

- 3**      **14-0544**      **File #:** 2014-7117  
**Location:** 815 W. Maude Ave. (APN: 165-41-033):  
**Zoning:** M-S (Industrial and Service) Zoning District  
**Proposed Project:** Consideration of an application for a 0.97-acre site:  
                 **USE PERMIT** to allow a new 23,340 square foot, three-story office/R&D building resulting in approximately 55% Floor Area Ratio, and  
                 **VARIANCE** to allow a 25-foot front setback along Maude Avenue, where 35 feet minimum is required.  
**Applicant / Owner:** ArchiRender Architects / Fregida, LLC  
**Environmental Review:** Mitigated Negative Declaration  
**Staff Contact:** Noren Caliva-Lepe, 408-730-7659, ncaliva-lepe@sunnyvale.ca.gov

Trudi Ryan, Planning Officer, presented the staff report.

Comm. Rheume discussed with Ms. Ryan the age and number of protected trees proposed for removal. Comm. Rheume asked which trees are proposed for removal due to poor health, to which Ms. Ryan responded that she would need to look up the information and return with an answer.

Comm. Durham verified with Ms. Ryan that all approved square footage above 35% would come out of the Citywide development pool, and discussed the option of making the exit from the project onto Maude right-turn only.

In response to Comm. Rheume's earlier question, Ms. Ryan said two trees are recommended for removal due to their poor condition.

Vice Chair Olevson and Ms. Ryan discussed the interaction of having greater setbacks for buildings on wider streets and its affect on motorist speeds and pedestrian environments. Vice Chair Olevson confirmed with Ms. Ryan that Transportation Demand Management (TDM) plans are not mandatory for projects with a Use Permit, but are highly recommended. The also discussed the reason staff wants a written agreement from the neighbor to the north regarding the shared driveway, and the estimate of additional vehicle trips and current and future sidewalk construction in that area.

Comm. Klein verified with Ms. Ryan the setbacks of the recently developed properties on the corner of Maude and discussed undergrounding utilities in the project area.

Comm. Harrison confirmed with Ms. Ryan that preserving more of the mature,

healthy trees requires a redesign of the sidewalk, and Comm. Harrison asked which of these are redwoods, to which Ms. Ryan responded that she would look up the information. Comm. Harrison and Ms. Ryan also discussed the intent of reduced setbacks of other specific plans to create a more urban atmosphere.

Chair Melton asked how many square feet would have to be trimmed from the first floor to hit the 35 foot setback requirement, to which Ms. Ryan responded that the applicant could answer, and added that the building may need to be relocated making parking more visible and potentially impacting more trees.

Comm. Rheume verified with Ms. Ryan the specific trees deemed in poor health.

Chair Melton opened the public hearing.

Huiwen Hsiao, the project architect, presented illustrations of the proposed project while discussing project details.

Comm. Klein and Mr. Hsiao discussed the location of parking and tree removal if the building was compliant with the 35 foot front setback.

Comm. Rheume and Mr. Hsiao discussed the reasons why a Variance is being requested.

Comm. Durham confirmed with Mr. Hsiao that bike parking and shower facilities would be provided on site.

Chair Melton verified with Mr. Hsiao that 80 square feet of the first floor goes over the required setback and that because the building shape is unique it would be hard to trim.

No speaker cards were submitted.

Mr. Hsiao gave a final presentation and said that pushing the building back weakens the pedestrian/urban experience.

Chair Melton closed the public hearing.

Ms. Ryan noted the number of trees that conflict with the proposed project and discussed the number that would be preserved by meandering the sidewalk around them.

Comm. Klein confirmed with Ms. Ryan that the two trees closest to the existing building are in good condition.

Comm. Harrison moved to recommend Alternative 1 to City Council to adopt the Mitigated Negative Declaration and approve the Use Permit and Variance with the recommended Conditions of Approval.

Vice Chair Olevson seconded.

