

Case File Number: ZT04-197

May 12, 2004

Location:	Citywide
Proposal:	Consideration of conceptual proposals for revised zoning standards and design review process and criteria for one and two unit residences. Request for Design Review Committee direction for preparation of zoning text. (Actual zoning amendments and related changes will be brought forward at a future date for public hearing).
Applicant:	City of Oakland
Environmental Determination:	Exempt; Section 15061(b)(3), State CEQA Guidelines, "general rule," no possibility of significant effect on the environment.
Action to be Taken:	Review and comment on conceptual proposals.
Staff recommendation:	Approve project subject to Conditions of approval
For further information:	Contact case planner Christopher Buckley at 510-238-6983 or by email at: cbuckley@oaklandnet.com or Ed Manasse at 510-238-7733 or by email at emanasse@oaklandnet.com .

BACKGROUND AND SUMMARY

In December 2001, the City Council approved revised zoning standards and design review changes for one- and two-unit residences. The design review changes include adoption of a new S-18 Mediated Design Review Combining Zone as a pilot project in City Council District One and the S-14 Overlay Zone (1991 Firestorm Area). Key objectives of the new Mediated Design Review pilot program were to simplify the review process, and to resolve issues between the project sponsor and neighbors. The City Planning Commission and City Council were to evaluate the Mediated Design Review pilot program, and the Council was to then decide whether to retain it, modify it, or expand it to other areas.

This report presents staff's assessment of the S-18 pilot program, as well as other elements of the City's 1-2 unit design review procedures. The report also evaluates the current 1-2 unit zoning standards, and includes staff's conceptual proposals for possible changes.

Staff believes that the pilot program's Mediated Design Review (MDR) procedure has not achieved its objectives and in many ways has been counter-productive. Its overly elaborate provisions require longer project review periods, have been confusing to both public and staff, and even appear to have encouraged larger projects, as well as more Variances and Conditional Use Permits. Staff is therefore recommending that the MDR program be replaced by a version of the City's Regular Design Review procedure. The new design review process envisioned in the S-18 Zone would have the same basic structure as Regular Design Review Citywide, but include the following additional features: (i) MDR's early neighbor consultation provision, which appears to have worked well; and (ii) a new voluntary dispute resolution procedure as an alternative to MDR's mandatory mediation provision.

Staff is also recommending changes to the 1-2 unit zoning standards and design review program Citywide to correct unintended effects of the 2001 zoning revisions; increase efficiency; and make design review more effective, easier to understand, and more consistent Citywide. The City's existing 1-2 unit residential design review procedures are very confusing; not standard across different zoning districts for the same

types of projects; and give unnecessary attention to minor changes to existing buildings and not enough attention to new construction.

Specific proposals include:

- (1) Replacing the current Special Residential Design Review (SRDR) New Construction Checklist with discretionary criteria that more effectively address issues such as building bulk; and view, privacy, and solar access impacts on neighbors.
- (2) Allowing more alterations, small additions and small accessory structures to be exempt from Design Review if they meet zoning requirements and match the exterior treatment of the existing building.
- (3) Informational or “courtesy” notice to neighbors for SRDR projects (which currently have no notice at all); and improved notice for Regular Design Review, Conditional Use Permits, and Variances.
- (4) Creation of a new “1-2 Unit Residential Design Review Manual” that would establish the decision-making criteria for *all* design review cases *Citywide*; incorporate existing criteria and guidelines now used only for certain situations and geographic areas; and consolidate the existing criteria and guidelines with much-needed new provisions.
- (5) Revisions to hillside front yard setback and side yard building length requirements adopted in 2001 that have encouraged undesirable building configurations, or imposed excessive constraints on proposed projects.
- (6) Increasing the 3½-foot front yard fence height limit adopted in 2001 to 4 feet, and allowing the pre-2001 6-foot fence height limit in certain cases with Small Project Design Review (SPDR).
- (7) Various minor zoning changes to clarify or “clean up” confusing or ambiguous language adopted in 2001, including clarifying the “height” definition and relocating certain provisions within the overall text.

Since December 2003, these proposals have been discussed in community forums in City Council Districts One and Six. On May 5, 2004, an additional Citywide forum was held at Montera Middle School. Input received from the District forums and recent Citywide meeting is discussed in the “Key Issues and Impacts” section below.

After receiving the Design Review Committee’s comments on the conceptual proposals, staff recommends that draft zoning text be brought back to the Design Review Committee prior to consideration at a public hearing by the full Commission. The draft zoning text would then be submitted to the City Council for adoption by ordinance.

PROPOSAL DESCRIPTION

I. Revised 1-2 Unit Design Review Program

The revised 1-2 unit residential design review program has the following primary objectives:

- To make the design review process easier to understand by having clearer steps and standardized criteria for review;
- To provide more certainty with how and what standards are applied for projects;

- To clean up inconsistencies and review procedures and compile them into a Citywide process;
- To revise the Mediated Design Review process; and
- To improve notification methods.

