



Planning & Community Development Department

Appeal of
Hillside Development Permit #6837
801 South San Rafael Avenue

City Council

May 3, 2021





Issues Presented

Planning & Community Development Department

- **De Novo Hearing – HDP Findings**
 - Potential impact to Neighbor’s private property (valuable train set)

- **CEQA Analysis**
 - Cumulative Impact Review – Serial Permitting
 - Historic Property – John Van de Kamp residence.

- **New Construction Conditions Imposed on the Project**
 - Dust
 - Vibration



Timeline

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Before the City Council is an appeal of a decision made by the Board of Zoning Appeals.

- **June 29, 2020** – Application submitted for review.
- **December 16, 2020** – Hearing Officer continued hearing the application.
- **January 6, 2021** – Hearing Officer heard HDP #6837; Project approved.
- **January 11, 2021** – Councilmember Steve Madison requested a Call for Review.
- **January 19, 2021** – Appeal filed by Roxanne Christ, abutting property owner.
- **January 22, 2021** – Councilmember Steve Madison withdrew the Call for Review.
- **March 18, 2021** – Board of Zoning Appeals heard the appeal of HDP #6837; Project disapproved.
- **March 24, 2021** – Appeal filed by Deborah Rachlin Ross, project applicant.

The hearing before the City Council is a *de novo* hearing where the Council has no obligation to honor the prior decision and has the authority to make an entirely different decision.



Requested Entitlement

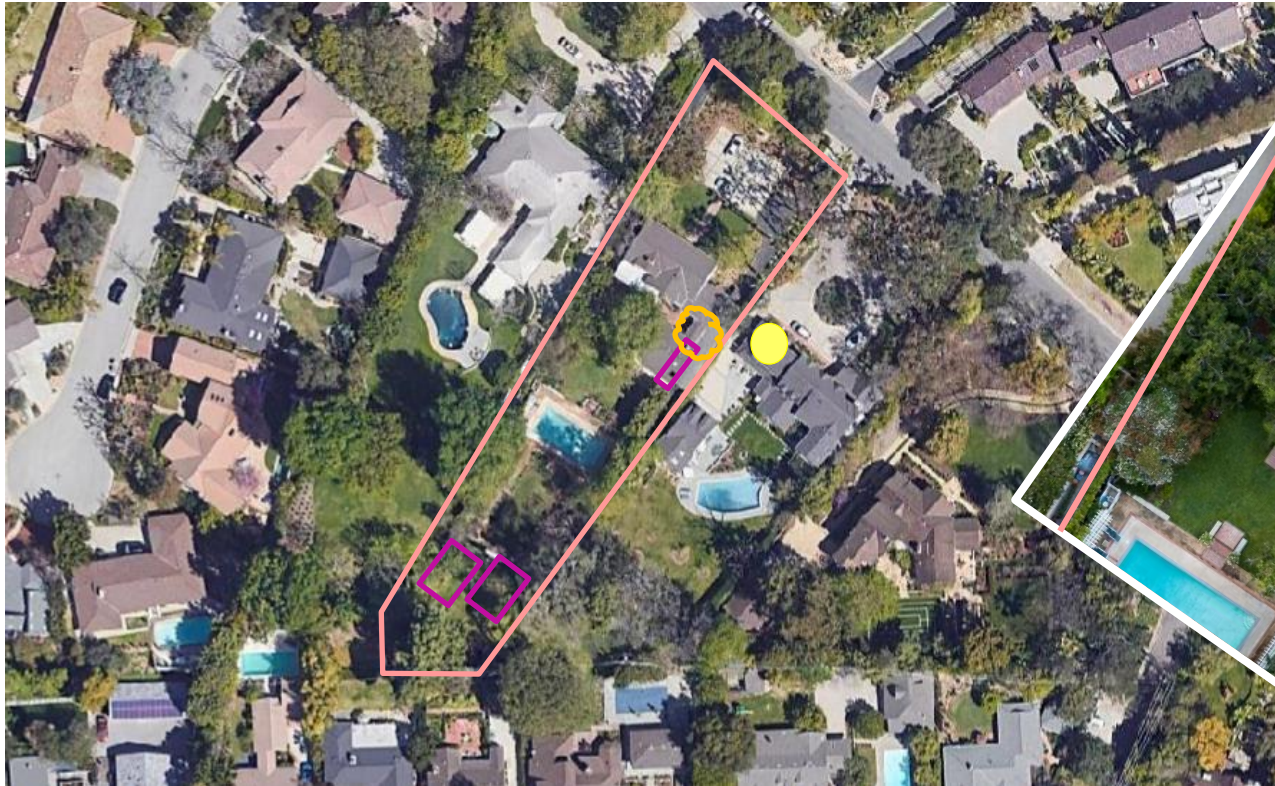
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- **Hillside Development Permit:** To allow the construction of two, new 600 square-foot detached accessory structures and the modification of an existing playroom, that is attached to the residence, by removing the connecting breezeway and reducing the size of the playroom by 670 square feet, resulting in a 262 square-foot, detached accessory structure to function as a partially opened cabana.
- The site is currently developed with a two-story, 4,706 square-foot dwelling with a detached 600 square-foot, three-car garage in the RS-4 HD (Single-Family Residential, Hillside Overlay District) zoning district.
- A Hillside Development Permit is required for the construction of more than one accessory structure.



