



City of Sebastopol Design Review Board Staff Report

Meeting Date: December 15, 2021
Agenda Item: 7A
To: Design Review Board
From: John Jay, Associate Planner
Subject: Design Review, Tree Removal, Tree Protection Plan for 771 and 773 First Street
Recommendation: Provide direction on appropriate size of single-family dwelling that meets guidelines stated in the subdivision Resolution No.5220.
Applicant/Owner: Thrive Construction/Builders' Studio, Gregory Beale & Marilyn Standley & Ryan Connelly
File Number: 2021-28
Address: 771 and 773 First Street
CEQA Status: Exempt
General Plan: Medium Density Residential (MDR)
Zoning: Single Family Residential (R3)

Introduction:

This is a continuance of the August 18th, 2021, Design Review Board meeting where this project was heard for the first time. It was the decision of the Design Review Board to continue this item to another meeting to further discuss the Mitigation Measure #8 from the signed resolution for this subdivision in 2001. Below is a description of what the project entails.

The applicant is seeking approval of Design Review, Tree Removal, and Tree Protection Plan to construct a new single-family residence and accessory dwelling unit at 771 and 773 First Street. Design Review Board approval is required because the application involves the development of a new single-family dwelling unit in a new residential subdivision of three or more units per Section 17.450,010.A(2) of the Zoning Ordinance. The single-family dwelling will be located on one of the three lots approved by the City Council on September 18, 2001, as part of the 'Schoch Subdivision.'

Project Description:

Note: No revised project has been submitted or is being requested for review at this time.
The applicant will submit a revised project submittal following the DRB's discussion and direction on the interpretation of Mitigation Measure #8.

The project as originally proposed included: a new 5,321 square foot (SF) single family residence with a 1,481 SF attached garage/workshop; a new 801 square foot detached accessory dwelling unit with a 306 SF attached garage; and the removal of one existing protected oak tree. The primary dwelling unit will be located within a 6,613 square foot area and will have two-stories, a

main floor area of 2,990 square feet, a 3,623 square foot lower floor (including 611 square foot unconditioned space and the 1,481 square foot garage/shop/storage). The accessory dwelling unit will be located within a 1,107 square-foot area and will include a 306 square foot garage. The project proposes 3 covered parking spaces for the primary residence and 1 covered parking for the accessory dwelling unit. Landscaping will consist of trees, shrubs, and grasses that are native to West Sonoma County and greater California.

General Plan Consistency:

The General Plan Land Use Designation for this site is Medium Density Residential. The General Plan describes Medium Density Residential as the following: “Designates areas suitable for single family dwellings at a density of 2.1 to 6.0 units per acre. Smaller existing parcels within this designation would not be precluded from developing one housing unit. Population density for this designation for this density would range from 5.0 to 14.4 persons per acre.” The project is consistent with the Medium Density Residential Designation in that it involves the development of a single-family dwelling in an area that contains an array of residential uses.

Zoning Ordinance Consistency:

The project is consistent with the Zoning Ordinance in terms of building height, lot coverage, and required parking. It is consistent with the Building Envelope designated in the Parcel Map. It is also consistent with the R3: Single-Family Residential zoning district in that it proposes to develop a single-family dwelling and accessory dwelling, both of which are permitted uses.

Subdivision Approval Consistency:

City Council Resolution No.5220 approved a three-lot subdivision located off First Street in the Southwest corner of the City of Sebastopol. This resolution was approved by the City Council on October 16th, 2001, with mitigation measures to ensure the character of Sebastopol as well as preservation of its trees and creek systems, this site has a portion of Calder Creek running through the western portion. The mitigation measure that is most important to this discussion is M8, which states:

“The homes to be built within this project shall be subject to the review and approval of the Sebastopol Design Review Board. The Board will be guided in their review of the proposal by their adopted Project Review Guidelines; by the design criteria set forth in the General Plan, and by the following infill development standard: In general, the size and height of the homes to be constructed within this subdivision shall not exceed those of similar homes of the more recent construction in the general area, including both the First Street area and the Swain Woods neighborhood (Jewell near Hayden).”

This language provides some discretion as to what an allowable home size is and gives the authority to the Design Review Board to make that determination as to what an allowable home size is, based on the “Project Review Guidelines”, as well as the “infill development standard” as specified in the Resolution. With that, the Board is tasked to determine what an appropriate home size should be for this site but it’s also important to keep in mind the other mitigation measures relevant to this resolution which also include a Tree Protection Plan prior to the approval of a grading permit.

Analysis

The project involves the development of a single-family dwelling, accessory dwelling, and hot tub/spa area on a vacant lot. The property is accessed from a private drive with Lots 1 and 2 of the subdivision, perpendicular to First Street. The dwelling will be developed in a neighborhood that contains several single-family dwellings of moderate size and various architectural styles.

The proposed main residence is much larger than those in the area. Staff felt that homes constructed from 1990 to present best captures the “recent construction” requirement of mitigation measure 8. From staff’s research the largest home totals 3732 square feet and the smallest home totals 1328, with an average of 2440 square feet. If the language from the signed resolution, specially M8 states “In general, the size and height of the homes to be constructed within this subdivision shall not exceed those of similar homes of the most recent construction in the general area, including both the First Street area and the Swain Woods neighborhood (Jewell near Hayden)” is to be taken for its intent then it is appropriate to conclude that the proposed home far exceeds this requirement.

The picture below shows the project site along with the parcels in the attached table. The parcels shown are within a 650’ radius from the proposed project. Staff feels that this unit of measurement also adheres to the language of mitigation measure 8 as it is within the “general area”.



Within this resolution there is also mention of a Tree Protection Plan that is required before the grading permit is issued. While Measure 8 does not talk to the protection of trees, the protection of trees on the site does directly affect the location of the home, size, and scale. Specifically, the large multi-trunked Oak tree at the eastern end of the property. As mentioned within the previous staff report, modifications to the building would allow the retention of these trees.

Finally, the project does meet the design guidelines in that it avoids box-like forms, has extensive articulated facades or large, and varied roofs. However, with the excess amount of additional square footage staff is concerned that it far exceeds the allowable square footage of the surrounding residences.

Letter to the Board from the applicant (applicant statements in italics):

Adopted Design Review Guidelines

- *Because the August 18, 2021, Staff Report concedes that the proposed single-family home is consistent with the design guidelines, and because the Board will review the actual design details at a future meeting, these items will not be addressed in this letter. (See 2021 Staff Report, pp. 7-8.)*
 - Staff feels that the project is generally consistent with the design guidelines in that it avoids box-like forms, has extensive articulated facades or large, and varied roofs. However, staff is still concerned with the overall mass and bulk of the primary dwelling and described in the design guidelines large structures should be designed to reduce their perceived height and bulk by dividing the building mass into smaller-scale components. Another concern staff has is the existing slope of the site and the proposed grading work. The site has a slope from east to west at a grade of about 6% with steeper areas of 10-12% slope along the bank of Calder Creek. The project proposed original grading at 660 cubic yards of cut, and 300 cubic yards of off-haul. Based on the concerns of staff, the project's civil engineer preformed a more detailed estimate, and provided revisions at 550 cubic yards of cut, and 380 cubic yards of off-haul. While the amount of cut has been reduced relative to staff's original concerns, staff finds that the extensive grading in order to accommodate the proposed structures may not reflect the existing topography and protect significant site features, including Calder Creek, which is located downhill of the proposed project. Specifically, the design review guidelines encourage balancing the cut and fill when it does not result in further adverse effects to the natural topography. Additionally, if the amount of grading/cut were minimized as specified by the design guidelines, the bulk and mass of the home would likely be perceived as a larger structure.
- *The visual impacts of a home to the public rights of way are minimal--there will be limited and partial view of the house or ADU from Jewell Avenue; there will be a limited, partial and distant view of the house from one view 'window' limited to the driveway on First Street. Thus, a home and other site improvements will have a minimal visual impact on the greater neighborhood, which should lessen potential Board concerns about general compatibility. Focusing on solely or primarily on square footage is an abstract consideration that does not comply with M8.*
 - The City does not have a "view ordinance". While the location of the ADU and house may not visually impact the view of other neighbors as the home sits low on the lot and doesn't affect the view of the upper three homes on Jewell Ave., there is also an issue of visual perception and fit of the home's scale and massing (height, bulk, and mass) in relation to the neighborhood.

- *In interpreting the mitigation measure and applying design review criteria, it is important to consider the site characteristics: a large lot (much larger than the typical City lot); sloping land conditions that reduce the visual impact of proposed improvements on neighboring properties and also facilitate consolidation of elements of a project; and a large amount of existing vegetation and trees that screen the site from most of the neighborhood, most of which will remain.*
 - While this comment is true, and the lot is much larger than other lots within incorporated Sebastopol it should also be mentioned that this Resolution also requires a tree protection plan, and the proposed project involves the removal of both invasive and heritage trees on the property. Most importantly is the large multitrunked oak tree that sits at the eastern property line, with the City Arborist as well as the DRB felt should be retained. For construction of the proposed home, it would require that this tree cluster be removed thus creating the need for more screening of the neighbors to the East. Additionally, the home construction proposes a large amount of grading work to sink the home lower in its attempts to reduce its mass and scale, which can also cause issues with surrounding trees as well as being contrary to the Design Guideline regarding minimizing grading.
- *However, like development of many homes in a suburban neighborhood, there will be modest visual impacts to some immediate neighbors. In particular, three existing neighboring properties to the east will have views of portions of a house and ADU, however these views will be similar in character and scale to development on typical urban lots, where homes adjoin each other, often with lesser setbacks and/or greater relative height. In addition, the site slope (which means a proposed home is lower than its immediate neighbors fronting on Jewell Avenue), proposed grading, and height of proposed structures lessen visual impacts to these neighbors. The applicant will work with adjoining neighbors on appropriate landscaping and fencing to provide additional screening.*
 - Staff feels that this mitigation is appropriate for the proposed home and agrees with the applicant that there is a perceived amount of visual impact that will always occur on an infill development within a residential setting.

Design Criteria in the General Plan

- *The General Plan has one relevant policy and one relevant action plan. General Policy LU 5-5 states: require design review of new residential development to be consistent with the City's design guidelines, to ensure harmony with Sebastopol's unique, small-town character and compatibility with existing land uses.*
- *General Plan Action Item LU-5a: Through the design review process, screen development proposals for land use compatibility and ensure that development proposals are designed to be compatible with existing residential and other lands uses, designed to reduce aesthetic, noise, safety, odor, and lighting impacts to residential areas, and are consistent with Sebastopol's unique, small-town character.*
- *The General Plan is silent on what specifically comprises the town's "unique, small-town character." The closest guidance is found in the "Guiding Principles" table in the General Plan. (General Plan, p. 1-3.) This table lists General Plan policies that implement this guiding principle. The listed General Plan policies range from quality of life to trails, to*

promoting downtown, to health and wellness. None of the listed policies are related to physical construction or height or size of new, single-family homes.

Under the General Plan, the design criteria are compatibility with existing residential uses and reducing aesthetic, noise, safety, odor, and lighting impacts in residential areas. Staff has already stated that the proposed home is compatible with existing residential uses and there is no evidence that the proposed home will change noise, safety, odor or lighting in residential areas in any unusual or extreme manner.

- Staff feels that project does not adhere to the General Policy LU 5-4 in that the proposed square footage is more than 500% of any home in the general area, shown in the parcel map in this staff report, of homes built within the last 30 years. The size and scale of this residential proposal does not fit within the “small-town character” of Sebastopol. However, the Design Review Board shall be the deciding factor in what is deemed an appropriate home size for this lot as directed by the resolution.

