

March 21, 2022

Honorable Mayor Kate Colin and City Council members
City of San Rafael
1400 Fifth Ave. Room 203
San Rafael, CA 94901

CITYCOUNCIL Meeting for Monday, March 21, 2022

Agenda item 6.b. Annual Progress Report & Housing Policy Update (staff report refers to agenda item 5.b)

Honorable Mayor Kate Colin and City Council members:

Please refer to the Staff Report, on the last page of attachment 2, under **New Policy Actions, Minor Streamlining Amendments**, “...align the hillside exception process within similar exception permits.”

On February 16, 2021, the City Council voted to remove the proposed amendments to “*Section 14.12.040 (Exceptions to Property Development Standards)*” from the Ordinance prepared by Planning Division staff. The City Council chose NOT to change the current process of requiring City Council approval for Exceptions to the Hillside Guidelines. As Council member Maribeth Bushey so eloquently stated:

“The unique value of the Hillside Guidelines to San Rafael and the unique importance that our community puts on Hillside Guidelines justifies the inconsistent treatment of these particular type of requests to come before the City Council rather than just the Planning Commission...”

For your reference, I have also attached a 4-page letter dated February 16, 2021, addressed to the City Council, requesting that the current Exception processing for Hillside development remain in place and is signed by several residents and neighborhood leaders.

Please update “**New Policy Actions**” to reflect the City Council’s decision to maintain the current process for Hillside Exceptions to require City Council approval and remove any future reference to changes or alignment of the Hillside Exception process from the list of New Policies requiring Council action.

Thank you for updating the streamlining policies that have already been acted on.

Sincerely,

Victoria DeWitt

att: 4-page letter dated February 16, 2021 to City Council

February 16, 2021

Honorable Mayor Kate Colin and City Council members
City of San Rafael
1400 Fifth Ave. Room 203
San Rafael, CA 94901

CITYCOUNCIL Meeting for Tuesday, February 16, 2021
Agenda item 6.a. Housing Development Policies and Permitting

Public Comments: Opposition to proposed amendments to SRMC 14.12.040, Hillside Exceptions process

Honorable Mayor Kate Colin and City Council members:

Residents of the West End, Gerstle Park, Bret Harte, and Mont Marin neighborhoods strongly oppose the proposed downgrading of the Hillside Exception approval process from the City Council to the Planning Commission because it will weaken compliance with the Hillside Guidelines and create a barrier to public participation by replacing an approval process with an appeal process.

Requested Council Action:

We request that you direct staff to return with additional information on how the proposed changes to *Section 14.12.040 – Exceptions to property development standards (Hillside Overlay)* align with the current code for exceptions to site development standards, *SRMC 14.24 Exceptions*. Like SRMC 14.24, we suggest that staff prepare specific criteria for minor exceptions to the Hillside development standards and include our suggested amendments described in item #5 below.

Discussion Points:

1. Staff states their reason for proposing this change is to “Align the Hillside Exceptions process with similar requests for exceptions in other parts of the Code” but the proposed Exception process for Hillside development *DOES NOT* align with municipal code 14.24 for other Exceptions.

SRMC 14.24 Exceptions states “The purpose of this chapter is to provide flexibility in the application of selected site development regulations where minor adjustments are needed.” Exceptions can only be granted for minor adjustments specified in 14.24.020. For example, fence height can be increased no more than 2 feet and only where topography warrants in order to maintain a consistent level of privacy. Minor adjustments are allowed for setbacks, from 2-1/2 feet to 10% depending on the specific zoning of the site. Chapter 14.24 allows minor exceptions to site development standards but only those described in 14.24.020 where very detailed, specific criteria is provided.

In contrast, Planning staff is proposing to eliminate the City Council as the deciding body and give the Planning Commission full discretion to approve any and all Exceptions for hillside development without limit in the number or scope of the exceptions, effectively undermining the Hillside Residential

Design Guidelines and regulations. Exceptions will get buried in the overall review of the project by the Planning Commission whose role is to consider the project in its entirety, where the current process allows the City Council to only consider and approve the Exception. If staff intention was to align this process with the exception process described in SRMC 14.24, only minor adjustments would be allowed and very specific criteria for allowed exceptions would be provided.

During the City Council's public hearing for the newly created Hillside Design Guidelines, former Councilmember, Al Boro, had the foresight to suggest that "the Council needs to have specific criteria before they decide on exemptions so they can be consistent if they decide to approve any." His statement shows that none to few exceptions were expected to come before the Council for approval. His comments take on more significance now as you consider Planning staff's proposal to allow full discretion by the Planning Commission to approve any and all exceptions as part their review, without limit or guidelines and removing City Council oversight. Maybe now we see the relevance of Al Boro's recommendation to develop specific criteria for hillside exceptions, similar to criteria for other development exceptions (SRMC 14.24).

2. Staff suggests that the public can still have the City Council approve an Exception by filing an appeal.

The proposed change completely alters the process by replacing an approval process with an appeal process which requires a member of the public to file an appeal and pay a fee in order for the City Council to review the project. Where the current process only requires the City Council to review and approve the exception, an appeal does not limit what could be considered on appeal, raising the possibility of the appellant raising several objections to the project.

