

The Objectives
Why the second story addition?

The Intent

Our request for addition is not based on seeking a luxurious increase in the number of sq ft but a genuine intention to take care of our large family including our elderly parents, who deserve a respectable living and a space of their own, and our children who as they grow, desire their own space, too. Given the real estate market, and one earning member in the family, we cannot afford to move out and buy a larger space in the city. A city that is opening its mind and horizons to unusual cases of expansion and improvement gives us tremendous hope for a favorable inclination towards our proposal, please.

Commissioner Olevson emphasized (June 2016 approval of plan with over 60% FAR, File #: 2016-7053)- “Sunnyvale’s desire to provide homes and housing and allow residents to modify homes so they can take care of their families.” In a similar vein, Comm. Olevson supported the proposed construction at 825 Tamarack Lane by saying, “the original intent when we were changing guidance was to avoid building monster homes, but that one goal from a former City Councilmember was to allow people to develop on their lots and stay in Sunnyvale rather than being forced to leave because they need more space.” Such decisions make us feel valued and understood as residents of Sunnyvale, and we hope for similar consideration of our case.

The Logistics and the constraints

Our children, aged 5 and 1 need to be on the same floor as us. Our elderly parents struggling with severe knee and back problems have to avoid climbing the stairs, and hence need to stay on the first floor. Given how the house was designed and features added nearly half a decade ago has created a situation where we cannot extend our house on the first floor, and hence only have the option to add a second story to provide a decent living space for our family. It is an L shaped house with pool in the front side yard and the rear yard is at a setback of 21’, thus leaving absolutely no room for any addition on the first floor. Our existing lot coverage is only 27.6%, and stays the same with the proposed second story addition, compared to over 45% lot coverage in case of Toll Brothers. Also, when we bought our house in 2013, we were not made aware of non existence of permit for converted garage and the rear carport. We became aware of the issue only during our talks with the city concerning our project. To make our house compatible with the city codes, the existing family room will be reconverted back to garage and the walls would move further inside by 4’, which will take one whole closet out of one of the bedrooms and will make it substantially small. From 1,701 sq ft. of present living space, our first floor living space will get reduced to 1,280 sq. ft. This, further, necessitates, the addition of living space to the existing house.

The structural features and the original building design of the house (over half a decade ago) have created exceptional circumstances peculiar to our property. Also, there is a strong existence of precedence in our neighborhood of setback variance, which creates extraordinary circumstances in our surroundings (explained in detail in ‘variance justification’ document). Hence, the request for variance justification.

Variance Justification
635 Toyon Ave, Sunnyvale

Request for dimensional variance

- 1. Partial deviation from front setback-** only 19' 8" of the second floor addition will be at a setback of 20', another 5' 1" is the balcony area and the rest of 19' 5" of second floor addition is at a front setback of 55' 9"
- 2. Partial deviation from side setback (left lot clearance)** at 5'6" for the second story addition (for the first story also, we are at 5'6" which is more than the required 4' minimum, And is 1'4" less than the required minimum of 7'. Combined side setback exceeds the required minimum, ranging from 24'3" to 38'3".

Justification criteria/ completed application continued on the next page

Justification criteria-

- 1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.**

Summary of the argument

a) Substantial and significant precedence of dimensional variance exists in our immediate and adjacent neighborhood-

Plan 2 and Plan 3 construction of Toll Brothers Luxury estates on Toyon, Torrey and Timberpine ave (35 homes approx.) have dimensional variance from the permitted setback requirements of R-0 zoning (same zoning as our home). [The city's counter argument of Toll Brothers being a special permit development and hence, allowed variance does not stand valid- please see the details below]. Granting the variance will not constitute a special privilege, but rather would allow us to enjoy a similar privilege and allow consistency with established precedents in our immediate and adjacent neighborhoods. (Please find attached the addresses and pictures of homes with dimensional variance in R-0 zoning in our neighborhood- Attachment 2.1)

b) Our request for variance meets all the legislative and judicially reviewed criteria (discussed in detail below with legal examples of similar cases):

(Allowing us the same dimensional setbacks as allowed for properties in our neighborhood and other R0 zoning-

