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LEGAL SPECIALIZATION

STATE BAR OF CALIFORNIA

February 16, 2021

APPEAL LETTER

1054 University Avenue – CUP 2020-001 Description of Proposal: Convert existing attic space to habitable use with no external modifications or change in footprint

Mayor Craig and Members of the City Council City of Salinas – City Hall c/o Salinas Community Development Center 65 West Alisal Street Salinas, Ca 93901

Re: 1054 University Ave; Conditional Use Permit 2020-001 Appeal

Dear Mayor Craig and Members of the Council:

This appeal is filed, pursuant to City Code section Sec. 37-60.1280, on behalf of the project Applicant, David Elliott, David J. Elliott & Associates, and the project owners Mr. and Mrs. Eduardo Couttolenc, appealing the Planning Commission's February 3, 2021 action, Resolution No. 2020-05, denying the Conditional Use Permit for Residential Design Review for the Couttolenc's home at 1054 University Avenue (Conditional Use Permit 2020-001).

Summary

For the reasons set forth below and the further evidence and materials presented to your Council, we ask that your Council grant the Appeal, as the Planning Commission's denial of this application was not in accordance with the objectives of

the City Zoning code and regulations, there was an abuse of discretion, and most importantly, the decision is not supported by the record.

The Applicant and Owner base their Appeal on the following facts:

- 1. The use permit involves the conversion of existing attic space, with no change to the exterior façade of the existing home at 1054 University Avenue, as shown on **Exhibit A**, creating no new design impacts to the neighborhood.
- 2. The existing the high pitched roof design was previously approved by City staff under Building Permit B14–0203. The attic conversion is within a portion of this already approved high pitched roof space.
- 3. Arguably the proposed attic conversion is not "infill development" as defined under Section 37-50.110, as Section 37-50.110(d) specifically exempts building permits for activities "that do not increase the square footage or height of an existing structure".
- 4. The interior area of the existing attic space being converted to habitable space is set back approximately 8 feet from the front of the home, with the front portion of the interior of the house remaining one story with the existing high ceiling over the front entry/foyer and living room, as shown on **Exhibit B.**
- 5. The use permit for design approval of the attic conversion, with the house as it exists today, was initially recommended for approval by City staff at the November 4, 2020 Planning Commission meeting, in which staff set forth findings for approval of the attic conversion with the existing front façade, finding the application consistent with the City codes and regulations, as set forth in **Exhibit C**, which findings remain valid today.
- 6. Thereafter, Planning Commission requested the owner demolish the exterior of upper front portion of the home, setting it back by approximately 8 feet to where the internal attic conversion begins.
- 7. The Applicant declined to make this substantial revision to the existing already approved high pitched roof design, given (1) the fact the high pitched roof design was already approved by the City; (2) the attic conversion involves no change to the exterior façade of the home; and (3) the front portion internal area that the Planning Commission wanted removed, is, in fact, and will remain, an existing one-story open high ceiling area above the living room and foyer area and is not part of the area in which the attic conversion is requested.
- 8. Without this substantial change to the existing high pitched roof at the front of the home, the Planning Commissions was unwilling to approve the use permit, resulting in the February 3, 2021 denial.

Discussion

The entirety of the Planning Commission's denial of this attic conversion relates to the exterior design of the existing façade of the home, finding the existing design incompatible with the City's guidelines for a second story, yet, this application requires no modification, to the already City approved exterior design to this home.

The existing front façade of this home, with its high pitched roof, was approved by the City of Salinas under Building Permit number B14–0203.

This use permit involves Design Approval for an attic conversion of 965 sq. ft. of an existing City approved 1099 sq. ft. attic area. There is no increase in height, square footage, setbacks, or other external changes.

The initial Staff report for the November 4, 2020 Planning Commission meeting recommended approval of the attic conversion, and contained detailed findings, finding the design was compatible with the City's codes and regulations, including the City's Infill Development Regulations, Section 37-50.110.

