

From: Hillside Neighbors [REDACTED]
Sent: Sunday, October 18, 2020 1:38 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>; Andrew McCullough <Andrew.McCullough@cityofsanrafael.org>; Gary Phillips <Gary.Phillips@cityofsanrafael.org>; John Gamblin <John.Gamblin@cityofsanrafael.org>; Kate Colin <Kate.Colin@cityofsanrafael.org>; Maribeth Bushey <Maribeth.Bushey@cityofsanrafael.org>
Cc: Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>; Raffi Boloyan <Raffi.Boloyan@cityofsanrafael.org>; Paul Jensen <Paul.Jensen@cityofsanrafael.org>
Subject: Open time for public expression

Honorable Mayor Phillips and City Council members:

RE: Council meeting 10/19/20 – open time for public expression

I request time to speak during the open time for public expression at the City Council meeting for Monday, October 19, 2020.

My comments concern recent communications regarding the project at 38 Upper Fremont, approved by the Planning Commission on September 15, 2020. I've attached the following documents to provide background information for my comments:

1. Letter to Alicia Giudice on September 22, 2020
2. Alicia's response on September 30, 2020
3. Follow-up letter to Alicia dated October 6, 2020

I plan to briefly comment on the importance of following all departmental policies, procedures and guidelines, general plan policies regarding safety, and municipal code for all hillside development. I will also comment on the lack of response to my letter dated October 6, 2020, which includes specific requests listed in [#5 Next Steps](#).

Thank you for the opportunity to speak during the open time for public expression.

Victoria DeWitt

September 22, 2020

Alicia Giudice, Principal Planner
City of San Rafael
1400 Fifth Ave
San Rafael, CA 94901

RE: 38 Upper Fremont, ED18-082

Dear Alicia:

You are the project planner for the application to build a new single family residence on a steeply sloped lot (~60%) at 38 Upper Fremont Drive. The plans proposed a “pit stacker car parking” plan with a mechanical device to stack 4 cars into an enclosed below-grade garage requiring excavation of ~20 feet deep, as best determined from the drawings. There was no grading plan included with any of the plans submitted to the West End Neighborhood Association (WENA) for comments.

WENA repeatedly requested a “thorough safety and feasibility study” be done prior to approval in several comment letters beginning on April 30, 2019, when this stacked parking system was first proposed, and included in the most recent letter dated August 17, 2020.

On August 17, 2020, I submitted a letter to you and the Planning Commission, with copies to Raffi Boloyan, Paul Jensen, and Bill Guerin. I asked why a Geotechnical Investigation Report wasn't required for this application and referenced the General Plan, the Geotechnical Review Matrix and Hillside Guidelines, which requires a Geotechnical Investigation Report for sites having a Slope stability rating of 3 or 4 and must be submitted before the application is deemed complete. When I didn't receive a response to my letter, I called you and you said that you rescheduled the hearing to give yourself time to look into it. A few days later, I asked Paul about his response to my letter and he said that you were talking to Public Works about it and suggested I talk with you. You never responded to my follow-up telephone message. I never received an answer to my question.

The Planning Commission approved the application for an Environmental and Design Review permit on September 15, 2020, with a vote of 4 to 1.

I am concerned about the Hillside Residential Guidelines Manual, Zoning Code, and General Plan policies, being followed during your review of this application and recommended approval before the Planning Commission. I have formulated questions to address areas of concern and request your written response to the following:

Question #1:

The applicant first submitted plans for a conceptual review in September, 2018. At that time, did you review the slope stability map to identify the stability rating for this vacant lot?

Reference: General Plan Safety Element “S-3. Use of hazard Maps in Development Review. Review Slope Stability, Seismic Hazard, and Flood Hazard Maps at the time a development is proposed.”

Question #2:

Did you review the City’s Geotechnical Review Matrix to determine what type of geotechnical report or review was necessary when the development was first proposed, in September 2018?

Reference: Municipal Code 14.16.170, General Plan Safety Element S-4. Geotechnical Review. Continue to require geotechnical investigations for development proposals as set forth in the City’s Geotechnical Review Matrix (Appendix F). Such studies should determine the actual extent of geotechnical hazards, optimum design for structures, the advisability of special structural requirements, and the feasibility and desirability of a proposed facility in a specified location.

Question #3:

Given this site was rated in zone 3 on the Slope Stability Map, did you require a Geotechnical Investigation Report before this application was deemed complete and scheduled for a hearing? Did you receive a written response on the geotechnical review before scheduling the hearing?

