



Office of the City Manager

ACTION CALENDAR

December 13, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning & Development

Subject: Amending "By Right" Residential Additions and Definition of a Story in the Zoning Ordinance, Part 2

RECOMMENDATION

That Council provide direction to staff by selecting one of the following options (note: this is the same recommendation as appeared in the November 15, 2005 report):

1. Refer the Councilmembers' request to the Planning Commission for its consideration and have staff return in January to discuss when a revised ordinance can be recommended by the Planning Commission and whether undertaking this project would delay other work already programmed for this year.

OR

2.
 - a. Direct staff to prepare an Urgency Ordinance modifying the Zoning Ordinance to make any addition above the first floor subject to discretionary review in the same manner as major residential additions, and modify the definition of a story, and bring it to the City Council for adoption by a 4/5 vote by December 13, 2005; and
 - b. Refer the matter to the Planning Commission for consideration by the end of the term of the urgency ordinance, as it may be extended by the Council, but in any event no more than two years (the maximum permitted duration of an interim ordinance).

In either case, the Council needs to provide direction to staff regarding the geographic area to be covered by the interim ordinance (e.g., limited to the Hill Overlay district, or applied to all residential districts where major residential additions are allowed) and whether a first story as-of-right addition should be limited to the current 500 square feet or be expanded to 700 square feet.

OR

3. Request that this issue return as part of Council's consideration of the 2006-07 Planning Department Work Program.

FISCAL IMPACTS OF RECOMMENDATION

If referred to the Planning Commission, processing a draft zoning ordinance amendment through the Planning Commission will require about .5 FTE for six months. This would displace existing work program projects and therefore have no direct impact on existing budgeted resources. If an urgency ordinance is adopted, depending on the direction adopted, implementation of the urgency ordinance could require an additional ½ to ¾ FTE Assistant or Associate Planner to process an additional 35 – 45 Administrative Use Permits (and associated appeals), with an estimated staff cost of \$75,000 - \$100,000. Fees would cover approximately half this cost with a net impact on the Permit Service Center fund of approximately \$37,500 – \$50,000. In the short term, the Permit Center fund balance could cover the deficit; it is unclear how the costs of this additional position will be covered in the long term.

CURRENT SITUATION AND ITS EFFECTS

Currently, the Zoning Ordinance allows additions of fewer than 500 square feet conforming to all zoning standards as a matter of right, subject to the limitation that the 500 square-foot cap includes all square footage added since 1992. In other words, a property owner may not add (for instance) 499 square feet every year as a matter of right. Major residential additions, defined as additions of 500 square feet or greater, are subject to an Administrative Use Permit. On October 25, 2005, Councilmembers Wozniak and Olds placed a proposal before Council that the Planning Commission be asked to return within 90 days with a revision that would, in effect, make all additions subject to a discretionary permit if they are not on the ground floor.

In subsequent Council discussion on October 25, the Council requested additional information from staff regarding this proposal on three subjects:

- Impact on the Planning Commission’s adopted work program, and the impact on staff resources.
- Are there other ways to implement this in the short-term without having an immediate impact on the Planning Commission’s work program?
- Should the current 500 square feet for as-of-right additions be retained or increased to 700 square feet for first story additions?
- Should there be a distinction between “flat-land” regulations and “hill-area” regulations.

On November 15, Staff returned with its analysis of the above issues. Staff found:

- Potentially significant impact on the adopted Planning Commission work program. Complex issues require significant staff effort to undertake the necessary analysis of alternatives and drafting of ordinance options. The Council discussion to date (continuing on November 15) indicates that this could require significant staff effort and therefore would displace other work program items if taken up in the next 90 days by the Planning Commission

- An urgency ordinance could be adopted by Council without Planning Commission action. However, such an ordinance requires a 4/5 vote under State law.

Staff did not have further comment or analysis of the 500 or 700 square feet question or the issue of where the revisions should apply, as staff could not undertake any analysis of potential impacts or alternatives in the time available.