The November 4, 2021 Staff Report and proposed Findings state:

"The project is in substantial compliance with the Infill Development Regulations in Section 37-50.110(f) as identified in the table below. The proposed 33-foot front yard setback measured from the front property line to the second story addition substantially meets the average front yard setback in neighboring block face of 20 feet. The proposed 24'-1" height of the second story addition does not exceed the maximum 30-foot height allowed in the R-L-5.5 Zoning District. No more than 4,194 square feet of floor area is permissible per Section 37-50.110(f)(2)(B). Therefore, a total of 134 square feet of attic space shall be permanently walled off to conform with the maximum allowed second story addition area. To address privacy concerns with adjacent dwelling units, the second story windows are staggered and are conditioned to be frosted, louvered, or placed above eye level at the top third of the wall in accordance with Section 37-50.110(f)(4)(B)."

Two public comments were received on this application.

On October 14, 2020 one member of the public sent an e-mail to the City raising a concern about the owner renting out the attic space. With regard to the rental issue, the stairway to the upstairs is in the middle of the existing home, and not amenable to tenants traipsing through the middle of their living room. Moreover, a garage conversion to an Accessory Dwelling Unit and up to 500 square feet of the existing home could be converted to a Junior Accessory Dwelling Unit could be allowed at this home, with no discretionary permits, but that is not this family's intent or interest. They want to use the space for their own use.

On the morning of the November 4, 2020 hearing, another resident raised an issue with the attic conversion blocking natural light and creating a privacy issue. With regard to light and shadows, the permit does not change any of the existing conditions, because there is no change to the exterior of the already approved high pitched roofline. The same resident suggested the applicant be required to step back the front wall above the first story where the large window and balcony are located. This area, in fact, is not part of the attic conversion, being an area which will remain one story open all the way to the high ceiling. The front window shown in the elevations is in the high ceiling over the entry foyer, and not in the attic space.

Since the November 4, 2020 meeting, articulation of the front mass of the building has remained the primary concern, as the privacy concerns have been addressed by the removal of two interior pockets of space to ensure they are no later remove for habitable space and frosting the dormer windows to obscure the view out the windows.

The February 3, 2021 Staff report notes that the existing attic and home design was subject to a 2014 ministerial permit and was approved the under Residential Low Density development regulations contained in Section 37-30.080, which design guidelines regulate architectural details, human scale structures, façade/roof articulation, and color/ materials.

Nevertheless, contrary to the City's previous design approval for the existing home, and Staff's initial recommendation for approval, Staff provided a new analysis to the Planning Commission including:

- the height and the scale is disproportionate in size and overwhelms the existing neighborhood residential block;
- the proposed roofline, mass, and lack of architectural projections along the street façade does not maintain similar horizontal and vertical proportions with adjacent facades;
- the proposed roofline, mass, and lack of projections along the street façade does not reflect a design that is stepped back from streets, broken up into smaller architectural components, or include a substantial single-story element;
- although the January 20, 2021 revised plans show an accent on the front façade at the front porch, the revised project does not achieve compliance with the provision of varied wall planes that break up the vertical mass of the second story addition.

None of this analysis, takes into account the approved structure already exists and all changes will be made internally, within the existing approved structure.

The Staff report notes that, going forward, the Zoning Code should be amended to address large or tall one story additions, but those amendments have not been made and were not in place when the City approved the initial high pitched roof and front façade as exists now, using the City's existing design standards under the Low Density Residential development guidelines.

The Planning Commission denied the application finding the project was inconsistent with the City's infill regulations. These findings, however, simply ignore the previous design approval and the fact there is an existing already approved structure in which the conversion is occurring with no impact whatsoever on the existing design of the home.

The Planning Commission requested the existing exterior front façade of the house, where there is an the existing window and high ceiling over the entry foyer and living room, be removed and the front wall of upper area of the home setback approximately 8 feet, completely redesigning the already existing City approved front façade.

