

ACTION NO. 2024-__
RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE ACTION
FOR 739 SUTTER AVENUE: VESTING TENTATIVE MAP, 24PLN-00005

At its meeting on _____, 2024, the City Council of the City of Palo Alto (“City Council”) approved the Vesting Tentative Map for the development of a one-lot subdivision to create 12 residential condominium units, including a density bonus waiver from street width requirements making the following findings, determinations and declarations:

SECTION 1. Background.

A. On January 4, 2024, Grace Li applied for a Vesting Tentative Map for the development of a one (1) parcel, 12-unit condominium subdivision project, including a density bonus waiver from street width requirements to permit a minimum 20-foot wide private street. (“The Project”).

B. The project site is comprised of one existing lot (APN No. 127-35-200) of approximately 16,720 square feet. The site contains a single multi-family development with eight (8) residential rental units. Single family residential uses abut the site to the north. Multi-family residential units abut the site to the east, west, and across Sutter Avenue to the South.

C. Following staff review, the Planning and Transportation Commission reviewed the project and recommended approval on _____, 2024, subject to conditions of approval.

D. On _____, 2024 the City Council held a duly noticed public hearing, at which evidence was considered and all persons were afforded an opportunity to be heard in accordance with the City Council’s policies and procedures.

SECTION 2. Environmental Review. The City, as the lead agency for the Project, has determined that the project is exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guideline section 15132, which provides an exemption for infill development projects. Documentation to support the exemption is available as part of the public record on file with the Planning and Development Services Division.

SECTION 3. Vesting Tentative Map Findings. A legislative body of a city shall deny approval of a Parcel Map, if it makes any of the following findings (California Government Code Section 66474). The City Council cannot make these findings for the following reasons:

1. *That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451:*

The site is consistent with the Comprehensive Plan as described below.

2. *That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans:*

There is no adopted specific plan for this project site. The proposed vesting tentative map and related improvements is consistent with the Comprehensive Plan in that it facilitates housing development on a site designated for multi-family use within the urban services area, consistent with Goal 2 of the Housing Element and Goal L1.2 of the Land Use Element. The proposed density (31 DU/AC) is consistent with the allowable density (20 to 40 DU/AC) in the multi-family land use designation as outlined in the Land Use Element. The project replaces eight existing residential rental units with twelve residential condominium units, including two units that will be offered at a rate affordable to low income (50-80% of AMI). The project improves the city's jobs housing imbalance consistent with the Transportation Element's goals and policies.

3. *That the site is not physically suitable for the type of development:*

The Project site is suitable for multi-family residential development in that it's located within the multi-family zone district on a site designated on the City's Land Use Map for multi-family use. The existing parcel meets the minimum code requirements for the RM-20 zone district with respect to lot area, width and depth. The parcel would not change with approval of this condominium subdivision. The proposed number of condominium units complies with the applicable densities set forth in the land use element.

4. *That the site is not physically suitable for the proposed density of development:*

The project would create a total of twelve (12) multi-family residential units which is 31 dwelling units (DU) per acre. This density complies with the maximum allowable residential density as calculated for the total site area under the comprehensive plan (40 DU/acre = 31 DU). Although it exceeds the allowable density set forth in the zoning district, the project exceeds this density in accordance with state density bonus law (Assembly Bill 2345) which allows for increased density based on the percentage of BMR units (25% of the base project) and their affordability level (low income). Building, Palo Alto Fire Department, Planning, Transportation, and Public Works Engineering have reviewed the requested density bonus waiver to permit a minimum 20-foot street width to ensure that all necessary requirements for safety, including but not limited to, fire safety and traffic safety (e.g. curb cut location, back-up space, turning radius, etc.) have been met.

