



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 16-0557, Version: 1

REPORT TO CITY COUNCIL

SUBJECT

File #: 2015-7756

Location: 803 W El Camino Real (APN: 165-01-029, 042, and 043)

Zoning: C-2 / ECR (Highway Business / El Camino Real Precise Plan)

Proposed Project: Appeal by a member of the public of a decision by the Planning Commission to conditionally allow:

SPECIAL DEVELOPMENT PERMIT for a mixed use development on a 2.97 acre site with 49 residential units (40 apartments + 8 attached single family homes + 1 detached single family home), approximately 5,662 square feet of commercial space, and expansion of the adjacent Grand Hotel (51 rooms)

VESTING TENTATIVE MAP to subdivide the 3 existing lots into 11 separate lots. A condominium map is requested for lot #11.

Applicant / Owner: De Anza Properties (applicant) / Pastoria El Camino Partnership (owner)

Environmental Review: Mitigated Negative Declaration

Project Planner: Ryan Kuchenig, (408) 730-7431, rkuchenig@sunnyvale.ca.gov

SUMMARY OF PLANNING COMMISSION ACTION

This Special Development Permit and Vesting Tentative Map were considered by the Planning Commission on April 25, 2016. The Report to the Planning Commission (PC) can be found in Attachment 9. Minutes of the Planning Commission hearing are Attachment 10. The project was approved unanimously 7-0 with the following modifications to the Conditions of Approval:

1. Require EV charging stations, per the calculation by staff (**Added as COA BP-45**);
2. Consider art as part of the building design (**Modified COA BP-11**);
3. Evaluate preserving the two Elm trees on El Camino Real (**Added as COA BP-16g**);
4. Evaluate moving the bus stop farther west on El Camino Real (**Modified COA EP-5**);
5. Have staff look at potential traffic calming measures on Olive Avenue (**Added as COA GC-17**) ; and
6. Consider a pedestrian pathway through the site that connects W. Olive Avenue to W. El Camino Real (**Added as COA BP-14j**).

The conditions of approval have been revised to reflect the Planning Commission action (Attachment 4).

Traffic Calming

Subsequent to the Planning Commission hearing, the applicant agreed to contribute funds to pay for an eastbound speed feedback sign to address the Planning Commission direction for traffic calming

measures on Olive Avenue (new Condition of Approval GC-17). Staff determined that this is the most appropriate approach to reduce traffic speeds on this residential collector.

Housing Conditions

In addition to the conditions added by the Planning Commission, staff has updated the condition of approval requiring the provision of the Below Market Rate housing consistent with the Sunnyvale Municipal Code and state law.

APPEAL

On May 9, 2016, the project was appealed by a member of the public. The letter of appeal is included as Attachment 11. The appellant states three reasons for the appeal:

- A. The Below Market Rate (BMR) unit requirements are not correctly applied in this project, since a condominium map is being requested.
- B. The bus stop at the El Camino Real street frontage should be installed off the street (bus pull-out) and moved approximately 250 feet further west of the current location. The requested design is to avoid buses stopping in the traffic lane.
- C. Parking should not be evaluated within the Initial Study of the project.
- D. The applicant requests that the fee for the appeal be refunded.

Pursuant to Sunnyvale Municipal Code Section 19.98.070 (f)(2) and (3) the City Council hearing is a de novo hearing and the City Council is not bound by the decision that has been appealed or limited to the issues raised in the appeal by the appellant. After the hearing, the City Council shall affirm, modify, or reverse the original decision based on the evidence and findings.

STAFF COMMENTS ON APPEAL

A. Below Market Rate Housing

The appellant states that the City should require an additional five (12.5% of the 40 units located on Lot 11) BMR units at project construction.

Chapter 19.67 of the Sunnyvale Municipal Code includes condominium units in the definition of ownership units that are subject to the BMR requirements. Therefore, the 40 units proposed in Lot 11 that are identified in the tentative map as condominium units, must also be included the BMR Developer Agreement for the project, even if the developer intends to rent them for a period of time. In such situations, the BMR Developer Agreement allows the sale of the BMR units in the rental portion of a project to be deferred until the sales process commences.

The Conditions of Approval require that the project provide BMR units based on the number of ownership units proposed to be sold at the time of project completion (nine units)--which translates into one BMR unit, plus a fractional in-lieu fee of 0.13 units. In addition, Conditions of Approval also require that if and when the rental units are sold the five deferred BMR units must be provided. The BMR Developer Agreement must be completed and recorded prior to approval of final map.

The apartments are exempt from the new rental housing impact fee requirements as the application was submitted and considered complete prior to the effective date of the rental housing impact requirements. State law prohibits the City from requiring BMR units in rental projects. The appellant argues that state law does not apply to this project and references an article by "two noted real estate

attorneys of the impact of the Palmer decision on inclusionary housing” and provides a link to that article in his appeal. In order to assure that the City was properly imposing BMR requirements on this project, the City Attorney requested an opinion from one of the authors of that article, Ms. Barbara Kautz, regarding whether the City can require BMR rental units as a condition of project approval (Attachment 12). In that opinion, she concludes that as the City is not providing the developer with a direct financial contribution or another form of specified assistance, the Costa-Hawkins Act precludes the City from requiring BMR rental units as a condition of a project approval.