Aerial Context

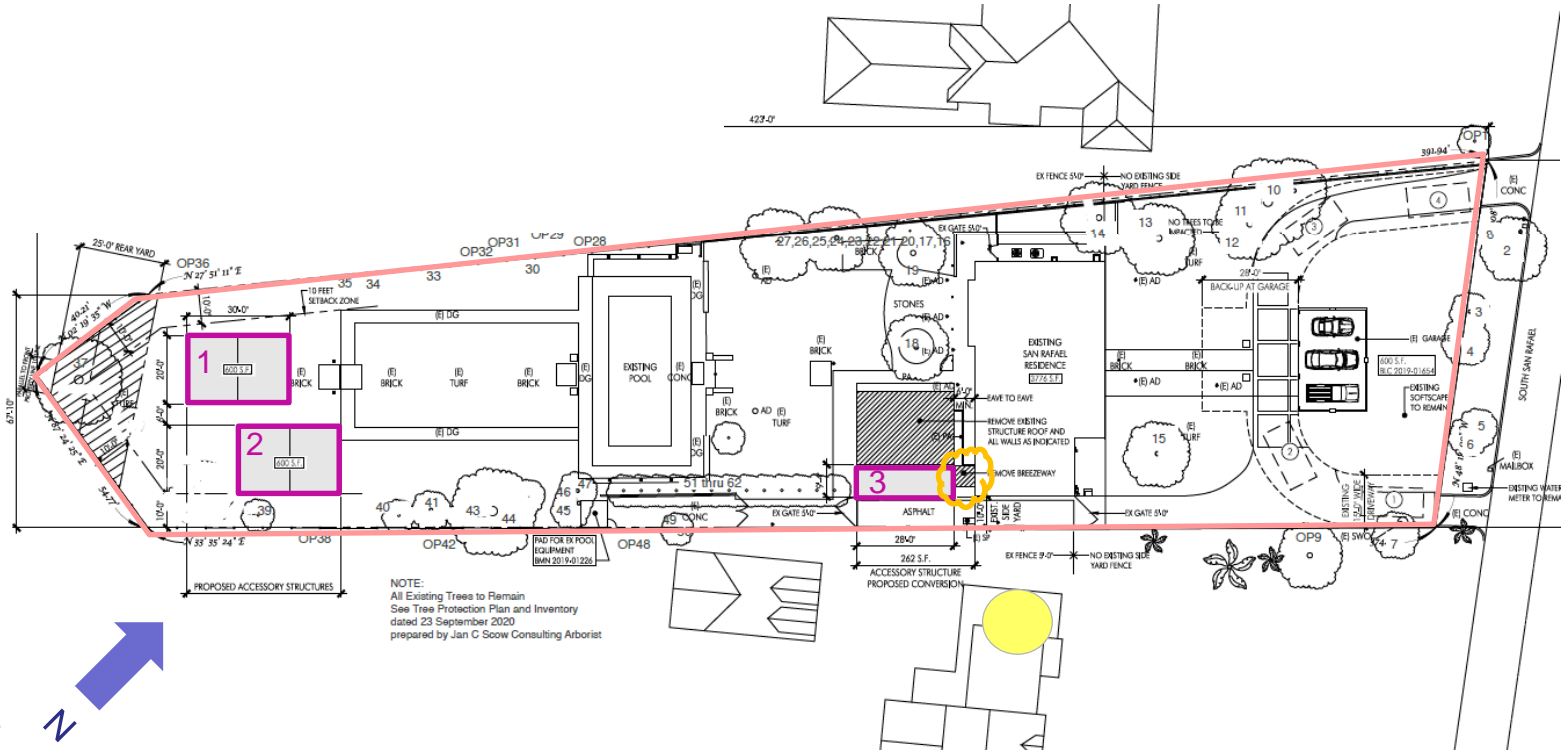
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Site Plan

