

CITY OF MOUNTAIN VIEW

ENVIRONMENTAL PLANNING COMMISSION STAFF REPORT OCTOBER 20, 2021

5. PUBLIC HEARINGS

- 5.1 **Public Hearing for Consideration of a Planned Unit Development Permit, Planned Community Permit, and Development Review Permit to Construct a Five-Story, 91-Unit Residential Condominium Development with One Level of Underground Parking, Including a State Density Bonus Request, Provisional Use Permit for Rooftop Amenities, Heritage Tree Removal Permit for the Removal of Six Heritage Trees, and Vesting Tentative Map to Create 91 Condominium Lots and One Common Lot at 282 East Middlefield Road**

RECOMMENDATION

That the Environmental Planning Commission (EPC):

1. Recommend the City Council deny a Planned Unit Development Permit, Planned Community Permit, and Development Review Permit to construct a five-story, 91-unit residential condominium development with one level of underground parking, including a State Density Bonus request, a Provisional Use Permit for rooftop amenities, and a Heritage Tree Removal Permit for the removal of six Heritage trees on a 1.15-acre project site and finding the action to deny the project to be exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270 ("Projects Not Approved") at 282 East Middlefield Road, based on the findings in the attached resolution (Exhibit 1 to the EPC Staff Report).
2. Recommend the City Council deny a Vesting Tentative Map to create 91 condominium lots and one common lot on a 1.15-acre project site and finding the action to deny the project to be exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270 ("Projects Not Approved") at 282 East Middlefield Road, based on the findings in the attached resolution (Exhibit 2 to the EPC Staff Report).

PUBLIC NOTIFICATION

The EPC's agenda is advertised on Channel 26, and the agenda and this report appear on the City's internet website. All property owners within a 750' radius and other interested stakeholders were notified of this meeting. A separate notification of the City Council public hearing will occur for this project.

BACKGROUND

Project Site

The project site is an approximately 1.15-acre vacant lot located on the north side of East Middlefield Road near the intersection of North Whisman Road. The project site is surrounded by townhomes to the west, single-family homes to the north, a gas station (Rotten Robbie) to the east, and commercial uses to the south (across East Middlefield Road).



Figure 1: Location Map

East Whisman Precise Plan

The project site is located in the Village Center Character Area of the East Whisman Precise Plan (EWPP). The EWPP envisions the Village Center Character Area as an area which includes neighborhood-serving and pedestrian-oriented retail and services as well as housing and small offices ideally incorporated into a mixed-use center. The Village Center Character Area allows development at a density up to a 1.0 floor area ratio (FAR) and building heights between 30' and 50' tall.

Project Overview

The project proposes development of the vacant 1.15-acre project site with a new five-story, 91-unit residential condominium development. The proposed dwelling unit mix consists of 40 one-bedroom units, 49 two-bedroom units, and two three-bedroom units ranging in size from approximately 697 square feet to 1,594 square feet (see Exhibit 3 – Project Plans).

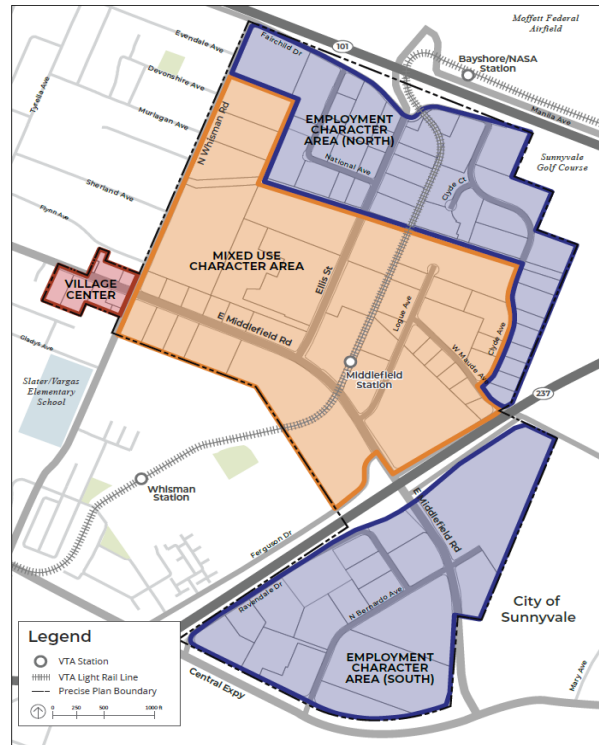


Figure 2: EWPP Character Map



Figure 3: Site Plan

The building is proposed to be constructed over a one-level underground parking garage containing 101 parking spaces accessed by a driveway entrance along East Middlefield Road on the southwest corner of the property. The project incorporates approximately 9,137 square feet of common useable open area in ground-floor common amenity areas and a rooftop deck. Six Heritage trees are proposed to be removed to accommodate the proposed structures, underground garage, and supporting site utilities and infrastructure.