Reference:

General Plan Policy CD-6a, Municipal code 14.16.170, Hillside Design Guidelines, Hillside Residential Guidelines Manual, Appendix C: Planning Department Procedures for Geotechnical/Hazardous Soils Review (see link below):

- B.1) “Sites which are rated 3 or 4 (most hazardous) on either Geoseismic Hazard or Slope Stability map will require a *Geotechnical Investigation Report* as part of the materials needed for completeness.”
- B.2) “The required report must be submitted before the application is deemed complete.”
- B.3) “Reports for high hazard areas must be reviewed by private geotechnical review board.”
- B.5) “A written response on the geotechnical review must be received before the environmental review is completed and the item scheduled for a hearing.”

<https://www.cityofsanrafael.org/documents/hillside-appendix-thru-h/>

Question #4:

Please explain your attempt to eliminate site-specific technical reports but then state that the Building Division requires a Geotech/Soils report as part of the building permit submittal process as a standard condition of approval. (Exhibit 4, pg. 3-5, S-4. Geotechnical Review)

Reference:

In the draft resolution, condition of approvals, you require a geotechnical investigation report and peer review prior to the issuance of a grading or building permit, (see condition of approval #3, page 4 of the Draft Resolution, attached to the staff report).

Discussion:

The timing of this requirement is not in compliance with the Municipal Code, General Plan or Hillside Residential Guidelines Manual, as referred to in the previous questions. How can you know the safety or feasibility of a proposal and make an informed decision to approve a project without the required

information *BEFORE* the hearing? The decision to postpone this requirement does not reduce costs to the applicant and there is no savings in processing time had this requirement been addressed when the application was first submitted in 2018, as required by the General Plan and the Hillside Residential Guidelines. Furthermore, in my letter dated **August 17, 2020**, I referenced both the General Plan Geotechnical Review Matrix and the Hillside Guidelines, Appendix C, which requires a Geotechnical Investigation Report as part of the materials needed to complete the application *BEFORE* scheduling a hearing.

Question #5:

Why wasn't a Grading Plan required with the Full Submittal of this application for an Environmental Design Review Permit prior to the project being accepted as complete?

Reference:

Hillside Residential Guidelines Manual, Appendix A, II.c. , Municipal Code 14.25.030-C.5.
<https://www.cityofsanrafael.org/documents/hillside-appendix-thru-h/>

Question #6.

Doesn't the proposed stacked parking system qualify as an Exception to the Hillside Guidelines and require an Exception approval before the City Council? What is the basis for your advice to the Planning Commission that they have the option to classify this stacked parking system as a tandem system for the purpose of approving an Environmental and Design Review Permit for this project even though you clearly state that it is NOT a tandem system?

Reference:

Zoning code 14.18.120 (B) allows tandem parking with an environmental and design review permit under the Hillside Residential Design Guidelines Manual. However, the Engineering Division does not consider the proposed stacked parking system a tandem parking system. In addition, the General Plan goal 18 (GP2020-Circulation) includes separate definitions for tandem parking and stacked parking and does not equate the two. Mechanical/automated parking systems are allowed within the downtown zoning district (14.18.010-I.3.c) but neither the Municipal Code nor the Hillside Guidelines contain regulations or guidelines that would allow "pit stacker parking" or mechanical/automated parking systems in single family residential or hillside areas and so, I believe, the proposed parking solution would require an Exception approved by the City Council.

Question #7:

Why wasn't a story pole plan submitted and installed prior to the public hearing?

Reference:

Hillside Residential Development Projects, Appendix A, II.h.; municipal code 14.25.030 C.11.

Discussion:

You requested a story pole plan from the applicant in an "incomplete" letter dated October 12, 2018, and again in a subsequent "incomplete" letter dated February 8, 2019. A story pole plan was not included with final plans and story poles were never installed.

Question #8:

How do you plan to include residents living on Upper Fremont, Fremont Rd, Trost, Marquard, and Espalda Court (if impacted by the construction) in the review and approval of the Construction Management Plan (CMP) prior to issuance of either a grading permit or a building permit?

Discussion:

All residents affected by this construction need to be included in the discussion and approval of the CMP, as has been the standard practice for previous construction projects on the hill.

Thank you for your timely response to these questions.

Sincerely,

Victoria DeWitt



San Rafael, CA. 94901

cc: Raffi Boloyan, Planning Manager
Paul Jensen, Community Development Director
Vice Mayor Kate Colin

38 Upper Fremont-Response to letter dated 9/22/20

Dear Victoria,

Thank you for your letter.

