DESIGN REVIEW BOARD STAFF REPORT

MEETING DATE: **May 11, 2009** REPORT WRITTEN: May 4, 2009

ITEM NUMBER: V.A. – DESIGN REVIEW

FILE NUMBER: **UP-01-09 – Parwin W. and M.Taher Sarwary (Applicant and Owner):** The design review board will consider making recommendations to the Planning Commission with regard to adequacy of parking and the addition three new bedrooms for a condominium conversion of an 8-unit apartment complex at 2009 Ascot Drive. APN 255-471-003

ZONING: 6-DUA (Six dwelling units per acre)

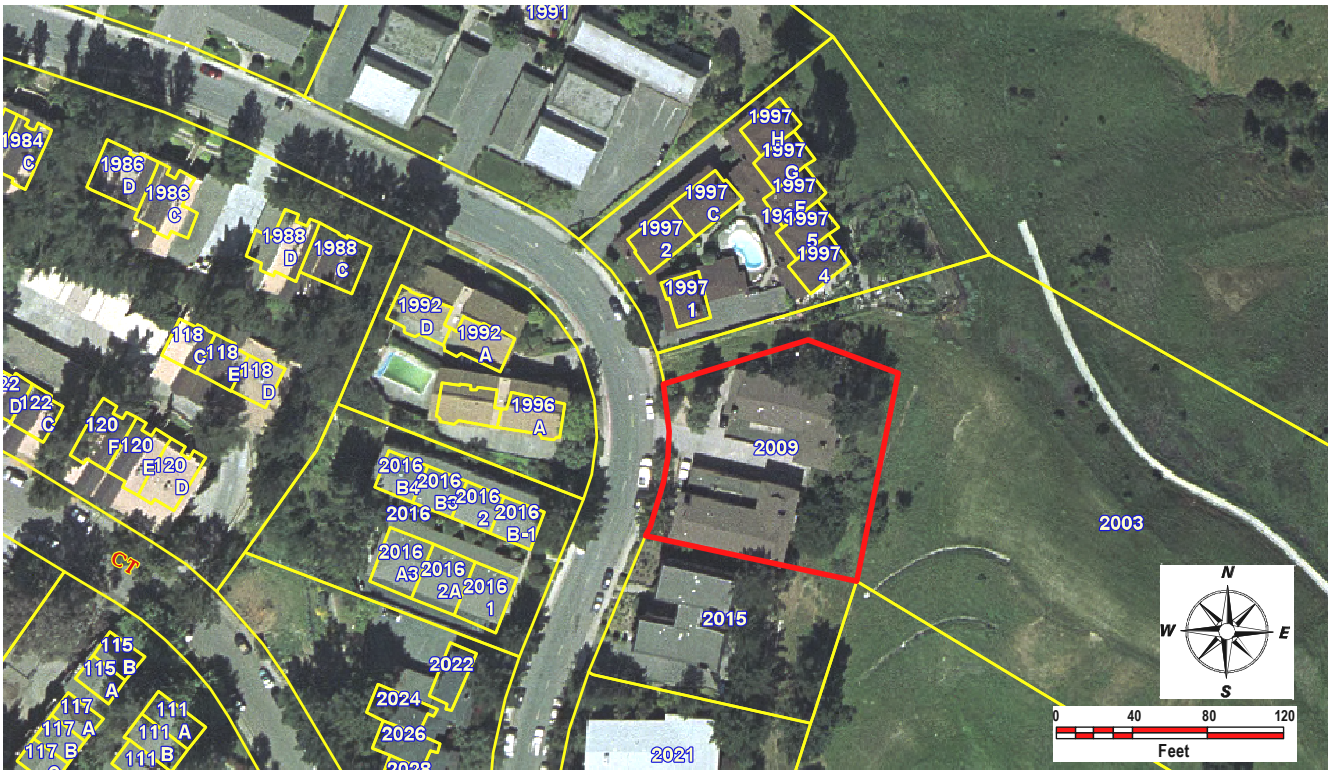
CEQA STATUS: The proposed additions and improvements to the existing apartment complex are categorically exempt from CEQA under Section 15301 for existing facilities. Specifically, Section 15301(e)(1) exempts additions to existing structures provided that the addition is less than 50 percent of the floor area or 2,500 sq.ft., whichever is less.

PUBLIC NOTICE AND MAILING LIST:
As required by Moraga Municipal Code Section 8.72.130(A)(1), written notices for this project were mailed to all property owners within three hundred (300) feet of the subject property on May 1, 2009. A map showing the area of notice, a copy of the mailing list and a copy of the public notice is attached as **Exhibit A**.