The original recommended conditions of approval may have given an impression that only 1.13 BMR units are required for the project. The revised recommended conditions of approval (Attachment 4) clarify that the project must provide six BMR units but five of the units will be provided when the units are made available for sale.

B. Bus Pull-out

The appellant requests that the project relocate the bus pad off the street and further west of the current location. During the public hearing, Transportation staff noted that such bus pads located off the street are not often preferred by transportation agencies due to the difficulty of pulling back into traffic. Staff notes that if a bus pad relocated off the street to the suggested location between the buildings, setback requirements will likely not be met, unless the project is redesigned. Staff notes that direction was given by the Planning Commission to explore relocating the bus pad further west away from the Pastoria & El Camino Real intersection (included in C.O.A. EP-5). During the project review, direction was not provided by VTA to relocate the bus stop; however, City staff will work with Caltrans and VTA to consider relocation, as directed by the Planning Commission. Approval from VTA and Caltrans is also required prior to approval of any bus stop improvements or relocation.

C. Parking as a CEQA Issue

The appellant notes that parking is not a CEQA issue for a mixed-use project located in a Transit Priority Area and should not have been evaluated in the environmental document for this project. The Initial Study does not indicate that parking is a significant impact; however, staff finds that providing information as to whether a project meets or does not meet parking standards does not violate CEQA or invite litigation. Public Resources Code Section 21099(b)(4) authorizes cities to apply local general plan policies, zoning codes, conditions of approval and other planning requirements with regard to parking in Transit Priority Areas.

D. Fee Waiver

The appellant further requests that a fee waiver be granted for the appeal. The City has no provisions to waive appeal (or any other development services) fees. Further, staff notes that Sunnyvale Municipal Code Section 19.98.070(b)(2) specifies filing requirements for appeals which state that: *an appeal be submitted in writing, and **shall be accompanied by the required fee, as set by resolution of the City Council, and shall state the decision appealed from, the facts and basis for the appeal, and the relief or action sought.***

ALTERNATIVES

1. Deny the appeal and affirm the Planning Commission’s determination to adopt the Mitigated Negative Declaration, and approve the Special Development Permit and Vesting Tentative Map subject to the revised recommended conditions of approval in Attachment 4.
2. Deny the appeal and modify the Planning Commission’s determination to adopt the Mitigated Negative Declaration, and approve the Special Development Permit and Vesting Tentative Map

- subject to modified conditions of approval in Attachment 4.
3. Grant the appeal and reverse the Planning Commission's determination to adopt the Mitigated Negative Declaration, approve the Special Development Permit and Vesting Tentative Map.
 4. Continue the public hearing to a date certain if Council finds that more information is needed before making a decision.

STAFF RECOMMENDATION

Alternative 1: Deny the appeal and affirm the Planning Commission's determination to adopt the Mitigated Negative Declaration and approve the Special Development Permit and Vesting Tentative Map subject to the revised recommended conditions of approval in Attachment 4 of the report.

Staff supports the Planning Commission action for the project and recommends denial of the appeal subject to the revised conditions of approval. The project utilizes exceptional site and architectural design and provides for an appropriate scale development along a major corridor that includes desirable commercial uses and additional housing opportunities.

The appellant's suggestion that the City could mandate the provision of BMR rental units (in Lot 11) offers an interpretation of state law that staff has determined is not accurate. Staff supports the Planning Commission action and conditions and included minor alterations to conditions to more accurately reflect the code provisions and current administrative practices.

The appeal suggests the project include a bus pull-out to assist in moving buses out of the travel lanes. Adding a pull-out would likely require a redesign of the project and sidewalk along the El Camino Real frontage, for a purpose not expressly requested by VTA. The appeal regarding considering parking as a CEQA impact in a Transit Priority Area is accurate if parking was found to create an impact, but the initial study did not find parking to be a significant impact, showing the issue to have "no impact." Although not necessary to include in the CEQA requirements, staff prepared the section as an information item for the decision-makers. Finally, the fee schedule, adopted by City Council resolution, requires payment of a fee when appealing an action of the Planning Commission.

Prepared by: Ryan Kuchenig, Senior Planner
Reviewed by: Andrew Miner, Planning Officer
Reviewed by: Trudi Ryan, Director of Community Development
Reviewed by: Kent Steffens, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

Attachments to Report to Planning Commission

1. Site, Vicinity and Public Notice Mailing Map
2. Project Data Table
3. Recommended CEQA, Special Development Permit, & Tentative Map Findings
4. Recommended Conditions of Approval (**Updated for City Council Hearing**)
5. Proposed Site and Architectural Plans
6. Project Description Submitted by the Applicant
7. Letters from the Public
8. Mitigated Negative Declaration

Additional Attachments for Report to Council

- 9. Planning Commission Report of April 25, 2016 (without attachments)**
- 10. Planning Commission Minutes of April 25, 2016**
- 11. Appeal Letter**
- 12. Opinion Memo from Goldfarb Lipman, dated June 6, 2016**