The Applicant declined this request given (1) the fact the high pitched roof design was already approved by the City; (2) the attic conversion was making no change to the exterior façade; and (3) the area that the Planning Commission wanted removed, is in fact an existing open high ceiling area above the living room and foyer area and not part of the attic conversion.

While the Applicant agreed to add stone veneer around the main entry door, extend the copper metal roof porch over the front door, add decorative steel grill the under the high ceiling window facing the street, and add wood corbels to the copper roof overhand, as shown on **Exhibit D**, the Planning Commission was unwilling to approve the permit unless the front wall above the front portion of the house where the window and balcony were located was removed and the front wall set back approximately 8 feet.

Without that design change, the Planning Commission denied the project on February 3, 2021, resulting in this appeal.

Resolution Findings

The Resolution Findings 2, 3, 4, 5 and 6 are not supported by the evidence.

Finding 1 concur, the project is Categorically Exempt under CEQA.

Finding 2 is not supported by the evidence. The project is in accordance with the General Plan, Zoning and the Low Density Residential District. The existing structure, with the high pitched roof, existing front façade, and dormers was previously

approved by the City and found to be compatible with the Low Residential Density guidelines when the building permit for the home remodel was issue in 2014 for the high pitched roof. There is no change to the footprint, roof height, or setbacks, of the existing structure, nor change in neighborhood compatibility, light, air, privacy open space, as the conversion is occurring within the existing approved structure.

Finding 3 is not supported by the evidence. The project is consistent with the General Plan and will not be detrimental to the neighborhood, or the public health, safety, or welfare of the persons residing or working adjacent to the neighborhood, as the conversion is occurring within an existing approved structure. The existing structure with the high pitched roof, existing front façade, and dormers was previously approved by the City and found to be compatible under the Low Residential Density guidelines when the building permit for the home remodel was issue in 2014 for the high pitched roof. There is no change to the footprint, roof height, or setbacks of the existing structure, nor change in neighborhood compatibility, or detriment to the neighborhood as the conversion is occurring within an existing structure. The project is not traditional infill development as the attic space already exists and there is no increase in square footage or height with the attic conversion, as the conversion is occurring within an already approved City approved structure.

Finding 4 is not supported by the evidence. The project complies with the City Zoning Code. There is no change to the footprint, roof height, or setbacks of the existing structure, nor change in neighborhood character or neighborhood compatibility, as the conversion is occurring with an existing approved structure. The existing structure, with the high pitched roof, existing front façade, and dormers was previously approved by the City and found to be compatible with the Low Residential Density guidelines when the building permit for the home remodel was issue in 2014 for the high pitched roof. The project is not traditional infill development as the attic space already exists and there is no increase in square footage or height with the attic conversion, as the conversion is occurring within an already approved City approved structure.

Finding 5 is not supported by the evidence. The project will not adversely impact the character of the existing neighborhood. There is no change to the existing footprint, roof height, setbacks, neighborhood character or neighborhood compatibility, as the conversion is occurring with an existing approved structure. The existing structure, with the high pitched roof, existing front façade, and dormers was previously approved by the City and found to be compatible with the Low Residential Density guidelines when the building permit for the home remodel was issue in 2014 for the high pitched roof. The project is not traditional infill development as the attic space already exists and there is no increase in square footage or height with the attic conversion, as the conversion is occurring within an already approved City approved structure.

Finding 6 is not supported by the evidence. The project is compatible with the existing homes in the neighborhood. The existing structure, with the high pitched roof, existing front façade, and dormers was previously approved by the City and found to be compatible with the Low Residential Density guidelines when the building permit for the home remodel was issue in 2014 for the high pitched roof. There is no change to the existing footprint, roof height, or setbacks and no impact to the neighborhood as the attic conversion is occurring within an existing structure. The project is not traditional infill development as the attic space already exists and there is no increase in square footage or height with the attic conversion, as the conversion is occurring within an already approved City approved structure.

Conclusion

This Appeal comes down to design approval for the front façade of an existing high pitched roof home already approved by the City and built by the owner providing an existing one-story a high ceiling area over the entry and living room at the front of the house, and an existing attic area at the middle and rear of the existing house for which a permit is sought to convert a portion of this area to habitable space, with no exterior revisions to the existing approved high pitched roof line, height, or dormers.