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Elevations and Floor Plans: Structures 1 and 2

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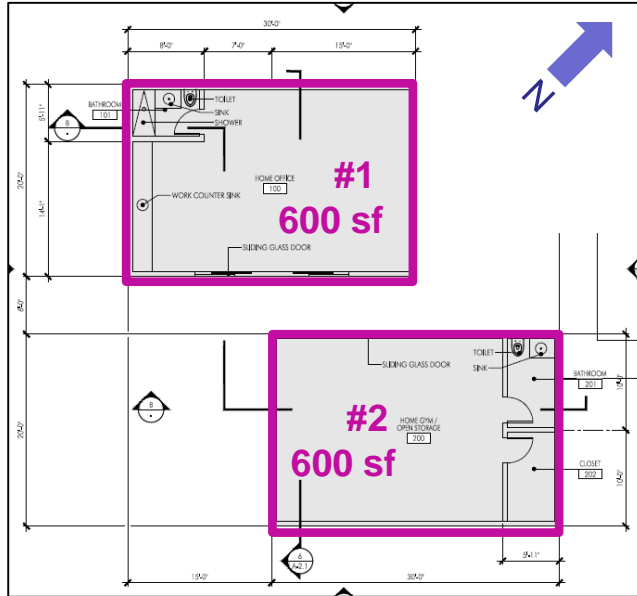
Roof Shingle Proposed to match existing



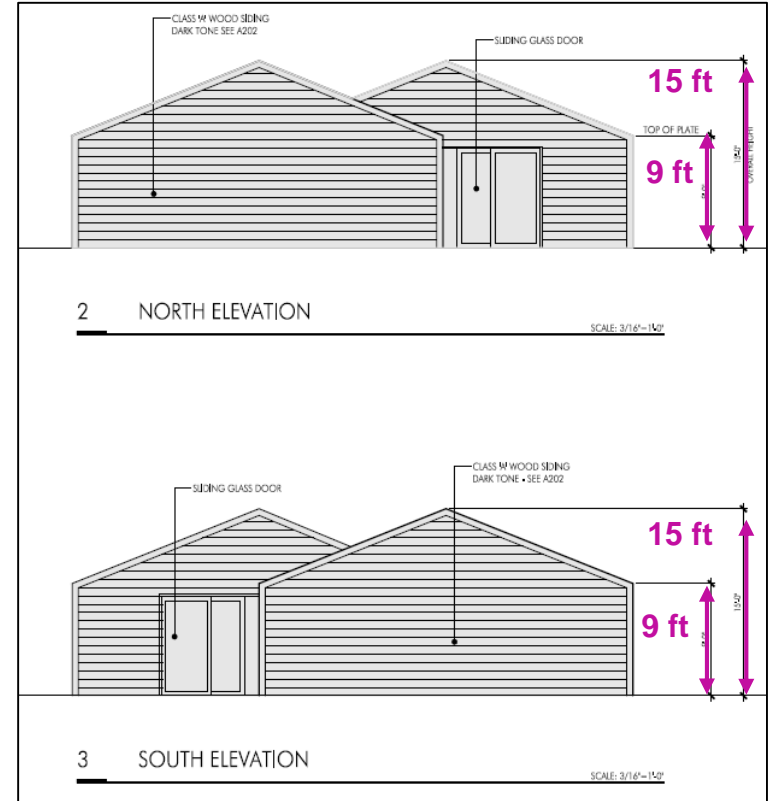
Proposed Accessory Structure Window Trim Color



