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City Council Staff Report

From: City Manager

Report Type: CONSENT CALENDAR

Lead Department: Planning and Development Services

Meeting Date: April 22, 2024

Report #:2404-2854

TITLE

QUASI-JUDICIAL. 739 Sutter Avenue [22PLN-00201 and 24PLN-00005]: Appeal of the Director's Decision to Approve a Streamlined Housing Development Review Application to Allow Deconstruction of An Existing 8 Unit Residential Rental Development and Construction of 12 Three-Bedroom Condominium Units. The Project Also Includes a Request for Approval of a Vesting Tentative Map for a Condominium Subdivision. Zoning District: RM-20. Environmental Assessment: Exempt from the California Environmental Quality Act per CEQA Guidelines Section 15332. For more information contact the Project Planner at Claire.Raybould@Cityofpaloalto.org.

RECOMMENDATION

Staff recommends that Council take the following action(s):

1. Find the proposed project exempt from the California Environmental Quality Act per CEQA Guidelines Section 15332;
2. Adopt the attached Record of Land Use Action, thereby:
 - a. Denying the appeal and upholding the Director's approval; and
 - b. Approving the Vesting Tentative Map

EXECUTIVE SUMMARY

On March 19, 2024, the Planning and Development Services Director tentatively approved the applicant's request for a Streamlined Housing Development Review Application. The proposed residential for-sale townhome project, located on a 0.38-acre parcel at 739 Sutter Avenue, includes 12 residential for-sale units, two of which are to be provided at below market rate to low income (50-80% of AMI). The project would replace an existing 8-unit residential rental development that is currently occupied. The project is a housing development project in accordance with the Housing Accountability Act and qualifies for a Density Bonus based on the percentage and income level restrictions on the provided units. The project is also eligible for three concessions as well as unlimited waivers, or changes to the objective development standards, to accommodate the development in accordance with the State Density Bonus allowances (California Government Code §65915) and PAMC Chapter 18.15.

In accordance with the approval process for streamlined housing development review applications, any member of the public may appeal within 10 days of the Director's tentative decision. Staff received timely appeals from two members of the public, one on behalf of the San Carlos Neighborhood Association and one on behalf of Milan Saini, a resident of Sutter Avenue. The concerns expressed in these appeal letters are detailed further in this report.

Adoption of the Record of Land Use Action (RLUA) in Attachment B would deny the appeals and uphold the Director's decision to approve the project. Three members of the Council must vote to pull this item from the consent agenda in order to hold a hearing to discuss the project. If Council approves the Streamlined Housing Development review application, staff also recommends simultaneous approval of the associated Vesting Tentative Map application, the findings for which are included in the RLUA.

BACKGROUND

The Planning and Development Services Director issued a tentative approval on the applicant's request for a Streamlined Housing Development Review Application on March 19, 2024. Two timely requests for hearing were filed, one on behalf of the San Carlos Neighborhood Association (Attachment C) and one by a resident on Sutter Avenue (Attachment D). In accordance with the municipal code, this request is placed on the Council's consent agenda within 45 days of the request for hearing.

Streamlined Housing Development Review applications are subject to the findings set forth in Section 18.77.073 of the zoning code. The findings of approval of this application are included in the Record of Land Use Action in Attachment B.

Request for Hearing-San Carlos Neighborhood Association

The San Carlos Neighborhood Association provided the letter in Attachment C to request a Council hearing on the Director's decision to approve the Streamlined Housing Development Review application. The letter focuses on the following key concerns:

- **Fire Safety:** The requester states that the project does not have sufficient setback from the property line for proper fire access and states concerns that the project relies on ground ladder access versus aerial access for fire service.
- **Privacy:** The requester states that the project does not adequately protect the privacy of neighboring residents by providing third floor balconies that face the rear of the site (toward San Carlos Court). The requester asks for the applicant to increase the size of all the trees along the rear to provide mature screening at the time of planting and requests that all third-floor balconies be removed.
- **Trash:** The requester states that the trash design is not adequate and that the receptacles should have two-foot spacing between each bin. They further state concerns regarding restriction to street parking during trash service hours.