Specified Infill Development Standard

- *“Size and height” are not specifically defined in the M8. M8 did not provide a specific height or square footage formula, did not state that an average size should be used as a standard, and did not have some other specific numerical limitation. M8 contained its own infill development standard. This “infill development standard” requires the size and height of the single-family homes to not exceed similar homes, of recent construction in the general area.*
 - While there is no specific language as to what those numbers shall be, the resolution does state that the Design Review Board is guided to determine what that number should be based on Project Review Guidelines and the General Plan.
- *Height is defined by the Zoning Ordinance and we accept that definition. Two-story homes are common in the ‘general area’ as well as in the Swain Woods and First Street neighborhoods. Two-story homes are permitted as-of-right by the Sebastopol zoning code in all residential districts.*
 - Staff agrees with this in that the size of the house does not exceed the height requirements of the zoning code.
- *Size - The Zoning Ordinance does not have a definition of this word. The Zoning Ordinance does define ‘dwelling’: “Dwelling” or “dwelling unit” means a room or group of internally connected, habitable rooms that have sleeping, cooking, and sanitation facilities, but not more than one kitchen occupied by or intended for one household on a long-term basis. A “dwelling” is the same as an independent housekeeping unit.” This definition is consistent with the common understanding of home size: habitable or livable square footage, which is what is listed in standard descriptions of homes for sale, or when people talk generally about the size of their homes. Thus, ‘size’ does not include unconditioned spaces.*
 - While home size is typically referred to as habitable, or “conditioned” (heated/cooled)space it is unfair to discount the unhabitable/unconditioned or storage space as it relates to this project, and considerations of the size of the

home, particularly as the unconditioned spaces are a significant part of the primary residence building envelope. The rooms that are not defined as “habitable” because they do not offer sleeping, cooking or sanitation still take up space in the overall footprint and add to the home size. It would be unfair to discount the lower level of the proposed project because it is mostly storage, workshop, and multi-purpose rooms.

- Most storage rooms, workshops, or other non-habitable structures fall under a detached accessory structure category. While that doesn’t preclude you from having these attached to the primary dwelling the Zoning Ordinance does limit the size of them. Within the definition of **Accessory Use, Structure, or Building** of the Zoning Ordinance it allows a maximum of two accessory structures of 400 square feet each, exclusive of garages and storage space. If the structure exceeds that amount storage areas shall be accessed from outside of the structure.
- While the Zoning Ordinance clearly does not limit *attached* accessory spaces such as is proposed for this project, these regulations may provide the DRB with a general guideline of the scale of reasonable accessory space for most homes in the City. The applicant has noted that the lower floor, which is connected to the main home via an internal staircase, is primarily to be considered storage or unconditioned space (a total of 1784 unconditioned square feet), while simultaneously noting that they should not be considered to be part of the size of the home (see Attachments for diagram). This is far in excess of 400 or even 800 square feet, staff feels this is not consistent with the intent of mitigation measure M8, which is to ensure a reasonable home size in comparison with the surrounding context. This area still takes up space within the lot and being on the lower floor, the main dwelling area would be above. If these areas are not to be considered, then the term “square footage” significantly lowers a homes overall size. Staff feels that the correct review of “size” should include the unconditioned space.
- *Similar Homes - For this lot, a commonsense interpretation of ‘similar homes’ requires the comparison of similarly situated homes, on larger lots of more rural character, such as homes in the First Street area and the unincorporated areas of greater Sebastopol. However, M8 also calls for consideration of the Swain Woods area, which is not rural residential in character. This reference may come more into play when the other two, smaller lots in the subdivision are developed. In addition, an appropriate reading of ‘similar homes’ must acknowledge the diverse styles and sizes of homes and lots in the Sebastopol area.*
 - The connection to similar homes in the area should only be applied to those home within the incorporated limits of Sebastopol. To include the unincorporated County does not seem to be a fair measuring stick for the debate of what an appropriate home size should be. Given the location of the lot the intent behind this measure could have been to develop a smaller scale rural sized home within the smaller residential character of a Swain Woods. Staff has provided further analysis of this below.
- *“General Area” - M8 does not define this term. Neither the General Plan nor the Sebastopol City Code define this term. Notably, this language does not limit the area to incorporated Sebastopol. Thus, the plain meaning of “general area” must be used. In other contexts, ‘general area’ can mean an entire city or a groundwater basin, or in one case,*

the Oregon Coast Mountain Range. Thus 'general area' means 'greater Sebastopol' including both incorporated and unincorporated properties encompassed within the 95472 'Sebastopol' mailing address zip code, particularly since this particular lot is most similar to properties in unincorporated Sebastopol.

- Staff agrees that the resolution does not clearly define the “general area”, nor does the General Plan or City Code have a definition for this term. But as mentioned before to include the unincorporated area, entire city, or Oregon Coast Mountain Range does not clearly relate to the intent of Mitigation 8. The Mitigation clearly denotes an area of Jewell and Hayden and Swain Woods which is within a 600’ radius buffer of the project site. The research that staffs provided for this project which details the home size and years of construction falls within this buffer.
- *M8 goes on to say that the ‘general area’ shall be considered to be ‘including’ two geographical subcomponents of the ‘general area,’ specifically “...both the First Street area and the Swain Woods neighborhood (Jewell near Hayden).” The word ‘including’ does not limit the areas to be considered to these two areas, rather they are a subset of the ‘general area.’ M8 does not define the ‘Swain Woods neighborhood’ although it does direct attention to the area of a particular intersection. However, the common understanding of what constitutes the ‘Swain Woods neighborhood’ would encompass a larger area than that intersection, to encompass homes on several streets including but not limited to all or portions of Swain Avenue, Swain Woods Terrace, Blossomwood Avenue, Palm Avenue, Jewell Avenue, and Parquet Street.*
 - Staffs research does include some of these named areas as they fall within the 600’ radius of the project site. Staff believes to include anything more than that would fall out of the scope of “general area”.
 - *The size, height and recent construction parts of M8 do not include a specific formula or numerical limit. Unfortunately, due to the dearth of construction of single-family homes within the city in the general area, and that definitions for “recent” could range from three months to multiple years, this part of the standard is unclear. There are typically multi-year economic cycles affecting residential construction activity. Sebastopol has not been immune to these cycles, resulting in a dearth of construction here. Thus, and in order to ensure that there are sufficient similar single-family homes to compare the proposed home to, a reasonable standard would be to define ‘recent’ as having been constructed within approximately 25 years prior to the application.*
 - Staff’s research includes a look at the homes built from 1990 to present, thus including the 25 years mentioned above.

Public Comment:

Public comments received after the prior DRB hearing and as of the writing of this staff report are included in the attachments.

Recommendation:

Staff recommends the Board review and discuss the intent of Mitigation Measure #8 from Resolution No.5220 to determine if the proposed project meets this condition and provide guidance on how to meet this requirement.

Attachments:

1. Letter to the board from the applicant
2. Conditions of Approval of original Tentative Subdivision Map (2000-049)
3. Staff report from August 18th 2021 meeting
4. Table of home sizes in general area
5. Diagram of unconditioned space
6. Public Comments

12/6/2021

Ted Luthin, Chair
Design Review Board
c/o Planning Department
7120 Bodega Ave.
Sebastopol, CA 95473
Via email delivery

RE: 771 and 773 First Street, Sebastopol

Dear Chair Luthin:

The Design Review Board (“Board”) requested a specific discussion of Mitigation Measure No. 8. Per the Board’s direction, the application of Mitigation Measure 8 to the proposed home will occur during a different meeting. The purpose of this letter is to request that the Board follow the law and Mitigation Measure No. 8, which can then be subsequently applied to the proposed single-family home at 771 and 773 First Street.

Legal Standard

Much like a statute, when interpreting conditions of approval, courts must apply the plain-meaning rule. (*Torres v. Parkhouse Tire Serv., Inc.* (2001) 26 Cal.4th 995, 1003.) This means that a court must apply the plain language, or usual or ordinary meaning, of the condition of approval. If the language is ambiguous, or if a literal interpretation would lead to an absurd result, a court may look to the intent behind the statute or regulation. (*Castenada v. Holcomb* (1981) 114 Cal.App.3d 939, 942.) Courts are prohibited from inserting or ignoring language in the statute or regulation. (*Harbor Fumigation, Inc. v. County of San Diego Air Pollution Control District* (1996) 43 Cal.App.4th 854, 860.) The Board should be guided by these precedents when applying M8.

M8’s criteria are set forth within M8 and relative size is one of several considerations. Relying on only one component of the criteria and ignoring the language in M8 is an abuse of discretion because doing so ignores the remaining language in M8. Importantly, the City does not have a maximum house size, but it does have a 30 foot height limit in the R3 zoning. The proposed home complies with this height limit. The code allows for 30% lot coverage. The proposed

home meets this requirement. In applying M8, the Board should also consider the practical reality of this site, where the home will be all but invisible to the greater neighborhood.

Background

The City of Sebastopol (“City”) approved a three-lot subdivision of 763 First Street in 2001. This subdivision created 771 and 773 First Street. As part of the subdivision approval the City adopted a Mitigated Negative Declaration, which included M8. The MND stated the purpose of M8 was to protect neighborhood character and protect surrounding residents’ privacy. (MND, p. 28.) Because CEQA requires mitigation measures to be enforceable, Mitigation Measure 8 (M8) became subdivision condition of approval M8. The MND was not challenged and is presumed valid for all purposes. (Pub. Res. Code, § 21080.1.)

By virtue of its First Street access, one-acre size, and secluded streamside character, the lot has more in common with the First Street area and other similar unincorporated West County properties, and less so with homes located at the Jewell Avenue/Hayden intersection.

In the subdivision approval process, access from an extension of Hayden was prohibited due to concern about removal of a native tree (the health of the tree was in question at that time; the tree died a few years after the subdivision was approved but the condition remains). Thus, as originally proposed by the subdivider, the project had a stronger relationship to the Jewell Avenue/Swain Woods area. When the access link was severed, the subdivision access shifted to First Street. Finally, unusually, the subdivision approval required the construction of a second dwelling unit, which is now called an Accessory Dwelling Unit, or ADU, on this lot.

Board Action To Date

On August 18, 2021, the Board held a design review hearing for a proposed single-family home and accessory dwelling unit at 771 and 773 First Street. One of the issues during this hearing was compliance with M8. The staff report focused on one criterion to comply with M8 — the size of the proposed house relative to other homes. The staff report conceded that the proposed single-family home “...appears to be compatible with the neighborhood in that its design is consistent with several existing dwellings in the area and contributes to the architectural diversity of the community.” (2021 Staff Report, p. 7.) We agree with this statement, and the Board should so find when it acts on the design review application.

M8's Criteria

There is no confusion about what M8 requires when undertaking design review of the proposed single-family home at 771 and 773 First Street because M8 says what criteria guides its consideration:

8. The homes to be built within this project shall be subject to the review and approval of the Sebastopol Design Review Board. The Board will be guided in their review of the of the proposal by their adopted Project Review Guidelines; by the design criteria set forth in the General Plan, and by the following infill development standard: In general, the size and height of the homes to be constructed within this subdivision shall not exceed those of similar homes of more recent construction in the general area, including both the First Street area and the Swain Woods neighborhood (Jewell near Hayden).

The plain language of M8 states that the Board considers these items:

1. Adopted project review guidelines;
2. Design criteria in the General Plan and an enumerated infill development standard that considers:
 - a. Size and height relative to
 - b. recent construction
 - c. in the general area, including the First Street area and the Swain Woods neighborhood.

Failure to use the language in M8 is an abuse of discretion and an illegal underground amendment to the condition and mitigation measure.

Adopted Design Review Guidelines

- Because the August 18, 2021, Staff Report concedes that the proposed single-family home is consistent with the design guidelines, and because the Board will review the actual design details at a future meeting, these items will not be addressed in this letter. (See 2021 Staff Report, pp. 7-8.)
- The visual impacts of a home to the public rights of way are minimal--there will be *limited and partial view* of the house or ADU from Jewell Avenue; there will be a *limited, partial and distant view* of the house from one view 'window' limited to the driveway on First Street. Thus, a home and other site improvements will have a minimal visual impact on the greater neighborhood, which should lessen potential Board concerns

about general compatibility. Focusing on solely or primarily on square footage is an abstract consideration that does not comply with M8.