The exterior design of this house was already approved and there are no new design impacts or neighborhood impacts from this interior attic conversion. It is questionable as to whether the attic conversion should even be considered residential infill, as the structure already exists and there is no change to square footage, height, or setbacks.

Nevertheless, ignoring the existing City approved design approval and existing approved high pitched roof and front façade design, the Planning Commission instead sought to require the Applicant to undertake a substantial redesign of the existing approved home before they would approve the permit, resulting in the Planning Commission's February 3, 2021 denial and this Appeal.

For the reasons set forth above and the further evidence and materials presented to your Council, we request your Council grant the Appeal and allow the project go forward as originally submitted to the Planning Commission and originally recommended for approval, which design is reflected on **Exhibit A** and the floor plans reflected on **Exhibit B**.

We could only hope that all homes in Salinas looked as lovely as this one.

Thank you for your consideration of this matter.

Sincerely,

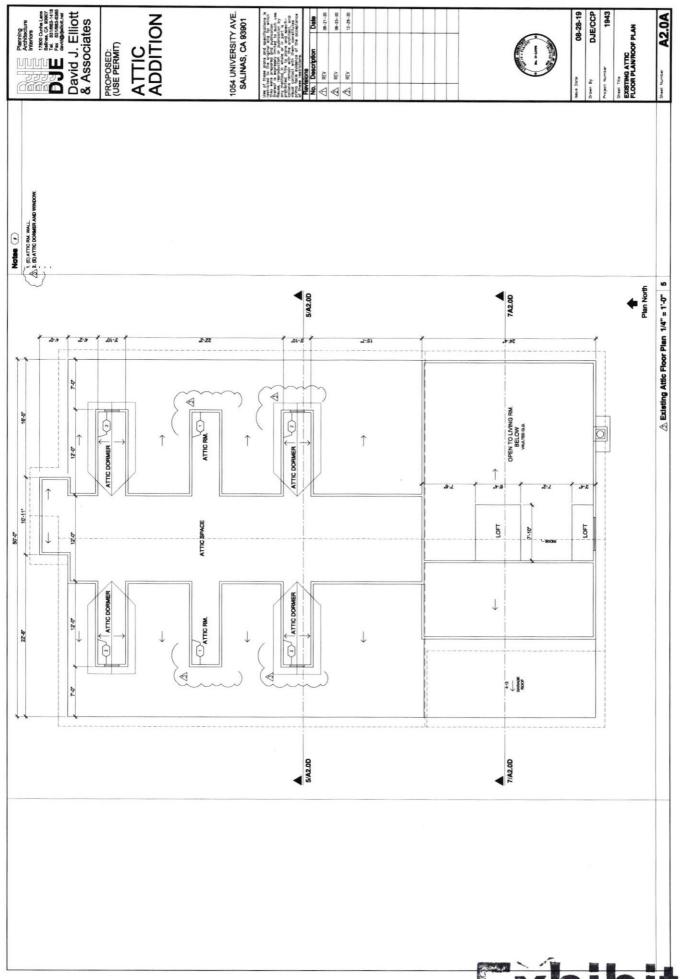
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Christine Kemp