BACKGROUND

At its meeting on November 15, the Council asked that staff return with further analysis of options and alternatives. In particular, the Council asked the following questions:

- What are the costs of the proposed modification to property owners?
- How many projects will be affected?
- Are there other options for modifying the ordinance that would not necessarily entail a full Use Permit?
- What projects/programs would be displaced if this became an immediate priority for the Planning Commission?

These questions are answered below.

Impact on Property Owner There are three types of impacts on property owners of modifying an as-of-right permit into a discretionary permit: the cost of the application; increased amount of time for the application to be processed; and uncertainty of outcome. Each is addressed below:

- Application costs. An Administrative Use Permit application costs \$1,364.70, whereas the Zoning Certificate is \$147.20. Although it is unusual for an applicant to appeal the decision of the Zoning Officer or ZAB, the cost of any appeal is currently \$63.
- Time. If there is no opposition leading to an appeal, an Administrative Use Permit currently requires 3 – 4 months to be completed (assuming a complete application is submitted at the beginning). This length of time is generally due to current workload relative to staff resources and could be shortened by increased staffing. However, under the best of circumstances, the amount of time for an Administrative Use Permit is about 6 to 7 weeks from receipt of a complete application. An Administrative Use Permit can first be appealed to the ZAB and then to the City Council. Appeals can add months of time, depending on how far the appeal is extended. A year or more is not uncommon for projects appealed to Council.
- Uncertainty. An Administrative Use Permit is a discretionary permit: it may not be granted. All of the money and time that is placed into an application (e.g., architectural

drawings, engineering, surveys, application fees, etc.) are at-risk. Although we do not maintain statistics, based on staff’s experience relatively few AUP’s are ultimately denied because staff and neighbors are generally able to work through issues prior to a decision. However, there is no guarantee of a positive outcome for the applicant and there are often additional direct costs incurred in addressing issues through the process such as project modifications, and indirect costs in neighborhood disagreements and tensions arising from the uncertainty. There is no way to measure how many property owners will simply forego projects rather than go through the uncertainties of the discretionary review process.

How many projects. Based on a rough analysis, staff estimates that approximately 35 – 45 projects would be affected by the new discretionary permit requirements on an annual basis. Because planning staff does not track as-of-right projects by type, staff estimated the number of projects that may be subject to the new requirement based on a review of zoning certificates over two recent months. Further analysis of location (e.g., hill area or flatlands) and a more refined estimate of the number of projects potentially affected would require a much greater level of staff effort.

Other discretionary options. The Mayor’s Task Force on Permitting sought an alternative to the existing discretionary processes, such as a permit where if the neighbors “signed off,” the permit would be approved, and if they did not, the permit would go through the AUP process. The City Attorney indicated that the city could not assign its land use authority to surrounding neighbors, so this option was not feasible. There may be other “permit levels,” or other approaches to this issue that staff has not yet considered (and could research in other cities), but this would be part of the deliberative zoning ordinance modification process undertaken with the Planning Commission. Staff has no immediate alternatives to offer for the Council’s consideration as part of an urgency ordinance.

Planning Commission projects/programs displaced. At the request of the Planning Commission, Staff has just completed a mid-year review of progress on its work program. While there has been substantial progress, there have also been some unanticipated issues that have arisen in the past six months that have required immediate attention, staffing levels have been somewhat lower than budgeted, and some issues have required more effort or have begun earlier than staff expected when we drafted the work program last April. Our mid-year review to the Planning Commission is attached. Staff estimates that the work effort required for the residential addition item is .25 - .5 FTE for six months. As noted in the staff report, active projects already require more staff than currently available, so some projects are already moving at a slower pace than anticipated (such as the Southside Plan), and the commencement of others (such as the General Plan Conformance Review and Ashby/Gilman Corridor Review) will be somewhat delayed. Projects that can be further delayed or displaced include the following:

- Gilman/Ashby Corridor Zoning Review

- General Plan Conformance Review
- South Berkeley/Ashby BART Station
- Auto Dealer Rezoning
- Southside Plan Adoption

Other projects have set deadlines or taskforces actively engaged that make them much more difficult to delay or postpone.

