

August 4, 2022



Conditional Use Permit case no. CU22-07: 3802 Kelli Lane

CASE DESCRIPTION: request for approval of a Conditional Use Permit to allow for a detached dwelling unit with no more than four unrelated people on land zoned Residential - Neighborhood Conservation District (R-NC)

SIZE & LOCATION: 0.24 acres of land adjoining the west side of Kelli Lane, and currently addressed as 3802 Kelli Lane, Bryan, TX

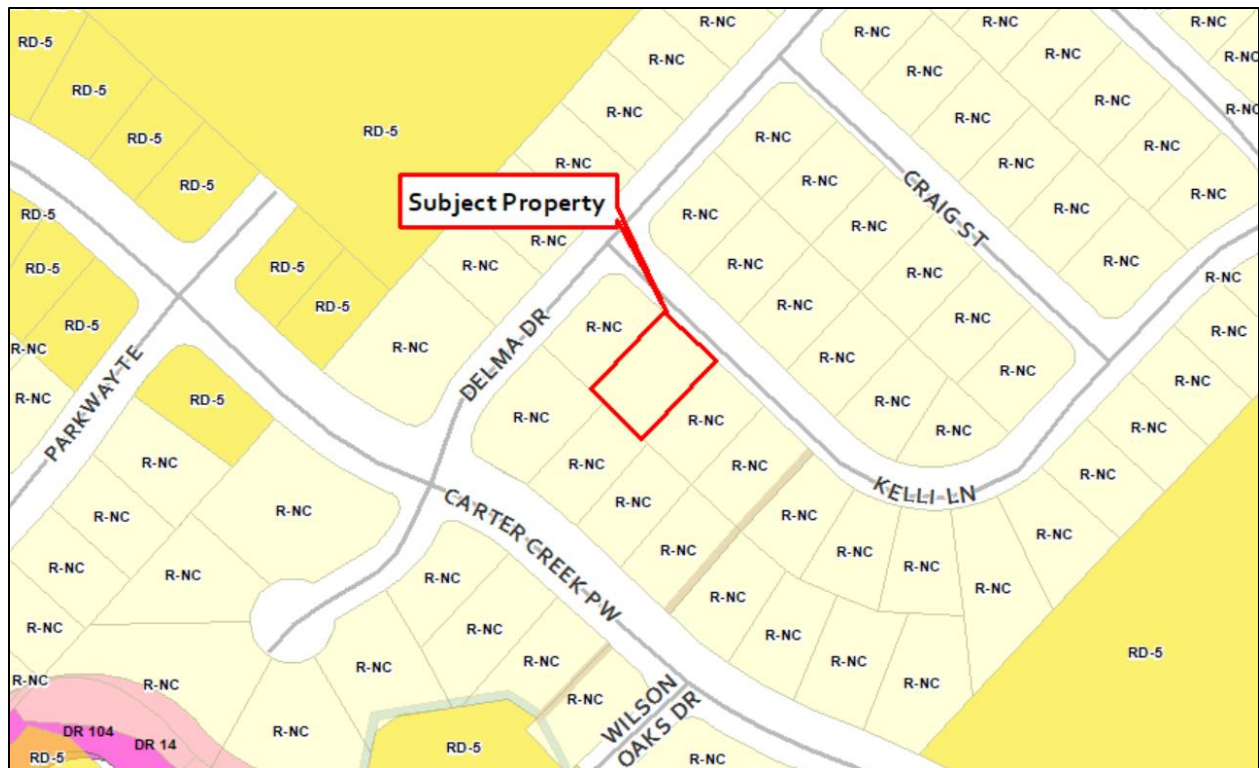
ZONING: Residential-Neighborhood Conservation District (RN-C)

EXISTING LAND USE: detached dwelling unit with no more than two unrelated persons

