

SUBJECT: PADR-2090

APPLICANTS: Rodney and Trina Lopez

PROPERTY OWNERS: Rodney and Trina Lopez

PURPOSE: Application for a modification to a previously approved Administrative Design Review application (Case PADR-2090) for additions totaling approximately 1,118 square feet at 6114 Homer Court to modify Condition No. 8 of City Council Resolution 11-420 regarding a skylight.

GENERAL PLAN: Medium Density – 2 to 8 dwelling units per gross acre

ZONING: R-1-6,500 (One-Family Residential) District

LOCATION: 6114 Homer Court

EXHIBITS:

- A: City Council Resolution 11-420
- B: Application to Amend Skylight Condition
- C: Bids for Skylight
- D: Staff Reports for City Council and Planning Commission Hearings (without attachments)
- E: Meeting Minutes for City Council, Planning Commission, and Zoning Administrator Hearings
- F: Location Map
- G: Noticing Map

BACKGROUND

The applicants, Rodney and Trina Lopez, applied for Administrative Design Review approval for additions to their home at 6114 Homer Court totaling approximately 1,118 square feet (approximately 80 square foot single-story addition and an approximately 1,038 square foot second-story addition). Adjacent neighbors requested a zoning administrator hearing and, in summary, the topics of concern consisted of: reduced privacy, reduced sunlight, views of the proposed two-story home, and inconsistency with the neighborhood. The proposal was approved by the Zoning Administrator at a hearing on June 30, 2010, but was appealed by adjacent property owners, David and Stephanie Persin, Hans and Roxana Hoehne, and Joe and TinaMarie Perry to the Planning Commission. The item was

heard by the Planning Commission at the August 25, 2010, hearing. During the hearing, the Planning Commission asked the applicants and the appellants if they would consider mediation as a method to reach a suitable solution. The appellants (Persins, Hoehnes, and Perrys) stated that they would be interested in mediation, but the applicants (Lopezes) declined participation since they felt it would not result in a solution that would be agreeable to all parties. Additionally, the applicants were seeking a decision from the Planning Commission the evening of the meeting. The Planning Commission upheld the Zoning Administrator's approval of the project by a 3-2 vote.

David and Stephanie Persin filed an appeal in response to the Planning Commission's decision. After the Planning Commission hearing, but before the City Council hearing, the Lopezes changed their mind regarding mediation. Two mediation meetings were held, on Wednesday, October 6th, and Monday, November 22nd, 2010. Ms. Mary Roberts, a former member of the Planning Commission, agreed to staff's request to act as the mediator and facilitated discussion for the meetings. The applicants (Rodney Lopez and Trina Lopez), two people from the "concerned neighbors" party (David Persin and Joe Perry), and staff attended the mediation meetings.