CONTACT PERSON

Dan Marks, Director of Planning and Development, 981-7410
Mark Rhoades, Manager of Land Use Planning, 981-7410

Attachments:

1: FY06 Planning Commission Workplan



Land Use Planning Division
Planning and Development Department

November 30, 2005

To: Harry Pollack, Chair,
and Members of the Planning Commission

From: Mark Rhoades, AICP,
Planning Manager

Subject: Midyear Work Plan Update – Fiscal Year 2006

Summary

On April 17, 2005, the Council adopted a work plan for land use policy issues that was based primarily on the Planning Commission recommendations from March of this year. As adopted, the work plan exceeded the 4.5 staff FTE¹ that existed at the time. Staff indicated to Council that it would make every effort, in partnership with the Planning Commission to finish items as expeditiously as possible in order to address all of the items on the list. The Council added one additional work plan item (Downtown Area Plan) at the beginning of the fiscal year. A staff resource was also provided for the effort. The total FTE for policy development is now 5.5, with one FTE dedicated to the DAP.

There are 5.5 staff FTE with an adopted work plan that requires up to 7.1 FTE. Council has referred new projects requiring significant additional staff resources, but has not indicated that it wanted existing items displaced in order to accommodate them; staff is therefore recommending that these items be added to next year's work program. Other items may be referred, as described later in this report. Projects currently underway require 5.35 + FTE. Projects not yet started will require up to 1.65 FTE. New referrals from the Council could require up to 2.2 FTE.

| Council Adopted FY 2006 Work Plan | | | |
|--|------------|-------------|-------------------|
| ITEM | FTE | Time | Proj. I.D. |
| Southside Plan | .5 | 1 year | 4 |
| General Plan Review and Implementation | .25 | Ongoing | 535 |
| UCB/LBNL Monitoring and Coordination | .5-1.0 | Ongoing | 820 |
| Creeks Task Force | .5 | 1.5 years | 911 |
| Waterfront Specific Plan Phase I | .25 | 6 months | 972/897 |
| David Brower Center/Oxford Plaza | .25 | 6 months | |
| Zoning Ordinance Revisions | .2 | Ongoing | 187 |

¹ FTE: Full time equivalent, 1 FTE = the number of work hours of one full time staff member.

| | | | |
|--|--------|-----------------|-----|
| West Berkeley Plan Update (Incremental) | .5 | 1 year | 947 |
| Mayor’s Task Force – Non Policy Items | .5 | 1 year | 992 |
| BART Plaza/Citywide Pedestrian Planning Processes | .25 | 1 year | 925 |
| BUSD Monitoring and Project Review and Tracking | .25 | 1-2 years | 894 |
| Inclusionary Ordinance Revisions/Incremental Density Bonus | .25 | 1 year | |
| Planning Commission Administration | .5 | Ongoing | |
| Auto Dealer Zoning | .4 | 6 months | |
| ABAG Housing Fair Share | .4 | 6 months | |
| South Berkeley Plan Implementation | .25-.5 | 1 year | |
| Added by Council July 2006 | | | |
| Downtown Area Plan | 1.0 | 3 years | |
| Total FTE | | 6.35-7.1 | |

Projects Completed

Projects completed so far this fiscal year include:

| ITEM | FTE | Time | Proj. I.D. |
|---|-----|----------|------------|
| Waterfront Specific Plan Phase I | .25 | 6 months | 972/897 |
| David Brower Center/Oxford Plaza | .25 | 6 months | |
| Carried over from the previous fiscal year’s work plan | | | |
| Housing Element Update per HCD agreement | | | |
| Zoning Amendments relevant to parking flexibility | | | |

Projects Underway

When the above work program was put together, staff roughly estimated the work effort required for the year (on average). Nine months later, we have a much better estimate as to the current and projected workload through the rest of this fiscal year for these items. The following projects are currently underway. The table estimates the current effort required and how long that level of effort is likely to be necessary through this fiscal year (several of these projects will extend until next year, but that is not described).