- (i) will treat us equally as our neighbors living in Toll Brothers homes in the same R-0 zoning,
- (ii) will relieve us from unnecessary hardship/ practical difficulties arising out of strict compliance of the ordinance,
- (iii) will not deprive us of the constitutional protection of our property rights,
- (iii) will not quash the principle of uniformity in zoning code implementation, and
- (iv) will provide us "substantial justice" (justice administered according to rules of substantive law in a fair manner)

c) Exceptional circumstances or extraordinary conditions are applicable to our property and also to its surroundings: Given how the house was designed and features added nearly half a decade ago has created a situation where we cannot extend our house on the first floor, and hence only have the option to add a second story to provide a decent living space for our family. It is an L shaped house with pool in the front side yard and the rear yard is at a setback of 21', thus leaving absolutely no room for any addition on the first floor. Our existing lot coverage is only 27.6%, and stays the same with the proposed second story addition, compared to over 45%

lot coverage in case of Toll Brothers. Also, when we bought our house in 2013, we were not made aware of non existence of permit for converted garage and the rear carport. We became aware of the issue only during our talks with the city concerning our project. To make our house compatible with city codes, the existing family room will be reconverted back to garage and the walls would move further inside by 4', which will take one whole closet out of one of the bedrooms and will make it substantially small. From 1,701 sq. ft. of present living space, our first floor living space will get reduced to 1,280 sq. ft. This, further, necessitates, the addition of living space to the existing house.

Also, as mentioned in previous paragraph and discussed in detail subsequently, the existence of precedence in our neighborhood of setback variance creates extraordinary circumstances in our surroundings. In case, we are not granted a variance as enjoyed by many of our neighbors on Toyon and Torrey Ave, it will not only deprive us of our property rights but will also deprive us of any opportunity to enhance the value of our house financially (availed by many house owners in Sunnyvale by adding to their existing house) and will limit our gains from the property in future.

Detailed discussion of the argument

a) Substantial and significant precedence of dimensional variance exists in our immediate and adjacent neighborhood

Plan 1 and Plan 3 homes of Toll Brothers Luxury Estate existing on Toyon, Torrey Ave and Timberpine Ave have dimensional variance from the permitted setback requirements of R-0 zoning (same zoning as our home). The city of Sunnyvale has used the term "special permit to create a subdivision" to treat the case of Toll Brothers' homes differently from the neighboring houses. However, the argument stands invalid on two accounts-

(i) The special permit was granted to issue a special use right- a different use of land from the existing use (agricultural to residential),

"Agricultural use with approved Special Development Permit to develop 51 homes."¹

"The proposed project is a special development permit to allow 51 single homes"²

and more importantly,

(ii) Toll Brothers construction never requested and hence, was never granted any special permit or right to deviate from the required setbacks. Special permit is not a free pass from regulations or a tool to subvert the zoning ordinances. Special permit does not mean any variance permitted

¹ (Source: <http://sunnyvale.ca.gov/Portals/0/Sunnyvale/NonCouncilReports/pc/2012/pc-2012-7009.pdf>)

² (Source: Report to Planning Commission, Agenda Item #2, Hearing date- July 25, 2011, File Number 2010-7672, p. 4)

without qualification.³ It has to be requested and approved. In Toll Brothers application, it is repeatedly mentioned,

“The project meets all the applicable city municipal code zoning requirements & the applicant is not seeking any deviations from zoning code...”⁴

“There were no setback deviations proposed in the original project. There are no setback deviations requested for the architectural modifications and proposed rear patio covers.”⁵

But on ground, Plan 2 and Plan 3 homes of Toll Brothers have dimensional variance. It should also be noted that the allowed variations (15’ to 25’) in front yard setback to allow for variations in pattern and rhythm of development for R-0 zoning exist only for the first story, and Ord. 2650-00 § 4 (zoning code 19.34.045.) states, “In any two-story residential development in an R-0, R-1 or R-2 zoning district, the front yard setback for the second story shall be not less than twenty-five feet.” Despite Toll brothers repeated assertion of sticking strictly to the given zoning setbacks and not asking for any special provisions, setback variances exist for second story in Toll Brothers construction on our street and our neighborhood block.

Given the law of precedence for administrative law practice, we should be allowed a dimensional variance (front and side setbacks). Miguel (1997) emphasizes the constitutional principle of equality before the law, “understood as the formal justice criterion that like cases must be treated alike, as a rationale of the rule or system of precedent” (p. 372).⁶ There is a legal obligation to stay true to the principle of ‘stare decisis,’ or acting according to the precedent, which is a historical pedigree, and also a normative constraint (Knight and Epstein, 1996)⁷ that the city has established.

