the following findings:

- i. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- ii. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- iii. That the site is not physically suitable for the type of development.
- iv. That the site is not physically suitable for the proposed density of development.
- v. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- vi. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- vii. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Analysis: Based on review of the subdivision, the City Council does not make any such findings to deny the approval for the subject subdivision. The pattern of development is consistent with the site's Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Residential Neighborhood. The site is already developed with a residential type use and does not have habitat sufficient for fish or wildlife use; the subdivision of lots for residential uses will not cause serious health problems. The subdivision is physically suitable to enable the project to conform with all of the required setbacks, building height regulations, site and building design guidelines, and parking requirements.

Site Development Permit Findings

Section 20.100.630 of the San José Municipal Code establishes required findings for issuance of a Site Development Permit, which findings are made for the Project based on the above-state findings related to General Plan, Zoning and CEQA conformance and for the reasons state below, and subject to the conditions set forth in this permit.

The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and area development policies; and

1. Land Use Policy LU-11.6: For new infill development, match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project. As an exception, for parcels already developed with more than one dwelling unit, new development may include up to the same number of dwelling units as the existing condition. The form of such new development should be compatible with and, to the degree feasible, consistent with the form of the surrounding neighborhood pattern.

Analysis: The project is consistent with the Residential Neighborhood land use designation and General Plan policies by providing an infill development and subdivision within an existing neighborhood for similar single-family residences. As defined by density, lot size and shape compared to other development that fronts onto the same public street, the nearby development maintains consistency with the area. The nearby development has an average lot frontage of approximately 78 feet. The average lot size is approximately 9,032 square feet. Combined with the proposed project, the average width of the lot for the nearby development would be approximately 76 feet with an average lot size of 9,230 square feet. Additionally, the average density of the existing neighborhood is 4.87 DU/AC; combined with the proposed project, the average density remains similar, at approximately 4.7 DU/AC.

As shown on the plan set (Exhibit B), all units from the project share architectural characteristics and similar materials to the existing development and the project provides similar second-story stepbacks as exhibited with nearby existing development as well. Additionally, all units are below 45 percent floor area ratio (FAR) which is also consistent with the surrounding development. Therefore, the project is consistent with the General Plan designation of Residential Neighborhood.

2. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: The proposed project includes six single-family residences on six lots that are greater than 8,000 square feet. Each structure has a maximum height of approximately 28 feet which is well within the maximum height requirement of 35 feet. Additionally, each unit contains the required two-vehicle garage and maintains all minimum setback requirements. Therefore, the project is consistent with the Zoning Code and the applicable San Jose Municipal Code requirements.

3. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The proposed project is consistent with the Public Noticing and Public Outreach City Council Policies. On-site signs describing the proposed project were confirmed to be posted on the project site on February 18, 2020. The project was noticed for the Director Hearing to a radius of 500 feet, consistent with the Public Outreach City Council Policy.

4. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The proposed project is oriented to front along Petroni Way and Almaden Road and have similar front setbacks along each street. There are three different unit types that

are used interchangeably throughout the project. Each type of unit includes a two-story single-family residence with similar height, setbacks, materials, and color. Therefore, the buildings are mutually compatible and aesthetically harmonious with the uses and development proposed on the site.

5. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The proposed project is oriented to front along Petroni Way and Almaden Road and has similar front setbacks to the adjacent neighborhood that shares a public street. The existing neighborhood includes two-story residences, and the project shares similar characteristics in the form of the buildings and in the materials of the buildings. Therefore, the project is compatible with and aesthetically harmonious with the character of the neighborhood.

6. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: An exemption pursuant to CEQA Guidelines 15332 for Infill Development Projects was prepared to reflect an independent judgment and analysis of the project. Even if insignificant for the purpose of CEQA, the project would be required to implement all conditions of approval in the proposed permit resolution related to minimizing temporary construction effects. Therefore, the temporary construction of the project will not have an unacceptable negative effect on adjacent property or properties because of City limitations on construction hours, and additional best management practices, that are required to be implemented as part of this project. Furthermore, the proposed project is within an urbanized area and the addition of six single-family homes is consistent with the immediate surroundings. The operation of the project is single-family residential and therefore would not be a generating source for excessive noise or odor. The project has been evaluated to be in compliance with the City's stormwater requirements and provides on-site bio-treatment. Therefore, the project would not have an unacceptable negative affect on adjacent properties.

7. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: The project includes landscaping to beautify the public right-of-way with adequate pedestrian and vehicle access, fencing to conceal outdoor activities, and tree planting around the entire site, sufficient to maintain the appearance of the neighborhood.

8. Traffic access, pedestrian access and parking are adequate.

Analysis: The proposed project contains parking consistent with the Zoning Ordinance along with adequate pedestrian and vehicular access into each lot. Pedestrians can easily access each building. The project was reviewed by the Department of Public Works, the Department of Transportation and Fire Department and was found to be consistent with City policies.

Demolition Findings

Section 20.80.460 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan and Zoning conformance, CEQA clearance, and subject to the conditions set forth in the Permit resolution. Pursuant to Section 20.80.460, the demolition permit is evaluated by the City Council on appeal in relevant part as follows:

“...[The] City Council shall determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation. In making such a determination, the following shall be considered:

1. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight, or dangerous condition;
2. The failure to approve the permit would jeopardize public health, safety or welfare;
3. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
4. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
5. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
6. Rehabilitation or reuse of the existing building would not be feasible; and
7. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.”

Analysis: The benefits of allowing the demolition of the existing structures and facilities on the parcel outweigh the impacts of removal because the demolition of the existing 2,154 square foot single-family residence, detached secondary unit, multiple sheds, and a swimming pool would facilitate the construction of six single family residences that would be compatible with the surrounding neighborhood and provide needed housing. Therefore, the project maintains and increases the supply of housing stock within the City. The structures onsite were built in the 1950s however the project was reviewed for historic integrity and it was determined to not be historically significant due to alterations and redevelopment of the land from orchards to a single-family neighborhood. Additionally, the site is not listed on the City’s Historic Resources

Inventory. The existing footprint is situated such that it would prohibit construction of the six new residences on the site.

Tree Removal Permit Findings

Section 13.32.100 of the San José Municipal Code includes three potential findings for tree removal, one of which is sufficient to support the issuance of a Live Tree Removal Permit, as follows:

“That the location of the trees with respect to the proposed improvement unreasonably restrict the economic development of the parcel in question” (Section 13.32.100.A.2).

Analysis: The trees proposed for removal are located within the new building and landscaping areas. The project involves the removal of 13 ordinance-size trees and 15 non-ordinance size trees. The trees proposed to be removed are located within the buildings and structures or within close proximity. Pursuant to the standard Tree Replacement Ratios, the project is required to provide 41 replacement trees at the size of 24-inch box; the project provides a total of 48 replacement trees on-site at the size of 24-inch box.

Environmental Review

Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is 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 15332 Infill Development Projects (Class 32) consists of projects characterized as in-fill development meeting the conditions described as follows: (a) The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations; (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) The project site has no value as habitat for endangered, rare, or threatened species; (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) All required utilities and public service can adequately serve the site.

The proposed project is consistent with the general plan and zoning designations and regulations. The proposed project is within an urbanized area, on a site that is less than five acres, and in an established residential area with adequate sewer, water, and electricity service. The proposed project is for the construction of six single-family detached residential units which fits within the BAAQMD screening criteria of the policy of small projects. As a single-family residence development within an existing residential development, the anticipated trips and operation of this project would not result in a permanent increase in exterior noise that would conflict with the General Plan policies. A Phase I and Phase II Environmental Site Assessment (ESA) was prepared by Almar Environmental on July 17, 2020, due to previous agricultural and other uses related to hazardous materials. Based on the analysis, a gas pump was removed from the property prior to this proposed project and a closure permit with the County of Santa Clara was

completed in 2016. Based on the findings in the Phase I and II ESA, in March 2016, soil samples were taken from a sub-surface work area that was four feet wide, ten feet long, and four feet deep. Results from soil testing showed elevated concentrations of total petroleum hydrocarbons as motor oil and diesel, hexavalent chromium, and lead. Over-excavation of the work area was conducted in May 2016. An underground storage tank system closure permit application was filed in 2016 with the County of Santa Clara Department of Environmental Health (SCCDEH) and was approved. Prior to the issuance of any demolition, grading or building permits, the project applicant shall be required to seek oversight and confirmation from the SCCDEH and to complete a Site Management Plan (SMP). The project would implement all construction standard permit conditions during all ground-disturbance phases to minimize construction effects in noise, dust and run-offs. For these reasons, the proposed project is categorically exempt pursuant to CEQA Guidelines Section 15332 (Exhibit E).