Proposed Accessory Structure Exterior Color



7





Elevations and Floor Plans: Structure 3

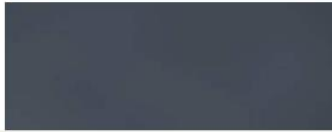
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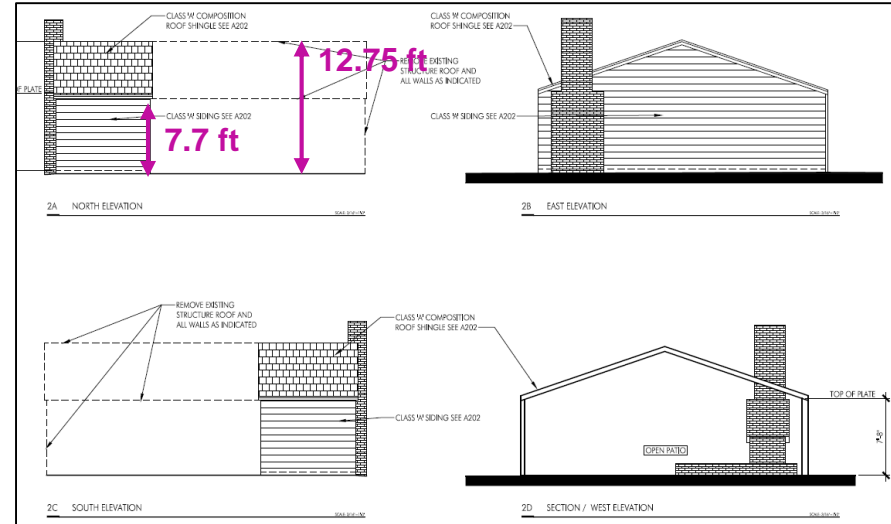
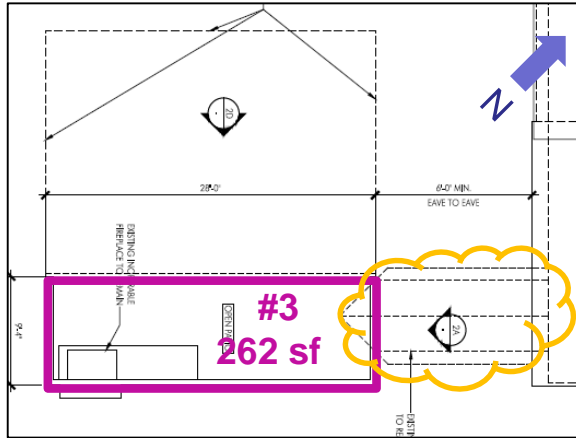
Roof Shingle Proposed to match existing



Proposed Accessory Structure Window Trim Color



Proposed Accessory Structure Exterior Color





Hearing Officer Public Hearing

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- **January 6, 2021**
 - Staff made a presentation and recommended approval of the HDP application.
 - The applicant provided an overview of the project and provided additional information.
 - Eight public comments in opposition of the project were received prior to and during the meeting, with primary concerns about vibration, noise, entitlement process, historic preservation, views and privacy.
 - During the presentation, Staff addressed each concern and noted that the staff report included recommend conditions of approval related to these concerns.
 - At the conclusion of the hearing, the Hearing Officer approved the HDP. The decision was based on the fact that all of the eight required findings to support the HDP could be made.
- **January 19, 2021** – Appeal filed by Roxanne Christ, abutting property owner.



Board of Zoning Appeals (BZA) Public Hearing

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- **March 18, 2021** – Board of Zoning Appeals heard the Hearing Officer Appeal.
 - Staff made a presentation and recommended approval of the HDP application.
 - During the presentation, Staff addressed each of the 11 appeal points, which included:
 - Inadequate information and conditions to avoid or minimize damage to the “Collection;”
 - Project is not categorically exempt from environmental review under CEQA;
 - Hillside Ordinance incorrectly interpreted and applied; and,
 - Hearing Officer failed to consider evidence.
 - As part of the presentation, staff discussed the CEQA analysis, the cumulative impact of ministerial and discretionary projects and the historic evaluation of the property.
 - Included the determination by the Design and Historic Preservation Division that the property did not meet the criteria for designation as a landmark – explained that even if it was designated – no impact from this project.



BZA Public Hearing – March 18, 2021 (cont.)