- In interpreting the mitigation measure and applying design review criteria, it is important to consider the site characteristics: a large lot (much larger than the typical City lot); sloping land conditions that reduce the visual impact of proposed improvements on neighboring properties and also facilitate consolidation of elements of a project; and a large amount of existing vegetation and trees that screen the site from most of the neighborhood, most of which will remain.
- However, like development of many homes in a suburban neighborhood, there will be modest visual impacts to some immediate neighbors. In particular, three existing neighboring properties to the east will have views of portions of a house and ADU, however these views will be similar in character and scale to development on typical urban lots, where homes adjoin each other, often with lesser setbacks and/or greater relative height. In addition, the site slope (which means a proposed home is lower than its immediate neighbors fronting on Jewell Avenue), proposed grading, and height of proposed structures lessen visual impacts to these neighbors. The applicant will work with adjoining neighbors on appropriate landscaping and fencing to provide additional screening.

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- General Plan Action Item LU-5a: Through the design review process, screen development proposals for land use compatibility and ensure that development proposals are designed to be compatible with existing residential and other lands uses, designed to reduce aesthetic, noise, safety, odor, and lighting impacts to residential areas, and are consistent with Sebastopol's unique, small-town character.
- The General Plan is silent on what specifically comprises the town's "unique, small-town character." The closest guidance is found in the "Guiding Principles" table in the General Plan. (General Plan, p. 1-3.) This table lists General Plan policies that implement this guiding principle. The listed General Plan policies range from quality of life to trails, to promoting downtown, to health and wellness. None of the listed policies are related to physical construction or height or size of new, single-family homes.

Under the General Plan, the design criteria are compatibility with existing residential uses and reducing aesthetic, noise, safety, odor, and lighting impacts in residential areas. Staff has already stated that the proposed home is compatible with existing residential uses and there is no evidence that the proposed home will change noise, safety, odor or lighting in residential areas in any unusual or extreme manner.

Specified Infill Development Standard

- “Size and height” are not specifically defined in the M8. M8 *did not provide a specific height or square footage formula, did not state that an average size should be used as a standard, and did not have some other specific numerical limitation.* M8 contained its own infill development standard. This “infill development standard” requires the size and height of the single-family homes to not exceed *similar* homes, of *recent construction* in the *general area*.
- Height is defined by the Zoning Ordinance and we accept that definition. Two-story homes are common in the ‘general area’ as well as in the Swain Woods and First Street neighborhoods. Two-story homes are permitted as-of-right by the Sebastopol zoning code in all residential districts.
- Size - The Zoning Ordinance does not have a definition of this word. The Zoning Ordinance does define ‘dwelling’: “*Dwelling*” or “*dwelling unit*” means a room or group of internally connected, habitable rooms that have sleeping, cooking, and sanitation facilities, but not more than one kitchen occupied by or intended for one household on a long-term basis. A “dwelling” is the same as an independent housekeeping unit.” This definition is consistent with the common understanding of home size: habitable or livable square footage, which is what is listed in standard descriptions of homes for sale, or when people talk generally about the size of their homes. Thus, ‘size’ does not include unconditioned spaces.
- Similar Homes - For this lot, a commonsense interpretation of ‘similar homes’ requires the comparison of similarly situated homes, on larger lots of more rural character, such as homes in the First Street area and the unincorporated areas of greater Sebastopol. However, M8 also calls for consideration of the Swain Woods area, which is not rural residential in character. This reference may come more into play when the other two, smaller lots in the subdivision are developed. In addition, an appropriate reading of ‘similar homes’ must acknowledge the diverse styles and sizes of homes and lots in the Sebastopol area.

- General Area - M8 does not define this term. Neither the General Plan nor the Sebastopol City Code define this term. Notably, this language does not limit the area to incorporated Sebastopol. Thus, the plain meaning of “general area” must be used. In other contexts, ‘general area’ can mean an entire city or a groundwater basin, or in one case, the Oregon Coast Mountain Range. Thus ‘general area’ means ‘greater Sebastopol’ including both incorporated and unincorporated properties encompassed within the 95472 ‘Sebastopol’ mailing address zip code, particularly since this particular lot is most similar to properties in unincorporated Sebastopol.

M8 goes on to say that the ‘general area’ shall be considered to be ‘including’ two geographical subcomponents of the ‘general area,’ specifically “...both the First Street area and the Swain Woods neighborhood (Jewell near Hayden).” The word ‘including’ does *not* limit the areas to be considered to these two areas, *rather they are a subset of the ‘general area.’* M8 does not define the ‘Swain Woods neighborhood’ although it does direct attention to the area of a particular intersection. However, the common understanding of what constitutes the ‘Swain Woods neighborhood’ would encompass a larger area than that intersection, to encompass homes on several streets including but not limited to all or portions of Swain Avenue, Swain Woods Terrace, Blossomwood Avenue, Palm Avenue, Jewell Avenue, and Parquet Street.

- The size, height and recent construction parts of M8 do not include a specific formula or numerical limit. Unfortunately, due to the dearth of construction of single-family homes within the city in the general area, and that definitions for “recent” could range from three months to multiple years, this part of the standard is unclear. There are typically multi-year economic cycles affecting residential construction activity. Sebastopol has not been immune to these cycles, resulting in a dearth of construction here. Thus, and in order to ensure that there are sufficient similar single-family homes to compare the proposed home to, a reasonable standard would be to define ‘recent’ as having been constructed within approximately 25 years prior to the application.

Ted Luthin, Chair
Design Review Board
RE: 771 and 773 First Street
December 3, 2021
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Conclusion

A fair and reasonable interpretation of M8 is required under the law. This analysis sets forth a detailed rationale for such interpretation. Moving forward with review of the project will facilitate the production of needed housing stock, including an accessory dwelling unit.

The Board should adopt a legally-valid interpretation of M8 as follows:

- For purposes of interpreting and applying Mitigation Measure No. 8, the Board finds that ‘size’ means habitable square footage; that ‘height’ means building height as defined in the Zoning Ordinance; ‘similar homes’ includes homes on sites that are similarly situated to this lot, on larger lots of more rural character; ‘more recent construction’ means within approximately 25 years prior to a subject application; ‘general area’ means greater Sebastopol, as defined by its zip code; ‘First Street area’ means First Street and areas adjacent to it; ‘Swain Woods neighborhood’ means homes on several streets including but not limited to all or portions of Swain Avenue, Swain Woods Terrace, Blossomwood Avenue, Palm Avenue, Jewell Avenue, and Parquet Street.

We thank you for your careful consideration of this matter.

Greg Beale, Design/Builder

cc: Larry McLaughlin, City Manager/City Attorney
Rose and Steve Schoch
Tina Wallace, Attorney at Law
Kenyon Webster, Planning Consultant

File

RESOLUTION NO. 5220

A RESOLUTION OF THE SEBASTOPOL CITY COUNCIL
APPROVING A MINOR TENTATIVE PARCEL MAP
TO ALLOW THE 3-LOT SUBDIVISION OF
763 FIRST STREET,
APN 004-172-007

WHEREAS, an application for Minor Tentative Parcel Map was filed by Paul Schoch on May 10, 2000, to divide a 1.86 acre parcel located at 763 First Street (APN 004-172-007) into 3 lots;

WHEREAS, the Environmental Coordinator has prepared a Mitigated Negative Declaration for the project, based on an Initial Study dated May 22, 2001, performed pursuant to the California Environmental Quality Act (CEQA);

WHEREAS, on June 19th, 2001, the Planning Commission of the City of Sebastopol held a duly noticed Public Hearing to consider the application of Paul Schoch for the 3-lot subdivision of the property located at 763 First Street, heard public testimony and considered the staff report;

WHEREAS, the Planning Commission of the City of Sebastopol, at their meeting of June 19, 2001, reviewed and adopted said Mitigated Negative Declaration, along with all recommended Mitigation Measures contained therein, finding it to be appropriate for the project as conditioned;

WHEREAS, after hearing said application for subdivision, staff report, and public testimony, and after finding adequate and adopting the Mitigated Negative Declaration, the Planning Commission did find and determine that the proposed Minor Tentative Parcel Map, together with the provisions for its design and improvements, as conditioned, is consistent with the Sebastopol General Plan, the State Subdivision Map Act, and with the Sebastopol Subdivision and Zoning Ordinances;

WHEREAS, having made the necessary findings of consistency, the Planning Commission did adopt Resolution No. 02-2001, recommending to the City Council adoption of the Mitigated Negative Declaration and approval of the Minor Tentative Parcel Map, together with the provisions for its design and improvements, subject to the conditions set forth therein; and,

WHEREAS, on July 18, 2001, the Sebastopol Tree Board held duly noticed public hearing to consider the separate request of Paul Schoch for removal of a 49" d.b.h. Black Oak tree from just beyond the Hayden Avenue Extension on the easterly side of this same property, said request having been filed as a separate application from that of the proposed subdivision of land, and thus to be considered on its own merits, pursuant to the Sebastopol Tree Protection Ordinance;

WHEREAS, after due consideration of the facts, findings, analysis, staff report, expert testimony and recommendations, and public testimony, the Tree Board found that the subject tree, having been declared hazardous, did qualify for the issuance of a Tree Removal Permit under the requirements of the Tree Protection Ordinance, and having so found, the Sebastopol Tree Board did grant the requested Tree Removal Permit, subject to conditions to ensure the adequate and timely planting of the required replacement trees; and,

WHEREAS, the Sebastopol City Council held a duly noticed public hearing on September 18th, 2001, received public testimony and considered the environmental document, staff report, and the recommendations of the Planning Commission; and

WHEREAS, the City Council continued its discussion and deliberations on the project to October 16, 2001; and

WHEREAS, the City Council has determined and hereby declares that the proposed Mitigated Negative Declaration is both adequate and appropriate for this project;

WHEREAS, the City Council finds that the application for Minor Tentative Parcel Map, together with the provisions for its design and improvements, as conditioned, is consistent with the goals, policies and objectives of the Sebastopol General Plan;

WHEREAS, the City Council finds that the application is consistent with the State Subdivision Map Act, and with the Land Use Designation of the Sebastopol General Plan; and that it meets all requirements and development standards of the Subdivision and Zoning Ordinances;

WHEREAS, the City Council finds that the granting of the Tree Removal Permit by the Sebastopol Tree Board eliminates the necessity of the design and access limitations imposed by the Planning Commission in the absence of such an approval for tree removal, and also eliminates the necessity of certain conditions recommended by the Planning Commission related to the placement of the proposed Jewell Avenue driveway and the protection of the subject tree;

WHEREAS, the City Council further finds that the subject division of property represents a residential infill project, such as is encouraged by the policies and programs set forth in the 1994 Sebastopol General Plan; and further, that it maintains consistency with the land use type and scale of adjacent development, and as such is consistent with the intent of the Land Use Chapter of the General Plan, and compatible with adjacent and surrounding land uses.

NOW, THEREFORE BE IT RESOLVED, after due consideration of the facts and analysis, and finding the proposal to be consistent with the Sebastopol General Plan, the State Subdivision Map Act, the Sebastopol Zoning Ordinance No. 913, and the

Subdivision Ordinance No. 944, the Sebastopol City Council hereby approves the Minor Tentative Parcel Map application, together with the provisions for its design and improvements, subject to the conditions of approval set forth below:

Conditions of Approval
Tentative Parcel Map
763 First Street
APN 004-172-007

October 16, 2001

Planning Department Conditions of Approval:

General Conditions

- P1. Approval is granted for the application date stamped May 10, 2000, except as amended herein.
- P2. All access for the subdivision shall be provided from First Street, and the subdivision map shall be revised to so indicate. No access shall be provided from the Hayden Avenue Extension.