Director Hearing

On September 16, 2020, the CEQA exemption, the proposed Tentative Subdivision Map, and Site Development Permit were considered by the Hearing Officer at the Planning Directors Hearing. Five residents in the neighborhood spoke against project approvals, citing concerns regarding the project, including:

- Density of six proposed lots
- The removal of 13 ordinance-size trees and one cactus
- Mitigation and plan for gas pump removal and chemical removal
- Removal and construction plan in terms of noise, dust and debris
- Consistency with the prevailing character of the neighborhood
- Consistency of Lot 6 side setback with neighborhood rear setback pattern
- Loss of privacy due to Lot 6 configuration
- Applicant's response to the four alternatives brought forth by a neighbor
- Traffic generation and the feel of the community

In response to the provided testimony, staff noted that any tree removal would need to be replaced by the City's standard tree replacement ratio and that no trees are to be removed outside of the property boundary. The project would be required to plant 41 trees and the project would provide 48 trees. Staff also noted that a Phase I Environmental Site Assessment was submitted due to previous agricultural and other uses related to hazardous materials. Based on the analysis, a gas pump was removed from the property prior to this proposed project and a closure permit with the County of Santa Clara was completed in 2016. Any additional excavation of the site would require compliance with appropriate oversight agency's protocols and requirements. The permit includes a condition that would require the applicant to enroll in the County of Santa Clara Department of Environmental Health Clean Up program, complete all necessary requirements, and provide copies of documentation to the City prior to grading permits. Additional conditions of approval were included to ensure compliance with standard construction and noise requirements. Staff noted that the density for the neighborhood does not increase and clarified that the proposed project is consistent with the development standards for the zoning district and that the existing rear setback would not apply to a site's side setback.

The project applicant expressed having considered the alternative plan proposals but desired to proceed with the application as proposed, as they agreed with staff's finding of conformance to the City's Municipal Code and General Plan.

The Hearing Officer clarified with staff on the measures taken to comply with the development standards. Staff identified the applicant's efforts to address concerns by moving the residence on Lot 6 further away from the setback requirement, adjusting windows, and increased tree planting along the property line to enhance privacy.

After consideration of the testimony, the Hearing Officer approved the Tentative Subdivision Map, the Site Development Permit, and the exemption. In the approval of the permits and exemption, the Hearing Officer noted the applicant's good faith effort to go beyond the requirements of the development standards in relation to the neighbor's concern.

Appeals

The timely appeals of the Tentative Subdivision Map and the Site Development Permit (Exhibit C), were filed on September 23, 2020, by Lance and Karen Danbe in accordance with San José Municipal Code Sections 20.100.230 and 20.100.240. The appeal applications do not include an appeal of the CEQA clearance. The Site Development Permit and Tentative Map appeals identified the following summarized concerns:

- Conformance with "Residential Neighborhood" section of the 2040 General Plan
- Layout of the proposed six-lot subdivision results in the creation of a "key lot" (Lot 6) which is inconsistent with the "pattern" of the neighborhood
- Lot 6 does not improve and/or enhance existing neighborhood conditions as it places a new two-story residence five feet from the property line resulting in loss of privacy for swimming pool and deck area
- Four design alternatives submitted by the appellant received little/no feedback from the applicant
- Request to revise the project to show a 20-foot setback for Lot 6 opposite of 1107 Corvallis Drive.

Staff was notified by the Appellant and the Applicant, after the appeal period window to withdraw an appeal had been closed, that a possible resolution has been found. However, staff has not received any further information from the Applicant and Appellant, so no change to the tentative subdivision map or the permit has been considered or proposed by staff.

ANALYSIS

Response to the Tentative Subdivision Map and Site Development Appeals

Staff's responses to the Appellants' grounds for the appeals are analyzed below, provided after each point presented by the Appellant as shown in the appeal letter (Exhibit C), item by item.

Appellant Item 1:

"Please accept this appeal to the approval of the subject 6-Lot Subdivision Application and Site Development Permit which was 'heard' at the September 16, 2020 meeting."

Staff Response 1: This comment is to reiterate that the appeal is submitted based on the approval of the Site Development Permit and the Tentative Map that was presented and discussed at the Planning Directors Hearing on September 16, 2020. No specific response is required here, and additional comments and responses are below.