Planning & Community Development Department

- Appellant spoke in opposition and submitted a presentation to the Board of Zoning Appeals for review.
 - Potential impacts due to vibration and dust to her private property.
 - Insufficient investigation and evidence to support a Class 3 Exemption.
 - The building is an eligible historic resource.
 - Concerns regarding continuous and piecemealed construction.
 - Cumulative impacts were not analyzed.
- Appellant proposed a number of conditions to alleviate her concerns.
 - Using deepened foundations.
 - Using hand tools and no high impact mechanical tools or diamond saws.
 - Staging construction equipment and debris away from abutting property.
 - Preventing dust, dirt, concrete, plaster etc. from being raised, spread or blown on other sites.



BZA Public Hearing – March 18, 2021 (cont.)

Planning & Community Development Department

- The applicant spoke in favor of the project and submitted a presentation to the Board of Zoning Appeals for review in response to the appeal.
 - The applicant agreed to incorporate the appellants recommended conditions of approval related to potential vibration and dust from the construction of the project.
 - These conditions have been incorporated as recommended conditions of approval to the City Council as numbers 7 through 16 in Attachment B of the report.
- 11 public comment letters were received prior to the hearing, 10 against the project and one neutral.
 - Focused on dust and vibration impacts on abutting properties, the historical significance of the subject property, incorrect application of a CEQA exemption and the cumulative impacts of multiple projects at the subject property.



BZA Public Hearing – March 18, 2021 (cont.)

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- Board of Zoning Appeals motioned to overturn the Hearing Officer’s decision and disapprove Hillside Development Permit #6837.
 - Determined that the project was not exempt from environmental review pursuant to the guidelines of the CEQA §15303, Class 3, New Construction or Conversion of Small Structures and §15301, Class 1, Existing Facilities.
 - Indicated that the Hillside Development Permit findings could be made and that the project could be approved but that additional CEQA analysis, including all of its phases (the previous ministerial approval, the proposed discretionary project and any future ministerial approval or discretionary projects), and the historical status of the residence, were not fully evaluated.
- Motion resulted in a 3-1 vote by the four members present.
- **March 24, 2021** – Decision was appealed by the applicant, Deborah Rachlin Ross.



Summary of Appeal – City Council

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- **Appellant cites the following:**
 - The Board of Zoning Appeals wrongly determined that the project was not exempt from CEQA.
 - The project is clearly exempt from CEQA and was correctly analyzed as required by the State CEQA Guidelines.
- **Staff's Response:**
 - Meets the Criteria for the Class 3 Categorical Exemption
 - Exceptions to the Exemptions do not apply
 - Cumulative Impact
 - Historic Resource



Class 3 Categorical Exemption

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§15303. New Construction or Conversion of Small Structures.

- Class 3 consists of **construction and location of limited numbers of new, small facilities or structures**; installation of small new equipment and facilities in small structures; and **the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure**. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to:
 - > (a) *One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.*
 - > (e) *Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.*
- The proposed project conforms to examples (a) and (e) of the Class 3 Categorical Exemption:
 - > The construction of two new accessory structure – example (e)
 - > The conversion of a portion of the existing primary dwelling into an accessory structure – examples (a) and (e)



§ 15300.2 – Exceptions

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- There are six exceptions to the use of categorical exemptions. Comments regarding two such exceptions for this project were received:
 - Cumulative Impact: Exemptions “are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.”
 - Historical Resources: Exemptions “shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.”



Multiple Permits Issued Successively

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- The issue of multiple successive permits has been raised as a violation of CEQA, as a way to circumvent review of the WHOLE project.
- That is NOT the case in this situation – each component of the project (interior and exterior work, garage in front and proposed HDP) has what is referred to in CEQA case law as “independent utility” – that is, each component stands alone and can exist separate from other components of project and each of the previous components was ministerial in nature.
- For example, under existing regulations, a property owner may obtain multiple, successive permits: 1) permit for kitchen remodel; then 2) Roof permit; followed by 3) 200 square foot addition. Each of these are ministerial building permits and are required to be issued if they meet code.



