

**PLANNING COMMISSION MINUTES OF JULY 27, 2009**

**2009-0428:** Application for Design Review to allow a 2,253 square foot first and second story addition to an existing 1,775 square foot residence located at **1197 Pomelo Court** for a total of 4,457 square feet resulting in a 41% Floor Area Ratio (APN: 202-17-019) SL

**Steve Lynch**, Senior Planner, presented the staff report. He said staff was able to make the findings and is recommending approval of the application. He said additional information received from the public after the report was completed is provided on the dais this evening.

**Comm. Klein** discussed with staff the second story addition. Staff confirmed that the second story unit would be considered an accessory living unit and would be considered under a separate permit considered at staff level. Staff said the Commission would be considering the architecture, including the style and bulk, for the second story unit and not that the unit would be an accessory living unit. Mr. Lynch said State law states that the accessory living unit is effectively allowed by right. Comm. Klein discussed with staff parking, privacy issues, and the deck structure on the second story, and asked for staff's opinion on the second story portion of the project. Staff discussed that the design guidelines encourage consistency in the neighborhood. Comm. Klein commented that it seems odd that the Commission is considering the structure only and that the deed restriction for the accessory living unit would be considered administratively and not be addressed at the same time. Comm. Klein said that he would like staff to further clarify the accessory living unit issue for the Commission at another time.

**Comm. Sulser** asked staff about the zoning and density in the neighborhood. Comm. Sulser asked about the proposed windows on the second story with staff confirming that there are options that could potentially help with privacy to the neighbors.

**Comm. McKenna** said it is difficult to consider the second story unit from just a structural standpoint commenting that a second story addition and an accessory living unit seem to be two different things. She said she understands there is State law and that the accessory living unit is allowed by right. Comm. McKenna discussed with staff the square footage allowed for an accessory living unit and the proposed square footage for the second story for this project. Staff explained that if the project is approved the applicant would then apply for building permits and that a deed restriction would need to be filed for the accessory living unit. Staff said that with an accessory living unit one of the living units would need to be owner occupied for at least 20 years. Comm. McKenna asked about parking and the entrance to the second story unit.

**Comm. Rowe** asked staff about the second story setbacks, the percentage of the house that the second story would be, and parking.

**Chair Chang opened the public hearing.**

**Jeff and Sheryl Boone**, applicants, said they have been working on the plans for their home for a long time. Mr. Boone discussed a letter he provided as supplemental information addressing the solar impact of the second story and what they have done to try to minimize solar impact to neighbors. He discussed the location of the deck on the second story including windows and said they are trying to maximize the view of their yard and pool, and have tried to minimize their view into other yards. Ms. Boone added that she is planning to use the second story as her home office and they have tried to place the windows and doors towards the pool side. She said there are two windows on the second story that face the neighbors, one over a sink, and the other in a bedroom that is needed for egress. Mr. Boone discussed how they have tried to design a home that would fit in with the neighborhood. Mr. Boone referred to Attachment C and discussed what the proposed home might look like from some of the neighbors' yards and how landscaping could be used for privacy.

**Comm. Klein** thanked the applicants for the supplemental information regarding the second story layout. Comm. Klein asked the applicant about the size and orientation of the deck, said that landscaping could help with privacy, and commented that this is an odd shaped lot.

**Comm. Rowe** asked the applicant about the deck, and why the steps are not closer to the house, with the applicant explaining that it would block the view for the master bedroom. Comm. Rowe discussed with the applicant about planting trees for green screening on their own property.

**Phil Brennan**, a Sunnyvale resident, spoke in support of the project and said he thinks this addition will add to the property values of homes in the neighborhood.

