Subdivisions Beyond Condominium Conversions

by John E. Gutierrez

It is a paradigm among modern real-estate investors that usually the value of the sum of the parts is greater than the value of the whole. To that end, since 2001, Bay Area real-estate investors have paid a great deal of attention to, and invested substantial sums of money in the conversion of multiunit residential and commercial properties to condominium ownership. As a consequence, significant inflation has occurred in the value of properties suitable for conversion, the cost of converting properties to condominiums, the volume of condominiums offered for sale, and the political rhetoric and policy initiatives intended to constrain, limit or prohibit condominium conversions. Lately, however (especially since autumn of 2005), the supply of suitable conversion properties and the values of converted condominiums have significantly decreased. It remains to be seen whether either trend will change in the foreseeable future. Meanwhile, however, some investors are familiar with or have discovered other ways to carve more out of less and increase property values; tenancy-in-common arrangements and land subdivisions are among these techniques. This article focuses on two forms of subdivisions allowable in Oakland: "mini-lot divisions" and parcel divisions between existing buildings. A future article will discuss other Bay Area jurisdictions that allow similar waivers of zoning standards.

Most cities' and counties' general plans and zoning ordinances include regulations that establish minimum lot sizes as conditions for allowing owners to split large parcels to create multiple smaller lots, especially lots used for residential dwelling purposes. Among urban cities, minimum lot sizes often start at 5,000 sq. ft. and increase to 10,000 sq. ft. or more. In this regard, the city of Oakland is somewhat unique in allowing owners to divide and create lots that are smaller than the otherwise applicable minimum lot size. While other jurisdictions may permit similar land subdivisions, usually the administrative procedure an owner must follow includes applying for and obtaining one or more variances from a combination of zoning standards for minimum lot size, width and coverage: useable open space; building and off-street parking requirements setbacks; and/or maximum building height. Oakland allows mini-lot divisions and land divisions between existing buildings upon approval of a conditional use permit (CUP). Depending on the zoning district wherein the property is located and the proposed density of the new residential units, an owner must obtain approval for either a "major" CUP (considered by the planning commission) or a "minor" CUP (considered by the city's planning director).

Both CUPs and variances are "discretionary" zoning permits. However, the standards an owner must meet for approval of a variance are substantially higher than those for a CUP. Requirements for a variance typically include proof that a lot is afflicted by extraordinary circumstances—often topographical or other natural limitations, or unusual historical lot configurations—and that denial of a variance would deprive an owner of substantial property rights enjoyed by the owners of surrounding properties governed by the same zoning regulations. That the value of one's property would be lessened or that a property owner would endure economic hardship if a variance were to be not granted may not suffice for approval of the requested variance. As with most discretionary permits, the city may attach conditions of approval to the CUP to mitigate a project's potential negative impacts. Discussion of the range and form of such mitigations is beyond the scope of this article, though some of the issues that may evoke mitigation measures may be surmised from the discussion that follows.

Mini-lot Developments

According to the Oakland Municipal Code, in the case of vacant lots or lots that may be vacated by demolition of existing improvements—when such lots are located only in an S-1 or S-2 zone (medical center or civic center zones) or in any residential or commercial zone other than R-1, R-10, R-20 and R-30 and do not exceed 60,000 sq. ft.—the applicable lot standards may be waived if the proposed residential development "will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood."

In this instance, special consideration is given to:

- harmony in scale, bulk, coverage and density;
- availability of civic facilities and utilities;
- harmful effect upon desirable neighborhood character;
- generation of traffic and the capacity of surrounding streets; and

- any other relevant impact of the development.

To gain approval, an owner must also demonstrate that adequate open space and other facilities will exist within the proposed development, and that the total development meets all the requirements that would apply to it if it were a single lot.

It is important to note that unlike parcel divisions between existing buildings, mini-lot developments are allowed only in specific zones.

Parcel Division Between Existing Buildings

In the case of parcels that contain two or more existing principal buildings, the applicable individual zone regulations—including the minimum lot area and frontage, and yard, open space and parking requirements otherwise applying to the divided lots—may be waived or modified to create two or more lots, if each resulting lot:

- accommodates at least one existing principal building;
- has frontage on a street;
- has entirely habitable principal structures;
- is not so small, so shaped or so situated that it would be impractical for subsequent permitted uses; and
- has a reasonable amount of usable open space and off-street parking spaces for the residential units.

Other Considerations

A mini-lot development entails all of the requirements of any new development project, including project design, construction financing and construction liability considerations. By contrast, depending on the improvements an owner elects to make to existing buildings, a parcel division between existing buildings may involve substantially fewer burdens and require substantially less time to complete. Additionally, the regulatory requirements for both mini-lot developments and parcel divisions necessitate the services of a civil engineer or licensed land surveyor to survey the property and prepare a tentative and final map. Finally, but not least of all, both methods of dividing property may avoid the need for the creation of a homeowners' association and a public report from the California Department of Real Estate to sell the newly created lots, provided that the number of new lots does not exceed four and the separate lots have no shared improvements.

The opinions expressed in this article are those of the author and do not necessarily reflect the viewpoint of RHA or *Rental Housing*. The information contained in this article is general in nature; consult the advice of an attorney for any specific problem. John E. Gutierrez is with the Law Office of J. E. Gutierrez and can be reached 510-647-0600.