



## Agenda Report

19-175

Agenda Date: 3/5/2019

### REPORT TO COUNCIL

#### SUBJECT

Direction to Prepare an Amendment to the Zoning Code, SCCC Chapter 18.76 Architectural Review

#### BACKGROUND

Chapter 18.76 of the Santa Clara City Code (SCCC) establishes an architectural review procedure whereby the Santa Clara Architectural Committee (AC) acts as the review body for specified new land use development projects not otherwise subject to Planning Commission or City Council review or other proceedings established within the City Code. Projects typically considered by the AC include additions to single-family residences and new construction within commercial and industrial districts. The City Code currently provides that the AC be composed of one member appointed by the City Council and two members of the Planning Commission appointed by the Chair of the Commission. In recent years the City Council has appointed a member of the Council to serve on the AC along with the two Planning Commissioners.

AC meetings are conducted one or more times monthly, typically on a Wednesday evening when the Planning Commission is not meeting. The AC meetings are noticed as public hearings but conducted in an informal setting with AC members, staff and the applicant seated around a table where they discuss the project design prior to the AC members' vote on approval, approval with conditions, deferment for redesign, or denial of the project. Members of the public may participate in the discussion. Per the City Code, decisions made by the AC may be appealed by any member of the public to the Planning Commission. The Planning Commission's decision on the appeal is in all cases appealable to the City Council.

On May 8, 2001, the City Council adopted voting procedures and guidelines for the AC, which provided that the AC could only take action with a quorum of two members present (Attachment 1). The adopted procedures did not specify that the two members making up the quorum must include a Councilmember, but sometime around 2003, the AC meeting agendas began to include an attached statement of procedures with the statement: "[a]t least one City Council member and at least one Planning Commissioner must be present in order to establish a quorum for voting purposes."

On December 21, 2018, the City Attorney's Office issued a Memorandum on Due Process Requirements in Multilevel Reviews of Decisions (Attachment 2), which identified possible due process issues that might be raised if a member of the AC then hears an appeal of the decision in which he or she had participated. Therefore, staff recommended that the City Council direct the City Attorney and the City Manager to draft amendments to the Zoning Code to resolve these issues. The Memorandum also raises concerns that the City Code does not specify upon what grounds the appellant must base their appeal; whether deference is given to the decision being appealed, or whether the appeal is heard *de novo*; and whether the applicant continues to carry the burden of proof in the subsequent review hearing regardless of who initiates the appeal. A *de novo* public

hearing for the project is conducted as a new “clean slate” hearing with no regard to the prior decision.

On January 15, 2019, following consultation with the City Attorney, the City Council adopted new procedures for the AC (Attachment 3), restoring the 2001 Council-adopted language. As restored, the procedures state that any two members of the AC constitute a quorum. This allows for the Council to appoint someone other than a Councilmember to serve on the AC.

## **DISCUSSION**

Staff is recommending further changes to the City’s Architectural Review process, including the composition of the AC, with the goals of addressing potential due process conflicts for Planning Commissioners, establishing clearer policy guidance for appeals, streamlining the review process for non-controversial projects, eliminating double appeals and utilizing standard staff level public hearings practices found to be effective in other jurisdictions.

While staff had contemplated proposing these improvements as part of the comprehensive update to the Zoning Code now underway, the release of the City Attorney’s Memorandum warrants consideration of process changes in advance of the City Council’s consideration of the comprehensive update anticipated for late 2019 or early 2020. Staff has previously received input on the AC hearing process through outreach at a community workshop at the outset of the comprehensive Zoning Code update and at a Neighborhood University Relations Committee meeting.

### *Composition of the Architectural Committee*

The City Attorney and staff are recommending that the AC members should not be current members of the Planning Commission or of the City Council.

A survey of neighboring jurisdictions indicates that it is more common for staff to conduct an administrative public hearing subordinate to the Planning Commission, with decisions made at the staff level appealable to the Planning Commission and/or City Council. Staff is recommending that Santa Clara adopt a similar administrative hearing process for the City’s Architectural Review. Such an approach would maintain the authority currently exercised by the Commission and Council in the Architectural Review process, through appeals, while allowing routine land use actions to be completed administratively. Under the current process most projects are approved as consent items or with minimal discussion by the AC, suggesting that there is little benefit for those projects from the time and effort required to conduct a public hearing, the cost of which is passed on to the applicant. As many of the land use actions performed at the AC level can be non-controversial, members of the Planning Commission and City Council could focus on items, identified through an appeal process, that most warrant a higher level City review.

Staff is not recommending that the AC continue as an appointed body comprised of three community members. While this approach would be similar to the current Architectural Review process, it may be challenging on an ongoing basis to find three well qualified community members, in addition to the Planning Commission membership, able to commit the required amount of time to serve on the AC.

The City will continue to develop policies, including an update to the City’s community design guidelines, single family and duplex design guidelines, and design standards incorporated into Specific Plans or Zoning Ordinance standards, which will further serve as guidance from the Planning

Commission and City Council on the City's architectural standards for new development. Design standards and guidelines have been incorporated into the recently adopted Lawrence Station and Tasman East Specific Plans and are part of the scope for the El Camino Real, Patrick Henry and Freedom Circle Specific Plans now under development. The City maintains and updates generally applicable design guidelines as well and staff anticipates future updates to these guidelines as the work program allows to address additional types of development and provide greater clarity where recent projects have indicated such clarity is needed.

