



Planning Commission Staff Report

April 9, 2008
6.b

SUBJECT: PUD-99-01-07M

**APPLICANT/
PROPERTY OWNERS:** Jun Kim

PURPOSE: Application for a major modification to an approved Planned Unit Development (PUD) development plan to reduce the rear and side yard setbacks for a water feature.

GENERAL PLAN: Low Density Residential

ZONING: PUD-RDR/LDR (Planned Unit Development- Rural Density Residential/Low Density Residential) District

LOCATION: 8024 Oak Creek Drive

ATTACHMENTS:

1. Exhibit B: Draft Conditions of Approval
2. Exhibit A: Site Plan dated "Received April 15, 2008"
3. Location Map
4. Exhibit C: Planning Approved Site Plan Drawing dated "Approved March 30, 2007"
5. Exhibit D: Building and Safety Division Letter dated "October 1, 2007" with Attachment
6. Exhibit E: Lemoine Ranch Homeowner Association Approval E-mail dated "Monday, March 10, 2008"
7. Exhibit E: Photographs
8. Exhibit F: Lemoine Ranch Development Standards (Ordinance No. 1790)

BACKGROUND

At the City's request, the applicant, Jun Kim, submitted an application on October 18, 2007 for a minor modification to the approved Lemoine Ranch Planned Unit Development (Ord. 1790), to reduce the rear yard setback of his property from the required 20-feet to 5-feet and to reduce the side yard setback from the required 10-feet to 5-feet for an existing water feature (Koi pond) located in the rear left side of his property.

This application was initiated by a Code Enforcement inquiry on March 7, 2007. A neighbor wanted to know what the applicant was constructing and if the applicant had received the appropriate permits from the City of Pleasanton. The neighbor was concerned with the improvements being constructed. The development consists of 12 homeowners, all of which attend HOA meetings and discuss up-coming “improvements”; the Kim’s improvements were not discussed at any previous HOA meetings, thus, an approval from the HOA had not been provided. Given the scope of the work that the neighbor had described, Code Enforcement engaged the Building and Safety Division into the process. On March 21, 2007, building inspectors conducted a site visit to the property to assess the scope of work. Based on this inspection, it was clarified that a “pond” was being constructed. Additionally, the building inspector had informed both the contractor and applicant that a pond would need to be reviewed by the Planning Department. The inspector also noted that based on the amount of excavation a “pool” permit from the Building and Safety Division would likely be required. During this inspection, the inspectors told the contractor to stop work until the appropriate permits are received.

The pond was approved over the counter by the Planning Department on March 30, 2007, as shown on the plans in Exhibit C. Staff approved the application with 5-foot setbacks from the property lines. Staff would like to note that HOA approval is required for projects of this nature prior to planning review and approval, however, an advisory stamp was noted on the approved plans stating that it is the property owner’s responsibility to receive approval from the HOA prior to commencement of work.

Building and Safety Division

After receiving planning’s approval, the applicant applied for and received a building permit on April 2, 2007 for a 4-foot deep body of water located at the rear of home for purposes of a fish pond; however, the Building Official stated that the building permit is to be treated as a pool and all appropriate barriers are to be installed per the 2001 California Building Code-Appendix 4. Staff would like to note that the valuation of the job was noted on the building application as costing approximately \$12,000; however, the final cost of constructing the pond is closer to \$32,000.

On June 12, 2007, the Building and Safety Division received a phone call from the concerned resident wanting to know the status of the project because it appeared that the work had been completed. Les Lyons, Senior Building Inspector, met with the contractor on June 19, 2007 and found that the work on the pond had been completed without receiving inspections from the Building and Safety Division. The contractor was provided with a preliminary correction list; pending the outcome of the geological hazardous report. Staff notes that because the subject site is located in the Lemoine Ranch Estates Geologic Hazard Abatement District, all excavations and gunite structures require structural engineering and steel detailing, thus, the requirement for the geological report is required by the Building and Safety Division. After the review of the

report was completed by ENGEO (Exhibit D), an updated correction letter was sent to the property owner on October 1, 2007 (Exhibit D).

Based on conversations with the HOA, the Building and Safety Division letter, and adjoining property owner at 8012 Oak Creek Drive, the pond has leaked twice and created soil erosion problems since its installation. The letter from the building inspector outlines why the erosion problems occurred; which, in short, is because the applicants did not address the building permit violations or provide the appropriate documentation for structural engineering and steel detailing to ensure the safety of the pond. Without the proper documentation, inspections, and corrections to the violation, the pond may continue to be a hazard to the neighboring down sloping property.