- Density Bonus Law: Express concerns that the project is inconsistent with State density bonus allowances as set forth in Chapter 18.15 of the Code because the project does not provide at least five additional housing units beyond what is existing.
- CEQA Analysis: The requester expresses that an Initial Study/Mitigated Negative Declaration is the appropriate level of analysis for the proposed project and that the project does not qualify for a Class 32 categorical exemption.

Request for Hearing-Milan Saini

Milan Saini, a Sutter Avenue resident, stated his concerns in an e-mail provided in Attachment D. In a second e-mail on March 26, 2024, he submitted a second objection letter. This second letter did not raise new objections but elaborated on the initial comments and included signatures from other neighbors. The comments focus on the following key concerns:

- Lack of Transparency in Planning Process: The requester states that they have not received communication or acknowledgement on previously raised objections.
- Neighborhood Compatibility: The requester states that there is no three-story development on the street and that this approval will initiate additional development on Sutter Avenue. He states that the density and scale of the proposed development are incompatible with the current aesthetic, architecture, and overall neighborhood character
- Precedent: The requester expresses that if this project is approved, the city would be required to approve successive applications.
- Cumulative Projects: The requester states that the project's impact must also take into consideration other projects that would follow and that, together, would increase traffic congestion and strain existing parking resources on the neighborhood. The high-density projects when taken collectively will lead to overcrowding in the neighborhood, potentially decreasing the quality of life for existing residents, including more noise and light pollution, disrupting the peacefulness of my neighborhood.
- Decreased property values: The requester expresses concern that the high-density projects on the street could potentially decrease property values in the surrounding areas due to overcrowding, increased traffic, and changes to the neighborhood character.

If three or more City Councilmembers want to hold a public hearing to consider the application, a vote is needed to pull the item from the consent calendar. If pulled, staff would return at a future date for a hearing on the application.

Streamlined Housing Development Review applications are subject to findings set forth in Section 18.77.073 of the zoning code. The findings to approve the proposed project are included in the tentative approval letter in Attachment E and reflected in the draft Record of Land Use Action in Attachment B.

Vesting Tentative Map

The proposed project includes an associated request for approval of a Vesting Tentative Map application (24PLN-00005) to allow twelve residential condominium units on a single, existing, 16,720 square foot (sf) parcel at the subject property. Approval of the map also includes acceptance of proposed utility easements on the parcel, which are required per City of Palo Alto Utility standards. The proposed Vesting Tentative Map is included in Attachment F.

The process for evaluating a vesting tentative map application is set forth in Title 21 of the Palo Alto Municipal Code (PAMC) and California Government Code 66474. The process for approval of a Vesting Tentative Map for a condominium subdivision is outlined in PAMC Sections 21.12.010 and 21.13.020. Tentative maps require Planning and Transportation Commission (PTC) review to evaluate whether the amended subdivision is consistent with the Subdivision Map Act (in particular, Government Code 66474), Title 21 of the Palo Alto Municipal Code, the Palo Alto Comprehensive Plan, and other applicable provisions of the Palo Alto Municipal Code and State Law. The PTC's recommendation is forwarded to the City Council for final approval.

On March 27, 2024, the PTC recommend (6-0, Hechtman absent) that Council find the project exempt from CEQA in accordance with CEQA Guidelines Section 15332; and recommend approval of the Vesting Tentative Map to City Council based on the finding and subject to the conditions of approval included in the PTC staff report. The PTC also recommended that Council consider removing the parking restrictions during refuse pickup hours referred to in the conditions of approval #5 and as shown in Sheet A0.5 of the Architectural Review Board (ARB) plan set. This condition of approval is not included in the Vesting Tentative Map conditions, but is part of the Streamlined Housing Development Review conditions of approval. The proposed parking restriction during trash service is a standard Condition of Approval (COA) used in many areas of the City and was made a requirement of the project by the Office of Transportation to ensure that carts, when placed out for service, do not block the vehicle lanes. While some of the Commissioners viewed the parking restrictions as a special privilege for residents of the proposed development, its primary purpose is to ensure safety during trash pickup times. In addition, although the site is fully parked with two spaces per unit, staff notes that the parking restriction may equally be viewed as a burden on the residents of the development, as they too would not be able to utilize street parking closest to their homes during trash pickup times.