The project consists of two architectural styles, which vary based on street frontage. The Middlefield Road frontage is five stories with a contemporary architecture style, while the Flynn Avenue frontage is three stories and has a more residential vernacular with gable roof forms. The project material includes stucco, aluminum siding with a wood-grain finish, limestone, metal awnings, glass-panel guardrails, and asphalt shingle roofs.



Figure 4: View from East Middlefield Road

Senate Bill 330

Senate Bill (SB) 330 (Housing Crisis Act of 2019) took effect on January 1, 2020. The applicant, DeNardi Wang Homes, submitted an SB 330 preliminary application for the proposed project on August 7, 2020 and a formal application on March 2, 2021; therefore, the proposed development is subject to all provisions of SB 330, and the preliminary and formal applications have been reviewed subject to SB 330's procedural requirements. However, because the formal application submittal occurred more than 180 days after the preliminary application submittal, the project is subject to the standards in place at the time the project was determined to be complete. The City notified the applicant that the project application was incomplete on April 1, 2021. The applicant resubmitted their application on May 25, 2021, and the City notified the applicant that the resubmittal was incomplete on June 24, 2021. Finally, the applicant submitted the remaining outstanding items, and the City determined the application was complete on August 19, 2021.

On September 17, 2021, within 30 days after the project was determined to be complete, the City provided the applicant with written analysis identifying the applicable, objective standards that the project failed to satisfy, including each of the inconsistencies identified below. In addition, in each of its incomplete notices, the City alerted the applicant to the fact that the project exceeded the maximum density allowed for the project site. The applicant declined to make any revisions to its application prior to this hearing.

Previous Meetings

One virtual neighborhood meeting was held by the applicant on July 15, 2021, noticed to residents and property owners within 750' of the project site. Over 35 people attended the meeting, and many expressed concerns regarding the proposed density and potential traffic and parking impacts to the neighborhood. Many people also expressed concerns on the project's design and height as they found it was not compatible with the residential character of the neighborhood and standards of the EWPP.

ANALYSIS

As explained in greater detail below, the project exceeds the density of 1.0 FAR allowed on the site under the General Plan and the EWPP. The project proposes to develop at a density of 2.46 FAR, which is substantially larger than what would be allowed on the site even if the project qualified for the maximum density bonus. Because the project is inconsistent with this objective development standard (and other standards, discussed in greater detail below), staff recommends that the project be denied.

General Plan and Precise Plan Density

The City's General Plan and the EWPP define density using different standards depending on whether a site is in a residential-only zone or a mixed-use zone. As stated in the General Plan, FAR is used to measure density in mixed-use areas when a dwelling units per-acre standard is not defined. Dwelling units per acre is used in residential districts. In addition, several of the City's Precise Plans use FAR to define density in mixed-use areas: the San Antonio Precise Plan, El Camino Real Precise Plan, North Bayshore Precise Plan, and EWPP. Moreover, the City uses FAR to define the density of residential uses that do not meet the definition of dwelling units (such as residential care facilities).

The maximum density at the project site is set by the General Plan and the EWPP. Both plan documents limit the base density to 1.0 FAR.

Overview of State Density Bonus Law

Under State Density Bonus Law, a project is allowed bonus density, incentives/concessions, waivers, and reduced parking standards if they provide a minimum number of affordable units.

- Bonus density is expressed as a percent increase over the allowed base density and depends on the number and income level of the affordable units provided.
- Incentives/concessions are reductions to development standards that reduce the cost of the development to provide for the reduced rents or sales prices of the affordable units.
- Waivers are reductions to development standards that physically preclude the development of the project at the allowed density or with the incentives/concessions.
- Reduced parking standards apply when a minimum threshold of affordable units is reached.

Developers do not need to build bonus density to be entitled to incentives/concessions, waivers, and reduced parking standards under State Density Bonus Law.