The staff anticipated that the Toll Brothers homes will act as precedence for future remodeling and additions of older homes in the neighborhood. The senior planner wrote in the report, “The precedence of the decision also needs to be considered because the appearance of larger homes will be a catalyst to future neighborhood changes. It can be anticipated that owners of older homes in the greater neighborhood will want to eventually benefit from additional square footage and lot coverage like their new neighbors either through additions to existing homes or redevelopment.”⁸

³ Adam Lovelady, *Variance Standards in Land Use & Code Enforcement, Quasi-Judicial Decisions, Zoning*, published May 27, 2014

⁴ (Source: Report to Planning Commission, Agenda Item #2, Hearing date- July 25, 2011, File Number 2010-7672, p. 4)

⁵ <http://sunnyvale.ca.gov/Portals/0/Sunnyvale/NonCouncilReports/pc/2012/pc-2012-7009.pdf>

⁶ Miguel, Alfonso Ruiz. Equality before the law and Precedent. 1997. *Ratio Juris*. Vol.10(4), 372-391

⁷ Knight, Jack and Epstein, Lee. The Norm of Stare Decisis. *American Journal of Political Science*. 1996. Vol 40(4), 1018-1035.

⁸ (Source: Report to Planning Commission, Agenda Item #2, Hearing date- July 25, 2011, File Number 2010-7672, p. 4)

In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517-518.), the court emphasized that Cities and counties may create rules and they may create zones; the rules should be the same for each parcel within a zone but may be different for parcels in different zones. "A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests." Now that the dimensional variance precedence has been established in our neighborhood, the uniformity should be allowed in similar cases.

Also, there are other examples of dimensional variance approved in R-0 zoning in Sunnyvale. For example, 1366 S Wolfe Road, Sunnyvale was granted a front setback variance, where first floor addition was allowed at a setback of 16' instead of the required 20' in R-0 zoning. Similarly, 1222 Susan Way, Sunnyvale was granted a side variance of 5' instead of 7' in R-0 zoning despite no precedence existing in the neighborhood. An 8 foot encroachment into the front yard setback was approved by the staff for 462 E. McKinley Avenue based on similar examples existing in the neighborhood. There are many examples of older two story homes with second story additions at same setback as the first story. Hence, our design with dimensional variance will not alter or change the existing character of our immediate and adjoining neighborhood but will contribute to a systematic, consistent and orderly development of our neighborhood.

(Please find attached the addresses and pictures of homes with dimensional variance in R-0 zoning in our immediate and adjoining neighborhood- Attachment 2.1)

Given the fact that a strong set of precedence in dimensional variance exists, we should be allowed to avail the same privileges as properties in our neighborhood as it will not be a special privilege exclusive or peculiar to our property.

(b) Our request for variance meets all the legislative and judicially reviewed criteria

A strict compliance with the ordinance will cause practical difficulties/ unnecessary hardship for us. It will require us to redesign and will sacrifice the design, its aesthetics and utility. The master bedroom and bathroom will get reduced to a size to look like narrow rectangles and will take away the washer/ dryer area, prayer closet and a small common area that separates the master bedroom from other rooms. If the variance is allowed, it will allow us to maximize the development potential of the lot. The approval of the request would permit us to construct a home on the property reasonably consistent in size and character with other homes in the vicinity and same zone.

The variance is necessary for the preservation of our property right, which is substantially the same as owners of other properties in the same zone or vicinity possessed.

In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517-518.), the court stated, "If a zoning scheme is like a contract, the uniformity requirement is like

an enforcement clause, allowing parties to the contract to challenge burdens unfairly imposed on them or benefits unfairly conferred on others... section 65852 “is intended to prevent unreasonable discrimination against or benefit to particular properties within a given zone.” (4 Manaster & Selmi, Cal. Environmental Law and Land Use, supra, Zoning, § 60.70, p. 60-114.3 (rel. 45-9/06)).⁹ Granting our property the requested dimensional variance will stand true to the spirit of the constitutional trust provision, which states “All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.”

Approval of the request would not conflict with any other aspect of the City of Sunnyvale Zoning Ordinance to our knowledge. The variance requested is the minimum variance which would alleviate the hardship.