APPLICATION SUMMARY:
The tentative subdivision map (Tract 9207) for this proposed condominium conversion was approved by the Planning Commission on August 6, 2007, subject to the conditions listed in Resolution 32-2007 PC, which is attached as **Exhibit B**. The Planning Commission staff report for the condominium conversion, which contains a wealth of information on the project and the conversion process, is attached as **Exhibit C**. Conditions of approval C-2 and D-3 required 16 covered parking spaces (2 per unit) and 4 guest parking spaces. Due to various site constraints, the applicant is requesting a parking modification to provide 12 covered spaces and 6 open spaces. Under Moraga Municipal Code (MMC) Section 8.76.130, the Planning Commission may grant a modification to the required off-street parking ***after review by the design review board*** (emphasis added). The DRB is requested to make a recommendation to the Planning Commission with regard to the parking.

Condition of approval A-10 required the applicant to file for a use permit prior to approval of the Final Map to allow expansion of the legally non-conforming use. Under MMC Section 8.20.030-B, a non-conforming use may be enlarged or modified upon the issuance of a conditional use permit. The applicant proposes to add a third bedroom to units 4, 6 and 8. The DRB is requested to make a recommendation to the Planning Commission for the expansion of the three units.

The location of the property with respect to the surrounding condominiums and apartments on Ascot Drive is shown on the aerial photomap below:



ISSUES:

PARKING MODIFICATION.

Two covered parking spaces are required for each residential unit and 1 guest parking space is required for each 2 units under MMC Sections 8.76.100-A and C. Section 8.96.090-J of the Condominium Conversion Ordinance also requires 2 parking spaces for each living unit that has two or more bedrooms. In order to comply with these parking requirements, the project should have 16 assigned covered parking spaces and 4 guest parking spaces, which may be uncovered. The existing project has 10 covered parking spaces and 6 open parking spaces. The applicant is proposing to cover two of the existing open parking spaces and add two new open parking spaces for a total of 12 covered and 6 open parking spaces. The project would need 6 new covered spaces and 4 open parking spaces to comply 100% with the off-street parking requirements. The table below shows the required, existing and proposed parking for 2009 Ascot Drive.

Parking Requirement	MMC Requirement	Existing On-site	Proposed Parking
Covered Spaces	16	10	12
Guest Parking	4	6	6
Total Parking	20	16	18

At the time the condominium conversion was approved, it was thought that it might be feasible to achieve full compliance with the required parking. Condition of approval number D-3 was based on the assumption that the applicant could install two tandem covered parking

spaces at the northeast side of spaces 13 and 14 as numbered on the current site plan and also cover two of the existing spaces at the east end of the parking area between the two buildings, numbered 7, 8 and 2-G on the current site plan. The full text of condition D-3 is included below:

> Condition D-3 states: "In order to comply with MMC Sections 8.96.090-J and 8.76.100, the project shall have 16 covered parking spaces and 4 guest parking spaces for a total of 20 parking spaces. ***Unless it is proven to be infeasible to the satisfaction of the Design Review Board*** (emphasis added), two (2) tandem covered parking spaces shall be added behind the parking spaces designated as P-15 and P-16 on the tentative map at the west side of Unit 1. A carport shall also be built over two (2) additional parking spaces, either spaces P-8 and P-9 or spaces P-9 and P-10. The remaining uncovered spaces, P-1 and P-10 or P-8 will become unassigned guest parking spaces for a total of 4 guest parking spaces."

The photo below shows a fairly level space at the west side of Unit 1 where staff thought there was a possibility that two tandem covered parking spaces could be added. However, if covered tandem parking was added at this location, then the entrance to Unit 1 would have to be changed and a 14-inch pine tree would have to be removed.

West side of Units 1 and 3 – Possible Tandem Parking Area

Connecting the two buildings with a carport at the east end also posed some problems due to the existing bedroom windows that would then be covered by the carport. Since no covered parking spaces can be added within the front building setback, the options for additional covered parking appear to be very limited.

The condominium conversion ordinance states that the Planning Commission may reduce the number of parking spaces required if it makes findings that (1) due to the physical limitations of the site, there would be a severe loss of amenities due to required parking, and (2) a reduction will not result in a deficiency of parking in light of the characteristics of the tenancies and the availability of alternate off-street parking in the vicinity of the site.

In addition to the condominium conversion findings, the Planning Commission will need to make the following findings under MMC Section 8.76.130 in order to grant a modification to the off-street parking requirements:

1. The modification is justified based on the existing locations of building, parking areas and other access points.
2. Existing facilities on the same parcel are sufficient to provide adequate services.
3. The design is consistent with the intent of this chapter and is complementary to and compatible with existing development on the same site.
4. The modification will not have an adverse effect on other properties in the vicinity of the project.

