



99965

DATE: February 11, 2020

TO: Board of Supervisors

FROM: Jacqueline R. Onciano, Director, Dept. of Planning and Development

SUBJECT: 65 'P' Pedro View Appeal of Single-Family Residence Design Review and Grading Approval

RECOMMENDED ACTION

Consider recommendations relating to appeal of November 21, 2019 Planning Commission decision to Grant the Design Review Administrative Approval and Grading Approval application for a new single family residence. (Department of Planning and Development)

Possible action:

- i. Declare intent to accept or reject the Categorical Exemption under Section 15303(a) of the California Environmental Quality Act (CEQA) Guidelines.
- ii. Declare intent to grant or deny the appeal by Carlos and Manuela Silveira.
- iii. Declare intent to grant, deny, or modify the Design Review Administrative Approval and Grading Approval.
- iv. Refer to County Counsel for preparation of findings.

FISCAL IMPLICATIONS

There are no fiscal implications to the County as a result of this recommended action.

CONTRACT HISTORY

Not applicable.

REASONS FOR RECOMMENDATION

The appeal hearing is *de novo*, and the Board of Supervisors may consider the entire scope of the application subject to the appeal, including proceedings and conclusions of the original decision-maker, the appeal to the Planning Commission, and the merits of the cases made by the Appellants and the Applicants.

Appeal Summary

The Appellant, in their appeal statement (Attachment A), raises the following points:

1. Asserts that the proposed location and design of the 15-foot wide, unobstructed area within the ingress/egress easement is not acceptable and is “infeasible and unsafe” to provide access to the Appellant’s upper and lower sides of their property, across the easement.
2. Requests that the design of the 15-foot wide, unobstructed area be relocated to “station 5+78.83,” as shown on the driveway plans dated February 7, 2019.
3. Requests that an additional Condition of Approval requiring both property owner and Appellant to sign and record a document confirming the Appellants’ rights to use the new location and design for the access point.

Each of these appeal points is responded to below.

Response to Appeal

1. Infeasible and Unsafe Easement Retaining Wall Design: The Appellant states that the design of the driveway and 15-foot wide, unobstructed area along the ingress/egress easement “*will cause the new turn-out to block the Silveiras’ ability to use the existing gradual route across the slope*” and “*unnecessarily interferes with the Silveiras’ existing safe route.*”

The design of the driveway and associated retaining wall meets all County Code requirements and the Planning Commission, on appeal, determined that the improvements met required findings and approved the Design Review Administrative Approval and Grading Approval (please refer to Attachment G). In addition, there is a 15-foot wide area along the ingress-egress easement that will be unobstructed by a permanent retaining wall. Finally, the design qualifications of the driveway easement described within the private easement agreement (see Exhibit B of Attachment A— Document 14471341) is a civil matter for which the County is not a party and does not enforce.

2. Requested Design Change: As further detailed in the Background section of this report, the Applicant previously submitted, and obtained approval of, a project that provided a 15-foot wide, unobstructed area to the satisfaction of the Appellant (unobstructed area at “station 5+78.83”). The Appellant states, “*This access point was acceptable to the Silveira’s and the only remaining task was for the parties to sign and record a document confirming the Silveira’s right to use the new location and design of the new access point.*” This design required additional grading beyond the limits of the easement, which would necessitate written and notarized authorization by the Appellant (County Ordinance Code C12-406). The Applicant did not wish to obtain the Appellant’s authorization, and subsequently submitted a new project and design that limits all work to the confines of the easement boundaries. The current project design for the driveway and associated retaining wall meets all County Code requirements and the Planning Commission, on appeal, determined that the improvements met required findings and approved the Design Review Administrative Approval and Grading Approval.

3. Additional Conditions: The current project design does not include grading beyond the limits of the existing easement. There are no requirements to obligate the Applicant to sign and record a document confirming the Appellants' rights to use the new location and design for the access point. For this reason, the Department does not recommend Conditions to this effect. If the Applicant submits a design that requires grading on the Appellant's property, outside of the easement limits, written and notarized authorization by the Appellant will be required, pursuant to County Code.