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district

Granting the Variance will not be detrimental to the public welfare as there are many homes in the immediate and surrounding neighborhood that are similarly designed with dimensional variance, as discussed above. For example, the toll brother house at 703 Torreya Ave stands next to the single story house at 699 Torreya Ave (picture shown on the next page). The city did not find any detrimental effects of the bigger construction on the adjoining old homes. The same should hold true in our case, too. Also, we have consulted with neighboring property owners regarding our request, and have included a letter signed by neighbors in the vicinity (left side, rear, across the street on the right side and the front) stating no opposition to our project. (Attachment 1 attached at the beginning of the submission documents)

9



3. Upon granting of the variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

Given the fact that a strong set of precedence in dimensional variance exists, we should be allowed to avail the same privileges as properties in our neighborhood as it will not be a special privilege exclusive or peculiar to our property. Granting of the variance will not constitute a special privilege, but rather would allow us to enjoy a similar privilege and allow consistency in the character, look, design and development of our immediate and surrounding neighborhoods. The intent and the purpose of the ordinance is to create a uniformity of appearance and aesthetics within the same zoning and to treat like properties alike, especially within neighborhoods. Our addition with the grant of variance will contribute to an increased uniformity of two story homes in our neighborhood. Our design is in strong conformity with the general planning and design principles of the city of Sunnyvale encouraging a quality architectural design, which improves city's identity, inspires creativity and heightens individual as well as cultural identity, and would also contribute positively to the surrounding areas (please see attachment - list and pictures of homes in our immediate and adjoining neighborhood in R-0 zoning with dimensional variance). Hence, we kindly request you to support and grant us the requested dimensional variance for our second story addition.

Attachments-

1. List and pictures of homes in our immediate and adjoining neighborhood in R-0 zoning with dimensional variance (Attachment 2)
2. Letter of support from neighbors (Attachment 1)

Attachment 2- List and pictures of homes in our immediate and adjoining neighborhood in R-0 zoning with dimensional variance

