



## Planning Commission Staff Report

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April 9, 2008  
Item 6.b.

**SUBJECT:** PUD-99-01-05M

**APPLICANT/  
PROPERTY OWNERS:** Susan and Steven Spencer

**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 swimming pool.

**GENERAL PLAN:** Low Density Residential

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

**LOCATION:** 8031 Oak Creek Drive

**ATTACHMENTS:**

1. Exhibit A: Site Plan dated "Received June 18, 2007"
2. Exhibit B: Draft Conditions of Approval
3. Location Map
4. Exhibit C: Architectural Control Committee Approval Letter dated "June 12, 2007"
5. Exhibit D: Correspondence
6. Exhibit E: Letter from the Besso's outlining Suggestions and Concerns dated "Received April 1, 2008"
7. Exhibit F: Photographs
8. Exhibit G: Lemoine Ranch Development Standards (Ordinance No. 1790)
9. Exhibit H: Lemoine Ranch Tract Map Conditions of Approval (TR7176)
10. Exhibit I: Approved Lemoine Ranch Estates Development Plan and Tract Map Site Plans

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## **BACKGROUND**

On June 18, 2007, the applicant, Steve Spencer, submitted an application for a minor modification to the approved Lemoine Ranch Planned Unit Development (Ord. 1790), to reduce the rear and side yard setbacks of his property from the required 20-feet to 5-feet and to reduce the side yard setback from the require 10-feet to 5-feet for a swimming pool with spa located in the rear right side of his property.

The City received a letter from the Architectural Control Committee (ACC) for Lemoine Ranch. The letter was signed by the applicant and staff wished to engage a dialog with the Homeowners Association to determine if the Association would like to move forward with a modification for similar types of lots within the development; there is a prevalence of requests/existing installations that do not adhere to the existing development standard setback requirements. However, consensus was not gained in this effort and the applicant stated that he would like to move forward with his own individual modification for reducing the setbacks. Mr. Spencer also noted that others in the subdivision may not want reductions over the entire PUD and did not wish to be held up further by the HOA not being able to move forward on behalf of the PUD to solve the setback issue. Please see Exhibit C for the HOA's Architectural Control Committee's (ACC) approval letter for the pool.

The request to reduce the rear yard setback from 20-feet to 5-feet has been considered by staff. Typically this type of request is supported by staff and as a request to modify the PUD would be processed as a minor modification to a PUD. A minor modification is a staff level approval which appears under 'Actions of the Zoning Administrator' to the Planning Commission and to the City Council.

Staff has evaluated the request and notes that the homes have been built somewhat larger than anticipated, yet maintaining the maximum FAR, resulting in a reduction of available rear yard area. The request to reduce the setback from 20-feet to 5-feet could impact the enjoyment of the adjacent rear yard neighbor by creating such a close physical location of private open space and use area. In particular, staff evaluated other large lot subdivisions and recognized that similar situations have been required in development standards where setbacks have been required at 20-feet with reductions to 5 or 10-feet. In evaluating this request, staff notes that there is adequate room to modify the plans to provide a 10-foot setback which appears to be more reasonable, thus allowing for additional distance between such uses enjoyed by both the applicant and the neighbor.

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 5-feet or if it is preferable to support a reduction from 20-feet to 10-feet 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 subdivision. 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 installed open fencing on all of the lots; except for those rear yard fences of the homes on Oak Creek Drive and River Rock Hill Road.

The subject site is a relatively flat lot that is elevated approximately 3 to 4-feet (from finished house pad to finished house pad) higher the house located directly behind it (4538 River Rock Hill Road, Mr. Besso's lot, and 4526 River Rock Hill Road) with the adjacent neighbor to the subject site, 8015 Oak Creek Drive, terraced lower and 8001 Oak Creek Drive below that. The same terracing topography applies to the southern side of the development with houses located farther from Foothill being higher and adjoining lots being lower.



**Figure 1: Besso and Spencer Shared Rear Property Line**



**Figure 2: Rear Yard View from Besso Backyard**

*PUD-99-01-05, Steven Spencer*



**Figure 3: Rear Yard View from Spencer Backyard**

*Planning Commission*



Figure 4: Rear Yard View towards Besso Residence

## PROJECT DESCRIPTION

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

<sup>a</sup> 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.