Specific proposals include:

1. Consolidate the City's 1-2 unit residential design review procedures into three basic procedures—Exemptions, Special Residential Design Review (to be renamed either "Minor" or "Basic" Design Review), and Regular Design Review—and make the process steps within these two procedures and the decision-making criteria as uniform as possible Citywide.

The existing 1-2 unit residential design review program is unnecessarily confusing and complex. Minimizing the number of different design review procedures and establishing uniform Citywide decision-making criteria will make the program easier for both the public and staff to understand and help assure the same standard of review for similar projects Citywide.

There are now four (4) basic design review procedures for 1-2 unit residential projects:

A. Design Review Exemption (DRX):

- Staff sign-off over the counter for small addition/alteration projects meeting the following exemption criteria: (i) the proposal does not include the addition of a dwelling unit; or (ii) involves no more than a 10% expansion of existing footprint, floor area or wall area on site, and all exterior treatment matches the existing building.

DRX applies Citywide in all zones that would otherwise require Special Residential Design Review and not require Regular Design Review.

B. Special Residential Design Review (SRDR): A Two-Track Process

1. SRDR Checklist (DRC)

- Staff decision on either: (i) additions of 10%-20% to a single-family home or duplex; or (ii) construction of a new single-family home or duplex.
- Decision based on a checklist point scoring system. No neighbor notice and no appeal.

2. SRDR Discretionary (DRD)

- Staff decision on either: (i) additions of 20% or more to a single-family home or duplex; (ii) creation of one new detached unit on a lot that has one existing unit; or (iii) development within any one-year period, on five or more lots contiguous or across the street from each other, and submitted by same owner or designer.
- Decision based on discretionary criteria that has been established for each of the preceding project types. No neighbor notice and no appeal.

SRDR applies Citywide in all zones not requiring Regular Design Review, and is used for the majority of design review-only cases.

C. Design Review in the S-18 Zone: A Three-Track Process

1. SRDR Checklist (DRC)

- Triggered in the S-18 Zone by: (i) additions or alterations of less than 500 square feet to a single-family home or duplex that involve or result in one or two dwelling units on a lot, are located on the ground floor, and result in a cumulative floor area of less than 3,500 sq. ft. for all residential facilities on lot; or (ii) a balcony or deck that is either less than ten feet in depth or is not on a side or rear elevation that faces a 1- or 2-unit residence on an adjacent lot;
- Review criteria according to a checklist point scoring system. No neighbor notice and no appeal.

2. Mediated Design Review (MDR)

- Triggered in the S-18 Zone by: (i) additions of 500 square feet or more to a single-family home or duplex, and results in a cumulative floor area of less than 3,500 sq. ft. for all residential facilities on lot; or (ii) new construction of a single-family home or duplex with a cumulative floor area of less than 3,500 sq. ft. for all residential facilities on lot; or an upper-story or attic addition of any size (except for a balcony or deck meeting the above DRC threshold).
- Pre-application review required;
- Applicant posts “Notice of Proposed Development” at site and shows plans to neighbors;
- City mails notice to property owners within 300’ of project;
- Parties notified of opportunity for mediation;
- Staff decision; which is only appealable if one party refused to mediate, or if mediation occurred but agreed-to design must be changed to meet zoning requirements.

3. Regular Design Review (DR)

- Triggered in the S-18 Zone by: (i) new construction of house or duplex 3,500 sq. ft. or more in floor area; (ii) additions to existing home that results in 3,500 sq. ft. or more of floor area; or (iii) new construction or addition when accompanied by a variance or use permit.

S-18 applies primarily to North Oakland, including the 1991 Firestorm Area.

D. Regular Design Review (DR):

- Triggered by: (i) any addition or alteration that affects exterior appearance in all zones requiring Regular Design Review (such as R-36, C-28, C-31, S-4, S-10, and S-11); (ii) new construction or addition meeting threshold criteria in the S-18 and S-20 Zones; and (iii) new construction or addition when accompanied by a Conditional Use Permit (CUP) and/or certain types of Variances.
- City mails notice to all property owners within 300 feet. Public has 10 days to respond.
- Staff reviews plans for conformance with codes and criteria, and issues a written, appealable decision.

Zones requiring Regular Design Review are primarily in parts of West Oakland and parts of the Hills.

As described above, the City's four basic review procedures include a number of subsets that vary according to such factors as zoning district, project type (new construction vs. additions and alterations) and project size. The procedural variations involve such factors as public notification, decision-making time limits, decision-making criteria and guidelines, and appeal provisions. Because of these procedural variations, the City's current residential design review program can be divided into about eleven (11) specific subsets as shown in **Attachment A**. Staff believes that this many procedural variations is unnecessarily confusing and can be consolidated with a simpler and easier-to-understand review framework as shown in **Attachment B**.