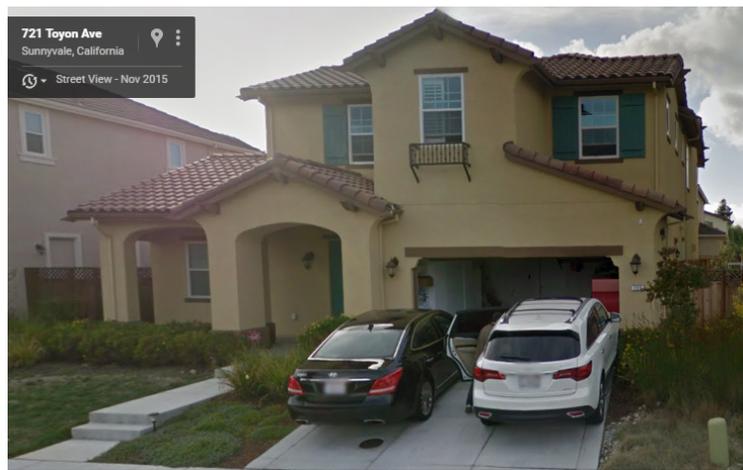
711 Toyon Ave



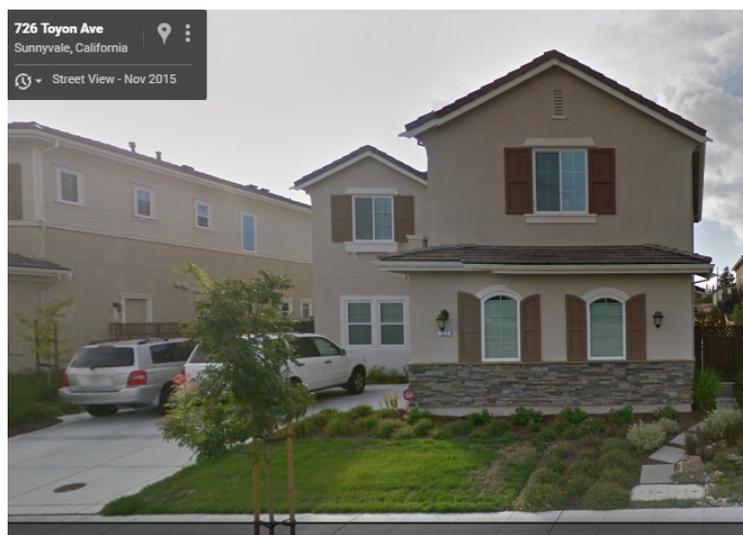
715 Toyon Ave



723 Toyon Ave



727 Toyon Ave



731 Toyon Ave



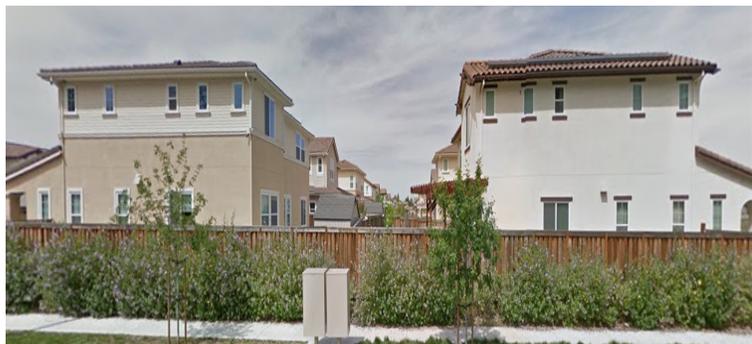
739 Toyon Ave



743 Toyon Ave



750 Torrey and 751 Toyon Ave



738 Torrey Ave



734 Torrey Ave



739 Torrey Ave



742 Torrey Ave



743 Torrey Ave



747 Torrey Ave



739 Torrey Ave



726 Torrey Ave



723 Torrey Ave



718 Torrey Ave



719 Torrey Ave



714 Torrey Ave



711 Torrey Ave



1150 Dahlia Dr



707 Torrey Ave



1154 Dahlia Dr



The Statistics

The Neighborhood

Our extended neighborhood (Toyon Ave and adjacent street Torreya avenue) is predominantly a two story residential neighborhood

| | |
|--|----------------------|
| Total number of homes | = 72 |
| Total number of two story homes | = 40 (55% approx) |
| Total number of two story homes with FAR above 50% | = 38 out of 40 (95%) |
| Total number of two story homes with FAR above 55% | = 35 out of 40 (88%) |

The proposed project (relevant statistics)-

| | |
|---------------------------------|-------------|
| Second floor (living area)- | 1,333 sq ft |
| Balcony- | 251 sq ft |
| First floor area- | 1701 sq ft |
| Total area (with balcony) | 3285 sq ft |
| Total living area- | 2613 sq ft |
| Total Lot area- | 6,154 sq ft |
| Lot coverage (stays same)- | 27.6% |
| FAR (proposed covered balcony)- | 53.4% |
| FAR (uncovered balcony)- | 49.3% |

The Comparison

- During the initial stages of our design and architectural planning (Fall 2016), we had requested data on 2nd/1st floor ratio for Toll Brothers homes, and the planning department responded with the required information on August 25, 2016. We based our calculations on it and designed accordingly, and we have lesser ratio than many of the Toll Brothers homes. In January, 2017, the calculation procedure was reconfirmed.

Please find attached the planning department's response at the end of this document

The calculated ratio in the spreadsheet was 45.9% for Model 2 A of Toll Brothers homes
 First floor size- 3,387 sq ft (not including rear covered porches)
 Second floor size- 1,554 sq ft
 2nd/1st floor ratio- 45.9%

Model 1 C had 41.1% 2nd/ 1st floor ratio.

Based on same method of calculation, our first floor size is 3,285 sq ft; second floor size (living space on second floor) is 1,333; and our 2nd/ 1st floor ratio is 40.5%. It should also be noted that our lot coverage is only 27.6% compared to over 40% (for Toll brothers houses without rear porches) to 45% (for Toll brothers houses with the optional feature of rear porches)

Area Comparisons

| | 635 Toyon (Existing & Proposed) | Toll Brothers Plan 1 Homes (Approved) | Toll Brothers Plan 2 Homes (Approved) |
|---------------|------------------------------------|--|--|
| Main level | 1280 | 1594 | 1406 |
| Upper level | 1333 | 1413 | 1554 |
| Total living | 2613 | 3007 | 2960 |
| Garage | 421 | 434 | 427 |
| 2nd/1st floor | 40.5% | 41.1% | 45.9% |

Source- Planning department's response to our request for 2nd/ 1st floor ratio for Toll Brothers luxury estates on our street and our neighborhood block (attached on the next page)

Sunnyvale Research

Noren Caliva-Lepe <ncaliva-lepe@sunnyvale.ca.gov>

Thu 8/25/2016 10:34 PM

To: sartaj_chanchal@hotmail.com <sartaj_chanchal@hotmail.com>;

 1 attachments (13 KB)

635 Toyon Av.xlsx;

Hi Sartaj,

You requested 1st/2nd floor ratios and floor area ratio information for the Toll Brother's development on half of the former Corn Palace parcel.