Prior to Issuance of a Grading Permit

- P3. A Tree Protection Plan (TPP), including a TPP Map Sheet, is required to be submitted as a part of the Grading and/or Improvement Plans. The Map Sheet containing the Grading Plan shall reference the TPP Sheet with the following large, boxed note:

<p>“NOTE: Contractor is responsible for compliance with the approved Tree Protection Plan (Sheet x). Failure to fully comply with the restrictions, conditions, and mitigation measures of the Tree Protection Plan, as reflected on Sheet x, may result in the issuance of a stop-work order, or the imposition of fines and penalties, or both.”</p>
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- P4. The Grading and Improvement Plans, including the Tree Protection Plan Sheet (TPP Map Sheet), shall be reviewed and approved by the City Engineer, the City Planning Director, and the City Arborist prior to issuance of a Grading Permit. The Grading Plans may be referred to the Design Review Boards, the Sebastopol Tree Board, or both, if, in the sole opinion of the Planning Director, the proposed site grading is excessive, and/or will impact the privacy of surrounding residents, and/or does not afford the maximum level of protection to existing trees.
- P5. Any tree shown to be removed which is 8" or larger d.b.h. (unless named as exempt under the Sebastopol Tree Protection Ordinance) shall receive a Tree Removal Permit from the Sebastopol Tree Board prior to issuance of a Grading

Permit.

Prior to Issuance of a Building Permit

- P6. The new residential development shall be subject to the review and approval of the Design Review Board. Design Review shall include consideration of the maintenance of privacy for adjacent properties, as well as compatibility with the existing neighborhood. Fencing materials at project boundaries shall also be subject to Design Review.
- P7. Prior to issuance of a Building Permit for Lot #3, the applicant for a Building Permit for this Lot shall file an application for a Second Dwelling Unit that is consistent with all applicable provisions of the City's Second Dwelling Unit Ordinance; if approved, the unit may be provided either simultaneous to the primary home, and rented out; or, it may be provided as a finished-space extension of the primary home, in such a manner that the provision of kitchen appliances and the construction of a simple firewall division between the units shall render it fully self-contained as a separate unit; or, it may be framed, plumbed, wired, ducted & insulated and closed in, but left unfinished until such time as the property owner elects to finish it and provide it as a rental unit, whether for a family member, or for any other person or household of approximately one to three persons, as the unit may be provided to, so long as the availability, advertisement, and rental or lease terms and practices associated therewith prohibit discrimination of any kind, and comply with all other applicable Fair Housing Laws.
- P8. A Traffic Impact Fee shall be paid prior to issuance of a building permit on each lot. The amount of the fee shall be determined by the City Traffic Engineer.
- P9. A Park In-lieu Fee shall be paid prior to issuance of a building permit on each lot.
- P10. Access to Lot 1-3 shall be provided to the satisfaction of the City Engineer, Fire Chief, and Planning Director.
- P11. The potential impacts associated with increased traffic along First Street shall be reviewed by the City Traffic Engineer, with recommendations made to address any increased impacts.
- P12. This condition deleted.
- P13. This condition deleted.
- P14. This condition deleted.

Mitigation Measures.

- M 1. A Geotechnical/Soils Report shall be submitted with the application for Final Map, if appropriate, or with each individual application for Building Permit, if

applicable. The Report shall identify and discuss site soils, slopes, geological features and any other site conditions, and shall make recommendations as to the type of construction best suited for the site conditions; the recommendations shall be followed, and shall become conditions of approval of the project to be incorporated into the plans submitted with the Building Permit application, to the satisfaction of the Building Official. Notwithstanding, if circumstances and conditions so warrant, the soils report requirement may be duly waived, in writing with a copy of said waiver provided to the Environmental Coordinator, by the Building Official pursuant to and consistent with all applicable provisions of the UBC and the Subdivision Map Act, provided that the Building Official verifies that he has sufficient knowledge of soils in the area, such data having been previously provided by Geotechnical and/or soils reports for construction in the general area, and having had experience with similar or proximate sites, and appropriate knowledge of appropriate construction requirements, as specified in the UBC. In the case that no engineering-level soils report is required to be submitted with the application for Building Permit, then prior to the acceptance of an application for Design Review as complete, the applicant shall submit written verification from the Soils Engineer that the proposed type and size of construction is consistent with standard Geotechnical or Soils Report recommendations, as well as with any specific recommendation made for the particular Lot, as applicable.

- M 2. The Final Map shall indicate the approved areas upon which building may occur for each Lot (“building envelopes”), in order to reflect the following, as applicable:
- a) the exclusion of building construction within the SCWA-required 30’ creek setback;
 - b) the required front, rear, and/or side yard setbacks for each future home on each Lot, being those yards required in the Rural Residential (RR) Zone District unless another set of requirements are established as a part of the project and approved by the City Council, with only those approved shown and labeled;
 - c) the area to remain undisturbed, if any, within the root protection zone of any protected tree or trees, as may be required by the approved Tree Protection Plan; or, if there be no approved Tree Protection Plan for any particular Lot, as may be determined to be necessary and appropriate by the City Arborist; and
 - d) such other specific construction limit(s), restriction(s) or allowance(s), as may be applicable, whether requested by the applicant and approved by the Council, or by request of the Council and agreed to by the applicant, or as a condition of project approval, without which there would be no approval. The intent of this measure is to delineate, in an appropriate format, such specific criteria as are or may be established for any or all Lot(s) as may be related to building footprint limitations or allowances; reduced or increased setback(s), whether in general or as may be imposed for second stories; limitation(s) and/or allowance(s) as may be related to rooflines, such as ridge heights, roof slopes, and the like.

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- M3. All project-related grading, excavation, trenching, backfilling, compaction, and the like shall be conducted in strict accordance with City design specifications, and shall be approved in advance of work by the City Engineer. In general, all grading and excavation activities shall be limited to the "dry" season (between April 15 and October 15) in order to minimize wind or water erosion; any exceptions to the above time period shall only be allowed with the express written advance approval of the City Engineer upon his review and approval of the appropriate Engineered Grading Plans, including a weatherization plan; if applicable, such winterization plan shall be submitted as a part of the application for Grading Permit, and shall be approved as a part thereof. The winterization plan(s), if used, shall include specifications for the seeding and/or re-seeding of all exposed soil surfaces, both on-site and off-site, prior to the onset of normal winter rains, with supplemental fill-ins following any new exposure of soil surface area. Specifications shall adhere to the requirements that:
- a) native grasses are to be used whenever possible; and,
 - b) in no case shall any seed or seed mix containing greater than 0.1% noxious weeds be used for this purpose.
- M4. For any home proposed on any Lot(s) within this subdivision, if the proposal includes a fireplace/chimney, and said fireplace is not intended (and gas service provided for) decorative use only, the following requirement shall be made, and shall be noted on the plans submitted for Building Permit: Woodstoves, pellet stoves, and/or fireplace inserts are required to be installed in all non-decorative (i.e., not solely gas-serviced) fireplaces within the home(s). All stoves and inserts used shall be of the maximum efficiency type, certified as meeting or exceeding the requirements of the BAAQMD, or as otherwise deemed satisfactory by the Building Official. This restriction shall continue to apply to each Lot(s) until such time as the applicable standard is no longer valid, or the BAAQMD ceases to exist and there is no similar successor agency.
- M5. Prior to issuance of any Grading Permit or Building Permit for any particular Lot within this project, the Sebastopol Tree Board shall review and approve a Tree Removal and Tree Protection Plan, or, if applicable, a Specific Tree Protection/Contingent Removal Plan and Permit, unless such Plan does not involve removal or contingent removal of any protected tree such that the Tree Board has delegated review authority of the Tree Protection Plan to staff. The Tree Protection Plan and/ or Tree Removal Permit/Contingent Removal Permit shall meet all submittal requirements of the Tree Ordinance and the Tree Board. The Tree Protection Plan shall reflect any tree-related limitations to building envelope, as required by Conditions above. If site development will involve the removal of any protected tree, the Tree Removal Permit shall be required to be approved, with performance and protective bonds (if any) set and paid, prior to the commencement of any site clearing or site work on that Lot, and prior to

issuance of any grading or building permit for that Lot, including a foundation-only permit.

- M6. A tree replacement plan consistent with the minimum replacement requirements discussed herein, and any required tree protection bonding or other performance/protection guarantees as may be required, shall be in place prior to issuance of any permit for grading or construction activities, to the satisfaction of the Planning Director. If the Tree Removal Permit is denied such that a re-design of site improvements is required, the re-design shall not be subject to further discretionary reviews so long as the changes are limited to those needed in order to provide tree protection.
- M7. For each tree heritage tree, if any, approved to be removed, the Tree Board shall require Tree Replacement at a rate equal to or exceeding the ratio established by the Ordinance, as provided for within the Ordinance, when a different requirement is warranted related to the size and age of the subject tree. The replacement program shall consist of a variety of tree sizes, including but not limited to the use of at least one 24" box tree (or equivalent) and two 15 gallon trees for each protected heritage-size tree removed; and of a variety of types and sizes to mitigate both short-and long-term effects of the loss of protected trees.
- M8. The homes to be built within this project shall be subject to the review and approval of the Sebastopol Design Review Board. The Board will be guided in their review of the proposal by their adopted Project Review Guidelines; by the design criteria set forth in the General Plan, and by the following infill development standard: In general, the size and height of the homes to be constructed within this subdivision shall not exceed those of similar homes of more recent construction in the general area, including both the First Street area and the Swain Woods neighborhood (Jewell near Hayden).
- M9. Garages and other off-street parking areas planned to serve the new residential development shall be located in such a way that vehicles entering or exiting the site from Jewell Avenue or First Street will not unduly produce direct, sustained headlight glare into the living areas of surrounding homes. If necessary, screening devices and/or plantings may be used to help dissipate any such direct glare, to the satisfaction of the Design Review Board.

Fire Department Conditions of Approval:

General

- F1. Fire protection for the homes to be built on Lots 2 and 3 shall be to the satisfaction of the City Fire Chief.

Engineering Department Conditions of Approval:

General

- E1 Submittals for Engineering Plan Check shall be made at the Engineering Department. Plan Check deposit shall be paid at the time of submittal. Call 823-2151 for information.
- E2 Any exceptions or variances from the conditions stated herein will require the written approval of the City Engineer or approval of the City Council if required by the City Code.
- E3 No construction shall be initiated until the Improvement Plans have been approved by the City, all applicable fees have been paid, an encroachment permit and/or grading permit has been issued and a project schedule has been submitted to the City Engineer and a pre-construction conference has been held with the City Engineer or designee.
- E4 All construction shall conform with the City Standard Details and Standard Specifications dated July 1998, all City Ordinances, the State Subdivision Map Act, and the approved plans.
- E5 Public Utility easements shall be provided as requested by the Public Utility Agencies and shall be offered for dedication on the map.
- E6 All underground utilities within the private access street shall be installed prior to street construction.
- E7 All utility distribution facilities, within the Hayden Street access and in the new private access from First Street, shall be placed underground except for surface mounted transformers, pedestal mounted terminal boxes, meter cabinets, fire hydrants, and street lights. Appropriate easements shall be provided to facilitate these installations. Existing overhead utilities on the First Street frontage of the project are not required to be placed underground because this requirement would result in an additional pole and guy wires, defeating the intended purpose.
- E8 Any existing septic tank(s) shall be abandoned under permit and inspection by the Sonoma County Health Department prior to map recordation.
- E9 Any existing well(s) shall be abandoned under permit and inspection of the Sonoma County Health Department.
- E10 The applicant shall submit to the City of Sebastopol for review and approval by the City Engineer, improvement plans prepared by a Registered Civil Engineer. Plans shall show all street, drainage, water, wastewater and grading improvements.

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- E11 The following notes shall appear on the improvement plan cover sheet: “All utilities on site shall be placed underground”.
“During construction, the Developer shall be responsible for controlling noise, odors, dust and debris to minimize impacts on surrounding properties and streets”.
- E12 The subdivider shall either complete the required construction or enter into an Improvement Agreement and post security with the City of Sebastopol prior to the filing of the Parcel Map, agreeing to complete the required construction within 24 months after the filing of the map. The Improvement Agreement shall be recorded with the map.
- E13 The developer shall complete all water and wastewater improvements, including pressure and bacterial testing and raising manholes and cleanouts to grade prior to connection of any buildings to the City water or wastewater system.

