



City Council Staff Report

From: City Manager

Report Type: ACTION ITEMS

Lead Department: Planning and Development Services

Meeting Date: May 1, 2023

Report #:2303-1080

TITLE

PUBLIC HEARING / QUASI-JUDICIAL. 2147 Yale Street [22PLN-00374]: Denial of a Request for a Preliminary Parcel Map with Exceptions to Divide an Existing 5,770 Square Foot Parcel Into two Approximately 2,885 Square Foot Lots. Environmental Assessment: Exempt Pursuant to CEQA Guidelines 15270 and 15301.

RECOMMENDATION

It is recommended the City Council take the following action(s):

1. Deny the proposed project based on findings in Attachment C.

EXECUTIVE SUMMARY

The applicant requests approval of a preliminary parcel map with exceptions to subdivide one conforming property into two substandard lots. The property is zoned Two-Unit Multi-Family Residential with a Neighborhood Preservation Combining District, or RMD (NP). The existing development was constructed in 2010 with two detached single family homes in accordance with local zoning standards. The zoning regulations for this district permit a two-family development under single ownership. Based on this provision, the site cannot be converted into a condominium subdivision or the individual units sold separately.

The current owners hold the property as a tenancy in common. This means the site is under shared ownership but restrictive agreements delineate which parties have access to each of the homes. Tenancy in common is an atypical ownership structure in Palo Alto but very common in San Francisco and some other jurisdictions.

The applicant reports financing challenges associated with this type of ownership model and therefore seeks approval to split the property with one home on each lot that can be sold independently. Further, the applicant asserts the underlying lot configuration or tract map for this neighborhood created in the year 1891 shows there are two lots for this site and that the City's approval of the project in 2007 (under address 586 College Avenue) was predicated on an error that the owner seeks to remedy with the subject application. Staff's review of the administrative record finds the applicant's reliance on the underlying tract map as justification

to support the request is not valid based on the provisions of the state Subdivision Map Act and is not supported by California Supreme Court case law. Moreover, staff does not find any City errors associated with the project approved in 2007.

BACKGROUND

The applicant proposes to subdivide an existing 5,770 square foot lot with two dwelling units into two 2,885 square foot lots with one dwelling unit on each lot. The existing lot is zoned RMD (NP) which is intended to minimize incentives to replace existing single-family dwellings, maintain existing neighborhood character and increase the variety of housing opportunities available within the community. The existing lot and uses conform to the City's standards for minimum lot size, development standards and permitted uses. The proposed new lots would not comply with the City's standards for minimum lot width, depth or area. Additionally, the new lot lines would render the existing buildings nonconforming with respect to floor area (due to the smaller lot size) and setbacks (due to the changed distance of the existing structures to new property lines).

It is staff's understanding that one of the reasons the applicant is requesting this change is to address financial challenges experienced by the owners of the property, specifically transactional and financing. While the underlying zoning for the subject property permits two residential units, these units must remain in common ownership and cannot be sold individually. The ownership structure for the subject property is one that is held in a tenancy in common. A tenancy in common is a legal form of ownership where two or more individuals have an undivided ownership interest in the property. Ownership interests may be transferred or sold without the consent of the other tenant in common. The City has no role in the formation of a tenancy in common and cannot prohibit this ownership structure. The City can and does regulate conversions of three or more rental units on a lot to ownership housing, but that regulatory framework is not relevant in this instance.

Tenancy in common is not an ownership structure typically seen in Palo Alto but it does exist in San Francisco and elsewhere. Given the infrequency of tenancy in common in Palo Alto, the applicant reports there is only one lender willing to provide financing options for this ownership model, which impacts lending costs.

Another reason the applicant requests the change is to address a reported aversion buyers have about taking on a 50% undivided interest in a property with someone unfamiliar to the buyer and associated concerns about liability exposure for the neighboring owner.

The applicant argues that the requested subdivision should be granted because it would be allowed under SB 9 if the property were zoned R-1. This property, however, is zoned RMD (NP) and not subject to state legislation or local implementation of SB 9. The Policy Implications section of the staff report expands upon this idea but for the purposes of the subject application, SB 9 is not relevant to the Council's decision on this project.

The applicant also asserts that the subdivision should be allowed due to the existence of an 1891 map showing the property divided into two parcels.

Many of the lots in College Terrace have legal descriptions based on the 1891 map of the neighborhood showing numerous 25x115 parcels. This may contribute to a perception that the 1891 map created legally recognizable lots that are 25 feet wide. However, because the 1891 map predated the first Subdivision Map Act in California, it was not subject to approval by a government entity and does not, by itself, result in legal lots. Under relevant caselaw, lots shown on an antiquated map are only recognized when the lots have been separately conveyed to a purchaser. Most lots in College Terrace have not been conveyed as separate, 25-foot wide lots and very few exist in that configuration today.

College Terrace contains 76 parcels zoned RMD (NP), not including an additional four parcels which currently contain condominiums. Of these 76, only 3 match the 1891 map's 25 x 115 original dimensions. The majority contain two or more of the lots shown on the 1891 map, and many deviate from the map's original lot lines entirely.

In the case of 2147-49 Yale, the legal description describes the lot as being comprised of Lots 1 and 2 of Block 48 in the original map. However, there is no evidence that Lot 1 or Lot 2 of Block 48 was ever conveyed as a separate parcel. Without this evidence, the applicant's argument about pre-existing lots is unfounded and cannot be relied upon to make a decision on the requested preliminary parcel map with exceptions.