| ITEM | FTE | Time | Proj. I.D. |
|---|-----|-----------------|------------|
| Southside Plan | .35 | June 30, 2006+ | 4 |
| UCB/LBNL Monitoring and Coordination Currently reviewing Bevatron and Memorial Stadium CEQA issues, in addition to regular coordination meetings unrelated to DAP. | .75 | June 30, 2006 + | 820 |
| Creeks Task Force | .75 | June 30, 2006 | 911 |

| | | | |
|---|-----|---------------|------------|
| Zoning Ordinance Revisions Three pending – Definition of yards, Teaching related home occupations, elimination of ADUs. | .2 | June 30, 2006 | 187 |
| Mayor’s Task Force – Non Policy Items G1.3, G1.5, G2.3, G7.6, G7.11, G8.1, G8.2, G8.4, R1.3, L5.1, L5.2, and L6.1. Several of these items are currently underway. | .2 | June 30, 2006 | 992 |
| BART Plaza/Citywide Pedestrian Planning Processes | .15 | June 30, 2006 | 925 |
| BUSD Monitoring and Project Review and Tracking Processing of Gilman Street Bus Yard, monitoring Derby Street Playing Fields issue, monitoring University Avenue [former adult school] process | .1 | June 30, 2006 | 894 |
| Inclusionary Ordinance Revisions/Incremental Density Bonus | .75 | June 30, 2006 | |
| Planning Commission Administration | .5 | Ongoing | |
| Auto Dealer Zoning | .4 | June 30, 2006 | |
| Downtown Area Plan | 1.0 | 3 years | |
| South Berkeley Plan Implementation | .25 | June 30, 2006 | |
| Total FTE | | | 5.4 |

Other issues and items that staff are currently engaged with and are not on the adopted work plan list include:

- Continued engagement at the Council level for the Landmarks Preservation Ordinance (.1 FTE through January, 2006)
- West Berkeley Bowl legislation (.2 FTE through March, 2006). While a consultant is handling much of this work, there is a significant amount of coordination required by other staff.
- Housing Issues Condominium Conversion revisions, Homeless and Special Needs Housing issue (.1 FTE through the end of this year)
- Transportation Fee Nexus Study (.1 FTE through April, 2006).

The total staff effort currently underway averages about 5.9. It will reduce by March to about 5.7. Staffing available, as described later, is about 5.5. The result is that some non-critical projects are delayed or maintained at a minimal effort level, such as Mayor’s Task Force implementation work and zoning ordinance revisions. Moreover, two of the following three not-yet-begun projects will likely be delayed (as noted below, one is indefinitely on-hold):

Projects Not Yet Started

| ITEM | FTE | Time | Proj. I.D. |
|--|-------------------|----------|------------|
| General Plan Review and Implementation | .25 | Ongoing | 535 |
| West Berkeley Plan Update (Incremental – Ashby and Gilman Corridors) | .5 | 1 year | 947 |
| ABAG Housing Fair Share | .4 | 6 months | |
| Total FTE | 1.4 – 1.65 | | |

The pending status of these items is as follows:

- General Plan Review and Implementation – the General Plan indicates that a report should be prepared on progress toward implementation on an annual basis; the City is also supposed to prepare an annual report to the State on its progress towards implementing the General plan. The first major report should be prepared for the Planning Commission’s review and recommendation to the Council in 2006. This project has not started due to staffing considerations. Staff anticipates that this item will be started after the first of the year by one of the Division’s new staff members.
- West Berkeley Plan, incremental: the Council approved an incremental approach to reconsideration of the West Berkeley Plan (the Plan itself states that it should be fully reconsidered beginning this year). The Council directed that this incremental effort be focused on the two major corridors, Ashby and Gilman. Staff anticipates starting this project as soon as the Auto Use issue has been completed. The project will involve (at minimum) the following components:
 - Start Up and Community Engagement Process identified
 - Information Gathering/Summarizing Issues and Concerns
 - Existing Conditions Report
 - Public Workshop(s)
 - Summarize Workshop Results
 - Prepare Alternatives for Consideration
 - Technical Analyses of Alternatives + Workshop
 - Development of Preferred Alternative
 - CEQA Review
 - Public Hearings and Recommendation to Council
- ABAG Housing Fair Share Process: establishing the City’s “fair share” is the first step in the State mandated update of the Housing Element, which is supposed to occur every 5 years. The Association of Bay Area Governments (ABAG) required by the State to prepare fair share numbers for all Bay Area Jurisdictions. State law had previously required that the process for revising housing elements begin this year with the ABAG allocation process. The State has delayed this requirement for at least two years so the City will not be engaging in this issue as anticipated and this item can be removed from the work program for at least two years.