ANALYSIS

A detailed analysis of the project's consistency with the Comprehensive Plan, Zoning, and relevant state regulations is included in the November 2, 2024 ARB staff report.¹ The project was found to be consistent with the relevant plans, policies, and regulations set forth in local and state law.

¹ The staff report for the November 2, 2023 Architectural Review Board Study Session is available online at: <https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/agendas-minutes/architectural-review-board/2023/arb-11.02-739-sutter.pdf>

Responses to Comment San Carlos Court Neighborhood Association (SCCNA)

Following is a response to key issues raised by the SCCNA. Some of these comments were raised in early comment letters. Therefore, responses were also provided in previous staff reports and in staff's formal response to two letters provided by the SCCNA's attorney during the review process. Staff's formal response to the previous letters is included in Attachment E.

Fire Safety

The requester states that the project does not have sufficient setback from the property line for proper fire access. However, the project not only meets the 10-foot setback requirement required for RM-20 zone districts but exceed the requirements by providing a 12-foot minimum setback, which greatly exceeds the requirement for adequate fire access (typically five feet on the ground level). There are existing overhead lines across the project frontage that restrict the site from being accessed by fire trucks with aerial ladders. Therefore, under existing and proposed conditions, the project would provide ground ladder access on two ends of each building for fighting fires. The project is also required to include a commercial grade fire sprinkler system. The project has been reviewed by the City of Palo Alto Fire Department and recommended approval based on the plans, as revised to accommodate the above referenced measures. Therefore, staff has reviewed the project and determined that the project design has adequate fire safety measures in compliance with the fire code.

Privacy

The requester states that the project does not adequately protect the privacy of neighboring residents by providing third floor balconies that face the rear of the site (toward San Carlos Court) and asks for the balconies to be removed. The project has been redesigned through the public process to reduce impacts to San Carlos Court residents. The initial design during the preliminary Architectural Review process (21PLN-00222) included rooftop decks on both the front and rear building. In response to resident comments. The rooftop decks on the rear building were removed prior to submitting a formal application. The rooftop decks on the front building were also removed following the ARB's review in response to both board member comments and additional neighbor comments.

The project was also redesigned to meet the objective standards set forth in PAMC Section 18.24.050(2)(A through E). This included:

- modifications to the balcony material (obscure versus glass) and height (taller railings to meet line of sight restrictions)
- modifications to the window design (reduced glass and transparent glazing),
- greater setbacks from the balcony from the property line to bring the project outside of the rear daylight plane and meet the visibility line of sight restrictions,
- increasing the height of the fence to the maximum allowable,
- and modifying the planting plan to provide a continuous row of vegetation for screening purposes.

The requester asks for the applicant to increase the size of all the trees along the rear at planting to provide mature screening at the time of planting. Staff believes that the proposed planting plan with 24-inch boxed trees is appropriate to provide for screening over time; although staff understands that the proposed trees, which shall measure 8 feet in height at planting does not provide full vegetation screening at planting, these are a fast-growing species capable of providing screening over time.

Trash

The requester states that the trash design is not adequate and that the receptacles should have two-foot spacing between each bin. They further state concerns regarding restrictions to street parking in front of this site for trash service hours.

The trash service has been reviewed by the City's Zero Waste Division as well as its waste hauler and Greenwaste, to ensure that the design meets the City and Greenwaste standards for waste disposal. The project meets these requirements. The plan set inadvertently refers to these waste receptacles as bins, which are larger metal receptacles, versus carts, which are the smaller plastic receptacles more typically used by low density residential uses. Bins require at least two-foot spacing between each for service. Carts require 6 inches between. Therefore, the proposed carts are adequately spaced in accordance with the Greenwaste requirements. The proposed parking restriction during trash service is a standard COA used in many areas of the City and was made a requirement of the project by the Office of Transportation to ensure that carts, when placed out for service, do not block the vehicle lanes.