On March 10, 2008, the Lemoine Ranch HOA president provided staff with its approval of the pond, post installation, and with the stipulation that the applicant adheres to the City's and HOA's conditions. The HOA's conditions of approval can be found in Exhibit E; however, only one of the conditions of the HOA is reflected in staff's conditions of approval since the other is civil issue and cannot be enforced by the City. The HOA has been made aware of this and has agreed to follow-up with that condition through there process.

The request to keep the pond at its current location was initially going to be processed as a minor modification to the Planned Unit Development (PUD); however, since Code Enforcement received a call from a concerned neighbor this application is presented before the Planning Commission as a major modification to the development plan. Therefore, the Planning Commission is requested to consider and provide a recommendation to the City Council regarding the appropriateness of a significant rear yard setback reduction from 20-feet to 8-feet and a reduction in the side yard from 10-feet to 5-feet or if it is preferable to have the pond relocated to adhere to the required development standards since adequate room is available on the large lot to accommodate such a distance.

DEVELOPMENT AND SITE DESCRIPTION

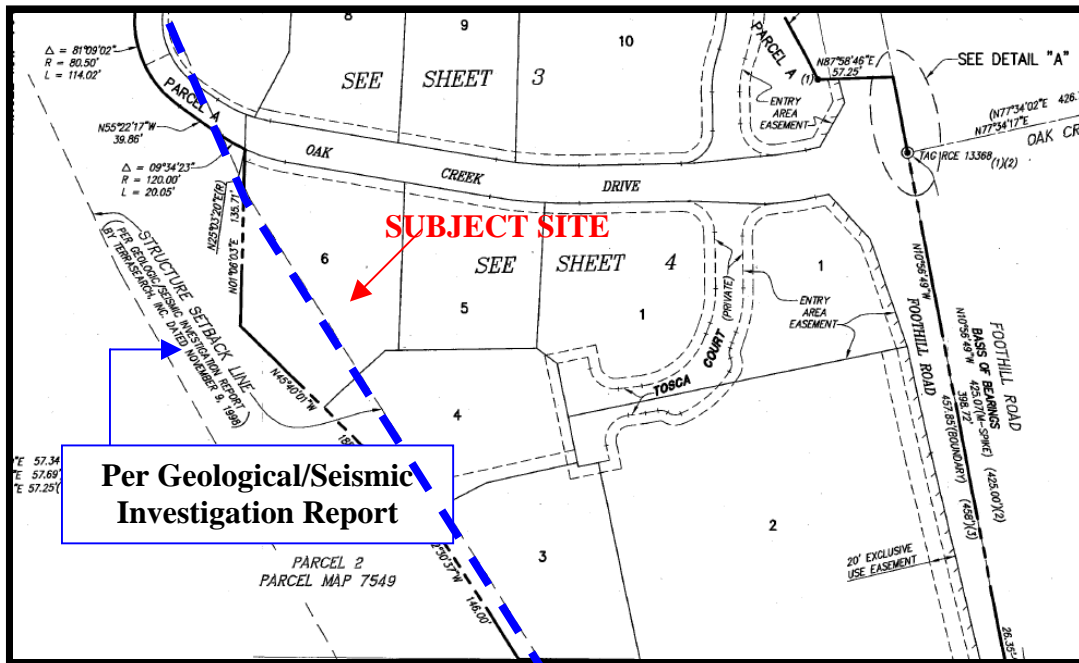
Lemoine Ranch is located on the west side of Foothill Road, northwest of Foothill High School, with 12 homes on the approximately 7-acre parcel. The houses in the development range in lot size from 12,700 square-feet to just over an acre and are terraced down towards Foothill Road. The majority of the development has open fencing on all of the lots; except for those shared rear yard fences of the homes on Oak Creek Drive and River Rock Hill Road.

The subject site slopes up southerly then flatten outs towards the middle with the topography along the west side of the property significantly sloping upward to the west, farthest from Foothill Road. There is also a downward slope towards the adjacent property located at 8012 Oak Creek Drive, thus, the subject site is terraced above those homes located south of Oak Creek Drive. The same terracing topography applies to the northern side of the development with houses located farther from Foothill being higher and adjoining lots being lower.