Staffing

The current staffing level for Policy Development is 5.5 FTE. That includes a Principal Planner, two Associate Planners, an Assistant Planner, and a Principal Planner dedicated to the DAP. In addition, the Planning and Development Director and the Land Use Planning Manager continue to play significant roles in various projects, including the LPO, Joint Density Bonus Subcommittee, Zoning Amendments, UCB and BUSD monitoring, and auto sales zoning in West Berkeley.

This has already been a challenging fiscal year for staffing. Since almost the beginning of the fiscal year we have been short one Associate Planner in policy planning (who is working a modified and greatly reduced schedule). We have just backfilled that position on a part-time and temporary basis. That individual started work the week of November 1. The Planning Commission's Secretary, Janet Homrighausen, has elected to assume the role of Secretary to the Landmarks Preservation Commission, replacing Gisele Sorensen who will be moving back to Current Planning. Another recently hired new planner, Carli Paine, will become the Planning Commission's new Secretary effective February 1, 2006. Carli will be working with Janet over the next three months to insure a smooth transition of these very important responsibilities. Carli will be introduced to the Planning Commission on November 30. While new staff and new duties bring new energy and ideas into the organization, they also require time for people to get up to speed in their new jobs which generally means a temporary reduction in efficiency and a reduction in overall work capacity.

New Items Referred or Being Considered by Council

There are two new Council referrals from the City Council. They are:

1. Elmwood Quota Adjustments – Elmwood Merchants and neighbors have been working on a set of recommendations that would modify the existing structure of the Elmwood District's Numeric Limitations for certain uses. Because there was no consensus on how to modify the quotas, the issue was referred to the Planning Commission. Staff indicated that the matter would be included in next year's work program and would not displace existing projects. It should be noted that establishing quotas on Euclid has long been referred to the Planning Commission and would normally take precedence over modifying existing quotas on Elmwood. The staff resource need for both these projects is **.25 FTE for six – nine months**.
2. Modifying Public Noticing Requirements - Consider modifying the public noticing requirements for proposed land-use actions in a manner such that effective notice to the public is maintained, but does not contribute to urban blight via unnecessary clutter on street light poles and other public places. The request includes the recognition of the effectiveness of the development project signs (Big Yellow Signs) that are now required as a result of the Mayor's Task Force on Permitting and Development. The staff resource need for this endeavor is **.2 FTE for six months**. Again, the Council did not place a deadline on a response, and staff therefore recommends that this be included in the work program for next year.

The Council is also currently considering a referral related to by-right additions to the Planning Commission. This issue has the potential to require a high level of process and engagement even though the proposed zoning language could be fairly simple.

1. Major Residential Additions - The Council is considering whether to modify the current definition of Major Residential additions. Although this has long been on the Planning Commission list of projects, it is not on this year's work program. However, some Council members believe that the matter deserves urgent attention. Three options are before Council, all of which would affect the Planning Commission's work program sooner or later. The Council is considering an urgency ordinance that it could adopt immediately for (ultimately) two years, which would then require the Planning Commission to consider this issue next year. Or the Council could refer the matter as a high priority item to the Planning Commission (thereby displacing other work); or it could simply request that the issue be considered in next year's work program. Staff believes that the resource needs for this project are **.25 - .5 FTE for a minimum of six months**. A version of this item, as recommended by the Mayor's Task Force, is currently on the "Inactive" list as requiring .5 FTE for six months.
2. Ashby BART Development Project and Study – There is an effort underway to consider a plan for a development project utilizing the City's air rights over the Ashby BART Station. The South Berkeley Neighborhood Development Corporation (SBND) is applying for grants to consider development of a transit village. The SBND has already been working with some neighbors, Councilmembers, and BART to begin discussions relevant to process. The Council had included a .25 FTE to work on South Berkeley implementation efforts and staff has indicated to the Councilmember and others involved that it would devote the .25 FTE to this project, if it moves forward. Staff had not anticipated working on South Berkeley issues until January 1, 2006; this has moved more quickly than anticipated and is already absorbing about .25 FTE. Given the magnitude of the project, the staff effort needed is likely to increase **from .25 FTE up to .5 FTE for six months**, but staff does not anticipate that level of effort in the near term. This figure is consistent with the resource need identified on the "Inactive" list item for the Ashby BART project.