Density Bonus Law

The requester expresses that the project is inconsistent with state density bonus allowances as set forth in Chapter 18.15 of the code because the project does not provide at least five additional housing units beyond what is existing. The requester's accurately notes that the municipal code includes a definition of development as "all developments pursuant to a proposal to construct or place five (5) or more additional dwelling units on a lot or contiguous lots including, without limitation, a planned unit development, site plan, subdivision, or conversion of a non-residential building to dwelling units." However, this provision conflicts with current state density bonus law, which provides only that the proposed development must be five units or more to be eligible for state density bonus. In cases where the City's local ordinance conflicts with state density bonus law, the state law shall prevail. This inconsistency will be addressed in an ordinance updating the municipal code later this month.

CEQA Analysis

As detailed in staff's response to the August 30, 2023 and November 1, 2023 letters from Silicon Valley Law group, the city disagrees with the assertion that a Class 32 exemption would not be applicable to the proposed project. Staff's response to these letters is included in Attachment E.

Response to Milan Saini Comments

Following is staff's response to key issues raised by Milan Saini in his comment letter.

Lack of Transparency in Planning Process

The requester provided a letter on July 11, 2022 expressing concerns about the proposed development, specifically indicating concerns about the increased density, the inclusion of low-income units, and that the project would affect property values. The objection letter was signed by four residents within the 700 block of Sutter Avenue. Staff inadvertently did not respond to this letter. Nevertheless, the status of the project has been updated continuously on the project webpage throughout the process and includes plan sets, links to staff reports, and the environmental documents. A notice was mailed to all residents within 600-feet of the project site prior to the November 2, 2023 ARB study session in accordance with the code requirements. Staff has confirmed that the requester was included on those mailings. The requester was also noticed at the tentative decision process, all in accordance with the City's standard process in accordance with the code. Therefore, review of the project has been transparent and multiple opportunities to comment were provided throughout the public process.

Neighborhood Compatibility, Precedent, and Cumulative Projects

Approval of the proposed project does not assure approval of any subsequent project. Each application is reviewed on an individual basis based on the relevant policies and regulations in effect at the time that it is submitted. No other applications, either preliminary or formal, have been filed to redevelop nearby properties. Therefore, staff cannot speculate as to the cumulative impacts of a subsequent project (or projects) that may be proposed in the future. The commenter notes that the density and scale of the proposed development are incompatible with the current aesthetic, architecture, and overall neighborhood character, but does not elaborate further as to how the project is inconsistent except to say that the existing street does not include three-story development. Although there are no three-story developments existing in the immediate vicinity of the project site, the site is zoned RM-20 and allows for 30-foot buildings.

Decreased Property Values

The applicant expresses the view that high-density projects on the street could potentially decrease property values in the surrounding areas due to overcrowding, increased traffic, and changes to the neighborhood character. However, this opinion is not substantiated by facts. Moreover, the project may only be denied based on findings that the project does not comply with applicable objective standards, or that the project will result in a specific, adverse, impact upon the public health or safety, which cannot feasibly be mitigated or avoided.

Vesting Tentative Map

The proposed Vesting Tentative Map is consistent with the Comprehensive Plan and Zoning, as discussed further below. A density bonus waiver from the street width also applies to the Vesting Tentative Map.

Comprehensive Plan Consistency

The proposed Vesting Tentative Map is consistent with the Comprehensive Plan, in that the site is designated primarily as “Multifamily” land use category and will be developed as a multifamily development on that portion of the site. The map facilitates the redevelopment of a parcel within the City’s urban service area which is consistent Policy L-1.2 of the Comprehensive Plan. The associated development to be constructed on the lot would add new residential units that contribute to the housing inventory including two affordable housing units, consistent with Goal 2 of the Housing Element, which states “assist in the provision of safe, attainable, and sustainable housing, especially affordable housing, to meet the needs of all economic segments of the community.” Consistencies with other Comprehensive Plan policies are included in Attachment B of this report.