2. Replace the existing Special Residential Design Review (SRDR) New Construction Checklist with Discretionary Criteria.

The existing SRDR procedure specifies that additions and alterations to existing structures are reviewed according to the "SRDR Discretionary Criteria," (see **Attachment C**) whereas the construction of entirely new one- and two-unit structures are instead reviewed according to a simple points-system checklist (the SRDR New Construction Checklist—see **Attachment D**). This two-track SRDR review process has inappropriately established a higher design standard for additions and alterations than for new construction.

The SRDR New Construction Checklist also does not always adequately address many important design issues, such as building mass and bulk, and impacts on neighbors' views, privacy, or solar access. In contrast, Regular Design Review has usually been more effective in addressing these issues, but is mostly limited to parts of North and West Oakland, and certain Hill-Area neighborhoods.

Staff recommends replacing the SRDR New Construction Checklist with discretionary criteria that would adequately consider issues such as building mass and bulk; as well as view, privacy, and solar access impacts.

A flow chart for proposed revisions to Special Residential Design Review (SRDR) is provided in **Attachment E**.

3. Consolidate the many existing Design Review criteria and guidelines into a new Citywide Design Review Manual for One- and Two-Unit Residences.

The Design Review Manual would merge the existing SRDR Discretionary Criteria with other existing design review criteria and guidelines, such as the "Expedited Design and Bulk Review Criteria for Single Family Houses in the S-14 zone" (completed in 1993).

The merged criteria and guidelines would be supplemented by additional provisions such as the draft criteria and guidelines for mass and bulk; and for view, solar access, and privacy impacts considered by the Design Review Committee in 2003, but not formally adopted. A preliminary outline of the proposed Design Review Manual is shown in **Attachment F**.

The Design Review Manual will promote project certainty and predictability by adopting a uniform set of Citywide design review criteria for all one- and two-unit structures. The Manual will also help streamline the design review process by clearly communicating the city's expectations regarding such

project elements as: site planning; mass & bulk; compatibility with the surrounding neighborhood; view, privacy and solar access impacts; and building details and materials.

The Manual will merge what are currently separate standards for design review approval into one citywide standard, and serve as a user-friendly guide for property owners and designers on the expected qualities of additions, alterations, and new construction. The goal will be to improve communications between applicants and staff, and avoid unnecessary plan modifications and time loss.

The Manual's specific criteria and guidelines will include numerous illustrations and promote a more sensitive and site-specific approach to the design of one- and two-unit residences in order to achieve the general purposes of the City's Zoning Regulations.

4. Provide a "Courtesy" Notice to neighbors for SRDR applications.

SRDR currently provides no notification to neighbors. Staff recommends that SRDR applicants be required to display a large noticing poster on site that describes the proposed project to neighbors and includes contact information. The applicant would also provide, by certified mail, reduced sets of plans to all adjacent neighbors.

The posting of notices of proposed development is already required for all Regular and Mediated Design review applications. Providing plans to neighbors and expanding the on-site posting requirement will address the widespread concern about the lack of public notice for SRDR projects.

5. Allow more small structures, additions and alterations to be exempt from Design Review if they meet basic zoning standards and criteria to "match existing."

Currently, discretionary design review is required for many small projects with little chance of adverse impacts, such as for ground-floor additions at the back of a house on a flat lot. In some zones, such as R-36, S-10, and S-11, every exterior alteration, no matter how small (such as new paint colors), technically requires Regular Design Review and full public notice.

As noted above, additions and alterations subject to SRDR are now exempt from Design Review if they involve, for example, less than a 10% expansion of existing footprint, floor area or wall area and they match the existing building. *Staff recommends extending exemptions to residential additions subject to Regular Design Review; and expanding the exemption threshold Citywide to include one-story side or rear additions with maximum wall heights of 12' and maximum roof heights of 15'.*

Allowing more small projects to be exempt from Design Review will allow limited staff resources to be focused on larger projects such as new construction, that have a higher potential for significant impacts on neighbors. (See "Key Issues and Impacts" section below for further discussion.)

6. Replace Mediated Design Review (MDR) with Regular Design Review in the S-18 Zone.

MDR, adopted in 2001 as part of the S-18 Zone, has not achieved its objective to facilitate design review by using mediation. In many respects it has been counter-productive by encouraging project sponsors to propose larger buildings and file more Variances and Conditional Use Permits in order to avoid MDR.