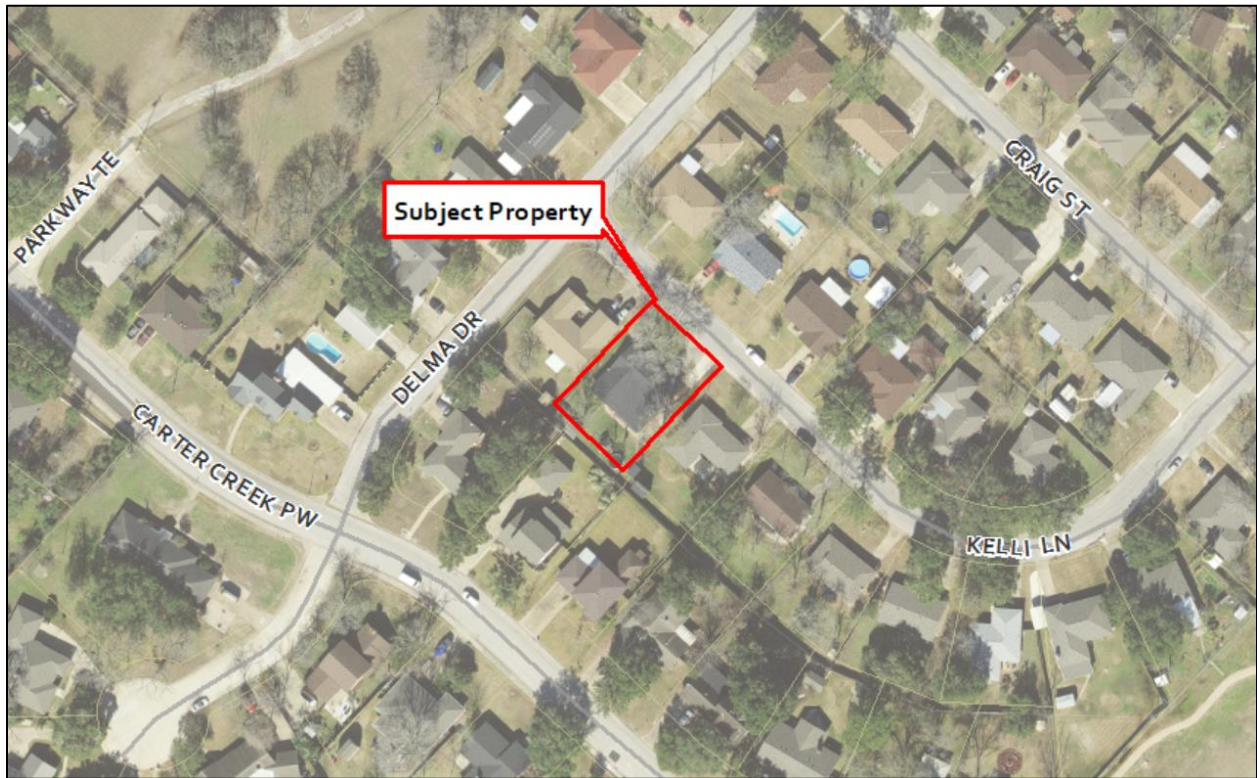
APPLICANT(S): Sam Hosch

STAFF CONTACT: Isabel Martinez, Staff Planner

SUMMARY RECOMMENDATION: Staff recommends **denying** this Conditional Use Permit.



2021 AERIAL PHOTOGRAPH:



BACKGROUND:

The subject property is located in the BB Scasta, Installment 1 Subdivision, and consists of .24 acres of land adjoining the west side of Kelli Lane, and currently addressed 3802 Kelli Lane. The subject property is zoned Residential -Neighborhood Conservation District (R-NC), and surrounding properties are similarly zoned. The property's residence was built in 1965, and has been in use as a residence to present day.

The R-NC District limits the number of unrelated persons living in a detached dwelling unit to no more than two unrelated individuals.

On February 27, 2007, all of the lots within the BB Scasta Installment 1 Subdivision were rezoned to R-NC District (Ordinance No. 1664). The rezoning was initiated by the City of Bryan after receiving a qualifying petition of support from 70 percent of the property owners within the subdivision. As required by state law, notifications of the request were sent to all property owners affected and all property owners within 200 feet of the subject properties. The Planning and Zoning Commission considered the rezoning request. Prior to P&Z consideration a hearing was held during which the public had an opportunity to express their views on the matter. The P&Z, hearing no opposition during the public hearing, forwarded the request to the City Council with a unanimous recommendation of approval. After a second public hearing, the request for rezoning to R-NC District was unanimously approved by City Council.