5. *That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat:*

The project is located within the built environment that does not contain quality habitat for fish or other wildlife on the site or within the vicinity of the site. The nearest stream is a channelized portion of Matadero Creek approximately 350 feet north from the project site. The adopted Palo Alto 2030 Comprehensive Plan includes Map N-1, which identified sensitive animal and plant species within the Palo Alto quadrangle, a large geographic area that includes the urban portions along the bay and within the foothills, based on information in the California natural Diversity Database (CNDDDB). Based on this map, and the urban nature of the site, the subject property does not contain any habitat for endangered, rare, or threatened species and has not historically supported any of these species.

6. *That the design of the subdivision or type of improvements is likely to cause serious public health problems:*

The subdivision of this parcel and associated improvements would not have the potential to result in serious health problems. The proposed multi-family use would not include use or storage of hazardous materials and the use is located within the urban environment adjacent to other residential uses. The site is not located on a hazardous waste site pursuant to government code 65962.5.

7. *That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.*

There are no public access easements over the property currently. Therefore, the design of the subdivision will not conflict with any public easements for access through, or use of, the property. An existing public utility easement along the northern lot line (rear lot line) is no longer necessary and would be vacated in accordance with the conditions of approval of the proposed development application. New public utility easements will be provided to existing and proposed electrical utilities as part of this subdivision map as required in accordance with City of Palo Alto Utilities standards.

SECTION 4. Vesting Tentative Map Approval Granted. Vesting Tentative Map Approval is filed and processed in accordance to PAMC Section 21.13.020 and granted by the City Council under

PAMC Sections 21.12 and 21.20 and the California Government Code Section 66474, subject to the conditions of approval in Section 6 of this Record of Land Use Action.

SECTION 5. Final Map. The Final Map submitted for review and approval by the City Council shall be in substantial conformance with the Vesting Tentative Map prepared by BKF Engineers titled “Vesting Tentative Map 739 Sutter Avenue For Condominium Purposes City of Palo Alto, California,” consisting of nine (8) pages, stamped as received February 23, 2024, except as modified to incorporate the conditions of approval in Section 6. A copy of the Vesting Tentative Map is on file in the Department of Planning and Development Services, Current Planning Division. Prior to the expiration of the Vesting Tentative Map approval, the subdivider shall cause the subdivision or any part thereof to be surveyed, and a Final Map, as specified in Chapter 21.08, to be prepared in conformance with the Vesting Tentative Map as conditionally approved, and in compliance with the provisions of the Subdivision Map Act and PAMC Title 21 and submitted to the City Engineer (PAMC Section 21.16.010[a]).

SECTION 6. Conditions of Approval.

Planning

1. **PROJECT PLANS.** The Vesting Tentative Map submitted for review and approval by the City Council shall be in substantial conformance with the Vesting Tentative Map titled “Vesting Tentative Map 739 Sutter Avenue For Condominium Purposes City of Palo Alto, California”, prepared by BKF Engineers and submitted February 23, 2024, except as modified to incorporate the conditions of this approval.
2. **DENSITY BONUS UNITS.** The project seeks a waiver of the minimum street width requirements to permit a minimum 20-foot wide private street. In order to qualify for a waiver from this development standard the project shall provide a minimum of two (2) dwelling units at rates affordable to low income households, as defined in Section 50093 of the Health and Safety Code.
3. **FINAL MAP COVER PAGE.** At such time as the Final Map is filed, the cover page shall include the name and title of the Director of Planning and Development Services.
4. **STANDARD CC&R REQUIREMENTS.** Section 16.38 of Palo Alto’s Municipal Code provides that all condominium and other “community housing projects” shall submit Covenants, Conditions and Restrictions (CC&R’s) to the City Attorney for approval before issuance of the Final Map. The City Attorney has developed the following standard covenants which shall be included in all CC&R’s.
 - a. **PROPERTY SHALL COMPLY WITH CITY ZONING ORDINANCES.** The property, including all common areas, private streets and, parks within the property, shall at all times comply with the City’s Zoning Code and shall not be used for any purpose other than as permitted in the City Zoning Code.