Appellant Item 2:

"The basis for the appeal is as follows: The layout of the proposed 6-lot subdivision results in the creation of a 'key lot' – Lot 6, which is inconsistent with the "pattern" of the neighborhood. By virtue of this lot's 90° oriented rotation, the rear setback of Lot 6 does not abut to the appellant's rear setback of 20'. The 20' to 20' rear setback pattern exists throughout the immediate neighborhood block bounded by Petroni Way and Corvallis Drive from Glenview Drive to Almaden Road. There are 19 existing homes with this setback pattern, plus three of the applicant's new lots. There is only one exception which occurs opposite the appellant's lot at 1107 Corvallis Way. Furthermore, this is not a minor inconsistency as the 'key lot' allows a minimal 5' side setback for the newly proposed two-story residence."

Staff Response 2: Staff understands this comment to say that the layout of the proposed six-lot subdivision results in the creation of a "key lot" (Lot 6), which is inconsistent with the pattern of the neighborhood. Section 20.200.580 defines a key lot to be the first interior lot abutting the rear of a corner lot. The front lot line of the key lot is a continuation of the side lot line of the corner lot, excluding any lot which is separated from a corner lot by an alley.

In order to maintain access to a public facing street, Lot 6 fronts onto Almaden Road and thereby shares a property line with lots that front onto Corvallis Way, which creates a side yard adjacent to a rear yard. This type of scenario is typically found at corners and can also be found approximately 300 feet away from the northern side of the site, at the intersection of Petroni Way and Almaden Road, where a building is situated behind three homes with a less than 20 feet

setback. Therefore, this project is consistent with other developments nearby, and creating a key lot would facilitate similar lot sizes and patterns.

If Lot 6 were to front onto Petroni Way, the project would involve long and narrow lots that would be inconsistent with the existing neighborhood lots in their size, shape, and width; such lots are not found in the neighborhood and would therefore not be consistent with the existing neighborhood pattern.

Appellant Item 3:

“The Envision San Jose – 2040 General Plan is explicit in the intent and description of what constitutes conformance. The approval of this subdivision design and in particular Lot 6 does not ‘improve and/or enhance existing neighborhood conditions’[sic]. To the contrary, it places a new two-story residence of 27’ height literally towering over the appellant’s existing swimming pool with a horizontal separation of merely 5’ from property line. The result is a complete lot of privacy for the swimming pool and deck area.”

Staff Response 3: The project improves existing neighborhood conditions by providing an infill subdivision that would create lots similar in form, size, and shape to the existing neighborhood that fronts onto the same public street. These proposed homes share similar characteristics by featuring similar material, architectural elements, and maintaining two stories in height. The plan set for the Site Development Permit shows an approximately 6.5 feet side setback, adjusted elevations with windows that are higher and smaller, and landscaping with trees to enhance the privacy for the swimming pool and deck area. Additionally, the setback conforms to the development standards as required by the R-1-5 Single-Family Residence Zoning District. This district is a conforming district to the Residential Neighborhood General Plan.

Appellant Item 4:

“No less than four code compliant design alternatives have been submitted by the appellant to the City and applicant with little or no feedback from the applicant. This unfortunate lack of consideration has resulted in the need to appeal these applications.”

Staff Response 4: Staff has received drafts of these alternatives by the Appellants, which did not meet the details required of a typical submittal. The drafts were missing information and did not provide enough information for consideration of all the lots. The Appellants have no standing or property interest in the subject parcel and project, so submittals by the Appellants cannot be considered unless agreed to and submitted by the Applicant. The Applicant has not agreed to revise the project with any of the Appellants’ alternatives. Any project alternatives would need to be officially submitted by the Applicant and provide details on the entire project to ensure these

design alternatives presented by the Appellant are consistent with the San Jose Municipal Code and the General Plan.

Appellant Item 5:

“The appellant respectfully requests that the project be revised pursuant to the email and exhibits that were submitted by TS/Civil Engineering to the applicant and City dated 09-15-20 (attached here). The result is the proper pattern of a 20' setback for the new residence on Lot 6 opposite 1107 Corvallis Drive, the appellant's property, ‘to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character form and pattern’ as described in the Residential Neighborhood section of the Envision San Jose - 2040 General Plan.”

Staff Response 5: See Staff Response 4 above, incorporated into this Response 5. The exhibits mentioned above are Exhibits C & D. Exhibit D attached is a partial site plan with redline corrections. The Applicant would need to provide an alternative plan set of the complete project for staff to properly evaluate conformance to the General Plan and the R-1-5 Single-Family Residence Zoning District. The Applicant has not done so.