As required by the State Density Bonus Law and Mountain View's Density Bonus Ordinance, the City awards bonus density to projects that provide the requisite amount of affordable housing. On the project site, this means that the project is eligible for additional FAR because the General Plan and East Whisman Precise Plan both define density for the project site using an FAR standard.

The City made a conscious decision to use FAR as a density metric when the General Plan was adopted in 2012 because it gives developers more flexibility to provide more, smaller units if they wish; it gives the community more predictability about the form of development; and the population density of a project is often more closely related to the floor area than the number of units since larger units tend to house more people.

However, the developer disagrees with the City's interpretation of its General Plan and the EWPP and, accordingly, disagrees with the City's application of the State Density Bonus Law to the project. The developer asserts that residential density may only be defined in terms of units per acre and that FAR can only be used to

define building intensity. The developer believes that because the General Plan does not include a dwelling-unit-per-acre standard, then no density limit applies to the project. Therefore, the developer asserts that no base density applies to the project site. Second, the developer asserts that because FAR is a development standard subject to waiver under the State Density Bonus Law in areas where density is defined by dwelling units per acre, the City must also waive FAR for the project despite the fact that it is the density limit defined by the General Plan for the site. Under the developer's interpretation, it is eligible for unlimited waivers of any physical development standard that would interfere with its project, regardless of how that project relates to the City's defined density standards. Additional analysis explaining the City's standards for awarding density bonuses to projects when density is defined using FAR is included as Exhibit 4.

Department of Housing and Community Development's Response to Applicant's Complaint

Based on the same arguments outlined above, alleging that the City's Density Bonus Ordinance conflicts with State Density Bonus Law, the developer submitted a complaint with the Department of Housing and Community Development (HCD) requesting that HCD take enforcement action against the City. On October 8, 2021, HCD issued its determination as a technical assistance letter. HCD disagreed with the developer's arguments and agreed with the City that FAR can be used as the density standard for purposes of State Density Bonus Law, and it is appropriate not to grant additional FAR increases as waivers if FAR is the density standard (see Exhibit 5).

As noted above, the project proposes an FAR of 2.46, which would represent an increase of 139% above the base density of 1.0 FAR. Pursuant to the City's standards, the project is clearly inconsistent with the maximum density established in the General Plan and EWPP, even with the maximum density bonus available to them (50%). Staff recommends denial of the project because it does not comply with the General Plan, EWPP, or State Density Bonus Law.

Zoning Compliance

The site is located in the EWPP, Village Center Character Area, which sets a range of development standards. Table 1 below lists the development standards to which the project must conform.

For some standards, the applicant has requested waivers under State Density Bonus Law. As discussed above, the applicant contends that the project is entitled to a

waiver of the site's density standard to allow development far in excess of the maximum density bonus required under State law. Although the City agrees that a project that provides enough affordable housing to qualify for a density bonus is eligible for waivers, those waivers must physically preclude development *at the density* permitted by State Density Bonus Law. Because the project far exceeds the density permitted by State Density Bonus Law, the City cannot evaluate whether the remaining waivers are necessary to reduce development standards that would interfere with a project at the permitted density level. Therefore, staff is not supportive of granting those waivers, and without the requested waivers, the project results in noncompliance with zoning standards and guidelines. Without the waivers, the project does not meet multiple development standards in the EWPP.

Table 1: Compliance with EWPP Village Center

Standard	Requirement	Proposed	Waiver Requested	Compliance
Height – All Buildings	50'	56.83'	Yes	Noncompliant
Height – Maximum Average Street Wall Height	45'	45'	No	Compliant
Height – Maximum Height Within 100' of Flynn Avenue	30'	38.45'	Yes	Noncompliant
Floor Area Ratio	1.0	2.46	Yes	Noncompliant
Open Area – Minimum Landscape Area	Minimum landscape area: 20%	13,503 square feet = 26.8%	No	Compliant