Property owner / applicant, Sam Hosch, purchased the subject property in January 2022. The applicant purchased the subject property with the intention of housing his children in the property while they attended college, and to rent out remaining rooms.

According to applicant's statement on Supplement "E" of the application form, Mr. Hosch was not aware of the zoning assigned to the surrounding neighborhood and subject property. In a conversation with an agent involved in the transaction, Ms. Hannah Hart-Hayes of GreenPrint Real Estate Group, told staff that she had informed Mr. Hosch that the zoning of the subject property was Residential District – 5000 (RD-5). Staff informed Ms. Hayes Hart that the information she had given her client was incorrect. Ms. Hayes Hart is the same person authorized by Mr. Hosch to act on his behalf during the processing and presentation of this request. In an effort to correct the error, the applicant is now requesting that the Planning and Zoning Commission grant approval of a conditional use permit that would allow the use of the subject property for occupancy by four unrelated individuals. If approved, the applicant and any subsequent owners would be granted the permanent right to occupy the property with up to four unrelated individuals. Property rights granted upon approval of a CUP are permanent and continue in perpetuity with the property, despite subsequent ownership changes.

Regarding Supplement "E" of the application form inserted on page 6 below, Ms. Hayes asserts several facts that appear to staff to be factually incorrect. These statements include, but are not limited to:

- **A neighborhood association requested a zoning change of the subject property.**

In 2006, individual property owners, representing 70% of the owners of properties within B.B. Scasta Installment 1 Subdivision, not a neighborhood association, petitioned the City Council for city initiated rezoning of the subdivision from RD-5 District to R-NC District.

- **The seller was not aware of the requested zoning change.**

The recent seller of the subject property has been the owner since 2002, and in 2006 was a signatory to the petition in support of rezoning to R-NC District.