Grading and Site Work

- E14 All grading work shall be shown on a grading plan to be incorporated into the improvement plans.
- E15 Grading plan shall include the location and size of all existing trees to be removed, and trees to remain. The plans shall show all measures identified in the Tree Protection Plan as needed, to protect trees during construction.
- E16 Improvement plans shall be submitted showing all proposed improvements including grading, paving, utilities, drainage, structures to be built, lighting and trash collection. Improvement plans shall include a winterization and erosion protection plan.
- E17 The grading plan shall clearly show all existing survey monuments and property corners and shall state that they shall be protected and preserved.

Streets

- E18 Construction of curb, gutter, and sidewalk on First Street shall be deferred to such time as other portions of First Street are improved. The Subdivider shall guarantee eventual construction of these improvements through an agreement, to be recorded against the lots taking access from First Street. The Subdivider shall also provide a preliminary design, including plan, profile and cross-sections, for the future improvements on First Street.
- E19 Driveway entrances shall meet the requirements of the City Traffic Engineer.
- E20 The access easement on Lots 1 and 2 in favor of Lots 2 and 3 shall be a minimum width of 25 feet.

Storm Drainage/Flood Damage Protection

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- E21 Drainage facilities shall be provided within the subdivision to eliminate the effects of additional stormwater runoff on adjacent properties.
- E22 Calder Creek shall be protected from water quality impacts due to additional stormwater runoff. Subject to feasibility (as determined by the geotechnical engineer, the Sonoma County Water Agency, the Regional Water Quality Control Board, and/or the State Department of Fish & Game, as applicable), drainage shall be filtered by natural vegetation or infiltration prior to entering Calder Creek.
- E23 If any work is necessary in Calder Creek, the subdivider shall be responsible for obtaining any and all permits deemed necessary, including but not limited to the following:
State Department of Fish and Game, Streambed Alteration Permit
Regional Water Quality Control Board, Section 401 Permit

Water Distribution

- E24 Fire protection facilities shall be in accord with the requirements of Sebastopol Fire Department.
- E25 Backflow prevention devices will be required in accordance with the requirements of the City of Sebastopol's Backflow Prevention Ordinance.
- E26 Water services to serve this development shall be connected to the existing mains. Meter locations shall be subject to approval by the Sebastopol Public Works Department.

Sewer Collection

- E27 Sanitary sewer to serve this development shall be extended from the existing mains.
- E28 New sewer laterals shall be constructed in accordance with City Standards.

Parcel Map

- E29 A Parcel Map as defined in the State Subdivision Map Act and prepared by a licensed surveyor or civil engineer, showing at all parcel rights-of-way and easements, shall be filed with the City of Sebastopol Engineer's Office. The Parcel Map shall conform to the requirements of the State Subdivision Map Act and the City Subdivision Ordinance. Upon recordation of the Map, the Subdivision is valid.
- E30 All property corners of lots within the subdivision shall be monumented with no less than 3' long by 1/2" diameter galvanized steel pipe imbedded no less than 24" into the earth except as expressly permitted in writing by the City Engineer.
- E31 The Parcel Map shall show: The assessor's parcel number

Total area of land being subdivided (in acres)

Total number of lots being created

E32 NOTE ON PARCEL MAP: "Building permits shall be subject to payment of development fees in effect at time of permit issuance."

E33 The following covenant shall be recorded with each lot:
An approved Grading, Drainage, and Erosion Control Plan shall be required for each lot (if such a plan has not already been approved for the entirety of this minor subdivision). The Grading, Drainage and Erosion Control Plan shall be submitted to the Engineering Department and shall be approved by the City Engineer, and by any other body as may be applicable as set forth herein, prior to issuance of a Grading Permit or a Building Permit, including but not limited to a foundation-only permit. (Note, recordation of this covenant may be waived if an inclusive Grading, Drainage, and Erosion Control Plan has been approved for the entirety of this subdivision, and work to be performed is consistent with the approved Plan.)

E34 The owner shall record contemporaneously with the Parcel Map an irrevocable offer of dedication to the City of Sebastopol to provide additional right-of-way along the First Street frontage as necessary to provide a width of 25 feet from the centerline of the street. Additionally, a 5-foot-wide public utility easement shall be provided outside of (and adjacent to) the right-of-way.

DULY ADOPTED by the Sebastopol City Council on this 16th day of October, 2001, by the following vote:

APPROVED: _____



Mayor

VOTING AYE: Councilmembers Roventini, Spooner and Mayor Robinson

VOTING NO: Councilmember Litwin

ABSENT: None

ABSTAIN: Councilmember Anderson

ATTEST: _____



City Clerk



City of Sebastopol Design Review Board Staff Report

Meeting Date: August 18, 2021
Agenda Item: 7A
To: Design Review Board
From: Kari Svanstrom, Planning Director
Jeffrey Setterlund, Contract Planner
Subject: Design Review, Tree Removal, Tree Protection Plan for 771 and 773
First Street
Recommendation: Approve with Conditions
Applicant/Owner: Thrive Construction/Builders' Studio, Gregory Beale & Marilyn
Standley & Ryan Connelly
File Number: 2021-28
Address: 771 and 773 First Street
CEQA Status: Exempt
General Plan: Medium Density Residential (MDR)
Zoning: Single Family Residential (R3)

Introduction:

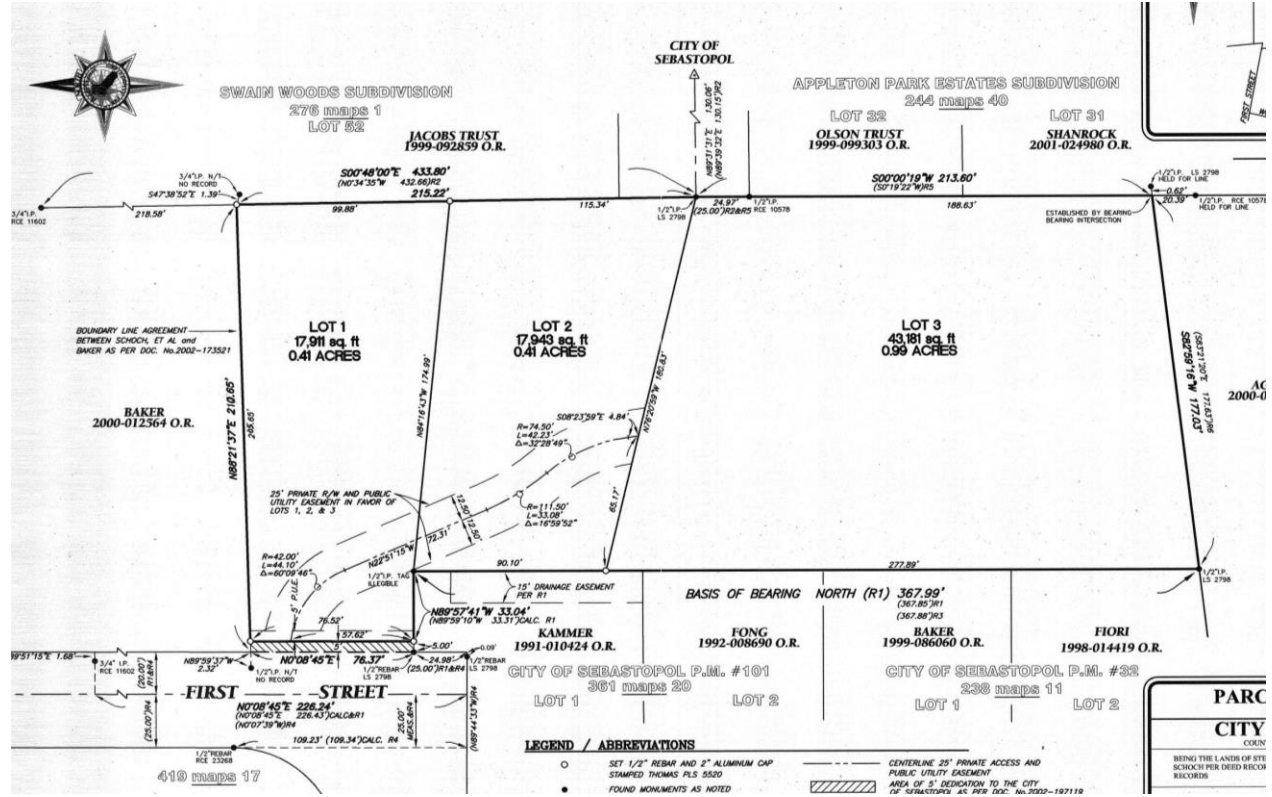
The applicant is seeking approval of Design Review, Tree Removal, and Tree Protection Plan to construct a new single family residence and accessory dwelling unit at 771 and 773 First Street. Design Review Board approval is required because the application involves the development of a new single-family dwelling unit in a new residential subdivision of three or more units per Section 17.450,010.A(2) of the Zoning Ordinance. The single-family dwelling will be located on one of the three lots approved by the City Council on September 18, 2001, as part of the 'Schoch Subdivision.'

Project Description:

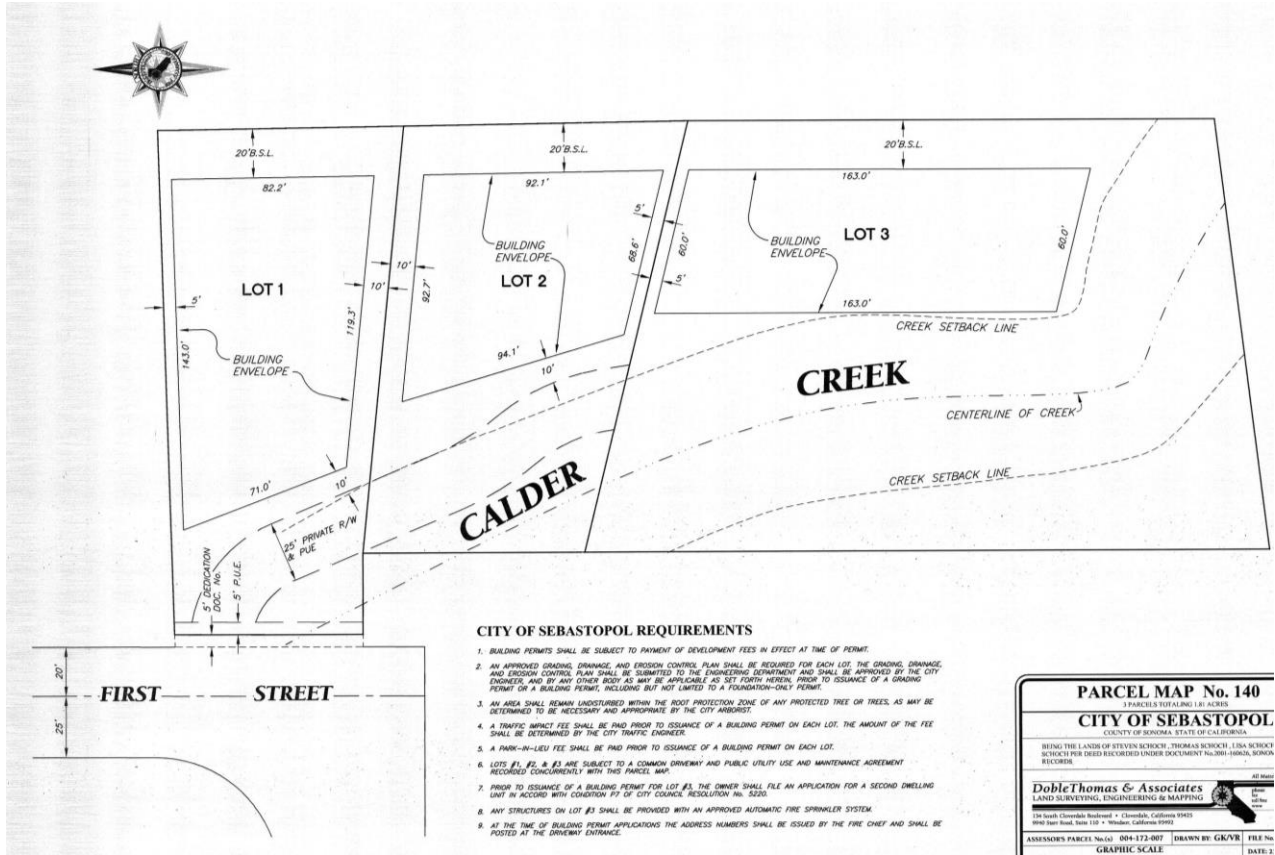
The project proposes to construct: a new 5,321 square foot (SF) single family residence with a 1,481 SF attached garage/workshop; a new 801 square-foot detached accessory dwelling unit with a 306 SF attached garage; and the removal of one existing protected oak tree. The primary dwelling unit will be located within a 6,613 square foot area and will have two-stories, a main floor area of 2,990 square feet, a 3,623 square foot lower floor (including 611 square foot unconditioned space and the 1,481 square foot garage/shop/storage). The accessory dwelling unit will be located within a 1,107 square-foot area and will include a 306 square foot garage. The project proposes 3 covered parking spaces for the primary residence and 1 covered parking for the accessory dwelling unit. Landscaping will consist of trees, shrubs, and grasses that are native to West Sonoma County and greater California.