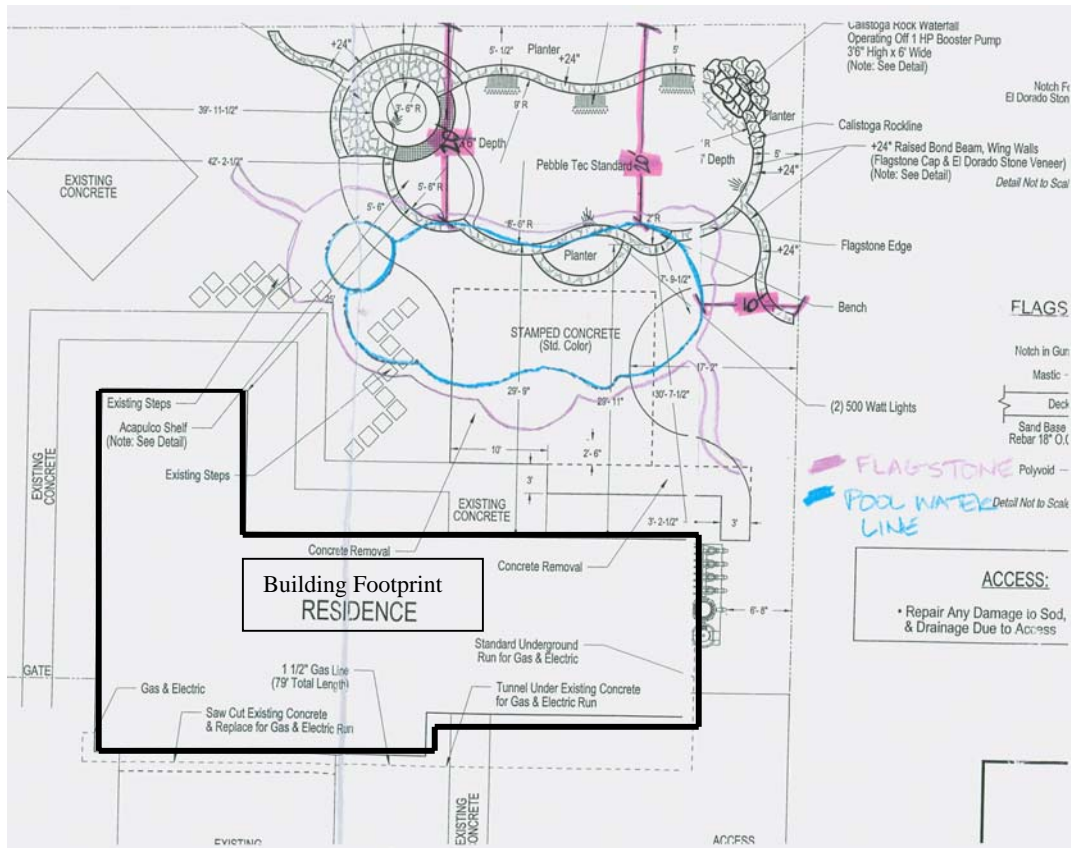
<sup>b</sup> The setback shall be measure from the westerly edge of the Foothill Road edge of pavement as established by the approved interim alignment plan.

<sup>c</sup> 20' minimum front yard setback for side entry garages.

<sup>d</sup> 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 a pool, spa, and waterfall feature to be located in the right rear yard of the rear lot. The closest portion of the pool would be located approximately 29-feet 11-inches from the rear of the subject house and approximately 5-feet from the rear fence. The total length of the rear

yard, where the pool is proposed, from building wall to fence is approximately 53-feet in length with the width of the pool proposed at approximately 17-feet at its widest. As shown in staff's modified scaled drawing below, there is essentially enough room in the rear yard for the pool to meet the setbacks currently outlined in the PUD guidelines; however, the applicant feels that the current location will allow them to utilize the most out of there back yard space. Furthermore, they do not wish to have the pool located approximately 15-feet from the rear of their house.



**Site plan with Proposed Location of Pool and Location of Pool Adhering to the Development Standards**

\* Exhibit A does not have this diagram of the pool with the 20 and 10-foot setbacks

However, staff notes that there is room to modify the location to provide a 10 foot separation from the pool to the fence which would allow increased distance from the rear yard neighbor's enjoyment of their rear yard area.

## ANALYSIS

### **Meeting with HOA Architectural Control Committee**

During the month of August, staff had further assessed the possibility of combining the applicant's request to reduce the setbacks for an accessory structure (pool) with a "global" development modification to legalize the structures that were put in without City approval and to resolve the approval by the City of the water feature located at 8024 Oak Creek Drive (PUD-99-01-07M).

On September 18, 2007, staff met with the applicant and conference called Nicole Norris, two of the three Architectural Control Committee (ACC) members to discuss a "global" setback for the development using the applicant's request. Staff notes that the third member on the ACC, Reza Jannatpour, was unavailable to attend or conference call for this meeting; however both of the ACC members said that they would discuss the outcome of the meeting with him. The meeting was a general discussion related to other accessory structures and existing construction work (i.e. pools, trellises, arbors, retaining walls, sheds, etc.) that has placed these structures outside of the established setbacks. Staff suggested that the ACC, with concurrent approval of the HOA, consider modifying the PUD setbacks for all the lots in since there appeared to be an interest in locating structures closer to the lot boundaries than what was originally envisioned. Mr. Spencer was agreeable to this, so long as it did not hold up the process of his individual application. The ACC members said that they would discuss this question and confirm to staff what other structures may not be conforming to the current development standards. Please see staff's e-mail dated Monday, September 24, 2007 and the applicant's response to that e-mail dated Tuesday, September in Exhibit D-1regard accessory structures in the Lemoine Ranch Development.