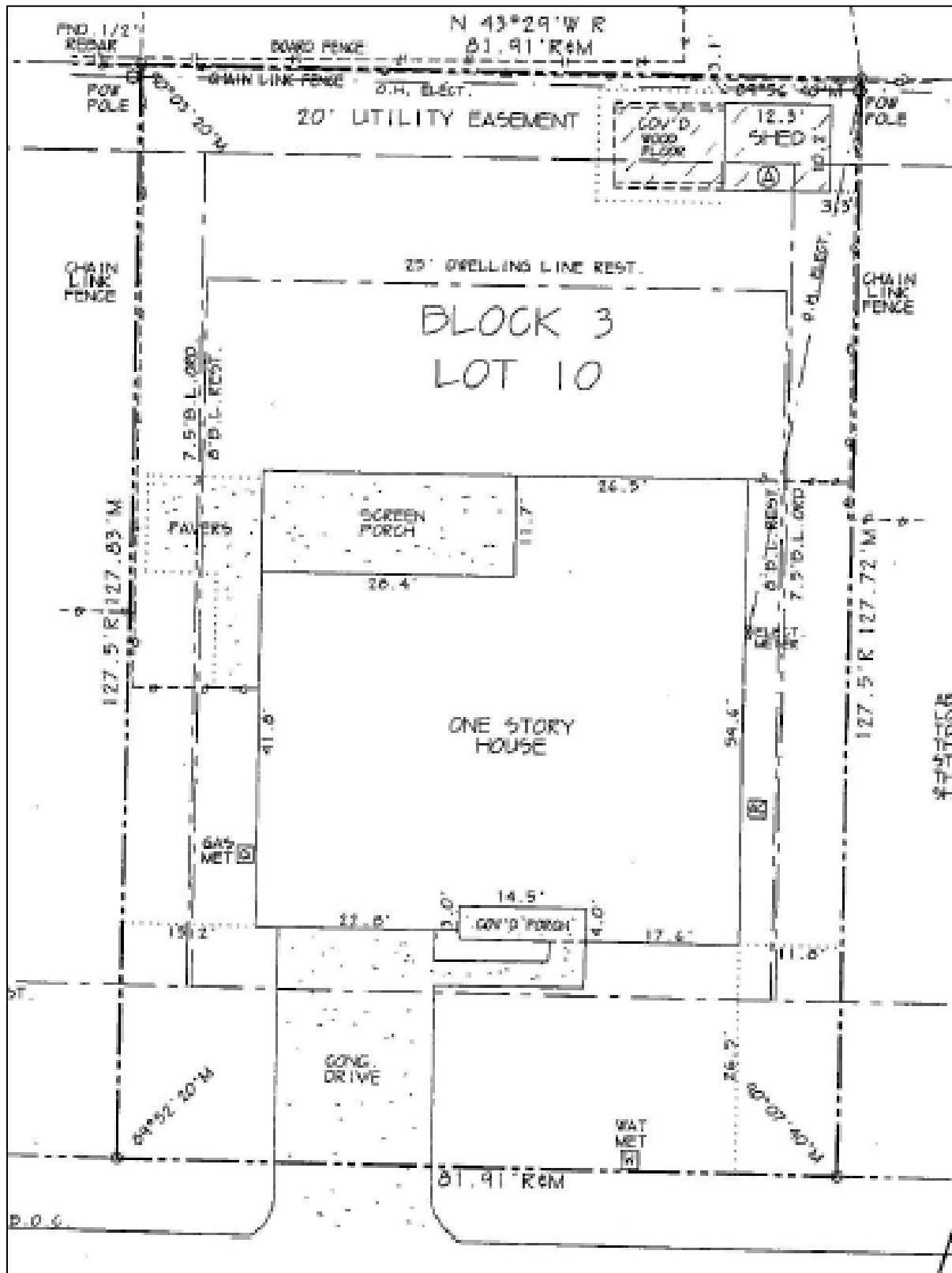
- **Prior to the contract, the zoning map showed the property to be Residential District – 5000 (RD-5). After the closing, the color changed to Residential – Neighborhood Conservation District (R-NC) for this one area of the community.**

Since 1996 the Land Based Classification Standards (LBCS) have been used as a standard convention for land-use categories for maps, GIS, and other rendering and presentation media. The symbol colors of the online Planning and Zoning map have been established for years and are consistently applied. In addition to the map colors, a click on any property will produce a pop-up detailed description text describing each specific zoning district. <https://maps.bryantx.gov/plan/>

With respect to the prevailing regulatory environment, The existence of the R-NC District and subsequent findings of the City Council regarding structures commonly referred to as "stealth dorms", i.e., by-the room occupancy of single-family homes in established Bryan neighborhoods, make clear the values of the community.

Both in 2006 and in 2018 the City Council took action to allow the public tools to protect what was characterized as "a land use is inconsistent with the public interest, threatening the integrity of established single-family residential neighborhoods".

SITE PLAN:



EXISTING CONDITIONS:



Conditional Use Permit Supplement E



CITY OF BRYAN
The Good Life. Texas Style

Minimum Requirements:

- PDF copy of site plan emailed to sdrc@bryantx.gov

Please list the reasons for this conditional use permit request:

The owner purchased this property with no known knowledge of the volunteer Neighborhood Association requesting a change of use/zoning for this property, nor was the seller informed of any such change prior to the sale.

The volunteer Neighborhood Association shall have no bearing on the use of the property as no formal documents have been filed with Brazos County and therefore, do not show during title searches.

Prior to contract, the zoning map showed the property as RD-5 and after closing, the zoning map now shows a different color for this one section of the community and so it is unclear why the zoning map was incorrect and that no formal paperwork was sent out to the seller from the Neighborhood Association or from the City of Bryan dictating the change of use/ ordinance.

The owner plans to occupy the property as a second residence or retirement property.

The owner plans to allow their children access to the property during their collegiate years. The children plan to have other college students as roommates, occupying rooms during school semesters.