MDR was set up in Council District One to be an expedited review process that strongly encouraged project sponsors to discuss proposed homes/additions with their neighbors early in the process and use mediation to resolve disputes. It was established with certain features listed below that are different than those used in the rest of the City:

- Full zoning review prior to the application being filed – during the mandatory pre-application, staff provides applicant with written determination of status of zoning conformance; list of names and addresses of adjacent owners; and stamps on plans for obtaining adjacent owner’s signatures;
- Applicant posts ‘Notice of Proposed Development’ at site, and provides plans to neighbors for review and signature;
- Applicant then files project application, which must include plans with adjacent owners’ signatures (or certification of applicant’s attempt to obtain signatures), plus photo and copy of posted notice;
- Staff mails notice to owners within 300 feet (using form different than that used in other areas of the City), posts notices in area, and notifies adjacent neighbors of right to request mediation prior to any decision on the application;
- If mediation is requested, parties have 30 days to complete mediation (subject to extension);
- Review criteria limited to bulk, views, privacy, and solar access;
- Staff decision appealable to the Planning Commission only if one party refused to mediate and other party appeals; or mediation occurred, but agreed-to design had to be changed to meet zoning regulations.

Staff believes that the Mediated Design Review program should be significantly modified. This conclusion is based on the following analysis:

a. *Case Statistics:*

- There were 128 projects in the S-18 zone in the first year and a half of the program;
- Only about twenty-five (25) percent (33 cases) qualified for Mediated Design Review;
- About fifty (50) percent of the projects fell under Regular Design Review either because they: were over 3,500 square feet; in a special zone, such as the S-10 Scenic Route overlay; or requested variances or conditional use permits;
- About twenty-five (25) percent were small enough to qualify for Special Residential Design Review (SRDR), which does not require public notice.

b. *MDR cases are taking longer to process than Regular Design Review process, whereas MDR was intended to be an expedited type of review.* MDR takes 3-6 months, while Regular Design Review takes 1-3 months. The extra time is due to: the time to obtain neighbor signatures; the additional step of zoning review prior to the application being filed and time allowed to request mediation prior to a decision.

c. *MDR was intended to simplify the review process, but it has been confusing to applicants and staff because it has different procedures and thresholds than SRDR and Regular Design Review.*

d. *None of the new homes in the hills area have used the Mediated Design Review process.* Both applicants and staff perceive MDR as more onerous than Regular Design Review.

- e. *Some applicants appear to be intentionally designing houses to exceed the 3,500 sq. foot limit, or to require variances or conditional use permits in order to avoid MDR.*
- f. *No MDR cases have actually gone to mediation. However, the requirements for early consultation with neighbors and signatures appear to be extremely beneficial. Applicants are working out issues in advance in order to avoid mediation.*

Staff recommends the following changes to MDR:

- a. *Replace the elaborate MDR review process with one that builds on the city's current Regular Design review procedures – public input, staff review, a Zoning Administrator decision and full right of appeal.*
- b. *Preserve MDR's special requirement for early neighbor consultation. This is the aspect of the current MDR program that seems to be the most beneficial.*
- c. *Replace MDR's formal mediation procedures with a Regular Design Review process that: (i) includes the right of any party with concerns about a project to participate in an informal, voluntary "dispute resolution meeting" chaired by staff and attended by the applicant.*
- d. *Extend Regular Design Review's 10-day public comment period to 15 days. This notice extension will be Citywide and also apply to comment periods for Variances and Conditional Use Permits.*
- e. *Eliminate the mandatory zoning review prior to the application being filed. It adds at least 30 days to the process and has not been particularly beneficial.*
- f. *Replace the current review criteria for Mediated Design Review (MDR) with a new reference to the proposed Citywide 1-2 Unit Residential Design Review Manual. Revise the ordinance to require that all S-18 projects conform to the Manual.*

A flow Chart for proposed revisions to Mediated Design Review (MDR) is provided in **Attachment G**.

7. Improve public noticing procedures.

For Regular Design Review cases, the current public noticing procedure involves mailings, via US mail, to all owners of property located within a 300-foot radius of the project site. All public notice mailings rely on the most current and available data from the Alameda County Assessor and include all owners of record. In addition to the mailed notices, a number of letter-size notices are posted within 300 -500 feet of the project site.

All mailed and posted notification currently takes place at least *ten days* prior to a public hearing or Zoning Administrator action as required by the Zoning Regulations.

The main issues that have been raised by the public about the notification process over the years have largely been to the length of public comment period, and the physical posting procedure. The main concerns include:

- Insufficient time allowed for the public to comment (the public comment period is currently 10 days from the date of notification);
- Low visibility due to small size of posters, and unclear project site location due to lack of prominent posting at site;
- Litter and ineffective postings due to signs deteriorating from weather or being torn down by vandalism;
- Reduced resources due to the large amount of staff time required to post signs around various sites throughout the city.

Staff feels that many of the concerns could be addressed by changing notification requirements to include the following:

- *Increase the public comment period from 10 days to 15 days from date of notification.*
- *Require one large on-site poster rather than numerous postings around the area.* This would cut down on problems with posters falling down due to vandalism or weather, and would provide for a large visible sign that should be of a color to attract the attention of anyone passing by.
- *Require applicant responsibility for posting and maintaining the public notification poster.* This would create a responsible body for ensuring that the posted notice is maintained throughout the duration of the notification process, as there is not enough Department staff to keep a routine check on a poster over a period of time. A signed affidavit by the applicant and a photo of the on-site poster would be required as proof of completion.