- b. MODIFICATIONS TO PROPERTY. Any alterations, modifications, or other improvements to the property shall comply with all applicable City Codes.
- c. MAINTENANCE AND LANDSCAPING OF COMMON AREAS. The Association is responsible for maintenance and landscaping of all parts of the community housing project which are held in common and such maintenance shall be performed to the standard of maintenance prevalent in the neighborhood. (See PAMC Section 16.38.030(a)).
- d. TERMINATION OF MANAGER OR MAINTENANCE CONTRACTS. The association may terminate the contract of any person or organization engaged by the developer to perform management or maintenance duties three months after the association assumes control of the community housing project or any time thereafter. (See PAMC Section 16.38.030(b).)
- e. PROTECTION OF STORM WATER FACILITIES. Neither the association, its residents, nor their agents, employees, representatives, invitees, licensees, customers, or contractors shall alter or modify any storm water facilities in any way including but not limited to placing, maintaining, constructing, or planting any improvements, landscaping or other items, including without limitation decks, stairs, walls, irrigation systems, trees, or any vegetation on any storm water facilities.
- f. TRASH DISPOSAL AND RECYCLING AREAS SHALL COMPLY WITH CITY ORDINANCES. All trash disposal and recycling areas shall be kept in a clean and sanitary condition and shall comply with all applicable City Ordinances.
- g. PROHIBITION AGAINST AIR AND WATER POLLUTION. Neither the association, its residents, nor their agents, employees, representatives, invitees, licensees, customers, or contractors shall use the property in any way which emits pollution into the atmosphere in excess of environmental standards set forth by City, State, and Federal laws, ordinances, and regulations. Neither the association, its residents, nor their agents, employees, representatives, invitees, licensees, customers, or contractors shall discharge garbage, trash, waste, or any other substance or materials of any kind into any private or public sewer or waterway on the property in violation of any regulations of any private or public body having jurisdiction over such matters.
- h. AMENDMENTS TO ORGANIZATION DOCUMENTS REQUIRE CITY APPROVAL. Any amendments or modifications to the organizational documents shall be submitted to the city attorney for approval. No amendment or modification to the organizational documents shall be effective without prior written consent of the city attorney.

- i. CITY'S RIGHT TO ENFORCE COVENANTS AND RESTRICTIONS. The City is hereby granted the right, but in no event the duty, to enforce the covenants and restrictions set forth in this section of the organizational documents. The association shall recognize that it has the primary responsibility for enforcement of the organizational documents and unequivocally guarantees to institute and expeditiously prosecute any required legal action to obtain compliance with all provisions set forth in the organizational documents.
 - j. NO WAIVER OF CITY'S RIGHTS. No failure of the City to enforce any of the covenants or restrictions contained in the organizational documents will in any event render them ineffective.
 - k. CITY'S REMEDIES TO CURE A BREACH OR VIOLATION. Remedies available to the City to cure any breach or violation of the organizational documents shall be cumulative to any other provisions of law. The City's failure to exercise any remedy provided for in the organizational documents shall not, under any circumstances, be construed as a waiver of the remedy.
 - l. SEVERABILITY. Invalidation of any one of the City's required covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
5. ADDITIONAL CC&R REQUIREMENT. The CC&Rs shall also include a provision that dictates the responsibilities of tenants for the trash pickup for the townhomes as shown in the approved plan set.
6. FINAL MAP EXPIRATION. A Final Map, in conformance with the approved Vesting Tentative Map, all requirements of the Subdivision Ordinance (PAMC Section 21.16), and to the satisfaction of the City of Palo Alto and its representatives, shall be filed with the Planning Division and the Public Works Engineering Division within two years of the Vesting Tentative Map approval date or this approval will expire. A one-year extension may be granted in accordance with the allowances set forth in the municipal code.
7. DEVELOPMENT IMPACT FEES. The Property Owner or their designee shall pay all applicable development impact fees associated with the proposed development and subdivision prior to issuance of the building permit(s), as detailed in the Streamlined Housing Development Review Approval.
8. INDEMNITY. To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The