Findings for Approval

In order to approve the proposed project, the Planning Commission, on appeal, was required to make specific findings of fact, pursuant to Zoning Ordinance Section 5.50.040, for the Design Review Administrative Approval, and Grading Ordinance Section C12-433 for the Grading Approval. These findings are provided in Attachment G for the Board's consideration.

As specified in Attachment G, the proposed project would meet all required findings for approval. The appeal concerns the conformance of the design of a driveway within a private easement agreement between the Applicant and Appellant, which is a civil matter, separate from the findings and requirements of the County to issue Design Review and Grading Approval for construction of a single-family residence on the property. Given that the appeal statements are outside the purview of the Board of Supervisors, and the proposed project meets all the County requirements, staff recommends that the Board deny the Appeal, and approve the Design Review Administrative Approval and Grading Approval, with no modifications to the Conditions of Approval.

Environmental Review (CEQA)

The project was reviewed in accordance with the California Environmental Quality Act (CEQA). A Categorical Exemption was applied to this project, pursuant to Section 15303(a), which exempts the construction of one (1) new single-family residence.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

Proposed Project

On July 30, 2019, the County of Santa Clara Zoning Administrator approved residential development on Parcel 3 of a three-lot subdivision. The development consists of Design Review Administrative Approval and Grading Approval (approx. 1,782 cubic yards [cu. yds.] of cut and 868 cu. yds. of fill) for the construction of a single-family residence (4,126 square feet [sq. ft.]), accessory dwelling unit (1,199 sq. ft.), detached garage (2,291 sq. ft.) with a

second-floor recreation room, and associated improvements on a property located at 65 P Pedro View Drive, San José, California (Assessor's Parcel Number [APN.]: 612-67-003; Parcel 3) owned by the Applicants, Judith Hart and Kevin Aitken. Proposed access improvements for the residential development include a driveway and fire truck turnout within a private ingress/egress easement through Parcel 2 (APN. 612-67-002), owned by the Appellants, Carlos and Manuela Silveira, which is the subject of this Appeal.

Existing access to the Applicant's property is provided from Mt. Hamilton Road (CalTrans maintained), along an existing dirt ranch road, within a private ingress/egress easement across the Appellant's property. Construction of the driveway and fire truck turnout includes a 5-foot tall retaining wall along the eastern portion of the driveway to meet the County Fire Marshal access standards. The preliminary grading plans submitted to the County as part of the application delineates a 15-foot wide opening in the turnout retaining wall. This opening is intended to provide unobstructed access for the Appellant to cross the ingress/egress easement to both sides of Parcel 2, pursuant to a private easement agreement between the Appellant and the Applicant (see Exhibit B of Attachment A). The Zoning Administrator approved the project with Condition No. 3 (see Attachment B), which stated the following:

“The driveway retaining wall and associated grading located within the recorded ingress/egress Grant of Easement (Document No. 14471343 on APN 612-67-002) shall be constructed as shown on the approved plans, dated May 2, 2019. The driveway and associated grading shall be located entirely within said ingress/egress easement to provide reasonable points of access across the easement. Modifications to the design of the driveway and/or associated retaining walls shall require additional Planning review and may result in additional requirements.”

On August 13, 2019, 14 days after the approval was granted by the Zoning Administrator, the Appellant appealed the project, which was later heard by the Planning Commission on November 21, 2019. At the appeal hearing, the Planning Commission denied the appeal and granted the Design Review Administrative Approval and Grading Approval application, consistent with the Zoning Administrator's action. On December 6, 2019, the Appellant filed an appeal to the Board of Supervisors on the same grounds that were originally filed to the Planning Commission. The grounds of the appeal are described in the Reasons for Recommendation sections of this report. The appeal application and grounds for appeal are *de novo* and are attached as Attachment A.