Previously Issued Building Permits

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- In this case, a Building Permit #BLD2019-01654 for a 466 square-foot addition, an interior/exterior remodel and a 600 square-foot detached garage located in front of the residence was issued on April 6, 2020.
 - > In response, as part of the recent update to the Historic Preservation Ordinance, detached accessory structures (e.g. garages) placed in front of the residence are now considered as a Major Project for eligible and designated historic resources.
- Building Permit #BLDSFR2020-10498 for modifications to windows and doors was issued on November 2, 2020.
- Building Permit #BLDSFR2021-00597 for the installation of two skylights was issued on March 25, 2021.
- The applicant then requested an HDP for the project under review by the Council tonight.
- The previously issued Building Permits are not under review by the Council this evening.
- Because of the independent utility of each of the above, an argument can be made that CEQA does not require their cumulative analysis.
- However, an argument has been made that the totality of “The Project” includes all of the aspects of the remodel and additions described above.



Cumulative Impact Analysis

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- **Previously Completed Ministerial Actions:**

- 600 square-foot detached garage
- Single-story addition of Less than 500 square feet
- Exterior and Interior Remodel

Each of these improvements, individually and cumulatively, did not require a discretionary submittal of a Hillside Development Permit and were not subject to environmental review pursuant to CEQA nor considered a “project” pursuant to CEQA.

- **Discretionary Action (HDP):**

- Two new accessory structures
- The conversion of a portion of the existing primary dwelling into an accessory structure

The current project under consideration is subject to a discretionary Hillside Development Permit and is subject to CEQA – so ALL aspects of the project have been evaluated under CEQA.



Cumulative Project is Categorically Exempt

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- If all aspects of the project (ministerial reviews and the subject discretionary review) were considered together, the State CEQA Guidelines provide that it would qualify as exempt under the Class 3 Categorical Exemption.
 - The totality of these improvements would meet the criteria and continue to include the conversion of existing small structures from one use to another, the construction of new accessory structures, and additions to the existing residence and there is no evidence in the record identifying a significant impact.
- Although not proposed as part of this project, it is worth noting that the Class 3 Categorical Exemption includes an exemption for not only the addition and remodel of an existing house, but the construction of a brand new residence with accessory structures.
- Future ministerial or discretionary reviews:
 - Staff is not aware of any future development or improvements for the site and the applicant has not indicated that other development or improvements are being considered.
 - CEQA does not require unknown future development to be considered as part of the project.
 - However, pursuant to 17.29.030, a Hillside Development Permit, along with environmental review pursuant to CEQA, would be required for any future additions to the residence or any other accessory structures proposed within the next three years, regardless of their size.



Historic Resource

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- John Van de Kamp owned this home from 1987 until 2019. He was a Pasadena native, of the Van de Kamp Bakery family, and served as Los Angeles County District Attorney from 1975 to 1981 and Attorney General of California from 1983 to 1991, when he retired from politics. He is an important figure in the City's history and has been honored with the re-naming of the La Loma Bridge.
- Pasadena Heritage has submitted an application to the Design and Historic Preservation Division for 801 S. San Rafael Avenue for Landmark Designation as an individual Landmark – based on the information submitted with the application and given that he retired within a few years of purchasing the home, staff did not find that the property met the City's eligibility requirements for local designation.
- Pasadena Heritage subsequently submitted supplemental documentation to further their position



Historic Resource



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- Pursuant to PMC Section 17.62.040, the historic significance under Criteria B and C are:
 - **Criterion B:** It is associated with the lives of persons who are significant in the history of the region, State, or nation.
 - **Criterion C:** It is exceptional in the embodiment of the distinctive characteristics of a historic resource property type, period, architectural style, or method of construction, or that is an exceptional representation of the work of an architect, designer, engineer, or builder whose work is significant to the region, State, or nation, or that possesses high artistic values that are of regional, State-wide or national significance.



Historic Resource

Planning & Community Development Department

- Despite the Sapphos memorandum submitted by the applicant indicating that the property does not qualify for Historic Designation, only the Council can make that determination;
- Staff Review  Historic Preservation Commission  City Council
- Based on the supplemental information presented by Heritage, staff believes that the property DOES qualify for historic designation (under Criterion B) and the project will be scheduled for a future meeting of the HPC;
- For the purposes of the analysis of this HDP, its assumed that the property IS a designated resource.