Attached is an excel spreadsheet with the information you requested. Regarding the Toll Brother's development, the only information that was readily available is the three different floor plans and the overall floor area ratio for the development. Unfortunately, information about the 1st/2nd floor ratio is not readily available for each of the 51 parcels. Staff also included information about a house just a few parcels south of yours at 663 Toyon Ave., which went through the Design Review process. Note that the Planning Commission originally approved the project, but the project was appealed to the City Council.

Let me know if you have any further questions.

Regards,
Noren

Noren Caliva-Lepe, Senior Planner
Community Development Department
City of Sunnyvale
Phone: (408) 730-7659
ncaliva-lepe@sunnyvale.ca.gov

The Department of Community Development is innovative in promoting sustainable development while enhancing the economy, community character and quality of life in Sunnyvale.

Save the environment. Please don't print this email unless you really need to.

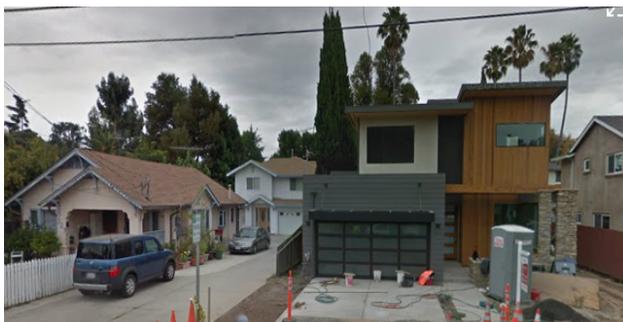
| Address | Date Approved | 1st Floor Size (sq. ft) | 2nd Floor Size (sq. ft) | 2nd/1st Floor Ratio | FAR |
|------------------------------|---------------|-------------------------|-------------------------|---------------------|--------|
| 663 Toyon Av | 8-Jul-13 | 2,080 | 686 | 33.0% | 49.7% |
| 700 Timberpine Av (Model 3B) | 25-Jul-11 | 3,508 | 1,298 | 37.0% | 56-58% |
| 700 Timberpine Av (Model 2A) | 25-Jul-11 | 3,387 | 1,554 | 45.9% | 56-58% |
| 700 Timberpine Av (Model 1C) | 25-Jul-11 | 3,442 | 1,413 | 41.1% | 56-58% |

The changing face of architecture in Sunnyvale- assimilation of different architectural designs

Our project brings together the virtue of the old and the promise of the modern. It incorporates unique features and still stands in strong conformity to the existing designs in our neighborhood. Our current design is inspired by the planning commission members' mention of 'what constitutes a good design,' during various public hearings. Our proposal is for a high quality 'mix of architecture' design that is respectable of the existing single story structures, is in conformity with the two story homes in our immediate and nearby neighborhood, is not a traditional run of the mill faux mediterranean structure, and it has a uniqueness and beauty of its own with enhanced adaptability with the needs of modern times.

We view our proposed design as a beautiful architectural plan that conforms to the evolving character of our immediate and adjoining neighborhoods and yet attempts to break the monotony and add greater visual interest and value to the neighborhood.

We hope for and anticipate an embracing acceptance for our proposal, especially in the light of recent developments where the city of Sunnyvale has incorporated, encouraged, appreciated and approved designs of rare architecture in total non-conformity with the existing neighborhood. For example, 363 Beemer Ave. Sunnyvale is a modern architectural example that stands in stark contrast to the bungalow style homes, and traditional 2 story homes in the neighborhood.



When the plans for the similarly designed rear lot went for public hearing, the esteemed members of the Planning Commission raised their concerns on the first project not coming to them despite a strong non conformity of the design with its neighborhood structures. They also noted a clear departure of the architectural design from the rest of the neighborhood. They, however, supported the project by appreciating the “mixes of architecture,” “a urban design near the transit,” “a design that has taken care of neighbors’ privacy,” “glad not seeing the popular faux-Mediterranean style,” “glad to see a structure that looks like this in the area,” “a definitive plus for the neighborhood” (File #: 2014-7314 Location: 363 Beemer Avenue (APN: 204-51-028). Similarly, 811 Mulberry Lane (File number 2012-7124) was allowed a modern design with no precedence existing within the neighborhood, and extended support by the city staff.