with the total new FTE for new items referred by or under consideration is .95 – 1.2 for six months to one year. With the exception of the Ashby Station project, and possibly the Major Residential Addition project, these projects can be incorporated in next year's work program list that will include the consideration of those items already on the "Inactive" list.

Recommendations

Currently active projects already exceed the Department's staffing capacity for policy work. Projects not yet started will require 1.65 FTE and there are several referrals from Council that could be undertaken now, but would have to displace or delay existing work. Staff recommends that the

Planning Commission consider the mid-year work plan information and provide a recommendation to the Council consistent with current staffing levels. Specifically, staff recommends:

1. Because new Council referrals do not have deadlines attached and Council did not direct that they be completed this fiscal year (thereby displacing other work), the Planning Commission will consider them at a later date this year if staff resources become available; otherwise, they will be incorporated into the consideration of the FY 06-07 work program.
2. Combine work related to a development plan for the Ashby BART Station (.5 FTE for six months) with the South Berkeley Plan Implementation, already authorized for .25 FTE for six months by Council.
3. Confirm that General Plan Implementation analysis will proceed in January and that an initial work program for the Gilman/Ashby corridor study will be reviewed in March, 2006, as recommended by staff.

Conclusion

The Community and the Planning Commission are currently undertaking a very high level of land use policy discussion. This level of policy review and analysis entails significant community engagement and sophisticated analyses of both particular and general land use issues. The demands of this level of engagement and analysis are many. They include the voluminous personal time donated by a dedicated and active citizenry. They also include the resources necessary for providing the high level of analyses needed to achieve an informed decision-making process. All of the items on this work plan list are important to the community. There are other items on the "inactive" list that are also very important. In addition, the Council has recently referred two additional items and is currently considering a third.

There are three areas where land use policy development issues are at the highest levels. Those areas include West Berkeley, Downtown, and South Berkeley. There are other land use issues that apply more generally to the City, and some that are smaller issues specific to certain areas. Finally, there are a number of ongoing work plan items (like Planning Commission administration) that require certain levels of resources.

Attachments: Projects Inactive or On Hold

Attachment 1 - Projects Inactive or On Hold

There are a number of projects that are on-hold. Staff expressed to the Council that as work plan items may be finished ahead of expectation, new items could be added from the following list. In addition, the “Inactive or On-hold” list becomes a priority list for the FY 2007 work plan year.

| Projects Inactive or “On-Hold” | | |
|---|-----------------|--------------------|
| ITEM | FTE | Time Period |
| Waterfront Specific Plan Phases II | .25 | 1 year |
| Mayor’s Task Force – Policy Projects | .5-1.0 | 2 years |
| UASP Residential Only Projects/UASP Implementation | .25 | .5-1 year |
| Euclid Avenue Quotas | .25 | 6 months |
| Establishing Numeric Density –R-3, R-4, R-5, C-districts | 1.0 | 1-2 years |
| Ashby BART Transit Village, Initiate Public Process | .5+\$ | 1-2 years |
| Increased Flexibility for Use of Ex. Comm. Bldgs | 1.0 | 1-2 years |
| 499 square foot by-right additions | .5 | 6 months |
| Downtown Hotel/Conference Center (when it occurs) | .25-.5 | 1-2 years |
| San Pablo Avenue Design Guidelines Development and Implementation Process | .75 | 1-2 years |
| Housing Element Update | 1.0 | 1 year (06-07) |
| Total FTE | 6.25-7.5 | |