Project Location and Surrounding Land Uses:

As noted above, the site is one of three lots created as part of a subdivision approved in 2001/ The site is accessed via a shared private driveway easement that includes a public utility easement as well, with utilities already installed to the edge of site. The easement ends at the north property line of the subject parcel (Lot 3):



The site contains a portion of Calder Creek along the western side of the site with a required creek setback; sloped topography from the creek upwards towards the eastern property line; as well as several onsite trees and shrubs. Development of the single-family dwelling and accessory dwelling unit will require the removal of 1 protected oak tree, which will require a Tree Protection Plan and a Tree Removal Permit.



The adjoining parcels to the east, south, and west are developed with single family residences, and Lots 1 and 2 to the north are currently vacant, and under the same ownership as the subject parcel (Lot 3).

Environmental Review:

The project is categorically exempt from the requirements of CEQA, pursuant to Section 15303, Class 3, which includes the construction and location of limited numbers of new, small facilities or structures. One single-family residence, or a second dwelling unit in a residential zone constitutes as a categorical exemption of CEQA under Section 15303(a). The project is consistent with this categorical exemption in that it involves the development of a single-family dwelling in a single family residential zoning district.

General Plan Consistency:

The General Plan Land Use Designation for this site is Medium Density Residential. The General Plan describes Medium Density Residential as the following: "Designates areas suitable for single family dwellings at a density of 2.1 to 6.0 units per acre. Smaller existing parcels within this designation would not be precluded from developing one housing unit. Population density for this designation for this density would range from 5.0 to 14.4 persons per acre." The project is consistent with the Medium Density Residential Designation in that it involves the development of a single-family dwelling in an area that contains an array of residential uses.

Zoning Ordinance Consistency:

The site is located in the R3: Single-Family Residential. The Zoning Ordinance states the following: "The purpose of the R3 District is to implement the "Medium Density Residential" land use category of the General Plan, and the General Plan goal of preserving Sebastopol's character

and image. This district is applicable to single-family residential areas with densities up to approximately 5.4 units per acre.” The project is consistent with the R3 Zoning District in that is a single-family dwelling and accessory dwelling, both of which are permitted uses.

In addition to the R3 District standards, the parcel map delineated Building Envelopes for each of the lots, which includes a smaller side yard setback to the north of 5 feet; a required creek setback as delineated on the parcel map to the east (front setback), which is approximate 105 feet from the west (front) property line; to the south of between 57-80 feet, and 20 feet to the east (rear) property line.

Code Section	Development Standard Required		Proposed Project
Section 17.20.30	Building Height	30 Feet	27 Feet – 8 ½ Inches
	Accessory Dwelling	17 Feet	16 Feet -1 Inch
	Stories	2 Stories	2 Stories
	Accessory Dwelling	1 Story	2 Story
	Lot Coverage	30%	5.6%
Schoch Subdivision 2001-160626 O.R.	Setback: North (side yard)	5 Feet	5 Feet
	Accessory Dwelling	5 Feet	5 Feet
	Setback: East (rear yard)	20 Feet	20 Feet
	Accessory Dwelling	20 Feet	20 Feet
	Setback: South (rear yard)	20 Feet Min./30 Feet Max.	30 Feet
	Accessory Dwelling	20 Feet Min./30 Feet Max.	30 Feet
	Setback: West (front yard)	30 Feet	30 Feet
Accessory Dwelling	30 Feet	30 Feet	
Section 17.110.030.A (1)	Required Parking	2 Spaces	4 Spaces

Building Height is defined as the following under Section 17.08.100.H of the Zoning Ordinance: “The maximum allowable height shall be measured as the vertical distance from the natural grade of the site to an imaginary plane located the allowed number of feet above and parallel to the grade. The natural grade shall not be artificially raised to gain additional building height.”

The project is consistent with the Zoning Ordinance in terms of building height, lot coverage, and required parking. It is consistent with the Building Envelope designated in the Parcel Map.

City Departmental Comment:

The Planning Department previously circulated the application to the following City departments for review prior to the August 4th DRB meeting: Building and Safety, Engineering, Fire, City Manager and Assistant City Manager, and Public Works. The following comments were received.

- Fire sprinklers, smoke detectors, and carbon monoxide detectors are required for both residences. 2019 California Building and Fire Codes apply.
- Developer shall submit a grading plan prepared by a registered civil engineer to the Public Works Department, and pay all fees associated with a grading plan check (may be deferred to building permit application).
- Developer's contractor shall obtain a Grading Permit from the Public Works Department before beginning any work on the property.

Public Comment:

The Planning Department previously posted the staff report item to the City's website for review by the public prior to the August 18th DRB meeting. The following comments are summarized below.

The Neighbor is concerned that the proposed project is out of character with the neighborhood due to its size; That the proposed project negatively impacts an ecologically sensitive area; and that the proposed project will negatively impact one of the last remaining parcels in a sensitive residential/rural corridor. Additional concerns include impacts on trees from the construction, and the amount of grading required for the project.

Required Findings:

Section 17.450.030.B.2 of the Zoning Ordinance states that in considering an application for design review, the Design Review Board shall determine whether the project is consistent with the following:

- a) The design of the proposal would be compatible with the neighborhood and with the general visual character of Sebastopol.
- b) The design provides appropriate transitions and relationships to adjacent properties and the public right of way.
- c) It would not impair the desirability of investment or occupation in the neighborhood.
- d) The design is internally consistent and harmonious.
- e) The design is in conformity with any guidelines and standards adopted pursuant to this Chapter.

Additionally, the three parcels in this subdivision are subject to the Conditions of Approval and CEQA mitigations adopted by Council via Resolution No. 5220 (October 16, 2001). See attachments for the full Resolution text.

Of note, this Resolution requires design review, and also sets more stringent tree protection and tree removal requirements than the standard Tree Ordinance, in addition to setting specific Building Envelope limits that vary from the City's normal setbacks for the zoning district (as discussed earlier in this report). Additionally, it includes conditions related to appropriate size and height of the homes for this and the two lots north of this parcel, discussed further below.

The City's Tree Ordinance (SMC Section 8.12.060.D of the Tree Protection Ordinance) states that a Tree Removal Permit may be approved when an International Society of Arboriculture (ISA) Certified Arborist has verified at least one of the following conditions:

- 1. The tree is diseased or structurally unsound and, as a result, is likely to become a significant hazard to life or property within the next two (2) years.
- 2. The tree poses a likely foreseeable threat to life or property, which cannot be reasonably mitigated through pruning, root barriers, or other management methods.
- 3. The property owner can demonstrate that there are unreasonably onerous recurring maintenance issues, which are deemed necessary for safety or protection of property. The property owner is responsible for providing documentation to support such a claim.
- 4. A situation exists or is proposed in which structures or improvements, including, but not limited to, building additions, second units, swimming pools, and solar energy systems,

such as solar panels, cannot be reasonably designed or altered to avoid the need for tree removal.

5. The tree has matured to such an extent that it is determined to be out of scale with adjacent structures and utilities, or with other landscape features.

Analysis

The project involves the development of a single-family dwelling, accessory dwelling, and hot tub/spa area on a vacant lot. The property is accessed from a private drive with Lot 2 of the subdivision, perpendicular to First Street. The dwelling will be developed in a neighborhood that contains several single-family dwellings of moderate size and various architectural styles.

The main residence is much larger than most of the homes in the area, it is set into the slope at the rear of the lot. While the City does not have a maximum home size, or floor area ratio (FAR) limits for residential parcels in the City, Mitigation 8 notes: *“The homes to the [sic] built within this project shall be subject the review and approval for the Sebastopol Design Review Board. The Board will be guided in their review of the proposal by their adopted Project Review Guidelines [now called Design Review Guidelines]; by the design criteria set forth in the General Plan, and by the following infill development standard: In general, the size and height of the homes to be constructed within this subdivision shall not exceed those of similar homes of more recent construction in the general area, including both the First Street area and the Swain Woods neighborhood (Jewell near Hayden).”*

While the Condition does not provide for a clear size limit, staff has received communications, and verified that the average size of homes in these referenced areas and the general neighborhood ranges from 2,000-3,000 square feet (not including garage/accessory structures, which are not included in the County’s records for square footage, or accessory dwelling units [ADUs]). Staff is aware of several larger barns, garages, and workshops in the general neighborhood; additionally, the County records do not include the square footage for these types of spaces. Staff has excluded ADUs as those are permitted to be specific sizes under State Law, which has superseded the 2001 subdivision approval and is now a ministerial process when built separately from primary residences.

While the size of the home does not need to be an exact match to the surrounding homes to comply with this Condition of Approval, staff believes it should be within a certain percentage. Staff recommends the Board discuss either 125% or 150% of the average or upper end of the surrounding homes, understanding that these homes could add an addition at any time and also increase over time. Staff further recommends that the Board not go beyond 150% of 3,000 square feet (the upper end of the range of sizes in the area), as staff believes this would be beyond the reference to ‘similar homes’ in the condition.

Staff has calculated what this means in terms of square footage (SF) as follows:

125% of 2,500 SF = 3,125 SF	125% of 3,000 SF = 3,750 SF
150% of 2,500 SF = 3,750 SF	150% of 3,000 SF = 4,500 SF

The main house, at 5,321 SF, is larger than any of these averages.

One consideration the Board may wish to consider is the size of the lot, which is larger than most of the other lots in the neighborhood, at just under an acre (43,181 SF). However, staff also notes that much of this lot is constrained with the Calder Creek and City's Creek Ordinance, which is reflected in the building envelope and the City's Creek Ordinance (SMC 17.100.060). Approximately 20,000 SF of the lot is within this creek setback area.

Other than the size of the primary structure, the dwellings appear to be compatible with the neighborhood in that its design is consistent with several existing dwellings in the area and contributes to the architectural diversity of the community. The primary and accessory dwellings incorporate similar design features, articulation, facade style, and are designed to create a cohesive visual relationship while also distinguishing its own visual identity and individual address. Applicable design guidelines include:

- *Design Guideline Site Planning A1: "Neighborhood Context" Infill development should be sensitively designed to respect existing patterns, and reinforce the character and context of existing neighborhoods consistent with applicable development regulations.*
- *Design Guideline Grading and Storm Water Management E1a: "Grading". Grading should be minimized to the extent feasible to reflect existing topography and protect significant site features, including trees*
- *Design Guideline Architecture A1: "Relationship to Surrounding Architecture" Architectural design should be compatible with the developing character of the area, and should complement the unique aspects of the site. Design compatibility includes complementary building style, form, size, color and materials. Consider architectural styles of existing structures on the site, as well as other structures in the area when designing a new building and provide for a harmonious integration of the new improvements.*
- *Design Guideline Architecture A2: "Relationship to Surrounding Architecture" In subdivisions, houses with identical or similar building elevations and/or floor plans should not be located on adjacent lots or directly across the street from each other. Where a single house design is used repeatedly, materials and detailing of major facade elements should be varied.*
- *Design Guideline Architecture B1: "Massing." In Large structures should be designed to reduce their perceived height and bulk by dividing the building mass into smaller-scale components.*
- *Design Guideline B3: "Massing." In Box-like forms with extensive unarticulated facades or large, unvaried roofs should be avoided.*
- *Design Guideline B4: "Massing." A variety of levels and planes should be encouraged to reduce the massing of larger buildings.*
- *Design Guideline C1d: "Architectural Details." Building facades should be articulated by using color, arrangement, or change in materials to emphasize the facade elements. The planes of the exterior walls may be varied in height, depth or direction.*

The project is consistent with the design guidelines in that it avoids box-like forms, has extensive articulated facades or large, and varied roofs. However, while the project is well articulated and encourages a variety of levels and planes in order to reduce the massing, Staff is concerned that

the overall mass of the primary dwelling is considerably larger than existing surrounding residences within the vicinity. As described in the design guidelines, large structures should be designed to reduce their perceived height and bulk by dividing the building mass into smaller-scale components.