First, I wanted to mention that I was disappointed at reading your letter as I do not believe it accurately reflects the amount of time we have spent with you over the past couple years responding to your inquiries and concerns on this project. I believe that we have done a great job at making ourselves available to you and to others in the neighborhood. Whether it is our front counter staff, our Planning Manager, our Community Development Director or me.

That said, I believe that much of your questions were addressed in the staff report and exhibits. However, I will touch on few points from your letter and advise you of next steps as follows:

Regarding the Planning Process and Geotech reports: With respect to your questions about the planning process, Staff provided that information in Planning Commission Staff Report and exhibits. In summary, the building and engineering are responsible for reviewing geotechnical/soils reports, grading plans, and structural reports and plans and other similar plans. Conditions of approval were appropriately included to advise the applicant of their obligation to submit these reports. Geotech reports do help advise siting of a project during the development review phase, however, given the size and shape of this lot, combined with site constraints (trees, slope, easements, required setbacks) there aren't other siting options. As such, the preliminary Geotech report was sufficient to advise the need for a final Geotech at the building permit phase.

Regarding the mechanical parking: Our municipal code does not prohibit mechanical parking and our General Plan encourages creative solutions to parking. You and I had several conversations about this topic and I mentioned on several occasions that this was not considered tandem and that the General Plan allowed variations in accommodating creative solutions. I also mentioned that the zoning code allows tandem parking on hillside lots with design review. There is no exception required whether this is considered tandem or not. And that was relayed to the Planning commission.

Regarding story poles: We requested a story pole when the applicant was proposing a much larger project that requested a natural state exception and exceeded the 30-foot height limit. This would provide the Design Review Board an understanding of the extent of the exceptions being requested. The project changed substantially over the period of two years and the final project was for a 20-foot structure (10 feet below the max allowable height) and did not include any requested exceptions. I do not recall what my thought processing was at the time but my guess is that due to the reduction in size and height and conformance with hillside design requirements, the request for a story pole was no longer relevant.

Next Steps

At this point the next step for the applicant is to prepare the required documents necessary for building permit submittal. The building permit process is not a discretionary process and does not provide public discussion. However, the Planning Commission adopted a condition of approval that requires the applicant submit a construction management plan that includes notification to the neighbors within 300 feet and to the Neighborhood Association when construction will begin and to provide monthly updates. Any restrictions on access during construction would also require proper signage as a standard procedure.

Thank you and I look forward to continuing our amicable interactions.

Alicia Giudice, AICP | [City of San Rafael](#)

Principal Planner

1400 5th Avenue, 3rd floor

San Rafael, CA 94901

415-485-3092

October 7, 2020

Alicia Giudice, Principal Planner
City of San Rafael
1400 Fifth Ave
San Rafael, CA. 94901

RE: 38 Upper Fremont – response to your email dated 9-30-2020

Dear Alicia:

Thank you for your response. I have responded to your comments, as follow:

1) Regarding the Planning Process:

I would also like to say how disappointed I was that you decided NOT to follow Hillside Guidelines for this project, particularly the safety and feasibility assessment which required an initial review of the slope stability (rated hazardous for this property) and a completed geotechnical investigation report and peer review which was required BEFORE the application was deemed complete, per Planning Department's own procedures for geotechnical/hazardous soils review (Appendix C, HDG).

In this case, the purpose of a thorough geotechnical evaluation is not only to determine the optimal siting but also the feasibility and desirability of the proposed parking structure in this location. It is important to assess potential danger to the health, safety, and welfare of the residents of this hillside and not endanger or contribute to the hazardous conditions on this site or adjoining properties, including the public road that wraps around this property, which is of questionable stability.

Upon whose advice did you rely, to make what is essentially an engineering decision, to accept a report for a different project and ignore your own Planning Department's procedures for geotechnical review? Don't you think the residents living closest to this property should be informed of potential hazardous conditions, including mitigation measures to address those risks, in a transparent process?

Our neighborhood is always happy to respond to your requests for input but we were surprised at the number of project referrals received from you requesting our comments for this project. In response, WENA submitted a total of 6 comment letters over a 2 year period, As of February, 2020, the project would have required a natural state exception, something which is usually discouraged early in the process. Normally, we don't receive more than one request for comments.

Seven months after the initial conceptual review, a Design Review Board (DRB) member discovered that the size of the lot was overstated by more than 1,000 sq' and the DRB hearing was abruptly cancelled. A current survey was required, which further delayed the project.