**Craig Uyeda**, a Sunnyvale resident, discussed his concerns with the size of the addition in comparison with other homes in the neighborhood. He said the plans offer no privacy to him as a neighbor due to windows, the deck and the staircase that would overlook his yard. He referred to the Sunnyvale Design Guidelines and discussed how he thinks that the proposed design does not meet the guidelines, and why he thinks the proposed features are not consistent with the neighborhood. Mr. Uyeda said the timing of this project is unfortunate as his family has recently moved in and they have not even had a chance to meet the Boones when they had to start preparing for tonight's public hearing. He said his concerns are nothing personal towards the Boones and his family's desire is to be a positive part of this neighborhood.

**Jennifer Uyeda**, a Sunnyvale neighbor and wife of Craig, explained that they recently moved into their neighborhood and that privacy was one of their main concerns. She

said when they found out about the proposed addition the applicant's were out of town so they came to City Hall to review the plans. She said they were disappointed that their privacy was going to be affected, and they did not want to meet their new neighbors this way as they want to be good neighbors to the Boones. She said they value their privacy and hope the neighbors understand why they are here.

**Gene Seelbach**, a Sunnyvale resident, said that he has lived in the neighborhood for a long time and discussed the issue of two story houses and privacy. He said he thinks the privacy issue could probably be resolved with landscaping.

**Joanne Riley**, a Sunnyvale resident and realtor for Craig and Jennifer Uyeda, said when her clients purchased the house they had no idea that the neighbors were going to build an addition and their privacy might be gone. She said her clients would never have bought the property if they had known this project was going to be built.

**Mr. Boone** said that the angles of the garage of their adjacent neighbor are the same as they are proposing. He discussed the updated style of the home and that he thinks the style will maximize their property value and positively affect the neighbors' home values. He said their goal is not to overlook the neighbor's yard and he thinks that landscape screening would afford privacy between the two homes. Ms. Boone said that the deck faces the neighbor's side yard and that the second story has been kept to a minimum. She said their intent is to maximize the view of their own yard and not affect their neighbor's privacy.

**Chair Chang closed the public hearing.**

**Comm. Rowe** discussed with staff that the Commission is reviewing this project because the proposed square footage, which exceeds 4,050 square feet, requires Planning Commission review. Comm. Rowe referred to supplemental information provided on the dais and discussed the windows on the second story and whether they could be modified. Staff said the kitchen window could be raised and the bedroom window is needed for egress. Comm. Rowe discussed the deck and confirmed with staff that it is allowed by guidelines though discouraged due to privacy issues. Mr. Lynch said this project creates unusual side and rear yard concerns.

**Comm. Klein** asked staff to provide input about the design of the deck. Mr. Lynch discussed the difficulties with decks and visibility issues, and said a solid railing around the deck might reduce the impact to the neighbor's privacy.

**Comm. McKenna moved for staff recommendation to approve the Design Review with the attached conditions.** Comm. Klein seconded the motion and asked for a Friendly Amendment to increase the setback of the second story deck from the left property line, and for the applicant to work with staff to look at screening the left facing

portion towards the Uyeda's property. Comm. McKenna asked Comm. Klein for further clarification about his Friendly Amendment regarding increasing the setback. After discussion of the proposed Friendly Amendment modifications, Comm. McKenna said she was not comfortable with the redesign suggestions and said she could not accept the Friendly Amendment. Comm. Klein withdrew his second. **Comm. Travis seconded the motion and offered a Friendly Amendment for the applicant to continue to work on green screening on the south elevation of home and further review of the material of the deck for potential solid use of materials to increase privacy, with Comm. McKenna adding that the deck be moved in approximately two feet to be flush with the home. The Friendly Amendments were acceptable to both the maker and the seconder.**

**Comm. Klein** clarified with staff the difference between setbacks to the home and the eaveline and that Comm. Klein was correct about the setbacks. Comm. Klein said he thinks the design of the home is good, however he would not be supporting the motion as there are issues with the deck and privacy. He said that green screening takes time and he still has an issue with a deck or balcony being only 11 feet from to the neighbor's useable space.