### *Appeal Procedures*

The Code allows for an appeal based on dissatisfaction with a decision by the AC or Planning Commission, and it defines who may initiate the appeal and how. It also states that the appeal needs to be in writing and must be made within a specific timeframe. But beyond that, it does not specify upon what grounds the appellant must base their appeal; whether deference is given to the decision being appealed, or whether the appeal is heard *de novo*; and whether the applicant continues to carry the burden of proof in the subsequent review hearing regardless of who initiates the appeal.

To provide greater clarity, staff is recommending amendment of the City Code to establish that the standard for appeal be *de novo*, and that the appeal body be able to weigh in on any aspect of the project. The appeal body would still be required to make the findings for Architectural Review approvals per Section 18.76.020(c) of the Zoning Code.

Staff is also recommending elimination of the double appeal process. The current AC appeal process can be very time consuming and requires General Fund subsidy as appeal fees are not cost recovery. When AC actions are appealed to the Planning Commission, a second appeal to the City Council is the likely outcome. If the Planning Commission upholds the AC action, the same appellants will likely then appeal the Planning Commission approval to the City Council. If, instead, the Commission overturns the AC action, the other party will most likely appeal that decision to the City Council. The potential for double appeals significantly extends the City's decision making process resulting in project delays and additional costs for the applicant and the City and generally makes the first hearing inconsequential as a second appeal is very likely. The removal of the double appeal process will reduce the number of appeals that need to be placed on Planning Commission and City Council agendas.

Therefore, staff recommends the elimination of the current double appeal process and to distinguish which AC actions are appealable to either the Planning Commission or to the City Council, but not to both in succession. Staff recommends that AC actions on single family projects would be appealable to the Planning Commission. AC actions on all other projects, including industrial and commercial developments, would be appealable to the City Council only. (Attachment 4)

### *Survey of Standard Practices*

The City of Santa Clara AC is unique when compared to neighboring cities which do not have a separate body, other than a Planning Commission, responsible for development and land use approvals. As summarized in the attached table (Attachment 5), neighboring jurisdictions instead utilize staff-level review processes for minor architectural approvals. The criteria for a minor approval vary by jurisdiction, but typically include site and architectural review approvals for single-family, multi-family, commercial and industrial projects and some use permits. This approach appears to be generally accepted within those communities and is beneficial in that it enables a more predictable

review process and reduces the load upon volunteer or elected community members. Some cities, such as Mountain View and Palo Alto, include an Architectural Review Board (ARB) in their design review process. The ARB may be composed of design professionals and/or community volunteers. In the two local examples the ARB acts in an advisory capacity to City staff which then conduct an administrative hearing in the same manner as other local cities, with the exception of Santa Clara.

### *Conclusion*

Staff recommends amending Chapter 18.76 Architectural Review of the SCCC to replace the AC process with an administrative hearing process (Development Review Hearing), streamline the approval and appeal process and remove due process conflicts. An administrative hearing process would eliminate due process conflicts and ensure impartiality of the decision-making body by eliminating the possibility of the same person making decisions on multiple levels of an appeal. The proposed process would continue to be a duly noticed hearing and noticing would follow the City's Public Outreach Policy for Planning Applications, which was adopted by the City Council on June 27, 2017.

This potential amendment would revise procedures for appeals to allow only a single appeal, determined by the project type, and clearly define the required basis for appeal and the level of review. The potential amendment would create a process where AC actions on single family projects would be appealable to the Planning Commission. AC actions on all other projects, including industrial and commercial developments, would be appealable to the City Council only.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

### **FISCAL IMPACT**

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

### **COORDINATION**

This report has been coordinated with the Finance Department and 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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

### **ALTERNATIVES**

1. Direct staff to prepare an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to replace the existing Architectural Committee process with an alternate Administrative Level Hearing Process (Development Review Hearing) including identifying the permits or projects subject to the approval of the Administrative Level Hearing Process, Planning Commission, or the City Council; identifying the hearing body that is responsible for the review on

appeal based on the types of permit or project; and limiting any planning application to a maximum of one potential appeal.

2. Direct staff to prepare an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to replace the existing Architectural Committee process with an alternate Administrative Level Hearing Process (Development Review Hearing) with only some or other components as identified in the staff report.

### **RECOMMENDATION**

Alternative 1:

Direct staff to prepare an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to replace the existing Architectural Committee process with an alternate Administrative Level Hearing Process (Development Review Hearing) including identifying the permits or projects subject to the approval of the Administrative Level Hearing Process, Planning Commission, or the City Council; identifying the hearing body that is responsible for the review on appeal based on the types of permit or project; and limiting any planning application to a maximum of one potential appeal.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. 2001 Architectural Committee Procedures and Excerpt of Council Minutes
2. Due Process in multilevel reviews 12-21-18
3. Architectural Committee Procedures, revised 1-15-2019
4. Architectural Review Process Diagram
5. Neighboring Cities Hearing Level and Process Analysis