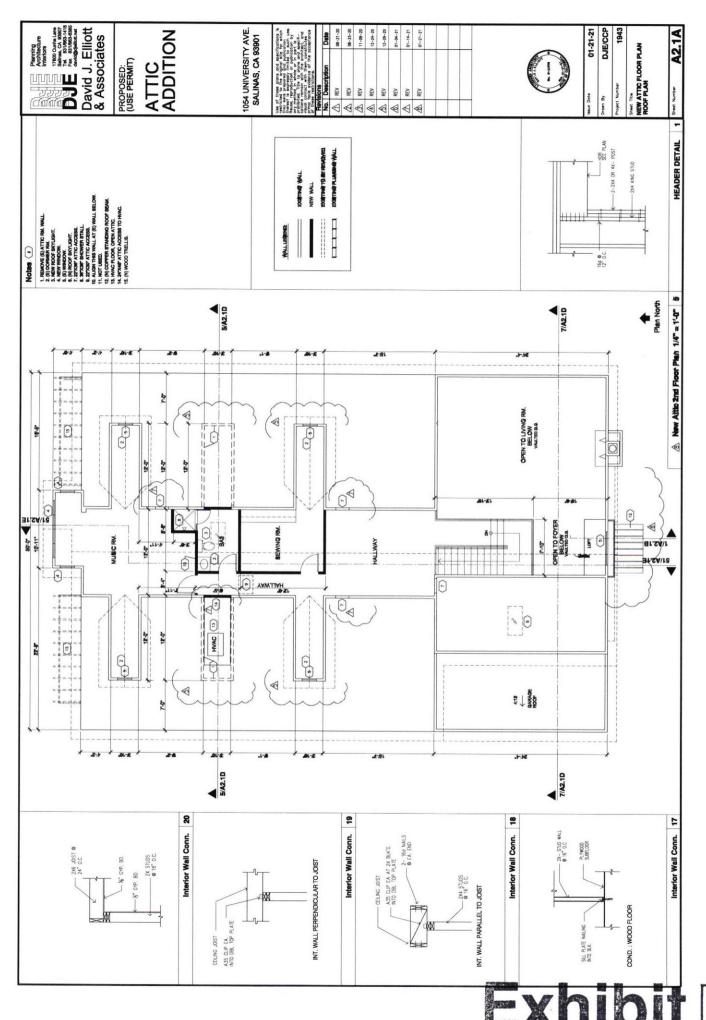
Attachments: Exhibits A - D

cc: Megan Hunter, Community Development Director Courtney Grossman, Community Development Department David Elliott, David J. Elliott & Associates, Applicant Mr. and Mrs. Eduardo Couttolenc, Owners





Exhibit



Analysis: Adding stone veneer around main entry door, a copper seam metal roof porch with copper columns over main entry door, and decorative steel grill and wood corbels under attic window facing the street appears not to address the Planning Commission's direction to minimize the scale and bulk of the second story addition and/or address articulation opportunities.

Below is the January 21, 2021 rendering with copper seam metal roof porch with copper columns extended into front yard setback.



Below is Google Street View of the existing dwelling unit and the adjacent dwelling units.





DATE: NOVEMBER 4, 2020

TO: PLANNING COMMISSION

FROM: COURTNEY GROSSMAN, PLANNING MANAGER

BY: BOBBY LATINO, ASSOCIATE PLANNER

TITLE: CONDITIONAL USE PERMIT 2020-001; REQUEST FOR

RESIDENTIAL DESIGN REVIEW TO CONVERT 965 SQUARE FEET OF AN EXISTING 1,099 ATTIC INTO A SECOND STORY ADDITION WITHIN AN EXISTING SINGLE-FAMILY DWELLING UNIT LOCATED AT 1054 UNIVERSITY AVENUE IN THE R-L-5.5 (RESIDENTIAL LOW DENSITY) ZONING DISTRICT

RECOMMENDED MOTION:

A motion to approve a Resolution finding the project exempt pursuant to Section 15301 of the CEQA Guidelines, affirming the findings, and approving Conditional Use Permit 2020-001.

RECOMMENDATION:

Approve a Resolution finding the project exempt pursuant to Section 15301 of the CEQA Guidelines, affirming the findings, and approving Conditional Use Permit 2020-001.

DISCUSSION:

Background:

Eduardo, Helia, and Nefte Couttolenc are requesting approval of a Conditional Use Permit for Residential Design Review to convert 965 square feet of an existing 1,099 attic into a second story addition within an existing single-family dwelling unit. The existing attic space was constructed with Building Permit B14-0203. The scope of B14-0203 was to construct a 1,944 square foot addition and remodel an existing detached single-family dwelling unit. The proposed floor plan and roof attic plan did not show a second floor nor a formal staircase providing access to the attic. Access to the attic was shown through a ceiling hatch with a retractable ladder. The property

owners converted the attic space into a second story addition without City of Salinas reviews or approvals and were cited under Code Violation CE1901-0101.