Lemoine Ranch Geologic Hazard Abatement District

Geologic Hazard Abatement Districts (GHADs) are districts formed specifically to address geologic concerns that may affect private and public improvements in areas that may be susceptible to hillside risks. A GHAD may be formed for the purpose of prevention, mitigation, abatement or control of a geologic hazard; also for mitigation or abatement of structural hazards that are partly or wholly caused by geologic hazards. A "geologic hazard" is broadly defined as an actual or threatened landslide, land subsidence, soil erosion, earthquake fault movement, or any other natural or unnatural movement of land or earth.

As shown in the map below, the Lemoine Ranch development is located in a GHAD. The GHAD "boarder" is located through the subject property, thus, the koi pond as well. Prior to issuance of a building permit, a review by a GHAD engineer is required in order to ensure the structural stability of the proposed "improvements" prior to the commencement of work. Although a GHAD engineer provided a report, it was done post installation. The review and recommendation from the GHAD engineer can be found in the ENGEO report in Exhibit D. Staff has added a condition of approval that the applicants must fulfill the requirements of the ENGEO report in order to ensure that the pond was constructed appropriately.



PROJECT DESCRIPTION

The applicant received over the counter approval for 5-foot setbacks for the side and rear for a Koi Pond; however, after staff's site visit to the property it was apparent that the rear yard setback was greater than what was approved. The site plan in Exhibit A accurately portrays the shape and setbacks for the pond; which are measured from the closest point of the property lines

to the water line. Therefore the applicant is proposing to modify condition of approval #8, for his property only, of case PUD-99-01, as shown below:

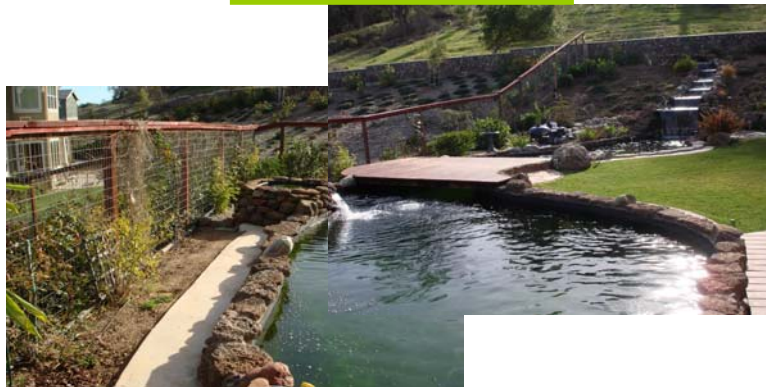
“8. The minimum setback regulations for all main structures, Class I, and Class II accessory structures on lots 1-12 shall be as follows:

	<u>Front Yard</u>	<u>Side Yard</u>	<u>Street Side Yard</u>	<u>Rear Yard</u>
Lots 1,2, & 10	150' ^{ab}	25' ^a	25' ^a	20' ^a
Lots 3-9, 11, & 12	23' ^{acd}	10' ^{ad} 5' ^{ad}	15' ^{ad}	20' ^{ad} 8' ^{ad}

- ^a Structure located outside an approved building envelope shown on the approved tentative map shall follow the natural grade and cut and fill shall be limited to less than three feet in height.
- ^b The setback shall be measure from the westerly edge of the Foothill Road edge of pavement as established by the approved interim alignment plan.
- ^c 20' minimum front yard setback for side entry garages.
- ^d On lots 3,4, and 6 no structures, including additions, may be placed in the “structure setback” area as designed on Exhibit “A”

The applicants request for the modification listed above is **site specific only** and would not apply to the entire development. The proposed modification would reduce the rear and side yard setbacks for the existing pond. Although the waterfall feature that leads into the pond was not apart of the application approved by staff or on the permit for the Building and Safety Division, the waterfall follows the topography of the side yard, is not considered a structure and therefore can be located beyond the structure setback line establish in PUD-99-1, and the retaining walls are not more then 3-feet in height, thus, within the development guidelines established for Lemoine Ranch.