Comm. Harrison said she can make the findings with regard to all of the different criteria provided by staff and with regard to the Variance, including that it is an extraordinary circumstance regarding the size, shape, topography and location of the surroundings. She said the requested setback deviation is minimal and not detrimental to the streetscape.

Vice Chair Olevson said he can make the findings and can appreciate the challenges of a triangular lot and trying to meet all of the City's requirements. He said the setback Variance is minimal, and rather than trying to move the parking lot around and negatively impacting the appearance of the project from Maude or Pastoria, leaving it as proposed and granting the Variance is a positive thing for the City and this area of the City.

Comm. Rheume said he will not be supporting the motion, and that during the study session the Commission was specific about preserving the protected trees. He noted that all of the landscaping is along Pastoria and Maude, and said that it is not as if the trees are in the middle of the lot and the Commission is asking the applicant to build around them. He noted that the applicant said this design builds around the existing landscape, but he is removing 60% of the protected trees, and that keeping all of the trees that are in good health only makes a better project. He said this is a really nice design that integrates into the landscape, but that he does not think replacing these more than 50 year-old redwood trees with popsicle sticks is sufficient. He said the Commission also talked with the applicant about designing the walkways around the trees in a manner similar to the old post office, and because staff is still asking the applicant to do that shows that what was asked of the applicant to review has not been considered. He said taking away protected trees to accommodate a sidewalk is concerning, and he cited Citywide Design Guidelines policy 4.A.2, which says "preserve and incorporate existing features, particularly trees, on a site into the landscape design of the project," and is not being met. He also noted that policy 6.4 discusses being environmentally responsible, and he said he does not believe taking out old trees to put a sidewalk in and not meandering around them is irresponsible.

Comm. Durham offered a friendly amendment to have the applicant work with staff on trying to save some of the trees located where the sidewalks can meander around and dealing with any ADA requirements.

Comm. Harrison confirmed with Ms. Ryan that these items are covered in the Conditions of Approval (COA).

Comm. Durham withdrew the friendly amendment, and said he can find for the Variance, and that even with some of the trees being removed there will still be a large amount of tree coverage. He noted that if the full setbacks are taken they comprise 30% of the property and fire access takes away space at the back so the site is limited. He said this is a great design to get around that, but that he is not sure how trees will be saved near the building and that four-to-five of them will have to come out just because of construction itself. He said that based on the fact that 30% of the property is set aside and cannot be developed, he will be supporting the motion.

Comm. Klein said he will not be supporting the motion, and that while he likes the design, the granting of a Variance from the Sunnyvale Municipal Code (SMC) should be an exceptional reason. He said this site has a slightly odd shape, and that the developer has come up with a possible alternative to move the building which would save two of the blue atlas cedars that are in good condition. He noted that changing five parking spots from universal to compact stalls to reduce parking is a possibility, and that there is already ample parking required and far more than the existing building. He said moving the building to comply with City code makes it a good project and that, depending on the landscaping, would not appear noticeably different. He said while the project looks nice, there is no specific reason to grant a Variance even if it is only 80 feet into that zone, and added that to do so would be setting precedence. He said the older buildings in the area have been there for a long time, many of which are not meeting current zoning and that as we redevelop an area we try to bring it into compliance which he was hoping could be done with this project. He said that a minor movement could bring the site within City code, so he will not be supporting the motion.

Comm. Simons said he will not be supporting the motion, and said Variances are for exceptional cases. He said creating an urban example of a building is not justification for accepting changes in setbacks and that the only one would be an odd shape. He said this site has a slight bulb out, but is still close to a rhombus and not that different from a rectangle. He said there are options for this site, that the building could be moved back and could save more of the trees. He said the kind of

landscaping coming into Sunnyvale is sub-standard compared to what is being removed and that the landscaping of this project is not much different. He said granting Variances could result in another LinkedIn controversy and that this is a useful example for why we should not grant a Variance for this project.