### **City's Request for Lemoine Ranch Setback Modification**

After discussing the "global" setbacks with the two ACC members, staff began to assess the PUD development plan to specifically address each lot with appropriate setbacks since the lots were initially approved with smaller homes and larger lots; however, the homes were later made larger during the tentative map approval stage, thus, making the houses larger and in turn making the lot sizes smaller. Please see Exhibit I for the PUD development plan and for the individual lots on the approved tract map. Staff met with the applicant on November 16, 2007 and provided him with a map of what the City would likely support for setbacks on each of the lots in the Lemoine Development. The applicant stated that he would take this back to the ACC and discuss it at their next HOA meeting to see if this was something that the other homeowners were interested in pursuing.

Staff was contacted by the concerned neighbor, Terry Besso, on January 7, 2008 requesting some clarification to the applicant's application; please see the e-mail from Mr. Besso dated Monday, January 7, 2007 in Exhibit D-2. The e-mail also addressed Mr. Besso's willingness to

split the cost of mediation with the Spencer's; however, was informed that Mr. Spencer would not be interested in mediation until the PUD is amended to the new setbacks. Staff notes that the "proposed" global setbacks would still require a PUD modification for the Spencer pool if an application was made to amend the PUD setbacks for all lots. Mr. Besso's e-mail stated his concern on how the approach of global setbacks would start the process over if an application was made for the development as a whole and then mediation for the individual Spencer's modification.

Staff contacted Mr. Besso to let him know that the City was informed that there may be other structures within the development that were built/construction/installed without City approval and within the setback requirements and that the City did suggest to the ACC that a modification to the entire development may be best if all of the homeowners and HOA agree to the suggested setbacks. Staff also noted that the setbacks, while provided on staff's map, were still being considered and may not be the "final" setbacks accepted by the City.

Staff contacted the applicant on January 10, 2008, please Exhibit D-4, to see if the applicant would be interested in revisiting the idea of a mediator for his application while the HOA/ACC considers a modification to the remaining lots or if he still wanted to move forward with one application of an entire development change to the PUD using his application. Mr. Spencer responded to staff via e-mail (Exhibit D-1) stating that it was his understanding that Mr. Besso has agreed to the global development setbacks proposed by the City if he (Mr. Spencer) would agree to mediation regarding the individual pool modification request. Mr. Spencer said that he would agree to mediation upon the following conditions:

- That the cost be split evenly;
- That the PUD be amended prior to the mediation;
- That the mediation occur within 30 days of the PUD approval; and
- I [Mr. Spencer] will not reapply for an improvement permit until the mediation is conducted.

Based on the chain of e-mails from the applicant and HOA members, Mr. Besso did not want to agree to these requests until there was an HOA meeting for all of the homeowners to attend and discuss a global setback change or individual ones. Please see Exhibit D-3. After the HOA meeting, the development voted to have staff come out to the site and review all of the lots and answer questions from the homeowners prior to making a decision; to which staff agreed. Please see Exhibit D-3 for correspondence.

## 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:

- |     |                              |   |
|-----|------------------------------|---|
| 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:       | Water Feature with waterfall retaining wall (PUD-99-01-07M) |
| 5.  | <b>8031 Oak Creek Drive:</b> | <b>Subject Site: proposed pool</b>                          |
| 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

Please see Exhibit F for the aerial view of the development and corresponding pictures of the lots with structures/water features/pools.

After assessing the individual lots, in terms of future setbacks and current pools/structures, homeowner comments during the site visit, and after receiving the applicants e-mail dated Monday, February 11, 2008, (Exhibit D-1) the project is being processed as an individual request for a modification of the PUD for the Spencer parcel only.

Prior to and since the initial noticing, staff has worked with the applicant, concerned neighbor, and Lemoine Ranch HOA and ACC to discern if there is a compromise that both parties, Mr. Besso and Mr. Spencer, may be willing to accept to allow the project to move forward without further delay or combining the global setbacks of the entire development; however, this mediation process with staff has been unsuccessful.

