



Agenda Report

21-108

Agenda Date: 1/26/2021

REPORT TO COUNCIL

SUBJECT

Response to Written Petition from Mr. Sam Liu Regarding a Proposed CMU Wall at 3200 Scott Boulevard

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

On July 20, 2016, the Architectural Committee approved the architectural review of the 3200 Scott Boulevard Office Redevelopment Project, a six-story, 230,500 square foot office development. The architectural review approval included the approval of a concrete masonry unit (CMU) wall up to 8 feet in height relative to the adjacent ground level along the southern edge of the property at 3200 Scott Boulevard, adjacent to the property developed with an office building occupied by Newnex Technology Corporation. In 2020, the developer sought a building permit to construct the CMU wall.

Mr. Sam Liu submitted a petition (Attachment #1) to the City Council at the December 15, 2020 City Council meeting objecting to the construction of the CMU wall and requesting that the City Council address his concerns with the proposed construction.

In his petition Mr. Liu referred to the wall as being 10 feet in height. This was based upon a construction detail that depicts the height of the wall above an underground footing. **However, the developer has now provided clarification that the proposed CMU wall would be no more than 8 feet in height above the adjacent ground level**, (not 10 feet), consistent with the 2016 architectural approval.

Council Policy 030 establishes a process for adding an Item to a City Council Agenda through a written petition. Any member of the public may submit a written request raising any issue or item within the subject matter jurisdiction of the Council. Per the policy, the written request will be submitted on the agenda, in the form substantially provided by the requestor, without any staff analysis, including fiscal review, legal review and policy review. If a simple majority of the City Council supports further study of the request, then a full staff analysis shall be prepared within thirty (30) days, unless otherwise directed by the City Council. The City Council heard the petitioner's request and directed staff to place the item on the January 26, 2021 City Council agenda.

DISCUSSION

In his petition and in a presentation (Attachment #2) Mr. Liu made to the City Council at the December 15 meeting, Mr. Liu raises the following allegations:

1. Public safety - the wall would "easily fall" if hit by truck or if there was an earthquake.
2. Property damage - if the wall falls onto the Newnex property, it could damage high voltage

electrical equipment installed adjacent to the wall.

3. Loss of use of property - Mr. Liu claims that construction of a 10-foot wall would require that he establish a “keep-out zone” adjacent to the wall with no parking spaces, effectively preventing Newnex from using the portion of the Newnex property located within 14 feet of the wall. If this were true, Newnex would lose use of 29 of the 66 parking spaces located on the property.
4. Land use incompatibility - Mr. Liu observes that other developments in the immediate area do not have 10 foot walls along their property lines, and argues that the proposed wall would “destroy the bordering continuity and coherence” of the area.
5. Code inconsistency - Mr. Liu also claims that the Santa Clara City Code does not allow walls taller than 6 feet, except for swimming pool enclosures which may be 8 feet.

Community Development staff have met with Mr. Liu on several occasions to discuss his concerns and review the City’s Building Permit materials for the construction of the proposed CMU wall. Specific to Mr. Liu’s concerns, staff has the following responses:

1. The wall would be no more than 8 feet in height above the adjacent ground level and will conform to the Building Code, which establishes the City’s standards for safety of new construction. The design of the wall has been prepared and reviewed by licensed engineers who are qualified per State and City codes to make such determinations.
2. As the proposed wall conforms to the Building Code, it is not reasonable to anticipate that it will fall down.
3. Mr. Liu is mistaken in his belief that there is any legally required 14-foot “keep-out zone.” The City’s Zoning and Building codes do not require a setback on the Newnex property and the wall would be entirely located on the adjacent property, so that there will be no loss of use of his property due to construction of the wall. The contractor building the wall approached Mr. Liu to ask for temporary use of a portion of the Newnex property during construction and it appears that Mr. Liu is referencing this request. After determining that Mr. Liu was unwilling to provide temporary use of his property, the wall was designed so that it could be constructed without a temporary intrusion onto the Newnex property.
4. An 8-foot wall was included in the architectural review approval issued by the City for the 3200 Scott Boulevard project on July 20, 2016, and through issuance of that approval, determined to be aesthetically compatible with surrounding development. Concrete walls can be found on other industrial properties throughout the City.
5. City Code Section 18.64.030(a) allows for the construction of walls at any height within industrial areas through issuance of a building permit. Walls exceeding six feet in height are considered structures, and as such, subject to architectural review. The currently-proposed eight-foot wall was included in the approval granted by the architectural committee on July 20, 2016. Mr. Liu is referencing design standards typical to single-family residential development, not industrial properties.

In addition, staff notes that the administration of Building Permits is a ministerial process and not subject to discretionary review by either staff or the City Council. The project at 3200 Scott Boulevard is being constructed in accordance with a Planning Permit, including an architectural approval granted by the Architectural Committee on July 20, 2016 that included diagrams of the proposed wall (with an 8-foot height). The architectural review ordinance (as it existed in 2016) provided a seven-day period to appeal decisions of the Architectural Committee to the Planning Commission. SCCC § 18.76.020(h) (2016). The appeal period expired on July 27, 2016, and Mr. Liu did not file an appeal. The subject Building Permit application conforms to the Planning Permit

requirements. Review of the Building Permit application is narrowly limited to conformance with the applicable requirements of the City's Building Code. Staff has determined that the proposed construction conforms to the Building Code.

ENVIRONMENTAL REVIEW

The action being considered - Mr. Liu's objection to the proposed wall construction - does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The Architectural Committee adopted an Initial Study / Mitigated Negative Declaration for the 3200 Scott Boulevard Office Redevelopment Project on July 20, 2016.

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>. The notice of public meeting for this item was posted at three locations within 300 feet of the project site and was mailed to property owners within 300 feet of the project site. Several public comment letters were received in support of the nomination and are included as Attachment 5.

RECOMMENDATION

1. Note and file this report.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Written Petition dated November 18 2020 from Sam Liu
2. Presentation made by Mr. Sam Liu to the City Council on December 15, 2020
3. 3200 Scott Blvd CMU Wall Aerial Photo