Chair Melton said he will not be supporting the motion, and that if the motion was broken up into three separate motions he would say yes to adopting the Mitigated Negative Declaration (MND) and he might say yes to the Use Permit, but he appreciates Comm. Rheaume's leadership on the protected trees, which made him rethink the Use Permit. He said the reason he is pressing the no button is because he cannot get there on the Variance, and that during the Study Session, the Planning Commission expressed concern about the requested setback deviation, and it appears as though nothing has moved on this project. He said the basis for approving the Variance seems to be the existing legacy building, which has a legal nonconforming setback and that it is some kind of precedence. He said the applicant just does not want to trim 80 square feet off of the project or to move it, and that he cannot say a Variance is justified because there is no extraordinary or exceptional circumstance. He said this is a nice, contemporary design, and the MND is no problem, but that he just cannot get there on the Variance.

MOTION: Comm. Harrison moved to recommend Alternative 1 to City Council to adopt the Mitigated Negative Declaration and approve the Use Permit and Variance with the recommended Conditions of Approval. Vice Chair Olevson seconded. The motion failed by the following vote:

YES: 3 - Commissioner Harrison  
Vice Chair Olevson  
Commissioner Durham

NO: 4 - Commissioner Rheaume  
Chair Melton  
Commissioner Klein  
Commissioner Simons

Comm. Klein moved to recommend to City Council adoption of the Mitigated Negative Declaration, approval of the Use Permit and denial of the Variance with modified Conditions of Approval to comply with the 35 foot setback requirement off of Maude.

Comm. Simons seconded.

Comm. Klein said this project has a nice design, fits in with the community and that the building design is very unique and sets a tone as far as the Peery Park Specific Plan is concerned. He added that the requirements for a Variance should be very high and he cannot say that the site location is dramatically different or not rectangular enough to require the setback to be altered accordingly. He said since the study session the developer has come up with the possibility of moving the building to comply with the SMC. He said working with staff they can deal with the parking and come up with COAs to save as many trees as possible and that getting the sidewalk to meander through the area will create a much better project than what is currently on the site. He said he looks forward to the project moving forward.

Comm. Simons said he will be supporting the motion and thinks there has been enough discussion about what can be done to make this project better. He said the urban, on-street presence will be lost, but that with the redwoods and cedars in front this will be a nice place to walk from one building to another.

Chair Melton said he will be supporting the motion and can make the findings. He said that he thinks there is something in this motion for all seven Planning Commissioners and he hopes everyone can consider pressing the yes button. He said the main difference between the first and second motion is 80 square feet and the concept of adhering to the SMC and allowing Variances in only the most extreme circumstances.

Comm. Rheume said he will be supporting the motion, and that he spent too much time on the trees in the last motion, and that he could not make the findings for the Variance with the first motion but now he can. He said he trusts staff will work with the applicant to save as many trees as possible and thanked staff for listing out the specific trees to be saved.

Vice Chair Olevson said he will be supporting the motion with some reluctance and is hoping the new design is not identical to the one presented here. He said he hopes the applicant can come up with a way to keep the parking away from the areas along Maude and Pastoria so that the visual appearance from the street makes maximum use of the visual component rather than just moving the building and putting the parking out in front. He said he will be relying on staff and the applicant to come up with a better location or even a different size of this shifted oval design. He noted that the applicant can get the 80 square feet by making the ellipsoid a little bit smaller.

Comm. Harrison said she will be reluctantly supporting the motion, and that the

current rules are as such and she anticipates that they will change in the near future. She said the project might be easy to approve if presented a year from now, and that she appreciates the design and pulling the building toward street, which she thinks will be the character of the area in the future.

FINAL MOTION: Comm. Klein moved to recommend to City Council adoption of the Mitigated Negative Declaration, approval of the Use Permit and denial of the Variance with modified Conditions of Approval to comply with the 35 foot setback requirement off of Maude. Comm. Simons seconded. The motion carried by the following vote:

**Yes: 7 -** Chair Melton  
Vice Chair Olevson  
Commissioner Durham  
Commissioner Harrison  
Commissioner Klein  
Commissioner Rheaume  
Commissioner Simons

**No: 0**