This is an informational report. No Council action is required.

**BACKGROUND**

On February 8, 2005, Ronald Wager (on behalf of Fred and Kathleen Morse) submitted a Development Review application for a project at 1121 Bryant Street that included the following elements:

- An interior remodel of the existing 8-unit apartment house into a reconfigured 8-unit apartment house that would preserve the historic entry hall and staircase, as well as the entire length of the existing entry corridor in a narrower width. All proposed renovations would comply with the Secretary of the Interior Standards for Historic Preservation.

- No change to the street-facing façade or to the portions of the side elevations nearest the street.

- An increase in height of portions of the third-floor penthouse roof by approximately 3.5 feet (which would match the height of the peak of the center portion of the existing hip roof) in order to provide a consistent interior ceiling height of 8 feet. This alteration would create a flat roof that would replace the existing hipped roof, and that would be the same height as the roof peak of the existing hip roof.

- Installation of plate glass windows to the penthouse walls on all four elevations.

- Replacement of the mansard roof and two dormers on the rear elevation of the penthouse with an exterior penthouse wall and an exterior balcony.

- Installation of photovoltaic modules approximately two feet high to the proposed flat roof at a location recessed several feet from the edge of the roof on all four elevations.
• Reconstruction of the exterior staircase on the rear elevation to meet the standards of the Uniform Building Code for enhanced safety and extension of the staircase to the third-floor penthouse to provide a fire escape.

The project included a request for a Design Enhancement Exception (DEE) to allow 1) the raised penthouse roof on the south elevation to encroach into the daylight plane approximately 33 feet in length at a height of 35 feet, and 2) to allow the proposed photovoltaic modules to extend to a maximum height of 37 feet above grade, where 30 feet above grade would be the maximum height normally allowed. The overall height of the building would not increase as a result of this proposal. A DEE is a type of exception that is used for minor architectural changes that would enhance the design of a proposed project without altering the function or use of the site, its impact on surrounding properties, or enable the preservation of the architectural style of existing improvements on the site.

The building is a Category 3 historic building located in the Professorville National Register Historic District. The Historic Resources Board (HRB) is required to review exterior changes to structures in the historic districts. The project was reviewed by the HRB at its April 6, 2005 meeting. The HRB recommended approval to the Planning Director. A copy of the staff report is included as Attachment A.

The project was approved by the Director of Planning on May 9, 2005. A copy of the approval letter is contained in Attachment B. The approval determination was based on the review of all information contained within the project file, all public comments received after comparison to all applicable zoning and municipal code requirements.

A building permit was issued in January 2006 for construction of the project.

DISCUSSION
In March 2006, the City received a request from an adjacent neighbor for the City to review the height of the building. The concern was that, during constriction, the overall height of the building was increased beyond what was approved for the building permit. Meetings were held with residents and City staff in order to understand the concerns and provide responses.

In addition to the building height question, neighborhoods expressed concerns regarding three other aspects of the project:

1. Building color- the property owners had repainted the building from the original dark brown to a light brown color;
2. Privacy impacts resulting from the installation of new windows in the existing third floor rental units; and,
3. Placement of solar panels on the roof in a manner that created a visual nuisance.

Staff has been working with the property owners and the nearby residents in order to address these concerns.
Building Height

Building Division staff verified the height of 1121 Bryant Street last spring when concerns were expressed about whether the project complied with the approved plans. From measurements made of each of the three floors on site, it was determined that the height of each floor sufficiently matched the dimensions shown on the approved architectural plans. However, the actual height of the building may vary somewhat depending on the ground location of the measurement. Building Division staff measured the height at 35'-5". This was derived by adding the measured heights of each floor plus 3'-5" or (the measured dimension from the first floor to the adjacent grade from where the measurement was taken). This measurement is approximately 3" less than what the approved plans show, or 35'-5" versus the 35'-8 ½" called out on the plans.

Much of the confusion about the building’s height stems from the top of roof elevation noted on the plans. The original height of the building prior to construction was not surveyed. Rather, it was calculated by the project architect, who compiled data from a topographic survey of the lot, along with as-built measurements made of the building to document the floor area, configuration and size of the building. From these two sources of data, the architect calculated the top of roof elevation 74.42’, which he indicated on the plans. He subsequently acknowledged that he made an error adding the finished 3rd floor elevation of 66.17’ and 9.25’, (which is the proposed height of the 3rd floor that the City’s Historic Resources Board approved) and should have called out the top of roof elevation as 75.42’ or one foot higher than what he wrote on the plans. The architect however, states that this discrepancy has no bearing on what the HRB actually reviewed and approved. Regardless of the actual top of roof elevation, the height of the building has not increased, which was evident from observing the exposed construction framing within the 3rd floor.