Per Section 37-50.110(e), a Conditional Use Permit for a Residential Design Review shall be required for residential infill development, which includes second story additions to existing single family detached dwelling units per Section 37-50.110(c)(2).

On October 9, 2020, a Notice of Intent to Approve Conditional Use Permit 2020-001 was distributed to the neighboring properties within 300 feet of 1054 University Avenue. On October 14, 2020, staff received the attached email correspondence from Mr. Chuck Eads in protest of the project. Therefore, the project was scheduled for Planning Commission consideration because the project cannot be administratively approved per Section 37-60.500(2).

The property is located in the R-L-5.5 Zoning District. The following provides an overview of the land uses and zoning districts adjacent to the project site:

North: Single-family dwelling/R-L-5.5 (Residential Low Density)
South: Single-family dwelling/R-L-5.5 (Residential Low Density)
East: Single-family dwelling/R-L-5.5 (Residential Low Density)
West: Single-family dwelling/R-L-5.5 (Residential Low Density)

Analysis:

The attached protest e-mail received on October 14, 2020 states, "I'm not a fan of this idea as our neighborhood is not up for multi tenant housing which is from my perspective what it will be. I do not want this precedent set so others will do the same. My opinion is negative." The project is a second story addition to an existing single-family dwelling and does not propose additional dwelling units.

The project is in substantial compliance with the Infill Development Regulations in Section 37-50.110(f) as identified in the table below. The proposed 33-foot front yard setback measured from the front property line to the second story addition substantially meets the average front yard setback in neighboring block face of 20 feet. The proposed 24'-1" height of the second story addition does not exceed the maximum 30-foot height allowed in the R-L-5.5 Zoning District. No more than 4,194 square feet of floor area is permissible per Section 37-50.110(f)(2)(B). Therefore, a total of 134 square feet of attic space shall be permanently walled off to conform with the maximum allowed second story addition area. To address privacy concerns with adjacent dwelling units, the second story windows are staggered and are conditioned to be frosted, louvered, or placed above eye level at the top third of the wall in accordance with Section 37-50.110(f)(4)(B).

1	Development	Proposed	Remarks
Zoning Code Section 37-50.110(f)	Standard	Development	
The minimum front and corner side yards	Average front	Second story	Substantially
shall be determined based on the average	yard setback in	addition is	conforms to
of the existing front and corner side yards	neighboring	setback 33 feet.	the
for single-family detached dwelling units			development

located within the neighboring block face. For purposes of calculating the average, the smallest yard and the greatest yard shall be disregarded. For an addition to an existing single-family detached dwelling unit, the existing front or corner side yard may be maintained, if less than the average for the neighboring block face.	block face is 20 feet.		regulation and standard.
The rear yard shall be in accordance with the base district regulations.	Minimum 10 feet.	21 feet.	Conforms to the development regulation and standard.
The minimum interior side yard shall be five feet for the first twenty feet in building height with an additional two and one-half feet of yard required for each additional five feet, or a fraction thereof, of building height as measured to the peak of the roof.	Minimum 5 feet.	13 feet.	Conforms to the development regulation and standard.
For additions: Maximum .40 FAR or two thousand five hundred square feet or the square footage of the existing house plus one thousand square feet, whichever is greater.	4,194 square feet (3,194 s.f. per approved Building Permit No. B14-0203 plus 1,000 square feet is the greatest). A portion of the 1,099 square foot attic is proposed to be sealed off from access through reducing the area to 965 square feet.	4,159 square feet.	Conforms to the development regulation and standard with a condition requiring partial reduction in area.
The maximum height to the peak of the roof shall not exceed the height of the highest roof peak on the neighboring block face, or thirty feet, whichever is more.	Maximum 30 feet.	24'- 1".	Conforms to the development regulation and standard.
The perceived scale of new dwelling units and additions should be minimized. To achieve this, two-story buildings should be stepped back from streets and adjacent	Stepped back from streets and adjacent smaller residential	While the existing second floor wall attic to second floor	Substantially conforms to the development