The applicant further asserts, based on the two lot argument above, that the City erred in its approval of the project in 2007. Staff has reviewed the administrative record and finds no error in the processing of the prior application. The subject property complies with all applicable development standards and minimum lot size requirements. As this argument is predicated on the unsubstantiated idea that subject property consists of two lots, staff is not able to validate the applicant's claim the original permit was issued in error.

Planning and Transportation Commission

The subject project was presented to the Planning and Transportation Commission (PTC) on February 22, 2023. Staff recommended denial of the application because the proposed subdivision would result in the creation of two substandard lots and because the required findings for exceptions to minimum lot dimensions cannot be made. The PTC gave a recommendation of denial, in keeping with the staff recommendation. The PTC also gave guidance on modifying the Findings to better represent their views. The proposed findings (Attachment C) have been modified according to the PTC motion. The zoning compliance table (Attachment B) was also modified to correct minor typos.

It is worth noting the PTC had a thorough and thoughtful discussion regarding the subject findings. Commissioners understood and appreciated the challenges associated with the tenancy in common and some considered this a compelling argument when making the

required findings. However, as discussed below, the inability to make all required findings requires the project to be denied. The summary discussion of the PTC's deliberation is available online: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-2.22.2023-summary-minutes.pdf#page=2>.

ANALYSIS

A decision on a preliminary parcel map is subject to required findings. The municipal code requires the legislative body to deny the preliminary parcel map if it makes a finding that the map is inconsistent with the comprehensive plan; is not physically suitable for the type or density of the development; would likely cause substantial environmental damage or serious public health problems; or, conflict with easements.

For the most part, staff and the PTC were able to make all but one of the preliminary parcel map findings. The finding that was not supported related to the suitability of development and a determination that the reduced lot area would render both homes non-compliant with respect to the maximum floor area ratio. By subdividing the one conforming lot into two substandard lots the total lot area dedicated to each home is less which would require a smaller building. The degree of variation, however, is relatively minor, approximately three percent over the standard. In addition to the floor area ratio, the new property line boundaries would result in the existing buildings being non-conforming for setback distances between the home and adjacent property lines.

Because the subdivision proposes to create lots that do not comply with minimum lot area or lot dimensions, additional project findings, or exception findings are required. These findings require the legislative body to deny the project if it fails to make any of the following findings:

1. There are special circumstances or conditions affecting the property;
2. The exception is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
3. The granting of the exception will not be detrimental to the public welfare or injurious to other property in the territory in which the property is located; or
4. The granting of the exception will not violate the requirements, goals, policies, or spirit of the law.

The PTC was not able to make Findings 2 or 4. Specifically, the exception is not required for the preservation and enjoyment of the property as the petitioner retains the same rights and ability to sell their ownership interest in the property with or without the map. Moreover, the granting of the exception would conflict with established, objective zoning standard that regulates floor area and setbacks and rendering the now conforming homes as non-conforming with respect to those development standards.

Attachment C includes draft findings for the City Council's consideration. The applicant has also provided information in support of the required findings, which can be found in Attachment G.

Staff and the PTC recommend the City Council deny the applicant's request for the reasons provided in this report and supporting material. The City Council in its review, however, may, based on revised findings, reach a different conclusion. Staff is concerned that if the project is approved, it could set a precedent for other property owners to form tenancy in common ownership structures and subsequently seek preliminary parcel map exceptions similar to the subject application. If the Council were inclined to support the applicant's request but cannot support the required findings, the following section provides some alternatives to consider.

POLICY IMPLICATIONS

While staff believe the subject application should be denied based on the City's current regulatory standard, staff note that it does raise an important policy question regarding the role of the R-2 and RMD zone districts given the state ADU law and SB 9. While these two-family zones are intended to provide increased density over R-1 and a transition between R-1 and multifamily zones, they have arguably been surpassed by single-family zones in development potential as a result of recent state laws. The City Council may wish to consider, as part of a separate agenda item, rezoning of the RMD parcels in College Terrace to R-1, which would permit the applicants to achieve their goal. Alternatively, the Council may consider changing the zoning regulations for the R-2 or RMD districts to enable small lot subdivision and separate ownership similar to the applicant's request. This policy may encourage redevelopment of these parcels for two-unit condominium or townhouse style development that can serve as starter homes and an opportunity to build equity. A third consideration is to consider up-zoning the R-2 and RMD districts to allow somewhat more density than can be achieved today. Again, any direction the City Council may want to give staff would need to be part of a separate agenda item and balanced with other work plan assignments recently approved the City Council.

STAKEHOLDER ENGAGEMENT

Prior to the PTC meeting, one neighbor has provided written comment expressing that she does not support the subdivision application. Prior correspondence is included in Attachment D.

ENVIRONMENTAL REVIEW

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Specifically, the project is statutorily exempt from CEQA per Guideline 15270 (Projects Which Are Disapproved) and categorically exempt per Guideline 15301 (Existing Facilities).

ATTACHMENTS

Attachment A: 2147 Yale Location Map

Attachment B: Zoning Comparison Table

Attachment C: Denial Findings

Attachment D: BEP0121 College Terrace County Recorded Map

Attachment E: Project Plans

Attachment F: Neighbor Comments

Attachment G: Applicant's Memo

APPROVED BY:

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