



MEETING DATE: 4/7/08
ITEM NO: 9
DESK ITEM

COUNCIL AGENDA REPORT

DATE: April 7, 2008
TO: MAYOR AND TOWN COUNCIL
FROM: GREG LARSON, TOWN MANAGER *GL*
SUBJECT: **115 N. SANTA CRUZ AVENUE AND 112 WILDER AVENUE**
COGGESHALL MANSION
PROPERTY OWNER: SANTA CRUZ WILDER, LLC
APPLICANT: JOHN LIEN
APPELLANTS: SANTA CRUZ WILDER, LLC AND LEE QUINTANA

REMARKS:

Under the recommendation section of the report to Town Council on this matter, the action on the variance and the variance findings were not included. This is needed to eliminate the parking in the lot on Wilder and to approve the residential land use on Wilder Avenue. Therefore, the following motion (noted in bold) will also need to be made by Council. In addition, three of the attachment numbers were referenced incorrectly. Following in bold are the correct attachment numbers:

- b. Approve the residential land use on Wilder Avenue
 - Make the required findings for the General Plan Amendment and Zone Change (Attachment **9 10**);
 - Move to adopt a Resolution approving the General Plan Amendment (Attachment 11);
 - Move to waive the reading of the Zone Change Ordinance (Attachment 12);
 - Direct the Clerk to read the title of the Zone Change Ordinance (Attachment 12) (no motion required);
 - Move to introduce the Ordinance to effectuate the zone change (Attachment ~~13~~ **12**).
 - **Make the required findings to approve a variance (Attachment 9) and approve the variance application.**
- c. Uphold the decision of the Planning Commission to approve the lot line adjustment subject to conditions (Attachment ~~14~~ **13**).

(Continued on Page 2)

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PREPARED BY: BUD N. LORTZ
DIRECTOR OF COMMUNITY DEVELOPMENT

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Reviewed by: _____ Assistant Town Manager *AL* Town Attorney
_____ Clerk Administrator _____ Finance _____ Community Development

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MAYOR AND TOWN COUNCIL
SUBJECT: 115 N. SANTA CRUZ AVENUE
April 7, 2008

Also attached is correspondence received after the staff report was sent to the Council.

Attachments:

- 1-20. Previously submitted
- 21. Correspondence from Brandt-Hawley Law Group (3 pages), received April 7, 2008

BNL:RT:SLB:mdc

BRANDT-HAWLEY LAW GROUP
Environment/Preservation

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April 7, 2008

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Mayor Barbara Spector and Councilmembers
Town Hall
110 E. Main Street
Los Gatos, CA 95030

TOWN OF LOS GATOS
PLANNING DIVISION

Re: Item # 9, Agenda of April 7th
Coggeshall Mansion
Appeal of Lee Quintana

Dear Honorable Mayor Spector and Councilmembers,

On behalf of appellant Lee Quintana, I ask that you uphold the appeal of the proposed negative declaration for the Santa Cruz Wilder LLC project at the historic Coggeshall Mansion at 115 N. Santa Cruz Avenue and 112 Wilder Avenue. Respectfully, the project application and appeal materials are incomplete and additional analysis is required to comply with the California Environmental Quality Act and to assist this Council in its decisionmaking. It also appears that the public notice of this appeal is inadequate.

Since I have not appeared before this Council, by way of introduction my law practice has focused on CEQA's application to historic resources in administrative and judicial forums for twenty years, including such cases as *Friends of Sierra Madre v. City of Sierra Madre* (2001) at the California Supreme Court, and *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997), *Architectural Heritage Association v. County of Monterey* (2005), *Lincoln Place Tenants Association and 20th Century Architectural Alliance v. City of Los Angeles* (2005), and *Preservation Action Council v. City of San Jose* (2006), at the California Court of Appeal.

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In this matter, the Initial Study and Negative Declaration fail to adequately assess the environmental setting of the proposed project relative to the historic context of the Coggeshall Mansion. As explained in the expert report of architectural historian Franklin Maggi, assisted by Leslie Dill, the impacts of the proposed construction and tree removal have not been considered pursuant to accepted practices by historic consultants vis-à-vis the *Secretary of the Interior's Standards*. As you are no doubt aware, the “fair argument” standard applies to your review of the adequacy of the negative declaration. The fair argument standard provides a “low threshold requirement for initial preparation of an EIR [which] reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.” (*League for Protection v. City of Oakland* (1997) 52 Cal.App.4th 896, 905.) The low threshold is met when any substantial evidence in the record supports a fair argument that significant impacts *may* occur, *even if* a different conclusion may also be well-supported. (*Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003.) A failure to conduct adequate investigation adds to the inference of a fair argument. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.)

The fair argument standard markedly differs from the deferential review normally enjoyed by agencies:

. . . if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.

(Guideline § 15064, subd.(f)(1).) Consistently, *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, holds that under the fair argument standard

. . . the question is one of law, *i.e.*, ‘the sufficiency of the evidence to support a fair argument.’ [Citation.] Under this standard, deference to the agency’s determination is not appropriate and *its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.*

(*Id.* at 1317-1318, italics added.) Thus, the agency must prepare an EIR “even though it may also be presented with other substantial evidence that the project will not have a significant effect.” (*Pocket Protectors v. City of Sacramento* (2005) 124 Cal.App.4th 903, 927.)

Here, the expert report of Franklin Maggi suffices to meet the fair argument standard, and the fact that your staff may have a different opinion cannot change that fact or undo the fair argument.

However, appellant Quintana suggests that at this point, rather than prepare an EIR it may be most appropriate for the Council to refer the entire project file back to its planning staff for preparation of an adequate Initial Study and further consideration of the whole project as recommended by the Planning Commission. There is much confusion as to the chronology of events and decisionmaking. And even without construction of the two new buildings, questions remain regarding the alterations to the mansion, tree removal, and the height of the proposed new deck that may impact the surroundings. As your staff has noted, impacts to an historic resource include alterations to an historic resource “or its immediate surroundings such that the significance of an historical resource would be materially impaired.” (CEQA Guideline § 15064.5.)

After the preparation of an adequate historic report and consideration of impacts of the “whole of the action” for this project, the town would again consider whether or not a negative declaration is appropriate. Absent such remand and reconsideration, preparation of an EIR will be required by law.

Thank you very much for your consideration.

Sincerely,

Susan Brandt-Hawley