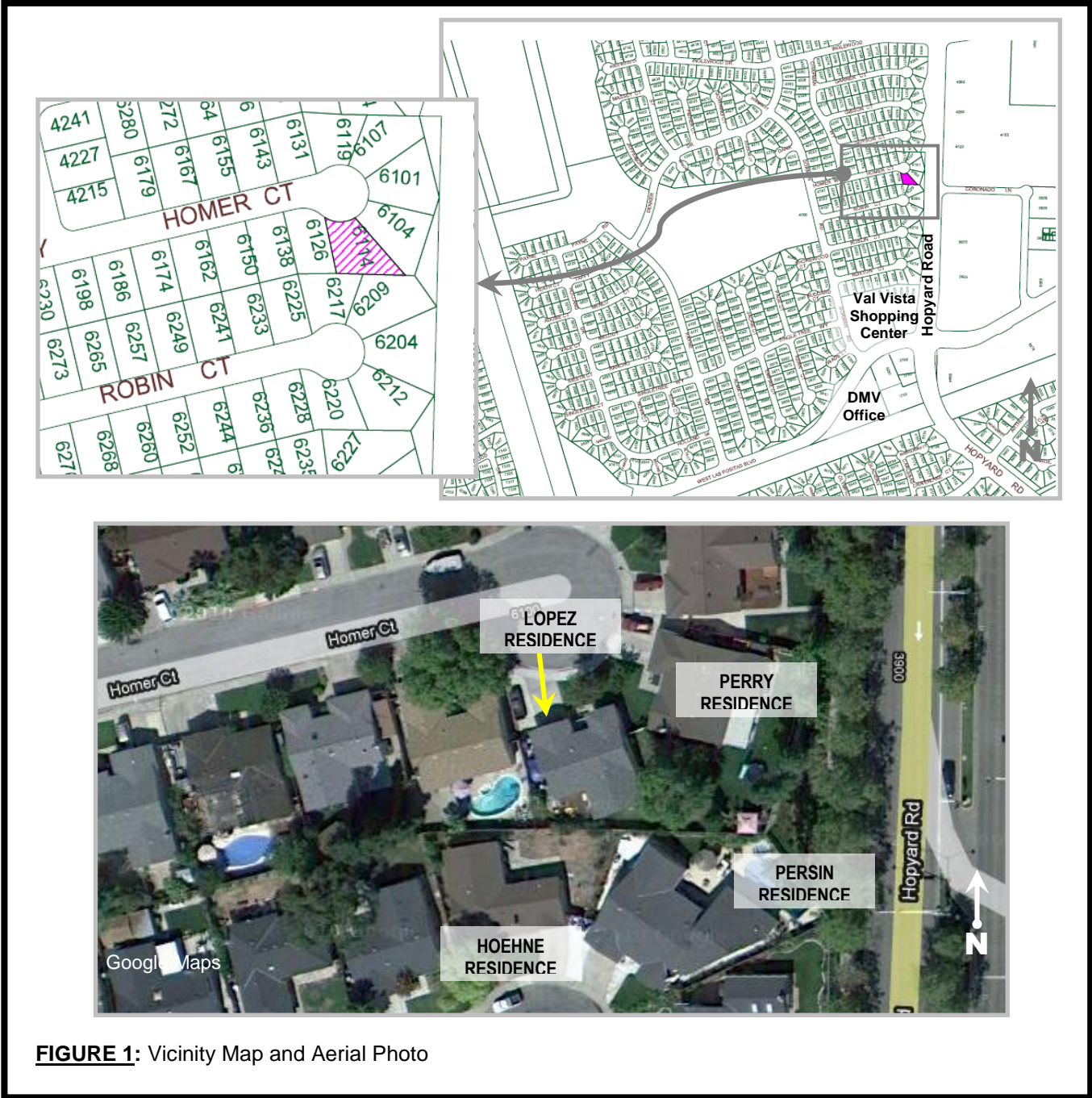
The Perrys had expressed concern that the proposed second-story addition would reduce the sunlight on their property. In an attempt to address this concern during mediation, the Lopezes offered to pay for the construction of a skylight in the front room of the Perry residence. However, the Perrys and other concerned parties wanted the Lopezes to modify the configuration of the second story such that it was further away from their property and reduce the size of the second story to address their concerns.

The mediation meetings resulted in further discussion between the applicants and the concerned neighbors, but did not result in a solution acceptable to all parties. Therefore, the project was heard by the City Council at the February 15, 2011, meeting. The City Council denied the appeal and approved the proposed project subject to conditions, including the mitigation measures offered during mediation, one of which included the skylight. The Lopezes (or other parties) did not object to the language for the condition related to the skylight prior to, at, or after the City Council meeting. The condition is reflected as Condition number 8 in City Council Resolution 11-420 (attached to this staff report as Exhibit A). Staff reports (without attachments) for the City Council and Planning Commission hearings and meeting minutes for the City Council, Planning Commission, and Zoning Administrator hearings are attached to this report as Exhibit D and E, respectively.

On November 2, 2011, the Perrys provided three bids for the skylight (attached to this report as Exhibit C) to the Community Development Department which were forwarded to the Lopezes for fulfillment of the condition. In response, the Lopezes expressed concern that the condition as written does not require the Perrys to use the funds to install a skylight and thus the funds could be used for something other than the intended purpose. Therefore, they applied to amend this condition with the subject application on December 2, 2011.

SITE DESCRIPTION

The subject property is located at 6114 Homer Court in the Val Vista neighborhood and is generally located west of Hopyard Road and north of West Las Positas Boulevard. Figure 1 shows a vicinity map and an aerial photograph of the subject property and the locations of surrounding neighbors.



PROJECT DESCRIPTION

Condition number 8 of City Council resolution 11-420 currently states:

“In order to allow for additional sunlight in the Perry residence, the applicants shall provide payment for the cost to purchase and install one skylight in the front room of the Perry residence. The amount of the payment shall be determined by the lowest of three bids obtained by the Perrys for the time and materials of a licensed contractor to complete the installation of the skylight. The funds shall be provided to Joe and TinaMarie Perry by Rodney and Trina Lopez within 30 calendar days of receiving all three bids. The cost shall not exceed \$2,500.00.”

As noted on the application form filed to amend the condition (attached to this staff report as Exhibit B), the Lopezes propose the language for the condition state the following:

“In order to allow for additional sunlight in the Perry residence, the applicants shall provide payment for the cost to purchase and install one skylight in the front room of the Perry residence. The amount of the payment shall be determined by the lowest of three bids obtained by the Perrys and presented to the Lopez’s for the time and materials of a licensed contractor to complete the installation of the skylight. The funds from the applicants shall not exceed \$2,500. The funds shall be paid directly to the licensed contractor upon completion of the installation or each phase pursuant to the contract. Completion of the skylight installation and payment of the funds shall be made no later than three months after the adoption of these conditions of approval.”