A flow chart showing the above changes incorporated into the Regular Design Review (DR) procedure is provided in **Attachment H**.

II. PROPOSED REFINEMENTS TO 1-2 UNIT ZONING STANDARDS

Many changes to development standards for single-family homes and duplexes were adopted in December 2001. The main ones were:

New Standards to Address Building Bulk:

- Revised height limits – reduced height limit; and changed height limits that increase with slope of site;
- Revised front, side and rear yard setbacks – primarily for sloped lots;
- 35-foot limit on building length along side lot lines – a new type of regulation;
- Lot coverage limits for flat lots.

New Standards to Address Street Appearance and Neighborhood Context:

- 3 1/2-foot height limit for front yard fences (previously six feet);
- Retaining wall height limits – six feet, with minimum four-foot separation;
- Minimum of 50 percent landscaping in front yards (to limit paving front yards);
- Garage/parking location – must locate to side or rear if that is neighborhood pattern;
- Minimum 20-foot distance between street and garage – to require more parking in hill areas

Analysis of 1-2 Unit Zoning Standards

Staff has begun a comprehensive review of the 1-2 Unit zoning standards centered on assessing the effectiveness and clarity of the current standards in meeting their intentions. Based on the experience staff has had in implementing the 1-2 Unit zoning standards, as well as from direct feedback received from applicants, there is the need to integrate and simplify the zoning standards without undermining their purpose. Staff has received a number of complaints from applicants that some of the current standards are overly complicated, unnecessarily restrictive on design, and not practical or feasible in certain situations. Staff has concluded that many of these problems and complaints can be addressed by adopting less complicated zoning text with less overlapping standards. More straightforward standards would also save time and frustration for both designers and staff, and may lessen the current proliferation of variance requests.

In order to achieve this objective, some numeric values will need to be adjusted as provisions are combined or simplified, while other standards need to be reworked completely to allow more flexibility for site-specific design responses. Also, staff and applicants continue to question how to measure and interpret many of the new standards adopted in 2001, so there is a need for technical clarifications.

The proposed changes that staff has brought forward to date are intended to address the more problematic of the current regulations. Based on Committee input and public feedback, other zoning standard changes may be added to the final proposal. For instance, an additional standard change that has been suggested by various attendees at the District forums and the Citywide meeting is to adopt lot coverage limits on hillside properties as a replacement for many of the problematic current standards listed below. Also, staff has recently received a memo deserving further study outlining suggested 1-2 unit zoning standard changes from a local architect that has been a consultant to the City's Zoning and Planning division since 1995 (see correspondence titled "Proposed Modifications to 1-2 Unit Residential Zoning Standards" included as part of **Attachment I**).

Specific proposals to date include:

1. Revise the 35-foot limit on building length in side yards on sloped lots. The building length limit has generated many variance requests. This regulation was adopted in 2001 to address the issue of long, flat, tall side walls facing neighbors. However, many applicants have complained that the rule overly restricts the building depth and often allows for only a typical 20-foot deep garage and one more interior room directly behind before a significant additional inset of the building line is triggered by this regulation.
2. Change the hillside regulation limiting the amount of building width that can utilize the reduced 5-foot front yard setback on sloping lots. Current regulations allow for the front yard setback on sloping lots to be reduced to 5 feet, but limit the amount of building footprint within the normally required front yard setback (usually the first 20 feet) to 60% of the lot width. This "60% of building width" standard was instituted in 2001 to reduce building bulk close to the street, but has had the unintended consequence of making the garage the dominant front façade feature for many new hillside homes. Staff's proposal is to change this hillside regulation so that the portion of building width exceeding 60% of the lot width need only be set back 10 feet, rather than the current 20 feet.

Permitting more of the front façade to be located within the normally required front yard setback will allow for hillside designs with more prominent entries, and help make garages less dominant.

3. Change the 3 ½-foot front yard fence height limit to 4 feet by right, and allow up to 6 feet in certain cases with Small Project Design Review (SPDR). The reduction in allowed fence height from 6 feet to 3 ½ feet was instituted in 2001 to avoid creating a neighborhood character where front yards and homes are completely walled off from the neighborhood with a solid fence. However, many residents still want taller fences for security reasons.