City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

Public Works Engineering

9. PUBLIC WORKS APPLICATIONS, FORMS, AND DOCUMENTS. Applicant shall be advised that most forms, applications, and informational documents related to Public Works Engineering conditions can be found at the following link:
<https://www.cityofpaloalto.org/Departments/Public-Works/Engineering-Services/Forms-and-Permits>
10. OVERVIEW AND GUIDELINES FOR THE REVIEW OF SUBDIVISION PROJECTS. Developer shall familiarize themselves with the guidelines described in the November 2007 revision of the document titled "Overview and Guidelines for the Review of Subdivision Projects". Particularly Section II (items 5 through 12) and Section V (items A through C).
<https://www.cityofpaloalto.org/files/assets/public/planning-amp-development-services/file-migration/current-planning/forms-and-guidelines/overview-and-guidelines-for-the-review-of-subdivision-projects.pdf>
11. MAP THIRD-PARTY REVIEW. The City contracts with a third-party surveyor that will review and provide approval of the map's technical correctness as the City Surveyor, as permitted by the Subdivision Map Act. The Public Works Department will forward a Scope & Fee Letter from the third-party surveyor and the applicant will be responsible for payment of the fee's indicated therein, which is based on the complexity of the map.
12. STREETWORK PERMIT. The applicant shall obtain a Streetwork Permit from the Department of Public Works for all public improvements.
13. GRADING AND EXCAVATION PERMIT. A Grading Permit is required per PAMC Chapter 16.28. The permit application and all applicable documents (see Section H of application) shall be submitted to Public Works Engineering. Add the following note: "THIS GRADING PERMIT WILL ONLY AUTHORIZE GENERAL GRADING AND INSTALLATION OF THE STORM DRAIN SYSTEM. OTHER BUILDING AND UTILITY IMPROVEMENTS ARE SHOWN FOR REFERENCE INFORMATION ONLY AND ARE SUBJECT TO SEPARATE BUILDING PERMIT APPROVAL."
14. GEOTECHNICAL ENGINEER STATEMENT: The grading plans shall include the following statement signed and sealed by the Geotechnical Engineer of Record: "THIS PLAN HAS BEEN REVIEWED AND FOUND TO BE IN GENERAL CONFORMANCE WITH THE INTENT AND PURPOSE OF THE GEOTECHNICAL REPORT".
15. ENCROACHMENT PERMIT: Prior to any work in the public right-of-way, the applicant shall obtain an encroachment permit from the Public Works Department for any work that encroaches onto the City right-of-way.

16. LOGISTICS PLAN: A construction logistics plan shall be provided addressing all impacts to the public including, at a minimum: work hours, noticing of affected businesses, bus stop relocations, construction signage, dust control, noise control, storm water pollution prevention, job trailer, contractors' parking, truck routes, staging, concrete pours, crane lifts, scaffolding, materials storage, pedestrian safety, and traffic control. All truck routes shall conform to the City of Palo Alto's Trucks and Truck Route Ordinance, Chapter 10.48, and the route map. NOTE: Some items/tasks on the logistics plan may require an encroachment permit.

SECTION 7. Term of Approval. Vesting Tentative Map. All conditions of approval of the Vesting Tentative Map shall be fulfilled prior to approval of a Final Map (PAMC Section 21.16.010[c]). Unless a Final Map is filed, and all conditions of approval are fulfilled within a two-year period from the date of Vesting Tentative Map approval, the Vesting Tentative Map shall expire and all proceedings shall terminate. An extension of time may be granted by the city council after recommendation of the planning commission, upon the written application of the subdivider, prior to the expiration of the Vesting Tentative Map approval, or any previous extension granted. Such extension(s) shall be subject to the maximum limitations set forth in the Subdivision Map Act.

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INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

City Clerk

Mayor

APPROVED AS TO FORM:

Assistant City Attorney

Director of Planning and
Development Services

PLANS AND DRAWINGS REFERENCED:

Those plans prepared by BKF Engineers titled "Vesting Tentative Map 739 Sutter Avenue For Condominium Purposes City of Palo Alto, California," consisting of nine pages, dated February 20, 2024 and submitted February 24, 2024.