With this conditional use permit, the owner and their children have the right to have no more than 4 unrelated persons in the home for a duration of longer than 21 days.

RELATION TO BRYAN'S COMPREHENSIVE PLAN (BLUEPRINT 2040):

The City of Bryan Comprehensive Plan is the framework for the establishment of zoning and other regulatory tools. The current plan includes policies and recommendations related to the various physical aspects of the community. These aspects are supported by a set of goals and objectives.

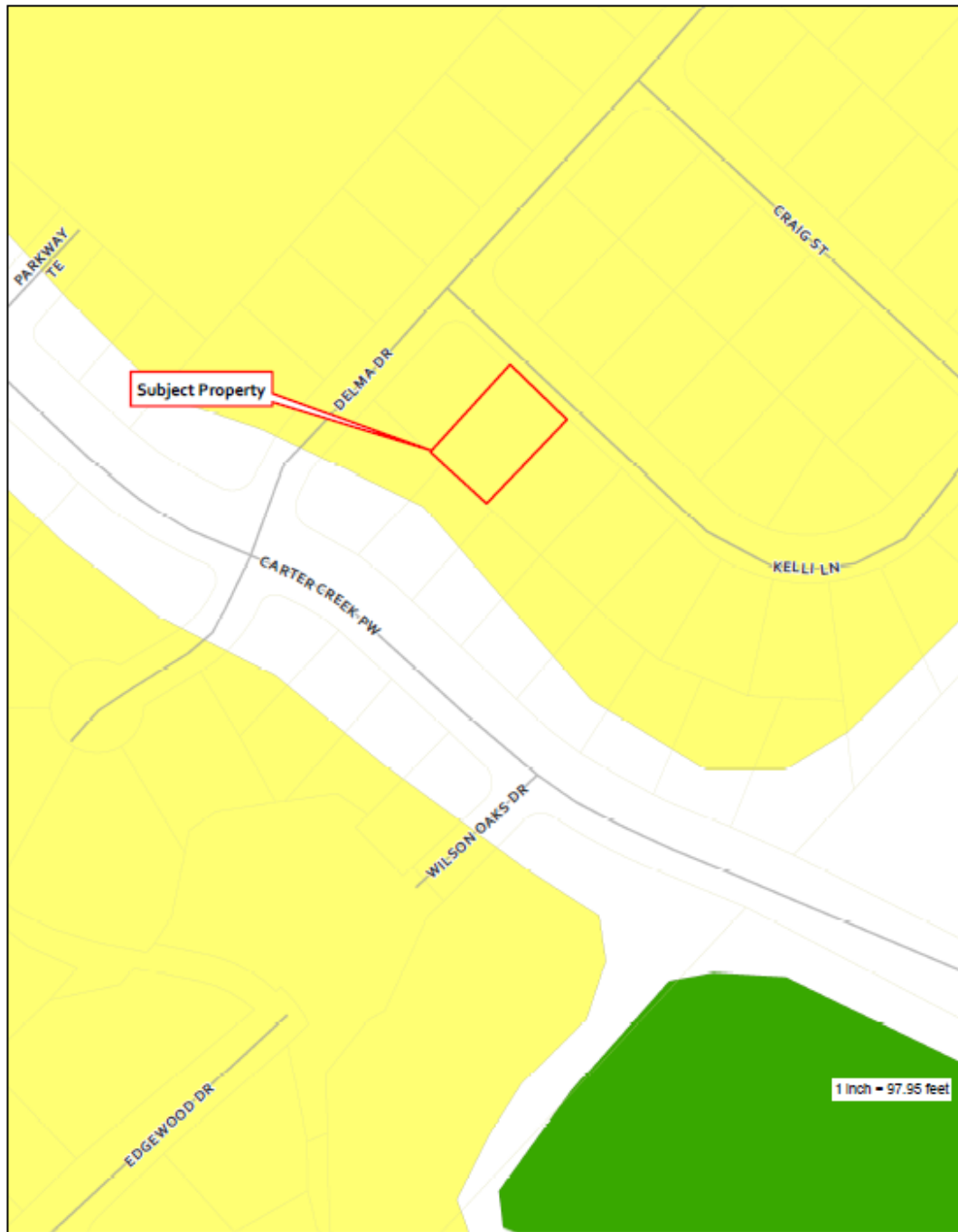
The Future Land Use Plan (as shown below) suggests the subject property is located in an area suitable for a Low Density Residential. According to the land use policies of the Future Land Use Plan and Comprehensive Plan, land to be developed in this district shall be located adjacent to the downtown core and serve as a transition between the core and existing peripheral low-density residential neighborhoods.