Staff is offering the following fence height proposal which hopefully balances streetscape integrity with security concerns:

- a. Increase the by-right front yard fence height to 4'.
 - b. Allow front yard fence heights up to 6' with Small Project Design Review (SPDR)¹ approval if the project meets the following criteria:
 - i. The portion of the fence higher than 4' is at least 70% transparent, or the fence as a whole is at least 60% transparent; and
 - ii. The fence is set back at least 18" from the back of sidewalk, but need not be further back than the front lot line. The unpaved strip between the fence and the sidewalk must be landscaped. (Note: Fences that are not set back at least to the front lot line are within the public right-of-way and require an encroachment permit. On most streets, the sidewalk does not extend all the way to the front lot line, resulting in a strip of unpaved right-of-way often over 3' wide that looks like it is part of the front yard.)
 - c. Chain link fences higher than 4' will not be allowed in front yards.
4. In certain cases, allow additions to maintain existing substandard side yards without the requirement for a variance. Additions to the rear of an existing residence that continue existing substandard side yard setbacks would be allowed *by right* only under the following circumstances:
 - a. A substandard side yard already exists along at least 75% of the length of the abutting building wall;
 - b. A rear addition would continue the abutting building wall line, but in no case reduce the side yard setback to less than 3 feet;
 - c. The height of the addition within the proposed substandard side yard does not exceed the height of the existing structure within the existing substandard sideyard; and
 - d. The length of any addition wall within the proposed substandard side yard does not exceed 30% of the length of the abutting building wall within the existing substandard side yard.

This exception to the normally required side yard setback requirement will promote rear additions that are more integrated with the existing structure.

¹ SPDR is now used mostly for nonresidential projects involving such elements as signs, awnings and storefront changes. SPDR projects require a decision within 5 working days and involve no public notice or appeal.

KEY ISSUES AND IMPACTS

Replacing the Special Residential Design Review (SRDR) New Construction Checklist with discretionary criteria.

This is the most far-reaching part of the overall proposal. The current SRDR procedure specifies that additions and alterations are reviewed according to the “SRDR Discretionary Criteria”, whereas the construction of entirely new one- and two-unit structures are reviewed according to a simple points-system checklist (the SRDR New Construction Checklist). The existing New Construction Checklist is very easy to pass, has allowed very unattractive designs and does not address view, privacy, and solar access impacts on neighbors. The existing SRDR discretionary criteria for additions and alterations, on the other hand, *does* address view, privacy, and solar access impacts, as well as the compatibility of the proposed design with the existing building. *Therefore, the current SRDR procedures impose a higher design standard for additions and alterations than for the construction of entirely new structures, even though additions and alterations generally have less impact potential than new construction projects.*

Replacing the New Construction Checklist with discretionary criteria will correct these deficiencies. The discretionary criteria will be included in the new Design Review Manual and feature well-illustrated design guidelines to help interpret the criteria. The Manual will provide a more uniform standard for new construction vs. additions and alterations, and cover such issues as view, privacy, and solar access impacts, and building mass and bulk.

Replacing the New Construction Checklist with discretionary criteria will require many project sponsors to take greater care with their designs than they presently do. Some may need to rely more on architects and other design professionals, thereby increasing project development costs. More staff time will be required to process new construction cases because administration of discretionary criteria will take more time than completing the current New Construction Checklist. However, staff believes that increasing the scope of Design Review exemptions as discussed in the next section will reduce the amount of overall cases sufficiently to offset the increased staff time required for review of new construction projects according to the Manual’s discretionary criteria.

Expanding the range of additions and alterations that would be exempt from Design Review

This proposal would expand design review exemptions Citywide, including Regular Design Review zones such as S-10, S-11 and R-36, where *no* exemptions are currently allowed. See “Proposal Description” above for a more complete description of the expanded exemptions.

As discussed in the preceding section, the time savings obtained from the expanded exemptions will offset the increased staff time required to process new construction projects according to the proposed New Construction Discretionary Criteria. Staff also believes that the availability of the exemptions will encourage some project sponsors to design additions *smaller* than they would otherwise, in order to qualify for the exemption and take advantage of the significantly reduced 1-3 day processing time and reduced fees compared to the current 40-60 day processing time needed for SRDR and the 65-75 days (70-90 days in the S-18 Zone) for Regular Design Review.

However, during the preliminary review of this proposal in community forums, concerns were expressed that the expanded exemptions could result in adverse view, privacy, and solar access impacts on neighbors,

and that neighbors would not be able to identify these impacts prior to construction and discuss them with the project sponsor, since neighbors would not be notified of exemptions.

Staff believes that the potential for significant adverse view, privacy, and solar access impacts from the expanded exemptions is extremely minimal given that the proposed exemption threshold would be limited to one-story side or rear additions that match the existing building, and include maximum wall and roof heights of 12' and 15' respectively.

If requested by the Committee, additional safeguards and/or limitations on exemptions can be included in the final proposal. For instance, staff has received a letter from Councilmember Jane Brunner (see correspondence dated May 6, 2004 included as part of **Attachment I**) stating her office's position that expanded exemptions should not be approved without the requirement for notification of the immediately adjacent neighbors.