CONCLUSION

With respect to the Appellants’ comments, the Tentative Subdivision Map and the Site Development Permit conform with the Tentative Map and Site Development Permit findings set forth in San Jose Municipal Code Title 19 and Section 66474 of the Government Code, and San José Municipal Code Section 20.100.630. Staff recommends that the City Council consider the CEQA exemption for the project, deny the appeals, and uphold the Planning Director’s decision by adopting the resolutions approving the subject Tentative Subdivision Map and Site Development Permit. The subject site has a Residential Neighborhood General Plan land use designation and is in an R-1-5 Single-Family Residence Zoning District; the subject project conforms to the General Plan, Municipal Code and applicable General Plan polices.

While staff acknowledges the comments and concerns from the public regarding the neighborhood pattern and setback dimensions; the decision to approve or deny a Tentative Subdivision Map and Site Development Permit must be based on the merits of the proposed project and its conformance to the General Plan, Zoning Ordinance, Subdivision Ordinance, and applicable state laws as expressed in the required findings for approval. The proposed project conforms to all these requirements.

EVALUATION AND FOLLOW-UP

If the City Council approves the Tentative Subdivision Map and Site Development Permit, the applicant would need to obtain a Final Map to subdivide the one parcel into six parcels and obtain demolition, grading, and building permit(s) for the project to allow the demolition of an approximately 2,154-square foot single-family residence, a detached secondary unit, multiple sheds, and a swimming pool for the construction of six single-family homes, and the removal of 13 ordinance sized trees; on an approximately 1.3-gross acre site located on the West side of Almaden Road, approximately 150 feet northerly of Corvallis Drive (6805 Almaden Road). The project applicant would be required to adhere to the project's conditions of approval.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals.

POLICY ALTERNATIVES

The Council has two distinct decisions to make on the Tentative Map and Site Development Permit respectively:

1. For the Tentative Map appeal, the Council may:
 - a. Make the required findings specified above in accordance with Government Code section 66474 and Municipal Code section 19.12.130 to approve the Tentative Subdivision Map; or
 - b. Make findings for denial of the Tentative Map in accordance with Government Code section 66474 and San Jose Municipal Code sections 19.12.130 and/or 19.12.220.

If the resolution approving the Tentative Subdivision Map is not adopted by the City Council, the Site Development Permit cannot be approved because the subject parcel cannot be divided into the six separate parcels required for the development of the six homes proposed in the Site Development permit.

2. Following approval of the Tentative Subdivision Map which conditionally approves the division of the single existing parcel into six parcels, the City Council may:
 - a. Make the required findings specified above in accordance with Municipal Code Chapter 20.100.630 to approve the Site Development Permit in accordance with; or
 - b. Make findings for denial of the Site Development Permit in accordance with Municipal Code Chapter 20.100.630.

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Staff recommends that the City Council deny the appeals of both the Tentative Subdivision Map and the Site Development Permit and approve the attached resolutions consistent with the Planning Director's action on September 16, 2020.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy, under which the project is considered a standard development proposal. Following City Council Policy 6-30, the applicant confirmed with staff on February 18, 2020 that the on-site sign was posted to inform the neighborhood of the proposed project. Comments received during the project review are further discussed above in the Director Hearing section and provided as an attachment found in Exhibit H.

Staff's contact information has been available on the hearing notices, and the staff report is posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is authorized by the Municipal Code with this action; the project was considered at a Planning Directors Hearing on September 16, 2020.

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CEQA

This project was found to be exempt pursuant to CEQA Guidelines 15332 for Infill Development Projects (Exhibit E). The appellants have not appealed the CEQA clearance for this project.

/s/

ROSALYNN HUGHEY, Director
Planning, Building and Code Enforcement

For questions, please contact Deputy Director Robert Manford, at (408) 535-7900.

Attachments: Exhibit A: Appealed Tentative Map T19-033 and Plan Set
Exhibit B: Appealed Site Development Permit H19-039 and Plan Set
Exhibit C: Permit Appeal
Exhibit D: Alternative Site Plan by Appellant
Exhibit E: CEQA Exemption
Exhibit F: Proposed Site Development Permit Resolution
Exhibit G: Proposed Tentative Map Resolution
Exhibit H: Public Comments