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smaller residential dwellings units,	dwellings units,	conversion is	regulation and
broken up into smaller architectural	broken up into	not stepped	standard.
components, or include a substantial	smaller	back entirely,	
single-story element.	architectural	the attic to	
	components, or	second floor	
	include a	conversion is	
	substantial	stepped back 10	
	single-story	feet on the front	
	element.	elevation and 7	
		feet on the side	
		elevations from	
		the first story	
		portion of the	
		home	
		minimizing the	
		scale and bulk.	
For additions, roof forms and pitch shall	Match the	Match the	Conforms to
match the existing dwelling unit.	existing	existing	the
	dwelling unit.	dwelling unit.	development
			regulation and
			standard.
Placement of windows and openings	Should not	Windows are	Conforms to
should not create a direct line sight into	create a direct	staggered and	the
the living space or the backyard of	line sight into	conditioned to	development
adjacent properties. Where privacy is a	the living space	be frosted,	regulation and
concern, windows should be staggered,	or the backyard	louvered, or	standard with
frosted, louvered, or placed above eye	of adjacent	placed above	a condition
level at the top third of the wall.	properties.	eye level at the	requiring
•	. .	top third of the	privacy
		wall.	treatment.

Findings:

The Planning Commission may approve an application for a Conditional Use Permit for residential design review if all of the findings set forth in the proposed Planning Commission Resolution are established.

Time Consideration:

The project was deemed complete on September 25, 2020. Final action is required by November 24, 2020 pursuant to Government Code Section 65950(a)(5).

Alternatives Available to the Commission

The Planning Commission has the following alternatives:

- 1. Affirm the findings set forth in the attached Resolution, rejecting the protest, finding the Conditional use Permit exempt from the California Environmental Quality Act (CEQA), and approving the Conditional use Permit, with modifications; or
- 2. Find that the Conditional Use Permit is not appropriate and establish findings at the public hearing stating the reasons for not approving the Conditional use Permit.

Conclusion:

The project is consistent with the Zoning Code and the General Plan. The proposed second-story addition will be compatible with adjacent properties because the front setback of the space created by the attic conversion exceeds the average front yard setback of the Neighboring Block Face as it is stepped back 10 feet on the front elevation and 7 feet on the side elevations from the first story portions of the dwelling unit thereby minimizing the scale and bulk.

CEQA CONSIDERATION:

The project has been determined to be exempt from the California Environmental Quality Act under Section 15301 (Existing Facilities) of the CEQA Guidelines.

ATTACHMENTS:

Proposed Planning Commission Resolution

Draft Conditional Use Permit (CUP 2020-020), including the following exhibits:

Exhibit "A" Vicinity Map Project Details (Sheet A0.1) Exhibit "B" Exhibit "C" Existing Site Plan (Sheet A1.0) Exhibit "D" Proposed Site Plan (Sheet A1.1) Exhibit "E" Existing First Floor Plan (Sheet A2.0) Exhibit "F" Proposed First Floor Plan (Sheet A2.1) Exhibit "G" Existing Attic Floor Plan (Sheet A2.0A) Exhibit "H" Proposed Second Floor Plan (Sheet A2.1A) Exhibit "I" Existing Exterior Elevations (Sheet A2.0B and A2.0C) Exhibit "J" Proposed Exterior Elevations (Sheet A2.1B and A2.1C) Exhibit "K" Proposed Building Sections (Sheet A2.1D) Exhibit "L" Color and Materials Board

Google Street View Image of Dwelling Unit, October 2007 (before attic addition)

Google Street View Image of Dwelling Unit, May 2019 (after attic addition)

Protest Email from Mr. Chuck Eads, dated October 14, 2020

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