INTER-OFFICE MEMORANDUM

Jan
uary 27, 2006

TO: Martin Heinrich, President, City Council

FROM: Richard Dineen, Planning Director**AC-06-5** - 05BOA-01641, Project #1001816 - Stephanie Landry, Attorney at Law, agent for Johnny and Jane Carlton, appeals the decision of the Board of Appeals to reverse the Zoning Hearing Examiner's approval of Special Exceptions (Height Variances) for an elevator shaft and stairwells for a proposed five floor residential building to be constructed on Lot 12 A, Block 54, New Mexico Town Company's Original Townsite, zoned SU-2/HDA and located on the south side of Tijeras Avenue NW between 9th Street and 10th Street NW. (J-13)

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Appellants Johnny and Jane Carlton are appealing this Board's decision, alleging that the Board:

Erred in applying adopted City plans, policies, and ordinances in arriving at its decision;

Erred in the appealed action or decision, including its stated facts;

Erred in acting arbitrarily or capriciously and in manifestly abusing the Board's discretion (if any discretion existed); and

Exhibited prejudgment and bias based on political considerations rather than the law.

The pertinent background information on the appeal is provided below.

BACKGROUND

This is the second consecutive Appeal to the City Council concerning this property. The first Appeal established the conditions for the second Appeal.

The first Appeal's most relevant decisions and actions related to the second Appeal are as follows:

1. a. The Appellant/owners (Carltons) submitted an application in November 2004 to demolish an existing residential structure on the site and construct a 35-unit apartment building in its place. The site is within the Fourth Ward Historic Overlay Zone; approval of the Landmarks and Urban Conservation Commission is required to obtain a Certificate of Appropriateness/or New Construction in this overlay zone.

   b. The Commission conducted its public hearing on the owners' application on February 9, 2005. During testimony taken by the Commission on behalf of and in opposition to the application, an adjacent property owner (Sanchez) protested the new proposed structure would adversely affect solar access to his property. The application was denied by the Commission based on seven (7) Findings.

   c. The Appellants/owners (Carltons) appealed the Commission's denial to the City Council (AC-05-4).

   d. The City Council on May 2, 2005, upheld the owners' appeal subject to the conditions recommended by the Planning Department in its February written report to the Commission. The City Council remanded the original application back to the Commission with the direction to approve the building subject to the condition of approval recommended by the Planning

Department.

e. The Landmarks Commission approved the remanded application subject to the Planning Department's recommendation.

2. a. After resolution of the first Appeal, building plans were submitted to the Planning Department. The Department concluded that the proposed buildings tallest elements required Special Exceptions (Variances as to height) for the elevator shaft and for two enclosed stairwells. The Appellant/owner (Carltons) applied for the Special Exceptions, which require a public hearing by the Zoning Hearing Examiner.

b. The Zoning Hearing Examiner's September 20, 2005 public hearing resulted in approving the Special Exceptions. An associated Special Exception (Conditional Use for Solar Rights) applied for by an adjacent property owner (Sanchez) was denied.

c. Sanchez appealed the Hearing Examiner's approval of Special Exceptions (Variances) and appealed the denial of the Hearing Examiner of his own Exception (Conditional Use for Solar Rights), asking the Board of Appeals reverse both decisions.

d. The Board of Appeals, meeting on December 20, 2005 reviewed the Hearing Examiner's Record of Decision. It reversed the approval of the Special Exceptions (Variances) for the Carlton property. It had also denied the Sanchez appeal for a Special Exception (Conditional Use for Solar Rights) citing lack of jurisdiction.

e.

The Carltons are now appealing the Board of Appeal's reversal of the Zoning Hearing Examiner's approval of their Special Exception request for height variances.

CONCLUSION

Disposition of this appeal may be based on the evidence in the Board of Appeals Record of decision and in the Record of the Zoning Hearing Examiner. The Planning department has no additional evidence for the record.

APPROVED:

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Jack Cloud, Interim Manager
Development Review Division
Planning Department

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