I would like to suggest "streamlining" hillside application processing based on what I have learned from this application. I would suggest following all department procedures and policies and request all required information *up front*, before the application is deemed complete. For hillsides, this includes: 1) Necessary geotechnical reports and peer review, based on slope stability; 2) a current Survey with slope calculations provided by the land surveyor/engineer; 3) a Grading Plan; 4) a Shadow study, if

necessary. I believe that by providing all information at the beginning of the project, it will go more smoothly and benefit everyone involved.

2) Regarding the mechanical parking:

Below grade parking “pits” with mechanical stacking devices are not currently allowed by the municipal code in residential or hillside areas. Lack of language disallowing their use in residential areas does not mean they are allowed. Currently, the use of mechanical or automated parking systems are only allowed in Downtown zoning districts. Expressions that call for “innovative methods of addressing parking” and “innovative parking solutions” are taken from the Downtown Parking and Wayfinding Study (DP/WS). The key objective of this study was to identify existing and future parking needs of the Downtown San Rafael Area. This study talks about finding innovative parking solutions in the downtown parking district, not in residential areas outside the district. The Final Report of the DP/WS recognized the need to modify City code to specifically allow the use of mechanical/automated parking systems in the downtown zoning districts (14.18.010. I.3.c.).

Likewise, if the City wishes to allow mechanical/automated/stacked parking systems in residential or hillside areas, the code needs to be modified to specifically allow this use. The City would need to determine where these types of parking systems are appropriate outside the downtown zoning district and amend the code accordingly. They are “clearly” not allowed in residential or hillside areas and so should not be allowed until the City adopts supporting language in the municipal code that allows their use in areas outside the downtown.

Other cities of similar size allow mechanical/automated parking systems in multi-family residential/commercial areas but not in single family residential zoning. Belvedere does not allow them on hillsides because of the excess excavation/grading required.

3) Regarding Story Poles:

Story Poles not only benefit the Design Review Board’s evaluation of the project, they also give the public an opportunity to assess the potential visual effects of new development and are typically required for hillside development, in order to illustrate the bulk, mass, grading and tree removal when viewed from adjacent properties, per SanRafael’s Story Pole flyer (see link below)
www.storage.googleapis.com/proudcity/sanrafaelca/uploads/Story-Pole-Handout.pdf

4) Regarding the Construction Management Plan (CMP):

Upper Fremont is a narrow, one-lane road that serves 2-way traffic. All construction activity can block the road several times during a single trip without additional coordination with residents in the area, not to mention the additional delivery trucks since COVID. There is also private property that may or may not be available for maneuvering of construction equipment; that would have to be determined with individual property owners. What is the concrete delivery plan?

This is why it is so important to involve residents during the creation of the Construction Management Plan, and require their final approval of the plan. WENA repeatedly requested that residents be included in the formation and approval of the CMP in six separate letters. This has been the past practice on the hill for previous construction projects, so we appreciate having the opportunity to again participate in this important plan for this project.

5) Next steps:

This is what residents would like to see, going forward:

1. Install Story Poles - The story poles should have been installed and we would still like to see them erected so that residents can understand the construction that will take place. Please provide the date when this will be completed.
2. Plans for paving of Upper Fremont - We would like to be kept informed about the plans for the paving of Upper Fremont Drive and the Delivery Truck turnaround; this includes preliminary drawings, approved drawings and construction time-line. Please provide contact information for the person overseeing the design and paving of the roadway.
3. Construction Management Plan – Residents would like to be involved in the preparation of the Construction Management Plan. Please provide the date when we can anticipate the start of this discussion and the date when Construction will begin. Please provide the contact information of the person that will be overseeing this process.
4. Changes to approved plans – We would like to be informed of any and all changes to the plans as approved by the Planning Commission under an Environmental and Design Review permit on September 15, 2020. This includes any changes made to the plans prior to completion of construction. Please provide the contact information of the person overseeing any changes to the plans.
5. Construction Timeline – Please provide a timeline of all construction activities, including the start of construction and the anticipated date of completion. Please provide the contact information of the person responsible to approve and amend this timeline.

6) Summary:


I think one neighbor summed it up beautifully:

If we felt confident that the structure being built was safe, met all building codes and requirements, and did not negatively impact our safety or daily life, we would have no problem welcoming a new neighbor to the hill.

I look forward to your response. Thank you.

Sincerely,

Victoria DeWitt


San Rafael, CA 94901

cc: Raffi Boloyan, Planning Manager
Paul Jensen, Community Development Director
Vice Mayor Kate Colin