

DATE ISSUED: July 27, 2005 REPORT NO. 05-166

ATTENTION: Honorable Mayor and City Council
Docket of August 2, 2005

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION FOR THE
RASHID RESIDENCE, PROJECT NO. 5179, Council District 1

REFERENCE: Planning Commission Report No. PC-05-058

OWNER/
APPLICANT: Yusef and Janice Rashid

APPELLANT: Gary McMullen

SUMMARY

Issues - Should the City Council AFFIRM the Hearing Officer's Environmental Determination for the Negative Declaration No. 5179, prepared for the Rashid Residence, Project No. 5179?

Manager's Recommendation - Deny the appeal and uphold the Environmental Determination.

Environmental Review – The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) has prepared and completed a Negative Declaration No. 5179.

Fiscal Impact Statement: None with this action. All cost associated with the processing of this project are paid by the applicant.

Code Enforcement Impact – None with this action.

Housing Impact Statement – None with this action.

BACKGROUND

The proposed project for which Negative Declaration No. 5179 has been prepared and previously Certified by the Hearing Officer on November 10, 2004, is the split of an existing 29,577 square-foot lot and construction of a new two-story single family residence. The proposed residence is to total 3,796 square-feet of gross floor area, to be located on the newly created parcel two, a 14,986 square-foot property. The existing residence will remain on parcel one, a 14,591 square foot lot. The project site is located at 7194 La Jolla Scenic Drive South, within the SF Zone of the La Jolla Shores Planned District, Coastal Overlay Zone (non-appealable), Coastal Height Limitation Overlay Zone, and within the La Jolla Community Planning Area.

The decision of the Hearing Officer to approve the project was appealed to the Planning Commission. On May 12, 2005, the Planning Commission voted 3 to 3 on a motion to approve the appeal and deny the project. The 3 to 3 vote resulted in no action by the Planning Commission, which meant that the Hearing Officer's previous certification of the environmental document and approval of the project stood.

This appeal is before the City Council because of an amendment to the California Environmental Quality Act (CEQA). Effective January 1, 2003, Section 21151 (c) CEQA has been amended as follows: *If a non-elected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or a mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any.*

Pursuant to this amended legislation, Mr. Gary McMullen filed an appeal (Attachment No. 2) of the Hearing Officer's adoption of Negative Declaration for the Rashid Residence project. This appeal applies only to the environmental determination.

DISCUSSION

The appellant, on the appeal form, states that an Environmental Impact Report must be prepared because the Planning Commission adopted a new interpretation of Land Use Development Codes in La Jolla that will result in substantial increases in density throughout the community. The following are the relevant issue(s) raised by the appellant and staff response(s):

Planning Commission adopted new interpretation of Land Use Development Codes in La Jolla – The Planning Commission's tie vote resulted in no action, which meant that the Hearing Officer's approval of the project and certification of the environmental document stands. Neither the Planning Commission nor the Hearing Officer "adopted" a new interpretation or an amendment to the Land Development Code in their consideration of the subject project. Staff's analysis of the proposed lot split concluded that the project complied with the Dwelling Unit Density Regulation of the Planned District Ordinance, that their interpretation of that section of the Planned District Ordinance is correct and consistent with past project reviews, and that there

would not be any adverse impact due to increased density of one dwelling unit. Staff determined that an Environmental Impact Report was not required.

No Minimum Lot Size – Throughout the City’s Land Development Code almost all of the zones have a stated minimum lot size (e.g. 5,000 square feet minimum or 10,000 square feet minimum). However, in the La Jolla Shores Planned District there is no stated minimum lot size. It is measured or controlled through Municipal Code Section 103.0304.1(h) – Dwelling Unit Density Regulation, of the La Jolla Planned District. Debate over the interpretation of this section was at the center of the discussion during the Planning Commission appeal hearing. The Dwelling Unit Density Regulation is not a new section of the La Jolla Planned District Ordinance. Staff concluded that the proposed project complied with the Dwelling Unit Density Regulation and that there would not be any adverse impact due to increased density. The appeal does not state specifically how the environmental determination before the Planning Commission/Hearing Officer was in error or inadequate.

Planning Commission failed to make the environmental determination – The Planning Commission’s tie vote resulted in no action, as was confirmed through the City Attorney’s Office. A letter from the City Attorney’s Office to the Appellant’s representative discussing the result of the vote is attached (Attachment No. 4). The no action by the Planning Commission resulting in the standing of the certification of the Negative Declaration and approval of the project by the Hearing Officer on November 10, 2004.

Staff’s analysis, to determine whether the Rashid Residence project would have a significant effect on the environment, was based on substantial evidence that included facts and documentation based on reasonable assumptions predicated upon facts. Upon completion of the Initial Study, staff determined that no significant impacts would result from the proposed development, no mitigation would be required, and a Negative Declaration was prepared in accordance with CEQA.

CONCLUSION

Staff has investigated the issues raised by the appellant and determined that no substantial evidence of unmitigated impacts exists. Staff believes that the Negative Declaration prepared for the project is in conformance with the California Environmental Quality Act (CEQA). Staff therefore, recommends affirming the Hearing Officer’s certification of Negative Declaration No. 5179, under Section 21080 (c) of the State CEQA Guidelines.

ALTERNATIVE

Grant the appeal, set aside the environmental determination, and remand the matter to the lower decision maker for reconsideration, with any direction or instruction the City Council deems appropriate (Negative Declaration, Project No. 5179).

Respectfully submitted,

Gary W. Halbert
Development Services Director

Approved: Ellen Oppenheim
Deputy City Manager

Project Management GRG

Note: The attachments are not available in electronic format. A copy for review is available in the Office of the City Clerk.

Attachments:

1. Project Location Map
2. Full Copy of Appeal
3. Ownership Disclosure Statement
4. Memo from City Attorney's Office

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