Staff's conclusion on expanded exemptions is based on the following analysis:

- (a) Solar access. The maximum shadow length of an exempt addition at 9 a.m. and 3 p.m. on the spring and fall equinoxes would be: 12' x 1.44, or 17.3'. (This assumes a maximum roof pitch of about 8:12 - a steeper roof pitch is unlikely given the 15' roof height limit). Assuming 5' side yards, the shadow will extend onto an adjacent property by no more than 12.3' at ground level and less at higher levels. *12.3' is less than 1/4th of the width of a 50' wide lot and does not seem to constitute a significant solar access impact. In addition, much of the shaded area will usually be shaded anyway by perimeter fences and landscaping.*
- (b) Privacy. Assuming an 8' ceiling (or 9' from finished floor to attic floor), an exempt one-story addition with a maximum wall height of 12' would result in eye-level height for a seated person inside the addition of about 7' above finished grade. (This assumes eye-level height for a seated person is 4' above finished floor). *Potential privacy impacts from such viewing levels will usually be mitigated by the 6' high fences and tall shrubbery that typically border side and rear yards.*
- (c) Views. Significant views are usually from the downslope side of buildings on sloped sites and from upper floors on level sites. Buildings on sloped sites are usually multi-story on the downslope side with the major viewing locations being on the upper floors. Assuming an upper-floor viewing location with finished floor 11' above grade (which is actually lower than the finished floor height of most upper floors, especially on downslope elevations), an eye level viewing position for a seated person would be about 15' above grade. *This is well above the exempt addition's 12' wall height and equals the proposed 15' height limit for the addition's roof. These sightline clearances appear to eliminate the possibility of any significant view impacts.*

During the community forums, some residents stated that the definition of "significant view" used in the analysis is too restrictive— that significant views can also be obtained from ground-floor levels of existing buildings and involve views of such features as: neighboring trees, adjacent gardens, and open sky. Staff does not believe that such views should be considered "significant views," and thus merit protection as part of design review. Protecting such views would make most, if not all side and rear additions impossible and deprive owners of a neighborhood's smaller buildings the right to expand these buildings into larger structures comparable to their neighbors.

Replacing Mediated Design Review (MDR) with Regular Design Review in the S-18 Zone.

The proposed changes to MDR were of major interest to S-18 Zone residents who participated in the community forums. After a series of discussions, there seems to be general acceptance now of the proposal to replace MDR with a modified form of Regular Design Review in the S-18 Zone. In lieu of mediation, Regular Design Review in the S-18 Zone would include the right of the public to request an informal dispute resolution meeting attended by the applicant and chaired by staff. S-18 Regular Design Review would also preserve a requirement for early review of plans by neighbors similar to the review now included in MDR. These provisions were very important to the apparent acceptance of the MDR changes by forum participants, and are supported by staff. Another key provision that appeared important to forum participants' acceptance was increasing the 10-day public comment time limit for Regular Design Review, as well as Variances and Conditional Use Permits, to 15 days. This is discussed further in the next section.

Increasing public comment period to 15 days for all Variance, Conditional Use Permit and Regular Design Review Cases.

The five additional days responds to ongoing requests for additional time to review application submittals and was a part of the proposal replacing Mediated Design Review in City Council District One with an enhanced form of Regular Design Review. The increased public comment period will apply to all Minor Variances, Minor Conditional Use Permit and Regular Design Review applications considered by staff *and to all Major Variance, Major conditional Use Permit and Regular Design Review applications considered by the City Planning Commission.*

During the community forums, there were some requests to increase the public comment period to 20 days (at least during December) or even 30 days. Staff does not support these longer periods because they would excessively prolong application processing times, and exceed the processing times used in most neighboring communities.

Adding five days to the public comment period seems reasonable since it will ensure a full work week (five business days) of review for those who can only review applications during business hours and would ensure two full weekends of review for others. Under the current ten-day comment period schedule, notification is sent out on Fridays with the comment deadline being a week from the following Monday. Those receiving notification at home, therefore, usually learn of the application on Saturday, but those receiving notification at their office have to wait until Monday. This only allows a week (assuming no holidays) to obtain copies of plans and other detailed information on the application and provide written comments by the deadline.

Defer separate adoption of 'Criteria for Building Mass and Bulk and for View, Privacy, Solar Access Impacts', and instead include as sections in the new 1-2 Unit Residential Design Review Manual.

Draft versions of the Manual chapters on "View, Privacy and Solar Access Impacts" and "Building Mass and Bulk" were reviewed by the Commission's Design Review Committee in 2003, and had been prepared separately mostly because they addressed the *only* criteria that could be considered in staff decisions on Mediated Design Review applications. If Mediated Design Review is to be replaced by Regular Design Review, as is now being proposed, *all elements of exterior design* must be considered in the decision.

Chapters on “View, Privacy, and Solar Access Impacts” and “Building Mass and Bulk” will be provided to the Commission for interim adoption concurrent with the zoning text, and pending completion of the entire draft Manual, as discussed further in this section.

Planning Commission adoption of an “Interim” 1-2 Unit Residential Design Review Manual as part of the Commission’s zoning text review.