Zoning Consistency

The site is zoned primarily as RM-20 (multi-family residential). The proposed multi-family development is a permitted use within the RM-20 Zone. The size of the parcel would not change and is consistent with code requirements for the RM-20 Zone District, which has a minimum lot size of 8,500 sf and minimum dimensions of 70 feet in width by 100 feet in depth. Staff finds that the proposed Vesting Tentative Map complies with these code requirements for parcels.

Private Street Width

The proposed project includes new private streets that do not meet the minimum width of 32 feet set forth in PAMC 21.20.240. The applicant requested a waiver from this development standard in accordance with State Density Bonus Law to allow for a private street that is 20 feet in width. Approval of this waiver was tentatively granted as part of the tentative approval of the proposed development under the Streamlined Housing Development Project review. The waiver also applies to the subdivision map process. The proposed improvements, including the street width, were reviewed by all departments as part of the streamlined housing development review process. Reviewers included, but were not limited to, City of Palo Alto Fire Department, Public Works Engineering, Office of Transportation and the Building Department. The proposed project, with the proposed 20-foot street width, meets all safety requirements, including, but not limited to, fire safety and traffic safety.

FISCAL/RESOURCE IMPACT

The developer would be required to pay all applicable development impact fees estimated to total \$279,177.12 for the subdivision and the proposed improvements, plus the applicable public art fees, as documented in the conditions of approval in the Record of Land Use Action. The project is a cost recovery project; therefore, staff time is charged to the applicant for the processing of this application.

A request for appeal requires a \$700 deposit from an appellant. Each of the respective appellants have paid their required fee. In accordance with the fee schedule, if the Council chooses not to hold a public hearing to discuss the appeal, these fees would be returned to the appellants.

STAKEHOLDER ENGAGEMENT

The Palo Alto Municipal Code requires notice of this public hearing be published in a local paper and mailed to owners and occupants of property within 600 feet of the subject property at least ten days in advance. Notice of a public hearing for this project was published in the Daily Post on April 12, 2024, which is 10 days in advance of the meeting. Postcard mailing occurred on April 11, 2024, which is 11 days in advance of the meeting.

Throughout the review process the San Carlos Neighborhood Association has been actively discussing their comments on the project with staff and at public hearings. Silicon Valley Law Group sent a letter on August 30, 2023. Key comments raised in that letter expressed concerns about privacy, safety, and indicated their disagreement with the conclusion that the project would be eligible for a Class 32 (in-fill) exemption due to significant impacts related to traffic, air quality, and noise among other impacts. Staff met with residents on September 12, 2023 to discuss their concerns. Silicon Valley Law Group submitted a second letter on behalf of the neighborhood association on November 1, 2023. Prior to approval of the proposed project, staff responded formally to these comments. The initial letters are included in Attachment D. Staff's response to those letters is included in Attachment E.

ENVIRONMENTAL REVIEW

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Specifically, the project is exempt from the provisions of the California Environmental Quality Act in accordance with CEQA Guidelines Section 15332 (infill development). The documentation to support this exemption is included on the project webpage, a link to which is provided in Attachment F.

The City disagrees with the assertions in the hearing request letter as they relate to the applicability of the Class 32 exemption. The documentation provided includes substantial evidence to support the conclusion that a Class 32 exemption applies to the proposed project and is the appropriate level of environmental analysis for this project. Specifically, it provides documentation to support the conclusion that there would be less than significant impacts related to air quality, traffic, water quality and noise. The CEQA documentation also includes a cultural resources analysis, which concludes that the project is not eligible for any register (National, State, or local). Attachment E includes the City's formal responses to questions raised by the San Carlos Neighborhood Association with respect to the CEQA analysis. The request for hearing does not include any new information.

ATTACHMENTS

Attachment A: Location map

Attachment B: Record of Land Use Action

Attachment C: Request for Hearing from San Carlos Neighborhood Association

Attachment D: Request for Hearing from Milan Saini (Sutter Avenue Resident)

Attachment E: Letter to SVLG in Response to Formal Letters Provided in the Review Process

Attachment F: Project Plans and CEQA

APPROVED BY:

Jonathan Lait, Planning and Development Services Director