Standard	Requirement	Proposed	Waiver Requested	Compliance
<p>Open Area – Minimum Common Useable + Private Open Area: Residential</p>	<p>100 square feet/unit common usable = 9,100 square feet</p> <p>200 square feet/unit total = 18,200 square feet</p>	<p>9,137 square feet of common usable;</p> <p>19,856 square feet of common usable + private open area</p> <p>Or 6,094 square feet of common usable;</p> <p>16,813 square feet of common usable + private open area without rooftop amenity area</p>	<p>No</p>	<p>Noncompliant</p> <p>Staff is not supportive of the rooftop amenity area. Removal of the rooftop amenity area results in noncompliance with the open area requirements.</p>
<p>Minimum Setback – Residential</p>	<p>Public street – 15'</p> <p>Side and rear – 15'</p>	<p>Public street – 11' (Middlefield Road) to 16'7" (Flynn Avenue)</p> <p>Side and rear – 15'</p>	<p>No</p>	<p>Noncompliant public street setback only</p>
<p>Minimum Setback – Surface Parking</p>	<p>Public street – 15'</p> <p>Side and rear – 5'</p>	<p>Public street – 20'</p> <p>Side and rear – 1'</p>	<p>No</p>	<p>Noncompliant side setback only</p>

Standard	Requirement	Proposed	Waiver Requested	Compliance
Height Limitations within 100' of Flynn Avenue	Two stories Wall plate height: 22'	Three stories Wall plate height: 32.7'	Yes	Noncompliant
Residential Height Transitions	Maximum wall plate height of 36' within 20' from property line. For every additional foot away from the property line, the maximum wall plate height may increase by 1'.	The wall plate height within 20' of the property line, particularly the rear property that abuts the single-family homes on Flynn Avenue exceed the maximum allowed.	No	Noncompliant
Ground floor Height Requirements	12'	9'2"	Yes	Noncompliant
Parking Ratio	State Density Bonus Law allows 0.5 parking space/unit for sites 0.5 mile from a major transit stop = 46 total required	101 parking stalls	Yes	Compliant

In the EWPP, rooftop amenities within the Village Centers are provisional uses, which are only allowed based on a review of the design, location, and operational characteristics of the use. Staff is not supportive of the proposed rooftop deck as its design is incompatible with the adjacent neighborhood due to its location and scale. The rooftop amenity area is immediately adjacent to one-story single-family residential, its height exceeds the maximum allowed on Flynn Avenue, and the

design does not provide adequate screening of the amenity area. Removal of the rooftop amenity area will result in 6,094 square feet of common useable open area and 16,813 square feet of common useable and private open area. Therefore, the project would not comply with the common useable open area and common useable open area plus private open area development standards.

Subdivision Map

The proposed Vesting Tentative Map for the project includes one common lot and 91 residential condominium units. Staff finds that the proposed map is not consistent with applicable City Codes and requirements; more specifically, the proposed density exceeds the maximum allowed density permitted by the General Plan and EWPP. Therefore, staff is recommending denial of the Vesting Tentative Map.

Zoning Interpretation Appeal

On July 28, 2021, the developer's attorney requested a formal zoning interpretation regarding density in Precise Plans. The Zoning Administrator provided a formal interpretation outlining how density is calculated, as discussed earlier in this staff report. The Zoning Administrator determination is provided as Exhibit 6. On September 27, 2021, the developer's attorney submitted an appeal contesting the Zoning Administrator's interpretation, stating that using FAR to measure density conflicts with State law. Per the procedures in the City Code, all appeals go to the City Council for a decision on the appeal. Therefore, the appeal will be heard at a future City Council meeting.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) does not apply to projects which a public agency rejects or disapproves per Section 15270 ("Projects which are Disapproved") of the CEQA Guidelines. Therefore, no additional environmental review or analysis is required for the project if the EPC recommends the project for denial.

NEXT STEPS

Following a recommendation from the EPC at this public hearing, the project and EPC recommendation will be considered at a City Council public hearing, tentatively scheduled for November 16, 2021.

CONCLUSION

The proposed redevelopment of the project site is inconsistent with the General Plan, EWPP, and State Density Bonus Law as it exceeds the maximum allowed density for the project site, and the project design is found to be incompatible with the surrounding uses and developments in the area. The waiver requests are not supported by staff as the waivers do not physically preclude construction of the project at the allowable density because the requested density is far greater than what is permitted.

ALTERNATIVES

1. Find the project is consistent with all applicable City ordinances and direct staff to reanalyze the project, initiate environmental review, and return to the EPC for consideration and recommendation to Council.
2. Provide other direction to staff.

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- Exhibits:
1. Draft Council Resolution for Denial of a Planned Unit Development Permit, Planned Community Permit, Development Review Permit, Provisional Use Permit, and Heritage Tree Removal Permit
 2. Draft Council Resolution for Denial of a Vesting Tentative Map

3. Project Plans
4. City's Letter to Department of Housing and Community Development
5. HCD Technical Assistance Letter
6. Zoning Administrator Interpretation