Payment Amount

The condition as approved by City Council requires that the payment not exceed \$2,500. The language requested by the Lopezes does not propose to change this amount. All three of the bids provided by the Perrys exceed \$2,500 (the bids are for \$3,745, \$4,022.95, and \$4,204.52) and thus the Perrys would be responsible for payment of the cost exceeding \$2,500.

Payment Recipient

The condition as approved by City Council requires that payment be provided to the Perrys by the Lopezes. The Lopezes have expressed concern that the condition as written does not require the Perrys to use the funds to install a skylight and thus the funds could be used for something other than the intended purpose. Thus, the language as proposed by the Lopezes requires payment directly to the licensed contractor instead of to the Perrys, and only requires payment after the skylight is installed.

Timing for Payment

The condition as approved by City Council requires the Lopezes to provide payment within 30 calendar days of receiving all three bids. It does not include any language that limits the timeframe within which the Perrys could submit the bids. The language proposed by the Lopezes requires that: (1) payment be provided directly to the licensed contractor upon completion of the skylight installation or be phased according to the construction contract; and (2) that the installation of the skylight and payment of the funds must be made no later than three months after the adoption of the modified condition. The language as proposed

by the Lopezes does not include a timeframe within which they are required to provide payment to the project contractor.

DISCUSSION

The condition as approved by City Council expresses the expectation that the funds provided by the Lopezes to the Perrys are intended for the installation of a skylight. It does not, as currently written, necessarily *require* the Perrys to utilize the funds for a skylight. The condition requires the Lopezes to provide payment to the Perrys in a timely manner (within 30 calendar days) and also limits the amount that the Lopezes are required to pay the Perrys to \$2,500. As currently written, the amount and timing are prescribed and are applicable to the Lopezes, who are the applicants for the project. The skylight is intended to be a mitigation measure for the project proposed by the Lopezes, particularly the second-story addition. The language of the condition as currently written provides the Perrys the opportunity to add a skylight to their home should they want additional sunlight in the front room. The Perrys may choose to accept this mitigation measure and modify their home to allow additional sunlight with a skylight, may choose to use the funds for an alternative measure to achieve similar results, or may choose to use the funds for unrelated purposes.

PUBLIC NOTICE

The Perrys have communicated that they believe they should have the flexibility to utilize the funds provided by the Lopezes for a skylight or alternative purposes if they desire.

Notices regarding the subject application and related public hearing were mailed to the surrounding property owners and tenants within a 1,000-foot radius of the project site. A map showing the noticing area is attached to this report. The public notice was also published in *The Valley Times*. At the time this report was prepared, staff has not received any comments or concerns.

ENVIRONMENTAL ASSESSMENT

Projects of this nature are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under section 15303 (Class 3) New Construction or Conversion of Small Structures. Therefore, no environmental document accompanies this report.

CONCLUSION

The condition regarding a skylight was intended to be a mitigation measure for reduced sunlight on the Perry property due to the second story addition proposed by the Lopezes. As written, the condition states that the intent and expectation is for installation of a skylight. Therefore, the language as currently written upholds the City Council's desire for the Lopezes to mitigate the impact of their project on their neighbor by providing funds that may be used for a skylight.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission make no changes to the conditions in City Council Resolution 11-420 attached to this report as Exhibit A, with the understanding that the Perrys may use the \$2,500 payment by the Lopezes for a skylight or other purposes.

Option 1

If the Planning Commission concludes that the subject payment must be used for a skylight, staff proposes that the following revisions to Condition number 8 of City Council Resolution 11-420 be made. Text in ~~strikeout (example)~~ is proposed to be deleted and text in bold red with double underline (**example**) is proposed as new text.

“In order to allow for additional sunlight in the Perry residence, the applicants shall provide payment for the cost to purchase and install one skylight in the front room of the Perry residence. The amount of the payment shall be determined by the lowest of three bids obtained by the Perrys for the time and materials of a licensed contractor to complete the installation of the skylight **and shall not exceed \$2,500.** The funds shall be provided ~~to Joe and TinaMarie Perry~~ by Rodney and Trina Lopez **to the City of Pleasanton in the form of a check made payable to Joe and TinaMarie Perry within 10 calendar days of the effective date of this approval. The City of Pleasanton shall release the check to the Perrys upon the Perrys receiving approval of final inspection by the City Building and Safety Division. The Perrys shall secure final inspection by the City Building and Safety Division within 180 days of the effective date of this approval.** ~~receiving all three bids. The cost shall not exceed \$2,500.00.”~~

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