8024 Oak Creek Drive
Koi Pond



ANALYSIS

Lemoine Ranch Site Visit

On February 11, 2008, staff met with Russ Berry, HOA president at the time, and Kryssa Cooper, Secretary to the HOA, to walk the development and assess the individual lots and the accessory structures that are currently in place. Staff made the following assessment:

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|----------------------------------|---|
| 1. 8001 Oak Creek Drive: | Waterfall with retaining wall feature and separate gazebo |
| 2. 8012 Oak Creek Drive: | N/A |
| 3. 8015 Oak Creek Drive: | N/A |
| 4. *8024 Oak Creek Drive: | Subject application: Water Feature with waterfall retaining wall |
| 5. 8031 Oak Creek Drive: | Proposed pool (PUD-99-01-05M) |
| 6. 8045 Oak Creek Drive: | Pool and arbor |
| 7. *4526 River Rock Hill Road: | Portable arbor |
| 8. 4538 River Rock Hill Road: | Waterfall retaining wall feature |
| 9. 4471 Tosca Court: | Detached arbor |
| 10. 4476 Tosca Court: | N/A |
| 11. 4455 Tosca Court: | N/A |
| 12. 4462 Tosca Court: | N/A |

*Non-compliant accessory structures

N/A: no accessory structures

During the site visit, staff was made aware that the scope of the work for the pond had been expanded to include a waterfall feature that cascades down, southwest to northeast, into the pond. Staff was initially concerned with this waterfall feature because it was located beyond the “structure setback line” that was established during the PUD approval of Lemoine Ranch; however, the waterfall is considered a retaining wall, thus, not a structure, and meets the retaining wall requirements for this development.

After assessing the individual lots, in terms of future setbacks and current pools/structures/retaining walls, and receiving feedback from the homeowner during the site visit staff decided to move forward with individual modifications verses global modifications for the entire development.

With the exception of 8045 Oak Creek Drive, none of the other homes in the development have a pool. The one house with the pool is within the development standards for the Lemoine Ranch PUD guidelines. The house located at 8031 Oak Creek Drive (PUD-99-01-05M) has proposed a pool to be setback 5-feet from the property lines; which is currently being considered by the Planning Commission. Staff believes that the applicant has good intentions for the pond; however, has not acknowledged the code violations outlined by the Building and Safety Division. Staff would like to note that the Les Lyons, Senior Building Inspector stated that the

Building and Safety Division is in support of the pond in its current location; so long as they address the outstanding items with the building division.

PUD modifications to reduce the rear yard setback for a pool to 10-feet have been supported by the City in the past. With the exception of the building code compliance, the applicants feel that they have received the appropriate permits/approvals from the City and are intending and addressing the outstanding code violations pending final approval from the City Council.

Staff requests that the Planning Commission consider the following and provide such recommendation to the City Council.

1. Allow the applicant to maintain their original request to reduce the required 20-foot rear yard setback to 8-feet and reduce the required side yard setback from 10-feet to 5-feet; or
2. Disallow a setback reduction requiring the applicant to meet the required 10-foot side yard setback and the required 20-foot rear yard setback.

Staff notes that the Planning Commission may wish to recommend other appropriate options to the City Council should the Commission wish to pursue alternatives that are not outlined above. The attached conditions of approval in Exhibit B would be modified accordingly to reflect the Planning Commissions recommendation to the City Council.

PUBLIC NOTICE

Notice of this application was sent to all property owners living within 1,000 feet of the subject property. As of the date this staff report was drafted, there were no public comments.

ENVIRONMENTAL ASSESSMENT

Existing facilities consisting of the operation, permitting, licensing, or minor alteration of structures involving no expansion of use beyond that existing are categorically exempt (Section 15301, Class 1 (L)(4)) from the requirements of the California Environmental Quality Act (CEQA).

CONCLUSION

Staff feels that the Koi pond is attractive and the waterfall feature is incorporated into the topography in an appropriate manner. Although there are still outstanding issues with the Building and Safety Division, staff believes that if the applicants are given time frames to address the violation's and meet the California Building Code requirements, staff is supportive of the application. The applicant's house pad is higher than the house pad located east of the subject property (8012 Oak Creek Drive) and is not highly visible at the proposed location. The

neighbor has a smaller rear and side yard area then the applicant's feel that so long as the pond does not leak again and meets the safety requirements and receives all of the appropriate permits, the Koi pond could be supported.

STAFF RECOMMENDATION

Staff suggests the Planning Commission consider the following options and provide a recommendation to the City Council for PUD-99-01-07M based the conditions of approval in Exhibit B; which will be modified per the Planning Commissions recommendation:

- Option 1: Allow the applicant to maintain their original request to reduce the required 20-foot rear yard setback to 8-feet and reduce the required side yard setback from 10-feet to 5-feet; or
- Option 2: Require the applicants to relocate the pond in order to maintain the required 10-foot side yard setback and the required 20-foot rear yard setback.

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