As noted above, the Board needs to discuss and determine what constitutes an appropriate infill development for the size and height of the home given the Subdivision Condition #M8, discussed above.

In addition, staff recommends the Board review and discuss the potential for a modified massing scale which represents the applicant wishes, but still provides greater variety to the development, which could be in combination with any square footage reductions or other requested modifications.

Staff was initially concerned with the project's suitability for the site in that its design did not adequately accommodate the existing slope and proposed significant cut and fill operations in order to place the proposed structures. The site has a slope from east to west at a grade of about 6% with steeper areas of 10-12% slope along the bank of Calder Creek. The project proposed original grading at 660 cubic yards of cut, and 300 cubic yards of off-haul. Based on the concerns of staff, the project's civil engineer performed a more detailed estimate, and provided revised calculations and a revised exhibit (see attachments) at 550 cubic yards of cut, and 380 cubic yards of off-haul. While the amount of cut has been reduced relative to staff's original concerns, staff finds that the extensive grading in order to accommodate the proposed structures may not reflect the existing topography and protect significant site features, including Calder Creek, which is located downhill of the proposed project. Specifically, the design review guidelines encourage balancing the cut and fill when it does not result in further adverse effects to the natural topography. Staff recommends the Board review and discuss the potential for a modified scheme which best accommodates the proposed structures, but reduces grading to the site.

While the city does not regulate color, the very light exterior color scheme of the residential structures may increase the massing of the building given the contrast to the surrounding exterior landscape. While the colors are likely neutral enough to be compatible with the landscape, the use of only a couple of shades of beige and white to be somewhat monotonous and may emphasize the sameness and massing of the structures. Staff finds a greater diversity of colors would also be more compatible with the of the surrounding neighborhood and with the general visual character of Sebastopol. While the colors are likely neutral enough to be compatible with the landscape, staff finds that the exterior color scheme, which is limited to a range of beige and whites, does not provide the same level of individuality to the units across the full set of structures. Staff recommends the Board review and discuss the potential for a modified scheme which represents the applicant wishes, but still provides greater variety to the development.

Furthermore, staff finds the design provides appropriate transitions and relationships to adjacent properties and the public right of way in that it contains sizeable setbacks and sets the structure low to the ground from the uphill properties to reduce the massing from adjacent parcels.. The proposed project complies with the required creek and existing drainage swale setbacks located at the western portion of the subject lot.

The design does not impair the desirability of investment or occupation in the neighborhood in that it revitalizes a vacant, unmaintained lot and creates a single family and accessory residence while leaving ample space to create an outdoor area with permeable surfaces, vegetation, trees and open space that softens the visual appearance of the existing site.

Finally, the design is internally consistent and harmonious in that it utilizes the same exterior colors and materials throughout both the primary residence and accessory dwelling unit.

Tree Removal

The City's Tree Protection Ordinance requires the granting of a Tree Removal permit by the Sebastopol Tree Board prior to the removal of any protected trees 10" d.b.h (Diameter Breast Height) or larger in diameter. In addition, Resolution No. 5220 (October 16, 2001), approved by the Sebastopol City Council for the Minor Tentative Parcel Map, requires the granting of a Tree Removal permit by the Sebastopol Tree Board prior to the removal of any protected trees 8" d.b.h (Diameter Breast Height) or larger in diameter.

Prior to the issuance of any building permit or approval of any grading/improvement plans, a Tree Removal Permit would need to be approved by the Sebastopol Tree Board for any trees protected under the Tree Ordinance which are to be removed. The project proposed the removal of one (32" d.b.h) Oak Tree (Tree #4) located at the eastern project boundary of the site which another **seven (7) protected trees of varying d.b.h recommended for removal by the project Arborist.** The City Arborist will review the detailed Tree Protection Plan prior to issuance of a building permit to ensure that impacts to the remaining trees are minimal.

While the trees recommended for removal are due to construction impacts, staff believes, in conjunction with other recommended modifications, there may be opportunities to reduce the impacts to the healthy trees to allow for their retention.

Recommendation:

Staff recommends the Board discuss and determine what constitutes an appropriate infill development for the size and height of the home given the Subdivision Condition #M8, discussed above. Staff recommends a reduction to a maximum size of 4,500 SF of conditioned space for the primary residence.

Staff further recommends the Board discuss tother potential modifications which, in coordination with the reduction of the size of the structure, could provide for modified massing, reduction in grading, and potential reduction in impacts to trees.

If it is the consensus of the Board that the proposed single family and accessory dwelling are compatible with the site, staff recommends that the application be reviewed and provide feedback to the applicant

If the Design Review Board feels the project can be approved, with conditions, based on the facts, findings, and analysis set forth in this staff report, and subject to the conditions of approval outlined. Key conditions recommended by staff include:

- Reduction of the size of the home to conform to the subdivision condition, with the reduction based on the Board's determination based on staff's analysis and the Board's deliberations. In considering these modification, include any conditions / direction that would reduce grading and potentially allow for additional protected trees to be retained.
- The proposed hot tub/spa be removed from the project scope given the current State of California's drought, and City of Sebastopol Mandatory 25% water reduction, which includes prohibitions on filling or refilling of pools/spas.

Alternatively, the Board may find that revisions are necessary and a continuance is appropriate. Staff recommends that the Board provide direction for redesign to the applicant in the event of a continuance or rationale in the event of a denial.

Exhibit A: DRAFT Findings for Approval
Exhibit B: DRAFT Conditions of Approval

Attachments:

1. Application Submittal Material
2. Conditions of Approval of original Tentative Subdivision Map (2000-049)
3. Schoch Subdivision Resolution No. 5220 (October 16, 2001).

EXHIBIT A
DRAFT FINDINGS FOR APPROVAL
DESIGN REVIEW and TREE REMOVAL APPLICATION
File 2021-28
771 and 773 First Street
Thrive Construction/Builders' Studio

Design Review Findings:

1. That the project is categorically exempt from the requirements of CEQA, pursuant to 15303, Class 3, as it involves the construction and location of limited numbers of new, small facilities or structures.
2. That the project, as conditioned, will be consistent with the General Plan and Zoning Ordinance in that it involves the development of a single-family dwelling and accessory dwelling unit in an area that contains an array of residential uses, and is consistent with development standards.
3. That the dwelling, as conditioned, will be compatible with the neighborhood in that its size and design are consistent with several existing dwellings in the area.
4. That the dwelling, as conditioned, will be compatible with the general visual character of greater Sebastopol in that it is well designed and contributes to the architectural diversity of the community.
5. That the design, as conditioned, will provide appropriate transitions and relationships to adjacent properties and the public right of way in that it contains sizeable setbacks, and preserves the low to moderate density character of the neighborhood.
6. That the proposed improvements, as conditioned, will not impair the desirability of investment or occupation in the neighborhood as the exterior colors contribute to the overall design of the building, creating a more aesthetically pleasing environment.
7. That the design is internally consistent and harmonious in that the improvements, colors, materials, and design are consistent in character throughout the site.
8. That the design, as conditioned, will be in conformity with Design Review Guidelines as the improvements, colors, materials, and design will be complementary to the surrounding residential area.
9. That the project, as conditioned, will be consistent with Resolution No. 5220 of the Sebastopol City Council.

Tree Removal Findings:

The City's Tree Ordinance (SMC Section 8.12.060.D of the Tree Protection Ordinance) states that a Tree Removal Permit may be approved when an International Society of Arboriculture (ISA) Certified Arborist has verified at least one of the following conditions:

6. The tree is diseased or structurally unsound and, as a result, is likely to become a significant hazard to life or property within the next two (2) years.
7. The tree poses a likely foreseeable threat to life or property, which cannot be reasonably mitigated through pruning, root barriers, or other management methods.
8. The property owner can demonstrate that there are unreasonably onerous recurring maintenance issues, which are deemed necessary for safety or protection of property. The property owner is responsible for providing documentation to support such a claim.
9. A situation exists or is proposed in which structures or improvements, including, but not limited to, building additions, second units, swimming pools, and solar energy systems, such as solar panels, cannot be reasonably designed or altered to avoid the need for tree removal.
10. The tree has matured to such an extent that it is determined to be out of scale with adjacent structures and utilities, or with other landscape features.

EXHIBIT B
DRAFT CONDITIONS OF APPROVAL
DESIGN REVIEW and TREE REMOVAL APPLICATION
File 2021-28
771 and 773 First Street
Thrive Construction/Builders' Studio

1. Approval is granted for the Design Review submittal described in the application and plans date-stamped May 19, 2021, except as modified herein:
 - a. The home size shall be reduced to be not more than square feet of habitable space (not including unconditioned garage/workshop space or accessory dwelling unit structures).
 - b. The spa shall be eliminated from the project.
 - c.
2. A final Tree Protection Plan shall be submitted to the Planning for the City's review and approval by the City prior to issuance of a building permit.
3. All tree removals shall be replaced within 365 days of removal, with two trees replaced for each protected tree that is removed. Tree replacement shall conform to the requirements of Resolution No. 5220.
4. All improvements shall conform to Conditions of Approval listed in the Schoch Subdivision Resolution No. 5220 (October 16, 2001).
5. A fire suppression sprinklers system is required.
6. Smoke and carbon monoxide detectors are required.
7. The new residence shall be connected to existing sewer and water lateral services installed at the time of the Minor Subdivision. All work shall be done in accord with City Standard Details and Specifications, and any modifications to existing services will require plan approval and permits from the Engineering Department.
8. Any work to be done within any street right of way or City utility easement will require a City Encroachment Permit.
9. Prior to approval of the Building Permit, the applicant shall submit a Grading Plan to the Engineering Department for Engineering Review and approval. Upon approval of the Grading Plan, the contractor shall obtain a Grading Permit.
10. All new utility services must be placed underground.
11. Storm water pollution prevention measures for erosion and sediment control will be required for any work performed between October 15th and April 15th.
12. Roof drainage from the new unit should be either piped through curb or connected to an existing onsite drainage system. No drainage may discharge across public sidewalks or across property lines.

13. The City of Sebastopol and its agents, officers and employees shall be defended, indemnified, and held harmless from any claim, action or proceedings against the City, or its agents, officers and employees to attach, set aside, void, or annul the approval of this application or the environmental determination which accompanies it, or which otherwise arises out of or in connection with the City's action on this application, including but not limited to, damages, costs, expenses, attorney's fees, or expert witness fees.
14. The Planning Director shall interpret applicable requirements in the event of any redundancy or conflict in conditions of approval.
15. This approval is valid for two (2) years, except that the applicant may request a one (1) year extension of this approval from the Planning Director, pursuant to Section 17.400.100 of the Zoning Ordinance.