Chapter 5: Land Use – Low Density Residential (pg.139-140):

Low Density Residential areas should represent a traditional single-family detached neighborhood and includes housing and living units for people with a range of incomes and needs. Low density residential areas generally range between three and five dwelling units per acre.

- They should be protected from, but accessible to, the major roadway network, commercial establishments, and industrial areas.
- Subdivisions should be accessible to collector and arterial streets, but should directly access only local streets.
- They should not be directly accessible to major arterials and freeways without adequate buffering and access management.

BluePrint 2040



-  Low Density Residential
-  Medium Density Residential
-  High Density Residential
-  Parks and Open Space



ANALYSIS:

Approval of a Conditional Use Permit by the Planning and Zoning Commission shall be based upon the following criteria.

1. Whether the proposed conditional use conforms to applicable regulations and standards established by the Zoning Ordinance.

Staff finds that the requested Conditional Use Permit (CUP) to allow four unrelated people to occupy the subject property would not conform to the applicable regulations and standards established for R-NC District properties.

Staff observes that while the requested CUP may potentially be allowed within the R-NC District, the ordinance specifies that the approval of such requests should be based on supplemental restrictions or conditions designed to mitigate or eliminate adverse impacts. The applicant's written comments requesting the CUP (see "DETAIL, SUPPLEMENT "E" on page 6 of this staff report), propose no measures intended to protect adjacent properties or the surrounding area against potentially harmful impacts.

2. Whether the proposed conditional use is compatible with existing or permitted uses on abutting sites, in terms of use, building height, bulk and scale, setbacks and open spaces, landscaping, drainage, or access and circulation features.

The subject property and home are similar in size to properties within the B.B. Scasta, First Installment Subdivision. In 2006, an overwhelming majority of property owners of the surrounding properties, acting in common interest, requested that the City Council act to conserve the character of their neighborhood by amending the zoning of their subdivision to R-NC District. As observed previously, the applicant's proposal suggests or offers no measures intended, as required by the ordinance, to mitigate or eliminate adverse impacts to the adjacent and surrounding properties.

Given the existing physical conditions, staff contends that the proposed conditional use would be incompatible with surrounding existing and permitted uses and incompatible with the intended purpose of the R-NC District.

3. Whether and the extent to which the proposed conditional use potentially creates greater unfavorable effect or impacts on other existing or permitted uses on abutting sites than those which reasonably may result from the use of the site by a permitted use.

Neither the applicant nor staff has been able to identify any special conditions relating to, or existing on, the subject property that could mitigate or eliminate adverse impacts to the adjacent and surrounding properties the proposed addition of two additional unrelated persons may create. The subject property is similar in size and layout to other homes within the R-NC zoned portion of the B.B. Scasta, First Installment Subdivision.

Staff contends that approving a conditional use on this property, absent of any mitigating conditions, would set a dangerous precedent. Staff further contends that such approval would effectively render the R-NC zoning designation in this subdivision ineffective and purposeless.

4. Whether and the extent to which the proposed conditional use affects the safety and convenience of vehicular and pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area.

If the addition of two unrelated occupants were to be approved, staff contends that the physical layout of the subject property would not be able to reasonably protect neighboring properties from negative impact. The subject property contains a comparable lot size to other properties within the subdivision, and no larger than typical physical separation from abutting properties.