REPORT TO PLANNING COMMISSION

Hearing Date: July 25, 2011
File Number: 2010-7672

SUBJECT: **Toll Brothers:** Applications for a 10-acre site located at **700 Timberpine Avenue** in an R-0/PD Zoning District (APN: 213-12-002):

Motion **2010-7672** - Special Development Permit to allow the development of 51 new single-family homes;

Motion Vesting Tentative Map for 51 parcels and one remnant lot.

REPORT IN BRIEF:

Existing Site Conditions Agricultural use.

Surrounding Land Uses

| | |
|-------|---|
| North | Single-family homes |
| South | Single-family homes |
| East | 10-acre agricultural site and Lawrence Expressway |
| West | Single-family homes |

Issues Parking, Neighborhood Compatibility, existing site conditions

Environmental Status A Mitigated Negative Declaration has been prepared in compliance with California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Approve with conditions.

| | | | |
|---------------------------------------|---------|-----------|----------------|
| Parking | | | |
| Total Spaces | N/A | 4 | 4 min. |
| Covered Spaces | N/A | 2 per lot | 2 min. per lot |
| Stormwater | | | |
| Impervious Surface Area (s.f.) | 435,600 | 222,284 | No Max. |
| Impervious Surface (%) | 100% | 51% | No Max. |

★ Starred items indicate deviations from Sunnyvale Municipal Code requirements.

BACKGROUND:

In 1990, the City Council approved a similar project that included the subject site, as well as the adjacent 10-acre parcel. The project included the following:

- Tentative Map (#6328) for 51 single-family homes on subject site and 61 units on the eastern 10-acres;
- Special Development Permit (SDP) (#6329);
- Annexation of the two 10-acre parcels into the City;
- Cancellation of Williamson Act Contract, for both parcels;
- Rezoning of adjacent 10-acre site from R-2 to R-1.5/PD. Subject 10-acre site has been zoned R-0/PD since 1988 and R-0 since 1965.

The 1990 Tentative Map and SDP approvals have now expired. The property annexations are complete and the properties are within the City limits. The Williamson Act Contracts were tentatively cancelled and require no further action by the City at this time. See Williamson Act Contract section below.

DISCUSSION:

Requested Permits

• **Special Development Permit**

The proposed project is a Special Development Permit to allow 51 single-family homes and related design review for the homes. The project meets all of the applicable City Municipal Code zoning requirements and the applicant is not seeking any deviations from zoning code at this time.

• **Vesting Tentative Map**

A subdivision is required to create 51 separate ownership lots and one remnant parcel for the existing water well. The Vesting Tentative Map vests the developer’s right to build the project for the life of the map. It also



Hearing Date: February 29, 2012
File Number: 2012-7009

SUBJECT: **Toll Brothers:** Application for a 10-acre site located at **700 Timberpine Avenue** in an R-0/PD Zoning District (APN: 213-12-002):

Motion **2012-7009** - Special Development Permit for minor architectural modifications and to allow rear porch additions to 51 approved single family homes in an R-0/PD (Low Density Residential-Planned Development) Zoning District.

REPORT IN BRIEF:

Existing Site Conditions Agricultural use with approved Special Development Permit to develop 51 homes.

Surrounding Land Uses

| | |
|-------|---|
| North | Single-family homes |
| South | Single-family homes |
| East | 10-acre agricultural site and Lawrence Expressway |
| West | Single-family homes |

Issues Neighborhood Development Intensity Compatibility (FAR)

Environmental Status Project is categorically exempt from CEQA based on Exemption Class 3 (construction or conversion of small structures)

Staff Recommendation Approve the project with Conditions of Approval.

BACKGROUND:

A Special Development Permit (SDP), related design review and Vesting Tentative Map allowing development of 51 single family homes in an R-0/PD Zoning District was approved by the City Council on September 20, 2011 (File # 2010-7672). The current project is a request for approval of architectural modifications that would allow minor increases in Floor Area Ratio to accommodate the addition of rear yard patio covers as an optional purchase feature for new home owners.

As approved by the City Council, the original approved project met all of the applicable City Municipal Code zoning requirements and the applicant did not seek any deviations from zoning codes. The proposed modifications would require a deviation for one scenario (one approved floor plan with a rear yard porch) that would increase lot coverage for a two story home to 45% where 40% is allowed by code.

ANALYSIS:

Approved Architecture

As originally approved the homes would be 3,387-3,508 square feet each, including two-car garages and two uncovered parking spaces in the driveways. There are three different floor plans with three different approved elevations or architectural styles available for each plan. Individual homeowners will be allowed to select the model (plan and architectural style) and the parcel. See approved architectural elevations in Attachment C for details. All homes will be two story units with private rear yard spaces (which vary in size).