The criteria and guidelines that will be used for Design Review decisions should be reviewed concurrently with the new zoning text so that reviewers can see the complete package of proposals. The criteria and guidelines will be in the new *1-2 Unit Residential Design Review Manual*. However, the Manual’s final draft will probably take at least 6-12 months to prepare following completion of the draft zoning text for the subject proposals.

In order to expedite Commission and Council consideration of the draft zoning text, staff is proposing to accompany the text with an “interim” version of the Manual consisting in large part of excerpts from the following existing documents:

- (1) Special Residential Design Review Discretionary Criteria for New Construction and Additions and Alterations (adopted by the City Council in 1992)
- (2) Expedited Design and Bulk Review Criteria for Single Family Houses in the S-14 Zone (completed in 1993)
- (3) S-10 Scenic Route Combining Zone Design Guidelines (adopted by the Planning Commission in 1973 and 1975)
- (4) Draft Design Guidelines for Retaining Walls (completed in 1988, and used administratively by staff, but not formally adopted)
- (5) Draft Criteria and Guidelines for View, Solar Access, and Privacy Impacts (reviewed by Commission’s Design Review Committee in 2003, but not formally adopted)
- (6) Draft Criteria and Guidelines for Building Mass and Bulk (reviewed by commission’s Design Review Committee in 2003, but not formally adopted)

These documents would form the interim Manual’s core and would be expanded as part of the Manual’s final draft. The documents have various format inconsistencies that would be corrected in the final draft.

Requiring SRDR applicants to provide a courtesy notice to neighbors.

One of the major complaints about SRDR is that neighbors receive no notice of applications, even for major projects such as new construction. Staff believes that the proposed “courtesy notice” will correct this deficiency and enhance a project’s responsiveness to issues such as view, privacy, and solar access impacts on neighbors, and facilitate the city’s review of projects with respect to these issues.

Because of the Planning and Zoning Division’s limited resources, the courtesy notice would be provided by the applicant and identify the applicant as contact person.

Requiring story poles for certain projects.

Story poles are often necessary for accurate project evaluations by staff and the public, especially for such issues as view, privacy, and solar access impacts, and building bulk. However, the City has no consistent criteria for requiring story poles.

Staff recommends that the new zoning text authorize staff to require story poles based on a written set of guidelines adopted by the Commission for story poles. The guidelines would be presented concurrently with the draft zoning text, and identify the situations where story poles would normally be required by staff; state how long they would need to be in place; identify the specific locations where they would normally be installed; and describe any special treatments, such as taping or draping between poles, that would be required and under what circumstances.

Staff's preliminary proposal for storey pole guidelines would be that at least two weeks before a decision may be made regarding an application subject to storey pole installation, the applicant would be responsible for erecting story poles to represent the actual height and area of any proposed new home or addition. The story poles installed would show the height at each corner of the structure, the maximum structure height, and the outline of the proposed structure with string tied between poles of wood and/or PVC piping.

Situations where story poles might normally be required include:

- (a) On sites over 20% slope and where there is a potential impact on solar access, privacy or views resulting from the construction of:
 - i. New one and two-unit residences; and
 - ii. Multistory additions located on the downslope side of existing buildings;and
- (b) For all one and two-unit projects Citywide involving either a height Variance or height-related Conditional Use Permit.

In all cases, the determination of whether storey poles are required would be by staff, based on a project's potential for a significant view, privacy or solar access impact or that the building's bulk may be excessive. The installation of story poles would be at the expense of the project sponsor.

During the community forums, there were requests that story poles be required whenever requested by neighbors, at least in the Hills. Given the significant expense of story poles, staff believes that it is inappropriate to allow neighbors to dictate the need for story poles. Such neighbor requests might be based on a misunderstanding of the plans; or on view, privacy, solar access or bulk concerns that are outside the scope of the decision-making criteria and guidelines.

Changes to Zoning Standards

There seemed to be general acceptance at the community forums of the proposed changes to fence height and the 35-foot building length limit along side lot lines. However, the proposed by-right continuation for certain existing substandard side yards for building additions was presented late in the process and generated significant concern from many forum participants.

The Commission should, therefore, give careful consideration to the substandard side yard continuation proposal.

RECOMMENDATION: Review the conceptual proposals and provide direction to staff for preparation of draft zoning text.

Respectfully submitted:

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ATTACHMENTS:

- A. Existing 1-2 Unit Residential Design Review Process
- B. Proposed 1-2 Unit Residential Design Review Process
- C. SRDR Discretionary Criteria
- D. SRDR New Construction Checklist
- E. Flow Chart for Proposed Revisions to Special Residential Design Review (SRDR)
- F. Preliminary Outline of the proposed 1-2 Unit Residential Design Review Manual
- G. Flow Chart for Proposed Revisions to Mediated Design Review (MDR)
- H. Flow Chart for Proposed Revisions to Regular Design Review (DR)
- I. Written Comments received through May 6, 2004.