Parcel Number	County Land Use	Parcel Address	Parcel City	Parcel Zip	Assessor Lot Acres	Residential Units	Bedrooms	Bathrooms	Main Building Square Feet	Year Built	Zoning Code
004-660-027	SFD W/GRANNY UNIT	931 BAYBERRY CT	SEBASTOPOL	95472	0.4275	1	3	3	2371	1990	R3
004-410-028	SINGLE FAMILY DWELLING	838 1ST ST	SEBASTOPOL	95472	0.46	1	5	4	2917	1990	R2
004-660-024	SINGLE FAMILY DWELLING	900 BAYBERRY CT	SEBASTOPOL	95472	0.4079	1	5	4	3336	1990	R3
004-410-027	SINGLE FAMILY DWELLING	830 1ST ST	SEBASTOPOL	95472	0.6235		3	3	2464	1991	R2
060-210-061	SINGLE FAMILY DWELLING	764 1ST ST	SEBASTOPOL	95472	0.6548	1	4	3	2296	1993	R2
004-410-014	SINGLE FAMILY DWELLING	880 1ST ST	SEBASTOPOL	95472	0.8586	2	4	2	2423	1994	R2
060-200-017	RURAL RES/VACANT HOMESITE	910 1ST ST	SEBASTOPOL	95472	0.5034	1	3	2	1978	1997	R2
060-210-062	RURAL RES/MANUFACTURED HOME	750 1ST ST	SEBASTOPOL	95472	0.4593	1	3	2	1328	1998	R2
060-200-018	SINGLE FAMILY DWELLING	900 1ST ST	SEBASTOPOL	95472	0.4695	1	3	2	2233	1998	R2
060-200-015	SFD W/GRANNY UNIT	920 1ST ST	SEBASTOPOL	95472	0.4621	2	5	4	3732	1998	R2
060-200-016	RURAL RES SFD W/GRANNY UNIT	930 1ST ST	SEBASTOPOL	95472	0.5087		4	3	3309	1998	R2
004-410-031	SINGLE FAMILY DWELLING	864 1ST ST	SEBASTOPOL	95472	0.34	1	3	2	1971	1999	R2
060-200-019	SINGLE FAMILY DWELLING	915 1ST ST	SEBASTOPOL	95472	0.3444		4	3	2653	1999	R3
060-200-020	SINGLE FAMILY DWELLING	925 1ST ST	SEBASTOPOL	95472	0.446	1	4	3	2532	1999	R3
004-410-018	SINGLE FAMILY DWELLING	885 1ST ST	SEBASTOPOL	95472	0.2755	1	4	3	2589	2000	R3
004-161-057	SINGLE FAMILY DWELLING	7420 BLOSSOMWOOD AVE	SEBASTOPOL	95472	0.2302	1	3	2	1851	2003	R4
060-210-063	SINGLE FAMILY DWELLING	754 1ST ST	SEBASTOPOL	95472	0.4491	1	3	3	2162	2004	R2
004-340-036	SINGLE FAMILY DWELLING	880 MCFARLANE AVE	SEBASTOPOL	95472	0.1607	1	3	2	1779	2004	R4

2440.2

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December 7, 2021

DRB/Tree Board
City of Sebastopol
VIA EMAIL to jjay@cityofsebastopol.org; kvanstrom@cityofsebastopol.org

RE: Design Review, Tree Removal, Tree Protection Plan for 771 and 773 First Street
File 2021-28

Dear DRB/Tree Board,

There was extensive discussion at the August 18 meeting regarding **Conditions of Approval #M8** for the 763 First Street Subdivision approved by the City Council in 2001:

“The homes to be built within this project shall be subject to the review and approval of the Sebastopol Design Review Board. The Board will be guided in their review of the proposal by their adopted Project Review Guidelines; by the design criteria set forth in the General Plan, and by the following infill development standard: In general, the size and height of the homes to be constructed within this subdivision shall not exceed those of similar homes of more recent construction in the general area, including both the First Street area and the Swain Woods neighborhood (Jewell near Hayden).”

Applying this Condition M8 to the proposed project will require the DRB to consider three questions:

- 1. Is Condition M8 permissive or mandatory?**
- 2. Where exactly are the neighboring measuring properties applicable to M8 which will determine the maximum size of the proposed house?**
- 3. What is the specific upper square footage limit imposed by M8?**

With respect, please consider the following comments with regard to these three questions concerning Condition M8:

1. Is Condition M8 permissive or mandatory?

In the second sentence the condition says, “The Board will be guided in their review....” The key word here is WILL. It does not say ‘could’ or ‘should’, rather it says “will”. The Council was expressing a strong intention or assertion about the future which leaves no room for deviation or variation.

Condition M8 also says, “...the homes to be constructed within this subdivision shall not exceed those of similar homes of more recent construction in the general area...”. Again, the key word here is SHALL. Shall is an imperative command, indicating that certain actions are mandatory, and not permissive (<https://www.law.cornell.edu/wex/shall>). Black’s Law Dictionary explains, “As used in statutes and similar instruments, this word is generally imperative or mandatory...” For example, in RSL FUNDING, LLC v. Alford, (239 Cal. App. 4th 741 - Cal: Court of Appeal, 4th Appellate Dist., 2nd Div. 2015), the California court found that, “We agree that settled principles of statutory construction direct that we ‘ordinarily’ construe the word ‘may’ as permissive and the word ‘shall’ as mandatory”.

There was a mention at the prior hearing that the term “In general” as used in M8 alters or somehow softens the mandatory language “shall” and “will”. There is nothing in this condition (or the record of the Council proceedings on the original subdivision application) to support this. Rather, a plain English reading here indicates the term “In general” refers to the entire subdivision, that is, the requirements of M8 apply *generally* to the entire subdivision. If the Council had intended anything other than the compulsory and binding “shall” and “will” they would have employed terms such as “should” or “may”. They did not.

This Condition of Approval is binding on the DRB – it is mandatory and there is no discretion.

2. Where are the measuring properties applicable to M8 which will determine the maximum size of the proposed house?

The measuring properties are specifically delineated in M8. It is not, as some have suggested, based on houses in the extended neighborhood. Rather, M8 specifies that the measuring properties fall into one of two classes:

- (a) The First Street area
- (b) The Swain Woods neighborhood (Jewell near Hayden)

The first class to consider, the First Street Area, is not well-defined. I submit that it is common usage to define the *area* around my house as my immediate neighbors, the people I know and see and socialize with frequently. When one talks about the *area* around their house they do not mean houses a quarter mile away, rather, it’s those house adjacent to or otherwise nearby one’s house.

The second class of measuring houses to consider is very specific. It is the Swain Woods subdivision at Jewell near Hayden. This is a very limited number of houses. It includes my house at 7480 Hayden, and those houses in the Swain Woods subdivision at the westerly end of Hayden, near Jewell.

At the August 18 hearing on this matter, the applicant gave examples of large houses, presumably suggesting these be considered with regard to Condition M8. However, as far as I can tell, none of the properties mentioned by the applicant are within the areas specified in the Condition of Approval, generally being 1/4 to 1/2 mile away and not part of the First Street area and the Swain Woods neighborhood (Jewell near Hayden).

The measuring properties in M8 do not include the bulk of Swain Woods, including the neighborhood off Palm, Blossomwood, and Swain Ave. It does not include the Appleton Park Estate subdivision, which are the houses on Jewell south of Hayden. It does not include houses at the far south end of First Street. It ONLY includes the two specific areas required to be considered under M8.

3. What is the specific upper square footage limit imposed by M8?

Condition of Approval M8 sets an upper limit, requiring that the proposed house shall not exceed the specified neighboring properties. It does not allow for single square foot over this limit. Whether this upper limit is an average of the neighboring properties in the specified areas, or some other formula, is something the DRB will have to determine.

It seems clear that the standard required by the City Council in M8 is essentially a common sense approach, wherein the new house does not exceed the same size as the neighboring houses. Based on a review of the square footage of the neighboring houses in the specified areas (see attachment), it appears the largest of the measuring properties are under 2,800 square feet, with most houses in the neighborhood being between 1,900 to 2,300 square feet.

I urge the DRB to make a determination of the upper limit of the measuring properties based on the specific criteria set forth in M8, indicating a range from roughly 1,900 to 2,800 square feet.

Thank you for your time and attention to this important matter. I am available to answer any questions or concerns.

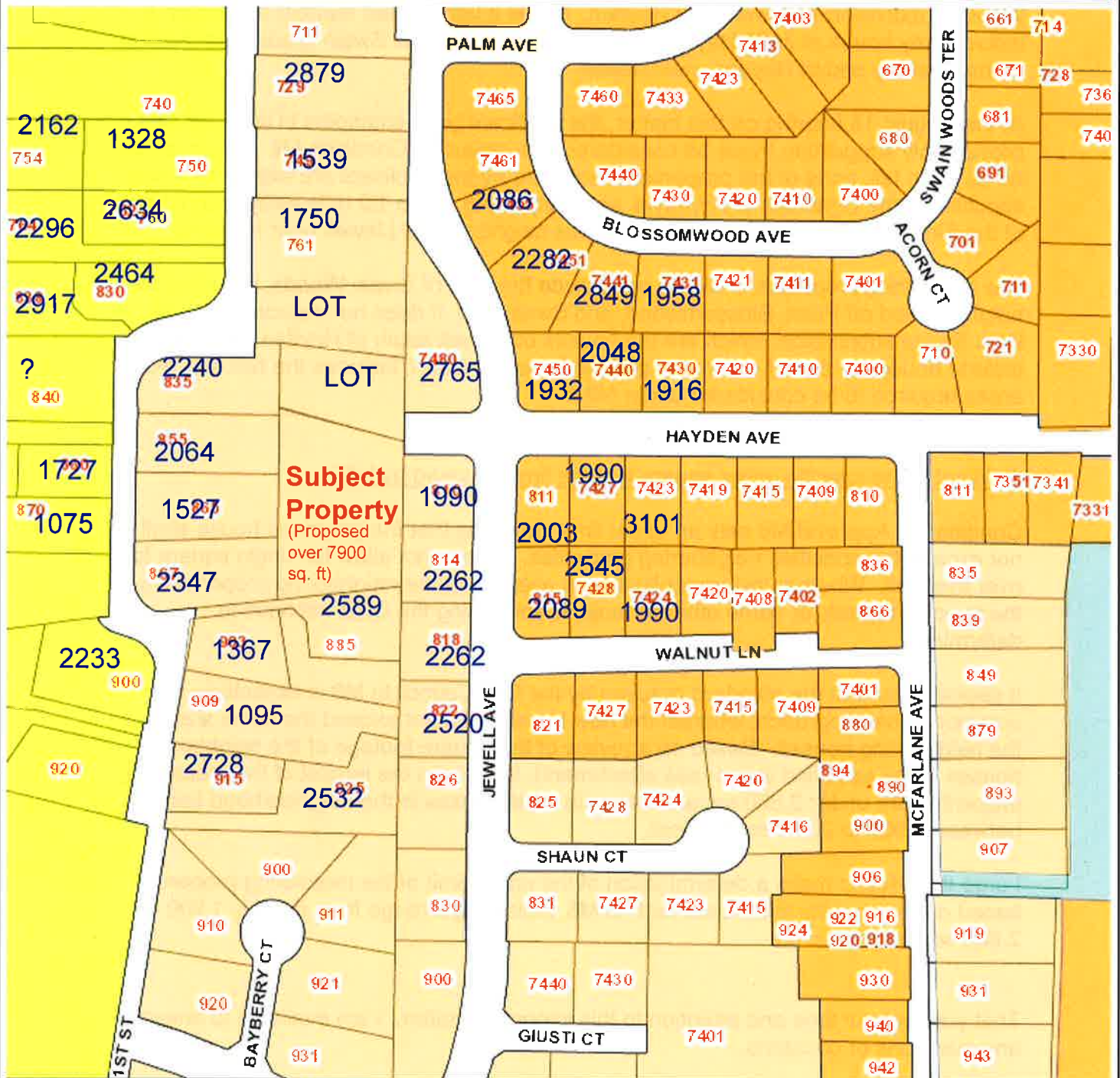
Very truly yours,



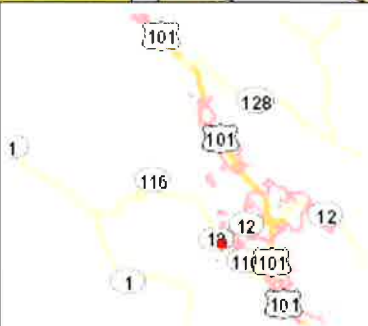
Ken Jacobs

Square footage of neighboring properties are indicated in blue.
Source is public records compiled at datatree.com.

Enter Main Title



Enter Description



8/10/2021

Scale 1: 2,400

0 Miles 0.04