**Comm. Rowe** said she would not be supporting motion, that she has a problem with the deck and thinks the staircase should be redesigned. She said the home design is attractive, however she thinks the roofline adds bulk to the front of the house. Comm. Rowe commented there is difficulty working with odd shaped lots. She complemented the homeowners for working with staff, but said the deck and stairway are still issues and a problem for the neighbors.

**Comm. Sulser** said he would be supporting the motion, and that this is an awkward site plan and parcel. He said he does not think the design is bulky. He said the main issue is the deck and privacy impacts and he thinks that as amended the privacy concerns can be addressed.

**Comm. McKenna** said that the difficulty with this project is that it sits in a cul-de-sac on a pie shaped lot and does not run perpendicular to the street. She said there is a lot of square footage being added however the project has been well designed and is not very noticeable. She said she sympathizes with the new neighbors and said when anyone moves in that additions can happen at any time and the timing is unfortunate. She said the decking is the furthest away from the neighbor's yard. She said she thinks with the modifications that this should not be significant impact on the neighborhood and may be a positive impact.

**Vice Chair Travis** said he agrees with Comm. McKenna and sympathizes with neighbors. He said the applicant is willing to discuss the green screening and material

issues and are willing to work proactively with their neighbors. He said he likes the architecture.

**Chair Chang** thanked the applicant for working with the Planning staff. He said there are discrepancies regarding the side and back yard and some privacy issues. He said he thinks work can still be done on project and said he would not be supporting the motion.

**The motion failed, 3-3, with Chair Chang, Comm. Klein and Comm. Rowe dissenting, and Comm. Hungerford absent.**

**Gerri Caruso**, Principal Planner, said that a tie vote is considered a denial. She said the Commission can make an additional motion, the item could be continued to another hearing, or the applicant could appeal the application to City Council.

**Kathryn Berry**, Senior Assistant City Attorney, said that in the three years she has been working with the City of Sunnyvale, that the Planning Commission has never continued a hearing item to a future meeting to break a tie vote. She said it is an interesting idea as it would resolve the problem. She said that, on many appeals that have gone to City Council, that the Council would have preferred the issue would have been resolved at the Commission level. She said if the Commission can resolve this issue at the Commission level that would be best. She said it is at the Chair's discretion what the Commission chooses to do and discussion with the Planning Commissioners should help the Chair make a decision. The Commissioner's discussed options with staff.

**Comm. Rowe** moved to accept the staff recommendation with modifications that consideration be given to green screening, and that the deck be redesigned so it is still large enough for socializing, and that the stairway be modified so it does not protrude out as far as proposed. The motion died for lack of a second.

**Comm. Klein moved to continue this item to the August 24, 2009 Planning Commission meeting. Comm. Sulser seconded the motion.**

**Comm. Klein** commented that he is hoping before that next time this project comes before the Commission that there is clarification on the size of the deck, the setbacks for the deck and the stairway, and possibly the concerns discussed this evening would be resolved. Comm. Klein commented that the Commission needs staff to clarify the accessory living unit rules and how they are applied during the application process. Ms. Caruso said that staff would try to address this subject in a Study Session before the August 24, 2009 meeting.

**Comm. Rowe** said she would be supporting the motion.

**ACTION: Comm. McKenna made a motion on 2009-0428 to approve the Design Review with modified conditions. Vice Chair Travis seconded. Motion failed 3-3-0, with Chair Chang, Comm. Klein and Comm. Rowe dissenting, and Comm. Hungerford absent.**

Due to the failed motion, a second motion was made for a modified project and failed to get a second.

A third motion was made to continue this item to a date allowing for a full Commission to be present.

**ACTION: Comm. Klein made a motion on 2009-0428 to continue this item to the August 24, 2009 meeting. Comm. Sulser seconded. Motion carried 6-0, with Comm. Hungerford absent.**

**APPEAL OPTIONS: This action serves as legal notification of the continuance of this item.**