The applicant will be adding two additional parking spaces and increasing the amount of covered parking by two spaces. The project will have only 2 spaces less than the total required by the municipal code. Nevertheless, the availability of parking on Ascot Drive is very limited because most of the existing apartments in the vicinity were built prior to the Town's incorporation and they only have one covered parking space per unit. In order to have the least impact on available guest parking, 4 spaces have been designated on the site plan with a "G" to be unassigned parking for guests and visitors. The proposed plan would assign 2 covered parking spaces for the four three bedroom units. The four two bedroom units will only have one covered parking space each, but two of these units may have an assigned open parking space. An alternate arrangement would be to have all the open parking spaces be unassigned guest parking to be used on a first come, first serve basis. A third alternative would assign four of the uncovered spaces to each of the units that only has a single covered space so that all the units in the complex have at least two assigned parking spaces. However, the third alternative would then leave only two guest or visitor parking spaces, which staff does not recommend.

If the parking modification is granted in accordance with the proposed parking plan with 4 guest parking spaces, then conditions C-2 and D-3 will need to be modified. Condition C-3 for the CC&R's could be restated as follows or a similar variation:

> There shall be a total of fourteen (14) assigned parking spaces and four (4) guest parking spaces for non-exclusive use by all owners and their guests. The guest parking shall be limited to 72-hours maximum use. Two covered parking spaces shall be assigned for each three bedroom unit. One covered parking space shall be assigned for each two bedroom unit. The additional two uncovered parking spaces may be rented or assigned to unit owners in accordance with a policy to be adopted by the board of directors for the condominium association.

ADDITIONS TO LEGALLY NON-CONFORMING USE.

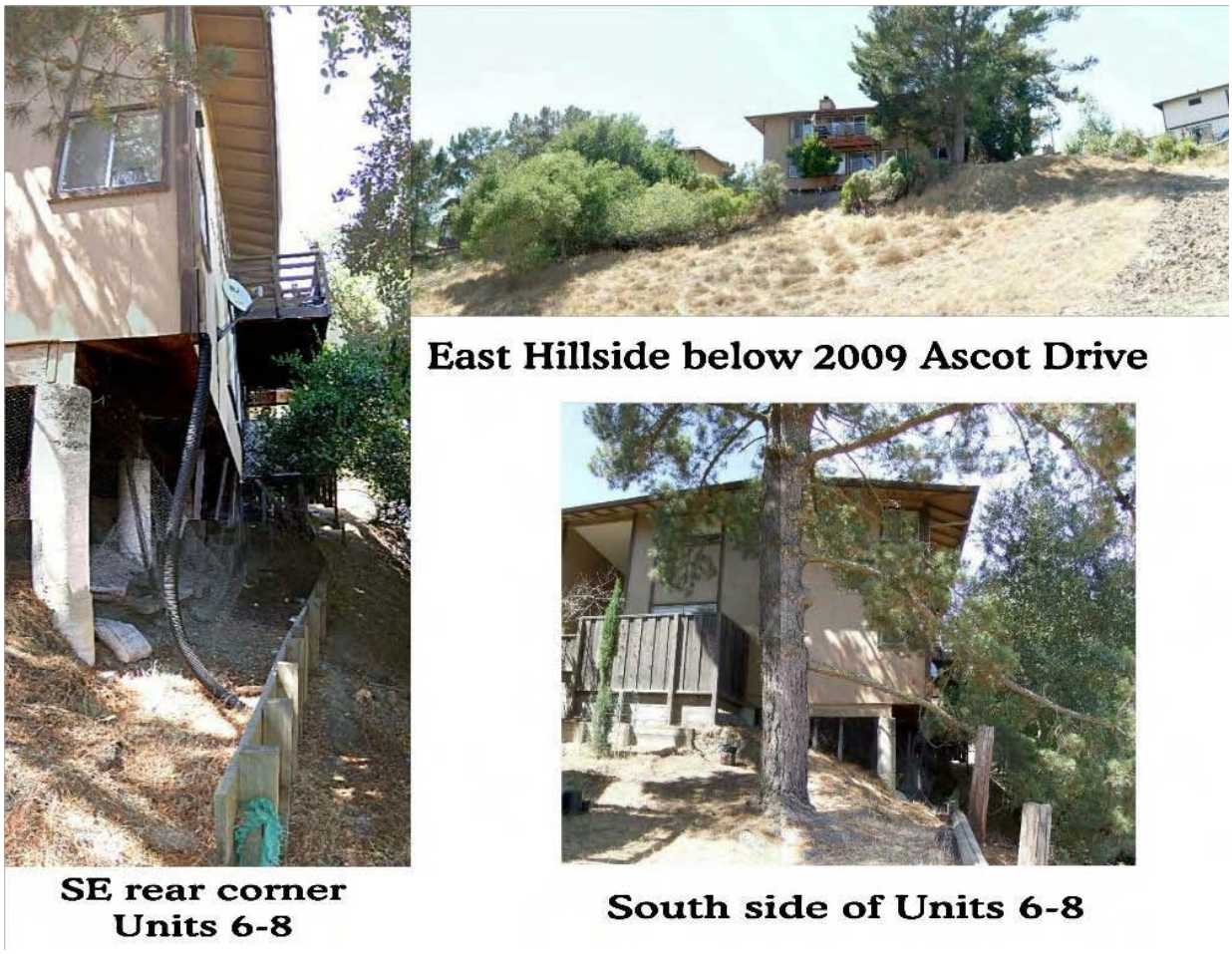
The apartment units at 2009 Ascot were originally built in 1969 in accordance with Contra Costa County's M-3 zoning district. The density of the project is 16 units per acre and is legally non-conforming with the Town's current zoning of 6 dwelling units per acre. MMC Section 8.20.030-A states the general regulations governing nonconforming uses, as follows:

1. No increase or enlargement of the area, space, or volume occupied and used is permitted.
2. No change in the nature or character of the nonconforming use is permitted.

3. If the nonconforming use is replaced by a nonconforming use, the nonconforming use is automatically terminated.
4. If the nonconforming use discontinues active operation for a continuous period of one hundred twenty (120) days, the nonconforming use terminates and the facilities accommodating or serving such activity shall thereafter be utilized only for uses permitted or conditionally permitted by the zoning district in which the land is located.

MMC Section 8.20.030-B allows the regulations in subsection A, above, to be modified upon the issuance of a conditional use permit. The design review board will consider a recommendation to the Planning Commission with regard to the addition of a third bedroom to three of the units. A 228 square foot bedroom is proposed on the second story at the west side of unit 4 and a 44 square foot hallway and 203 square foot bedroom would be added at the east rear side of units 6 and 8. The applicant has submitted partial floor plans and building elevations to show the new bedroom additions on sheets A0.3 and A0.4 of the plan set. Staff has three concerns with the proposed bedroom additions as follows:

1. The proximity of Oak trees on the slope behind units 6 and 8 is a potential problem. Condition A-10 from Res. 32-2007 required an arborist's report to ascertain whether the construction of the bedroom additions at the east side of Units 6 and 8 will have any adverse impacts to the two existing Oak trees. The photos below show the Oak trees in relation to the existing building.



2. The slope at the back (southeast) side of units 6 and 8 is steep and detailed topography has not been submitted by the applicant. The skirt wall below the new bedrooms is shown to be 8-feet high on detail 2 on sheet A0.4 of the plans. The design guidelines for multi-family residential buildings do <u>not</u> include restrictions on the height of skirt walls, such as SFR2.11 in the single family residential guidelines. The only guideline that is relevant would be MFR2.6, which states "Large building masses should be avoided. One factor that helps mitigate the view impact at the rear of the project is a large vacant parcel which is located on a knoll that extends east from the main Ascot ridgeline (see site plan on page 2). This knoll blocks the view of the back of the apartment complex from most of the properties along Moraga Road below the site. The photos below show some views of the east rear side of the project.

View of rear of 2009 Ascot Drive from TJ Maxx Store

Birds Eye View of 2009 Ascot from Virtual Earth

3. The sectional view of Unit #4 on detail 2 of sheet A0.5 shows the mansard carport roof along the south wall of the new bedroom addition, but the elevation drawing on detail 4 on sheet A0.4 appears to show the mansard terminated at the west side of the new addition. Since there is no plan view showing where the section through Unit #4 was made, the location of the mansard roof needs to be clarified on the plans. The picture below shows the existing carport roof with the mansard extending over the bedroom on Unit 2.

South side of Units 1, 2, 3 and 4 with existing mansard roof over carport

PERMIT STREAMLINING ACT:
The application for the use permit for the bedroom additions was submitted on March 27, 2009. The Permit Streamlining Act requires a decision on the project within ***60 calendar days*** after a project has been found to be exempt from CEQA or a negative declaration is adopted for the project. The staff report was written on May 4, 2009 at which time the project was determined to be exempt from CEQA. Therefore, the application must either be approved or disapproved by July 3, 2009 unless both the Town and the applicant agree to a one time 90-day extension.

RECOMMENDATION:
Staff has prepared a draft memo with multiple choices for recommendations to the Planning Commission with regard to the parking modification request and the addition of the three new bedrooms. The draft memo is attached as **EXHIBIT D**.

Prepared By Richard Chamberlain, Senior Planner

EXHIBIT A – Notice Area Map, Mailing List and copy of Public Notice
EXHIBIT B – Resolution 32-2007 PC, approval of Tentative Map for SUB. 9207 (conversion of 8-unit apartment at 2009 Ascot Drive to Condominiums)
EXHIBIT C – Planning Commission Staff Report for the August 6, 2007 Condominium Conversion Hearing.
EXHIBIT D – Draft Recommendations to the Planning Commission
EXHIBIT E – Applicant's Plans