Building Division staff also measured the heights of the photovoltaic panels on the top of the roof and determined that they are each 25” above the plywood roof sheathing at their highest points. When the roof is finished, they will be 24” or less in height from the finished roof surface.

Building Color

The property owner has recently repainted the building to match the original dark brown color with white trim to comply with the HRB approval. The rear windows at the third floor will not have the white trim so that they will blend in with the building color.

Privacy Impacts
As previously described, the project included raising the roof at the rear of the building in order to increase head height in portions of the two existing third floor units. The overall height of the building would not be increased as a result of the project. As part of the project review, a new window system was approved to bring light into the rear portion of these units, as well as to provide exiting to a new rear deck and stairway. The HRB’s purview is limited to compliance with the City’s historic preservation ordinance as well as accepted preservation standards and
does not include assessment of privacy impacts. The HRB staff report does indicate potential privacy impacts as background for the HRB’s review.

Staff conducted an on-site review of the third floor units in May 2006, after the renovation of the third floor was complete. It was clear that the windows allowed direct views from the interiors of the two third floor units to the adjacent properties at the rear of the site. Based on this review, staff and the property owner discussed plans for a privacy screen, in the form of planter boxes and plant material, which would reduce the direct lines of sight from inside the units to adjacent properties. A preliminary design was proposed by the property owners in early July 2006. Staff had concerns with the irrigation and drainage system of the planter boxes, as well as the species of plant material that would be used.

Construction work on the project site slowed during the latter half of 2007, and no progress on the privacy screen was made during this time. In January 2008, staff met with the property owner to revive the plans for the privacy screen to address the staff suggestions. The screen, consisting of planter boxes and safety railing, will be placed on top of the existing deck railing to a height of 42 to 45” above the deck. Appropriate plantings would extend the screen to approximately 48”. No screening is proposed at the master bedroom window in the unit near the north corner of the building. It is expected that a final screening plan will be approved in March with construction to begin soon after.

**Solar Panels**

The project included the installation of a solar panel array to be placed on the roof of the building. It was expected that the array would not be installed flat on the roof, but that it would be installed on a support system that would angle the array in order to improve energy efficiency. As part of the DEE request, the property owner requested two feet of additional height for the solar array, not to exceed a total height of 37’ above grade. The application materials submitted by the applicant include statements that the solar array would be “below the sight line from the street or surrounding properties” and “the photovoltaic modules on the roof are designed to be set back on the roof sufficiently to fall below the line of sight from the street and immediate neighborhood and have the ability to be moved to accomplished this goal.” Based upon this information, the HRB and Planning staff did not have any specific concerns with the solar panels.

Planning staff conducted an inspection of the installed solar panels in January 2008. The panels were installed in a manner that would allow for maximum solar efficiency. As a result, the panels have been installed close to the rear edge of the flat roof. The panels are visible from the properties to the rear of the site and from the 300 block of Lincoln Avenue. Furthermore, the panels have been installed in a manner that would not allow for adjustments without modifications to the roof system.

It is staff’s opinion that the roof is large enough to accommodate an adjustment to the location of the solar panels that would reduce the visual impacts. The support structure could also be modified to reduce the angle and height of the panels. These adjustments would require additional costs to the property owner. It is unknown how the adjustments would affect the efficiency of the system. Other possible modifications include painting the solar panel support...
structure to minimize the metallic glare from off-site views and installation of a lightweight roof screen that would block views of the panels. The property owner would need to voluntarily make these adjustments, as the City and other jurisdictions are limited in the discretionary review of solar energy systems by the Solar Rights Act. The intent of this legislation is to limit a local agency’s ability to “adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems” (California Government Code Section 65850.5 (a)). The City has reviewed the Solar Rights Act with regard to the City’s ability to require and request adjustments to solar energy systems for aesthetic or design purposes. The Solar Rights Act limited the City’s discretion to the issuance of a ministerial or building permit which would not enable the City to specify the location of the panels on the roof.

**ATTACHMENTS**
Attachment A: April 6, 2005 HRB Staff Report  
Attachment B: May 9, 2006 Planning Department Decision Letter

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