Historic Resource

Planning & Community Development Department

- The project was analyzed as if the house was a designated landmark.
 - The HDP (nor any of the ministerial permits) would not, and have not, changed the home's ability to convey its significance under **Criterion B**: It is associated with the lives of persons who are significant in the history of the region, State, or nation.
 - The project does not trigger additional review under Interim Urgency Ordinance No. 7354, which was in effect at the time the HDP application and the application for Landmark Designation were submitted.
 - The scope of work does not exceed any of the thresholds would not be subject to review under Ordinance No. 7372, the newly adopted regulations that became effective on April 12, 2021.
- The exception to the exemption clause in Section 15300.2, of CEQA Guidelines pertaining to historic resources does not apply.
 - The project (HDP) would not cause a substantial adverse change in the significance of a historic resource or materially impair the resource's ability to convey its historical significance.
 - The proposed improvements (all aspects of the remodel) do not result in cumulative impacts which would cause a substantial adverse change to the integrity or significance of the resource or materially impair the resources ability to convey its historical significance.



Hillside Development Permit Findings

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1. *The proposed use is allowed with a Hillside Development Permit within the applicable zoning district and complies with all applicable provisions of this Zoning Code.*
 - A single-family residential use, with accessory structures, is a permitted use within the RS-4 HD (Residential Single-Family, Hillside Overlay District) zoning district.
 - Multiple accessory structures are allowed with approval of a Hillside Development Permit.
 - The proposed accessory structures will be in compliance with all applicable development standards, including maximum allowable floor area, lot coverage, setbacks, building height, and off-street parking requirements of the RS-4 HD zoning district.
2. *The location of the proposed use complies with the special purposes of this Zoning Code and the purposes of the applicable zoning district.*
 - The subject property is zoned RS-4 HD, which is designated primarily for single-family residential purposes; accessory structures are permitted as subordinate structures to the main use.
 - The subject site and the surrounding properties within the neighborhood are developed with one and two-story, single-family residences and accessory structures.
 - The proposed project will be consistent with existing development within the vicinity.



Hillside Development Permit Findings (cont.)

Planning & Community Development Department

3. *The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan.*
 - The subject site is designated as Low Density Residential in the General Plan Land Use Element.
 - GPLU Policy 21.9 (Hillside Housing) requires residences to maintain appropriate scale, massing and access to residential structures located in hillside areas.
 - The use of the site would remain a single-family residence and the scale and massing of the one-story accessory structures would be consistent with the scale and setting of the surrounding residences; therefore, the character of the single-family neighborhood would be maintained.
4. *The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*
 - The project will be constructed in such a manner as to minimize impacts to surrounding property owners
 - Conditions of approval have been included to address the abutting property owner's concerns regarding dust and vibration.
 - The project meets all Zoning Code requirements and no variances are required.
 - The conditions of approval required by the Building Division, Fire Department and Public Works Department.



Hillside Development Permit Findings (cont.)

Planning & Community Development Department

5. *The use, as described and conditionally approved, would not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.*
 - The proposed project will be constructed in compliance with the current Building Code and Zoning Code standards.
 - A Soils Engineering Report has been submitted which reported that the site is considered feasible for construction of the proposed additions.
 - Conditions of approval have been included to address the abutting property owner's concerns regarding dust and vibration.
6. *The design, location, operating characteristics, and size of the proposed use would be compatible with the existing and future land uses in the vicinity in terms of aesthetic values, character, scale, and view protection.*
 - The use of the site will remain as a single-family residential use. The project complies with all the development standards of the Zoning Code.
 - The one-story detached structures will not block views or impede upon privacy of the neighboring properties.
 - The proposed project will be below the maximum allowable floor area requirements.
 - The project has been designed with the use of wood siding and earth tones, which are design elements that can be found in the neighborhood.
 - Additionally, the one-story detached accessory structure's scale and massing is within the scale and setting of the surrounding vicinity.
 - The project would be compatible with the existing and future land uses in the vicinity in terms of aesthetic values, character, scale, and view protection.



Hillside Development Permit Findings (cont.)