Project Setting

The proposed residential development is located on Parcel 3, a 9-acre vacant parcel located within the foothills of east San José, south of Mount Hamilton Road and north of Fleming Avenue, with a General Plan and Zoning designation of Hillside. The eastern property line of Parcel 3 abuts Pedro View Road, a private road, and the western property line abuts residential properties located within the City of San José's jurisdiction. The adjacent, 9.1-acre property (Appellant's property, Parcel 2) to the north is currently developed with miscellaneous structures (County Permit records not on file) and an unimproved ranch road provides access via an easement from Mt. Hamilton Road to Parcel 3.

Previous Approvals

Lot Creation

The subject property was legally created in 1994 (File No. PLN90-1963) as part of a 3-lot subdivision (Parcel Map Book 658, Page 52), recorded on September 29, 1994, and is referenced as Parcel 3 (Applicant's property). According to the Parcel Map, two (2) separate points of access are available to for Parcel 3. Access may be provided from either 1) an existing 30-foot right-of-way for Pedro View Road (private road), or 2) via an exclusive ingress/egress easement through Parcel 2, for the benefit of Parcel 3 only.

A Grant of Easement (Document 14471341) was recorded on October 30, 1998 between the then-owners of Parcel 2 and Parcel 3, granting ingress/egress easement for the benefit of Parcel 3 through Parcel 2, in addition to stipulating rights and responsibilities agreed to by the parties. The rights of the agreement transfer to all successor owners of both parcels. The Grant of Easement includes a reservation of crossing rights to access the westerly portion of Parcel 2 that ensures “...*reasonable points of access across the easement for that purpose.*” This document was never submitted to the County with the development applications by the property owners of Parcel 3.

2001 Department Approval

On May 17, 2001 and August 6, 2001, a Design Review Administrative Approval (File No. PLN01-7921) and Grading Approval (File No. PLN00-7921) were approved, respectively, for Parcel 3. The approvals allowed construction of a new single-family residence with access provided through Parcel 2 from Mt. Hamilton Road. No Grading or Building Permit were issued for development of the residence, and the Design Review Administrative Approval and Grading Approval subsequently expired on August 6, 2008.

April 8, 2019 Department Approval

On March 7, 2017, the Applicant (Hart/Aitken) submitted a combined application for Design Review Administrative Approval and Grading Approval (File No. PLN17-7921) for the construction of a new single-family residence. The property owner continued to work with County staff and the application was ultimately deemed complete on October 5, 2018. Pursuant to Ordinance Code Section C12-438, a public notice for approval of the project (Grading Approval) was sent to surrounding property owners on November 15, 2018. Following the public notice, the Appellant submitted an email objecting to the project based on the retaining wall design, lack of access to cross one side of their property to the other, and lack of a guard rail on the retaining wall. During this time, staff became aware of the private easement agreement (Document 14471341). Meetings with staff between the Appellant and the Applicant ensued to discuss design alternatives.

On January 9, 2019, in an effort to address the Appellant's design concerns, the Applicant provided a one-time, 90-day extension to the Permit Streamlining Act, extending the decision deadline for the County to April 8, 2019. The Applicant subsequently provided a revised driveway design, dated February 7, 2019, showing a 15-foot access at station 5+78.83 (see Exhibit A of Attachment A) that would require grading outside of the recorded ingress and egress easement. On April 5, 2019, a representative of the Appellant, attorney Richard B. Gullen (see Attachment H), provided staff with email confirmation and acceptance of the

February 7, 2019 driveway design. Subsequently, on April 8, 2019, staff issued Final Conditions of Approval for File No. PLN17-7921, with the following Condition of Approval:

Condition 21: *“Prior to issuance of any permits, revise the design of the retaining wall, shown on approved plans dated August 29, 2018, located within the ingress/egress easement that traverses APN 612-67-002, to provide reasonable points of access across the easement, per the requirements of the Grant of Easement, Document No. 14471343. The property owner/Applicant of APN 612-67-003 shall submit written and notarized authorization by the adjacent property owners of APN 612-67-002 approving the design and construction of the retaining wall within the easement, prior to submittal into plan check.”*

On April 23, 2019, the Applicant appealed the project, specifically stating concerns with the requirements of Condition No. 21. The Applicant retained legal counsel and was objecting to the requirement that written and notarized authorization by the Appellant approving the design and construction for the retaining wall within the recorded easement was not agreeable. The Appeal and this prior application were withdrawn on May 11, 2019.