The approved homes are similar in character to the existing homes in the surrounding neighborhood; however the homes have larger square footage. To the south of the site (across Lily Avenue) homes are primarily single-story and range from 1,400 – 1,800 square feet. Across Timberpine to the west, homes are generally larger with one and two-stories. The sizes typically range from 2,100 – 2,800 square feet. Homes in the Torreya, Dahlia, and Toyon neighborhood to the north have a greater size variance from 1,500 – 2,600 square feet and are primarily single story.

Proposed Minor Architectural Changes to Approved Plans

The applicant has proposed minor changes to the approved floor plans. The changes would not result in visual modifications to the exterior front elevations but would slightly modify the interior layouts and slightly increase square footage to create options for new home owners to purchase rear yard porches that integrate seamlessly into the roofline and exterior elevations of the new homes.

Architecture Proposed Rear Yard Patios

The proposed rear yard patio covers would be integrated into the architecture and roofline of the home to be built on site. The addition of a patio cover would be an optional additional purchase for the homeowner. Example elevations of the proposed patio covers are located in Attachment D.

| Notice of Negative Declaration and Public Hearing | Staff Report | Agenda |
|---|--|--|
| <ul style="list-style-type: none"> • Published in the <i>Sun</i> newspaper • Posted on the site • 412 notices mailed to the property owners and residents within 300 ft. of the project site | <ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Website • Provided at the Reference Section of the City of Sunnyvale's Public Library | <ul style="list-style-type: none"> • Posted on the City's official notice bulletin board • City of Sunnyvale's Website |

CONCLUSION

Discussion: Staff finds that the proposed minor architectural modifications *without* rear yard porches are not significant and are in the range of changes expected once a developer modifies conceptual design review plans into detailed construction-level plans.

The plans *with* rear yard porches significantly alter the FAR of each lot from 57%-58% (as currently approved) up to 63%. Compatibility with the greater surrounding neighborhood needs to be considered when approving increased FAR. The square footage of the approved homes already significantly exceeds that of the surrounding older homes. The new neighborhood will interface with existing older homes on four streets; however, the new rear yards are not visible to the existing surrounding neighborhood.

The precedence of the decision also needs to be considered because the appearance of larger homes will be a catalyst to future neighborhood changes. It can be anticipated that owners of older homes in the greater neighborhood will want to eventually benefit from additional square footage and lot coverage like their new neighbors either through additions to existing homes or redevelopment.

Staff believes that since the additional FAR from the rear yard porches would be on entirely on the ground level and not visible to the street, some reasonable allowance for porches can be made. Even if the developer's proposed rear yard porches are not approved, it can be assumed that some of the new home owners will eventually request approval for rear porches or accessory structures like pavilions and gazebos once they move in and landscape. Some provision or guideline will need to be used to consider these structures even though they may increase FAR and lot coverage.

In addition to consideration of FAR, for Plan 3 a rear yard porch would also require approval of 45% lot coverage (5% over the code for a two-story home). As previously discussed, if 100 Green Building points are achieved the project can increase lot coverage by 5%. This incentive is available only on new construction and not on remodels, alterations or additions. As a result, and because of the need for

verification by a rater, increased lot coverage could not be considered after market, but only when the new homes are being constructed.

Staff believes that allowing an increase in FAR up to 63%-64% for rear yard porches would be a reasonable purchase option for a new upgraded development. Staff recommends that for Plan 3 when newly constructed with a rear yard porch under the Green Building code can be built at 45% lot coverage. Staff recommends limiting lot coverage for all other Plans to 40% maximum lot coverage as allowed by code. In addition, staff has also added a condition of approval that no lot can exceed 40% lot coverage including after-market sheds, gazebos and other similar accessory structures not purchased through the developer. When these limits are taken into consideration with the possibility that only some owners will select the porch option due to additional costs, it is less likely that the new development will ultimately feel overbuilt when compared to the surrounding greater neighborhood.

Staff finds the project, as conditioned, meets the required Findings and Goals of the General Plan. The Conditions of Approval ensure that impacts of the architectural modifications and rear yard patios on the approved project and on the surrounding neighborhood address neighborhood compatibility.

Findings and General Plan Goals: Staff was able to make the required Findings based on the justifications for the Special Development Permit that were provided by the applicant as well as based on staff analysis. Recommended Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Recommended Conditions of Approval are located in Attachment B.