Planning & Community Development Department

7. *The design, location, and size of the proposed structures and/or additions or alterations to existing structures will be compatible with existing and anticipated future development on adjacent lots as described in Section 17.29.060.D of this ordinance and in terms of aesthetics, character, scale, and view protection.*
 - The project has been designed with the use of wood siding and earth tones, which are design elements compatible with the surrounding environment.
 - The scale and massing of the proposed detached accessory structures are in keeping with the scale and setting of the surrounding residences and the combined proposed gross floor area for the project is below the maximum permitted.
 - The placement of the proposed accessory structures would not impede protected views of any adjoining property.
 - The project is in scale with the context and character of existing and future development in the neighborhood in terms of aesthetics, character, scale, and view protection.
8. *The placement of the proposed additions avoids the most steeply sloping portions of the site to the maximum extent feasible and minimizes alteration of hillside topography, drainage patterns, and vegetation.*
 - The subject site is relatively flat, with an average slope of 3.17 percent.
 - The project proposes minimal grading and site disturbance compared to the typical hillside development given that the site is currently developed with a single-family residence.
 - As part of the building permit review, the Building Division will review any grading and/or drainage plans to ensure that the drainage conditions after construction comply with all applicable regulations.
 - A Soils Engineering report was prepared by SubSurface Designs Inc., which concludes that the proposed development is safe and adequate for its intended use.



Recommended Conditions of Approval

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- A number of conditions (Nos. 7-16) have been included in Attachment B as recommended conditions of approval to address the abutting property owner's concerns regarding vibration and dust during construction:
 - Using deepened foundations.
 - Using hand tools and no high impact mechanical tools or diamond saws.
 - Staging construction equipment and debris away from abutting property.
 - Preventing dust, dirt, concrete, plaster etc. from being raised, spread or blown on other sites.



Recommended Conditions of Approval

Planning & Community Development Department

7. As an alternative to the removal and mechanical recompaction of the near surface soils for support of the proposed two new accessory structures, deepened foundations shall be utilized, as was identified in the soils report prepared by SubSurface Designs Inc. dated May 12, 2020. The detached structures shall be supported by foundations that extend into the underlying bedrock. Additionally, the floor slab shall consist of a structural slab spanning the foundations system. If, during construction, these methods prove unfeasible, an alternative method shall receive approval by the Zoning Administrator and the Building Department.
8. For demolition work, hand wrecking tools shall be used in lieu of high impact mechanical tools.
9. Diamond saws shall be used for cutting paving and concrete.
10. The construction staging site shall be located in the northwest portion of the site. The location of the staging shall be identified in the Construction Staging and Traffic Management Plan submitted to Public Works.
11. Construction vehicles shall be equipped with standard tires and shall not be equipped with metal wheels.
12. To the maximum extent feasible, the off-site removal of structural and hardscape shall be in large sections.
13. Earth material (soil, rock...etc.) resulting from excavation shall be staged as depicted in the Construction Staging and Traffic Management Plan. Earth material not to be reused shall be exported off-site. All stake beds, trucks, lowboys, and other similar vehicles, carrying dirt on- and off-site shall be covered with a tarp.
14. Demolition and grading activities shall comply with PMC Section 8.20.010, to prevent dust, dirt, concrete, plaster and similar particles from being raised, spread, scattered or blown on other sites.
15. No sandblasting shall be permitted on-site.
16. Barriers shall be installed around the construction area shielding abutting properties from spraying operations.



Conclusion

Planning & Community Development Department

- Staff has reviewed and analyzed the project, considered the Board of Zoning Appeals decision and the abutting property owner's (initial appellant) concerns, and has determined that the findings necessary for approving the Hillside Development Permit can be made.
 - The proposed project meets all applicable development standards required by the Zoning Code for the RS-4 zoning district, for accessory structures and the additional development standards required within the Hillside Overlay District. No protected trees are proposed to be removed and the project does not include any requests for waivers or variances.
 - The proposed project meets the criteria for a Class 3 Categorical Exemption.
 - None of the Exceptions to a Categorical Exemption apply.
 - Staff has included conditions of approval in response to the abutting property owner's concerns.
- Therefore, based on staff's analysis of the issues, the construction of the proposed three accessory structures would be compatible with the adjacent land uses and would not result in any adverse impacts to the surrounding area with the recommended conditions of approval.



Staff Recommendation

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1. Adopt the Environmental Determination that the proposed project is exempt from environmental review pursuant to the guidelines of CEQA, Sections §15303, Class 3, New Construction or Conversion of Small Structures, recognizing that there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances; and,
2. Overturn the Board of Zoning Appeal's decision and **approve** Hillside Development Permit #6837 based on the findings in Attachment A of the report with the conditions in Attachment B.

Appeal of
Hillside Development Permit #6837
801 South San Rafael Avenue

City Council

May 3, 2021