Staff finds that when additional unrelated individuals occupy a residence intended for single detached use, the number of motor vehicles based at the property generally increases. The subject property has enough space for on-site parking of two vehicles. According to the agent for the applicant, a portion of the garage has been converted to bedroom use. It is unclear how much space remains for auto storage in what was formerly a two-car garage. Staff contends that additional automotive presence may be reasonably anticipated at the subject property if the requested conditional use were granted. Staff finds that such an increase will negatively impact the safety and convenience of vehicular and pedestrian circulation in the vicinity. As stated previously, the applicant has not acknowledged the basic facts and circumstances that would result from their proposal and have proposed no measures intended to protect neighboring properties from potential harmful impacts.

5. Whether and the extent to which the proposed conditional use would reasonably protect persons and property from erosion, flood or water damage, fire, noise, glare, and similar hazards or impacts.

As there is no new construction or improvement proposed as part of the request, staff does not foresee any impact on persons and property due to erosion, flood or fire.

Staff is concerned with the foreseeable safety impacts that may arise as the result of the increase in the number of adult occupants allowed to occupy the property. As evidenced by the applicant's statements in Supplement "E", no consideration is given to the possibility that approval of the request may produce additional impact on the surrounding neighborhood. Consequently, the applicant proposes no measures intended to mitigate and protect neighboring properties from the reasonable expectation that their request will produce negative impacts.

6. Whether and the extent to which the proposed conditional use adversely affects traffic control or adjacent properties by inappropriate location, lighting, or types of signs.

As stated previously, staff contends that additional automotive presence may be reasonably anticipated at the subject property if the requested conditional use were granted. Staff finds that such an increase will negatively impact the safety and convenience of vehicular and pedestrian circulation in the vicinity. Staff observes that the 27-foot street section, while standard, makes additional on-street parking problematic in some cases and could affect traffic movement.

Staff contends that the proposed addition of two additional unrelated persons use at this location should not have any adverse effects on lighting beyond typical residential lighting permitted within R-NC district.

7. Whether and the extent to which the proposed conditional use provides adequate and convenient off-street parking and loading facilities.

As stated previously, the applicant has not acknowledged the basic facts and circumstances that would result from their proposal and have proposed no measures intended to protect neighboring properties from potential harmful impacts, including the expected presence of more automobiles. The applicant proposes no solution to the need for additional parking.

Staff finds that as conditions at the subject property exist today, the five-bedroom house is required to provide a minimum of four off-street parking spaces. There appear to be at least two spaces, possibly three actually provided. With respect to parking, the subject property appears to be substandard, as it does not meet minimum requirements.

8. Whether the proposed conditional use conforms to the objectives and the purpose of the zoning district in which the development is proposed.

The RN-C zoning district is intended to be detached dwellings designed primarily for residential use and do not easily lend themselves to other types of nonresidential uses or rental property. Other uses may be permitted in this district which are compatible to residential uses and occupy structures designed for their intended use and do not infringe upon the residential uses. The R - NC zoning district is intended to help preserve, protect and enhance the character of the established residential neighborhood.

The proposed conditional use allows for occupancy of the subject property by up to four unrelated individuals. Staff finds that the proposal, under these specific circumstances, does not conform to the objective and intention of the R-NC zoning district.

9. Whether the proposed conditional use will be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

Staff contends that the proposed occupancy of the subject property by up to four unrelated individuals, absent any plans for mitigating the potential for negative impact upon the surrounding property owners, will be detrimental to orderly development, and materially injurious to property owners and residents of the surrounding neighborhood.

10. Whether the premises or structures are suitable for the proposed conditional use.

Staff finds that the premises or structures on the subject property are not suitable for the requested conditional use. A search of building permit records reveals no record of applications, issued permits or inspections authorizing conversion of a portion of the two-car garage into the fifth bedroom.

The applicant has not proposed, and staff has been unable to identify circumstances or special conditions relating to the applicant's request that could mitigate the various above mentioned harmful impacts potentially caused by approval of requested Conditional Use Permit.

RECOMMENDATION:

Based on all of these considerations, staff **recommends denying** the requested Conditional Use Permit.