The burden shifts to the public to convince the Council to reverse a decision made by the Planning Commission, not just to disallow the exception. In addition, payment of an appeal fee can be a hardship for some and the decision and reasons for an appeal must be made within only a few days after project approval. The appeal process is expensive, intimidating and time consuming for most residents and can thwart public participation, not to mention the applicant's frustration for having to go through an appeal process and defend the entire project.

3. The City Council, not the Planning Commission, is the appropriate body to approve Exceptions to Hillside development.

Chapter 14.12 Hillside Development Overlay District is one of four overlay districts defined in the Municipal Code. The Hillside Overlay is the only overlay district that includes the protection of public health and safety as the primary reason for its adoption. The purpose of the Hillside development overlay district is provided in 14.12.10 – Specific Purposes, as follows:

- A. To protect public health and safety by minimizing hazards, including seismic and landslide risks, soil erosion and fire danger associated with development on steep and/or unstable slopes;
- B. To encourage preservation of natural hillside features;
- C. To ensure adequate emergency access by providing on-site parking;
- D. To implement the residential site design policies of the general plan and the Hillside Residential Design Guidelines Manual.

These are the reasons why the Hillside guidelines and regulations were adopted by the City Council and any deviation from the regulations could fail to protect public health and safety. The Planning Commission's role is to "make decisions or advise the Council on land use and property development issues" (source: Reviewing Bodies, city website). Protecting public health and safety are entrusted to the City Council.

We are concerned that downgrading approval of hillside exceptions from the City Council to the Planning Commission will result in more exceptions being allowed, increasing a precedent for greater departures from the Hillside Guidelines/standards, and compromising public health and safety. For these reasons, the City Council is the appropriate body to decide any exceptions or deviations from the adopted Hillside regulations.

4. The fact that few Hillside Exceptions are heard by the City Council should not be incorrectly interpreted. The procedure requiring City Council approval for Exceptions by itself is meant to limit requests for exception approval to only those projects with no other alternative. The fact that few projects come to the City Council for Exception approval means that the process is working, that projects are able to comply with Hillside regulations, as intended. Remember my previous reference to Al Boro's comment that he expected the Council may not approve any exceptions, emphasizing the expectation that the Hillside regulations, as adopted, would result in none to few exception approvals.

All attempts to comply with the Hillside guidelines and regulations should be made before going to the City Council for an exception approval, as Cyr Miller, a former Council Member that adopted the Hillside Guidelines said: "Exceptions should be limited to those which are absolutely legally necessary and limit approval to the City Council."

5. We ask you to consider the following suggested amendments to **14.12.040 – Exceptions to property development standards (Hillside Overlay)**, as follows:

Recommended changes to the first paragraph:

- We recommend maintaining the **City Council** as the authority to approve Exceptions.
- We recommend changing "Exceptions to the property development standards..." to "**Minor** exceptions to the property development standards...".
- We also recommend changing the wording "upon the recommendation of the design review board" to "upon the recommendation of the **full** design review board **after a noticed public hearing**".

We recommend adding additional criteria, C. through G. This additional criteria relates back to the specific purposes cited in 14.12.10. and D. is copied from SRMC 14.24.060. B.

C. The burden of proof shall be on the applicant to show that there are compelling reasons for granting the exception; and

D. That granting the exception will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and

E. Adequate fire safety measures have been incorporated into the design of the project including necessary improvements for fire and emergency vehicle access; and

F. Grading is limited to only what is necessary to allow reasonable development of the site and ensure preservation of the natural hillside; and

G. The proposed exception will not result in degradation of the Hillside Design Guidelines by introducing an undesirable precedent.

Additional comments re current status of approved housing projects (attachment 2 of staff report):

1. 1628 Fifth Avenue has been for sale for over a year (469 days) per Realtor.com
2. 104 Shaver is currently for sale for \$849,000; previously listed in 10/20 for \$1,200,000; sold in 2018 for \$800,000

Thank you for your consideration of our comments.

Sincerely,

Victoria DeWitt, Fremont Rd (West End)
Fred P. Cushing, Upper Fremont (West End)
Michael Smith, Upper Fremont (West End)
Davis Perkins, Upper Fremont (West End)
Toni McIntyre, Marquard (West End)
Mike Davis, Upper Fremont (West End)
Steve Thomson, Fremont Rd (West End)
Maren DeGraff, Fremont Rd (West End)
Dr. Zanette Johnson, Marquard (West End)
Crystal Wright, Upper Fremont (West End)
Tim Bowen, Fremont Rd (West End)
Anne Bowen, Fremont Rd (West End)

Amy and Joe Likover, Reservoir (Gerstle Park)
Tom Heinz, Clorinda (Gerstle Park)
Denise Van Horn, Clorinda (Gerstle Park)
Emese Wood, Gloria Dr (Gerstle Park)
Dolores Manuel, Estates Court (Gerstle Park)
Ron Freshman, Blossom Ct (Bret Harte)
John Rojas, Cedar Hill Dr (Mont Marin)
Adam DeGraff, Fremont Rd (West End)
Mark Abadi, Marquard (West End)
Rena Harel, Upper Fremont (West End)
Lori Davis, Upper Fremont (West End)
Jasmin Thomson, Fremont Rd (West End)