Current Application

On May 2, 2019, the property owner submitted a new application (PLN19-0091) to revise the shared driveway access through Parcel 2 and, as stated above, withdrew the appeal and previous application (PLN17-7921) on May 11, 2019. The new application was subsequently deemed complete for processing on May 31, 2019. Staff reviewed the new design with the Appellant, and subsequently the Zoning Administrator approved the project on July 30, 2019. The Appellant appealed the project to the Planning Commission on August 13, 2019.

November 21, 2019 Planning Commission Appeal Denial & Project Approval

On November 21, 2019, the Planning Commission heard an appeal of the July 30, 2019 Zoning Administrator decision. After receiving staff’s presentation and hearing public statements from the property owner, the Appellant, and their legal counsel, the Planning Commission accepted the Categorical Exemption under CEQA Guideline 15303(a), denied the appeal, and granted the Design Review Administrative Approval and Grading Approval application.

For a complete chronology of the project timeline, reference Attachment F.

Public Outreach

Pursuant to Section 5.20.110 of the Zoning Ordinance, notice of the Board of Supervisors meeting to hear the appeal was published in the San Jose Post Record on January 27, 2020. Additionally, a copy of the public notice was mailed to all real property owners within 300-feet of the subject property, as well as the representatives of the owners and the Appellants.

Public Comments

No public comments were received by Planning staff for the subject application appeal (PLN19-0091) as of the preparation of this report.

CONSEQUENCES OF NEGATIVE ACTION

If the Board finds the proposed project does not meet the required findings, it will grant the appeal and deny the Design Review – Administrative Approval and Grading Approval application.

LINKS:

- **Linked From:** 99966 : Hearing to consider appeal relating to the November 21, 2019 decision by the Planning Commission to grant the Design Review Administrative Approval and Grading Approval application for a new single family residence. Appellants: Carlos and Manuela Silveira (PLN19-0091-APL2); Applicant/Owner: Judith Hart and Kevin Aitken. Property Address/Location: 65 'P' Pedro View Road, San Jose. (Assessor's Parcel No. 612-67-003) (File No. PLN19-0091) (Supervisory District Three)
- **Linked To:** 98575 : Public hearing to consider an appeal of a July 30, 2019 decision by the Zoning Administrator to approve a Design Review Administrative Approval (Tier 1) and Grading Approval for a new single-family residence, relating to the proposed location and design of a retaining wall along a private ingress/egress easement. California Environmental Quality Act (CEQA): Categorical exemption under Section 15303(a) (new construction of single-family residence) of the CEQA Guidelines. File No.: PLN19-0091 APL1. Appellants: Carlos and Manuela Silveira. Owners/Applicants: Judith Hart and Kevin Aitken. Property Address/Location: 65 'P' Pedro View Road, San José. Zoning: HS-10Ac-d1. Supervisory District: 3. Assessor's Parcel No.: 612-67-003.

ATTACHMENTS:

- Attachment A - Appeal Letter with Exhibits (PDF)
- Attachment B - Conditions of Approval 7-30-2019 PLN19-0091 (PDF)
- Attachment C - Plans 7-30-2019 PLN19-0091 (PDF)
- Attachment D - PLN17-7921 Previously Approved Conditions of Approval 4-8-2019 and previously Approved Plans, including 2-7-2018 driveway design (PDF)
- Attachment E - CEQA Statement of Categorical Exemption (PDF)
- Attachment F - Project Chronology (PDF)
- Attachment G - Findings (PDF)
- Attachment H - Richard Gullen, April 5, 2019 Email (PDF)