With the exception of 8045 Oak Creek Drive, none of the other homes in the development have requested a permit to install a swimming pool. The one house with the pool (8045 Oak Creek Drive) was installed in accordance with the development standards for the Lemoine Ranch PUD guidelines. The house located at 8024 Oak Creek (PUD-99-01-07M) has a water feature for Koi fish, however, does not meet the setback requirements. Staff believes that the applicant, Mr. Besso, and the HOA/ACC have tried to reach a compromise for the location of the Spencer's



proposed pool such that all parties involved would be satisfied. A satisfactory solution has not been found through the discussion and compromise process and therefore staff requests that the Planning Commission considers 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 5-feet and reduce the required side yard setback from 10-feet to 5-feet;
2. Allow the applicants to reduce the side yard setback from the required 10-feet to 5-feet, however, reduce the rear yard setback from the required 20-feet to 10-feet;
3. Allow the applicants to reduce the side yard setback from the required 10-feet to 5-feet, however, maintain the required 20-foot rear yard setback as established in the PUD Guidelines; or
4. Require the applicants to maintain the required 10-foot side yard setback and the required 20-foot rear yard setback.

PUD modifications to reduce the rear yard setback for a pool to 10-feet have been supported by the City in the past in similar developments. The applicants feel that they are not asking for anything unusual and feel that they have made every effort to do what is best for the development as a whole while trying to be accommodating to the Besso's.

The attached conditions of approval in Exhibit B would be modified accordingly to reflect the Planning Commissions recommendation to the City Council.

## **PUBLIC NOTICE**

Pursuant to the Planned Unit Development Minor Modification process, staff notified the surrounding properties on July, 18, 2007. In response to the notification, staff received comments from two neighbors, Judy and Terry Besso, 4538 River Rock Hill Road, who expressed concerns about the drainage given the proximity of the pool/spa/waterfall to their home, and Kryssa Cooper, 8045 Oak Creek Drive, who expressed support of the proposed application. The Besso's concerns and the applicant's response are outlined in the e-mail dated Wednesday, July 25, 2007 in Exhibit D-2. After speaking with the Besso's, staff had provided the applicant with the following options:

- Since there was objection to the application, move forward with a major modification to the PUD with a recommendation from the Planning Commission to the City Council for final action;

### **OR**

- Since both the applicant and rear neighbor seemed willing to try and come to a compromise, staff would put the application "on hold" until the Spencer's and Besso's went through some type of mediation process to see if a compromise could be reached.

Both parties had expressed an initial interest in mediation; to which the City recommended a professional facilitator with the applicant paying the cost of the facilitator. The Spencer's and the Besso's were also informed that staff may request again that all of the setbacks for pools, spas, and other accessory structures in the Lemoine Ranch Development be reduced in order to be more consistent with what the residents may have already constructed prior to City approval. Please see Exhibit D-2 for staff's e-mail correspondence dated Monday, July 30, 2007 regarding the facilitation and reduced setbacks for the development.

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, staff had not received any addition comments to the proposed project. At Mr. Besso's request, staff met with him again at his property on April 1, 2008 to discuss the proposed application. During this discussion, Mr. Besso offered staff the following summarized his suggestions again for the applicant's proposal; which are as followed:

- 1) move the pool five additional feet forward, requiring a 10-foot setback from the rear property line;
- 2) relocated the hot tub to the opposite side of the pool, mirroring the Besso's hot tub;  
And
- 3) "tone" down the waterfall feature for noise relief since it is currently proposed near their, the Besso's, bedroom.

Please see the correspondence letter from the Besso's dated "Received April 1, 2008" in Exhibit E for further detail regarding the their concerns and suggestions.

## **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 is sympathetic with the neighbor's concerns and the applicants desires and recommends that the Planning Commission take into consideration what the applicants are trying to achieve along with what the rear yard neighbor's concerns are; as outlined in Exhibit D-2 and Exhibit E. As previously mentioned, the applicant's house pad is higher than the house pad of the neighbors to the rear and although it is not highly visible at the proposed location, the proximity of the pool has raised safety and privacy concerns with the rear yard neighbor. The Besso's

have a smaller rear yard area than the applicant and feel that it would be appropriate to move the pool forward to accommodate their concerns which, in their opinion, would not take away the enjoyment of the pool if it is moved 5-10-feet closer to the subject house. This would result in a reduction of the rear yard setback from 20-feet to 10-feet as noted within the discussion above.

## **STAFF RECOMMENDATION**

Staff suggests the Planning Commission consider the following options and provide a recommendation to the City Council for PUD-99-01-05M based on the conditions of approval in Exhibit B; which will be modified per the Planning Commission's recommendation:

- Option 1: Allow the applicant to maintain their original request to reduce the required 20-foot rear yard setback to 5-feet and reduce the required side yard setback from 10-feet to 5-feet:
- Option 2: Allow the applicants to reduce the side yard setback from the required 10-feet to 5-feet, however, reduce the rear yard setback from the required 20-feet to 10-feet;
- Option 3: Allow the applicants to reduce the side yard setback from the required 10-feet to 5-feet, however, maintain the required 20-foot rear yard setback as established in the PUD Guidelines; or
- Option 4: Require the applicants to maintain the required 10-foot side yard setback and the required 20-foot rear yard setback.

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