

CITY OF MOUNTAIN VIEW
RESOLUTION NO.
SERIES 2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DENYING 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 AT 282 EAST MIDDLEFIELD ROAD, AND FINDING THE DENIAL OF THE PROJECT TO BE EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO CEQA GUIDELINES SECTION 15270

WHEREAS, an application was received from Denardi Wang Homes for 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 Heritage Tree Removal Permit for the removal of six Heritage trees at 282 East Middlefield Road (Application No. PL-2021-042); and

WHEREAS, the City provided the developer with written notification as a courtesy noting the density inconsistency in connection with the Permit Streamlining Act completeness letters dated March 31, 2021 and June 24, 2021; and

WHEREAS, pursuant to Government Code Section 65589.5, the City provided written documentation to the developer on September 17, 2021, reiterating the density inconsistency as well as other objective General Plan and zoning standards that the project was not in compliance with; and

WHEREAS, the Environmental Planning Commission held a duly noticed public hearing on October 20, 2021 on said application and recommended the City Council deny the Planned Unit Development Permit, Planned Community Permit, Development Review Permit, Provisional Use Permit, and Heritage Tree Removal Permit subject to the required findings; and

WHEREAS, the City Council held a duly noticed public hearing on November 16, 2021 on said application and received and considered all evidence presented at said hearing, including the recommendation from the Environmental Planning Commission, City Council report, project materials, testimony, and written materials submitted;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Mountain View finds:

1. The Planned Unit Development Permit is denied based upon the following findings pursuant to Section 36.46.95, Subsections (B), (D), and (G) of the City Code:

a. The proposed project is not consistent with the East Whisman Mixed-Use Land Use Designation of the General Plan because the proposed density exceeds what is allowed in the General Plan. The General Plan states that FAR is the development standard used to measure density in mixed-use areas, including the project site. The maximum permitted density for the project site is 1.0 FAR. State Density Bonus Law allows up to 50% density bonus for developments with market-rate units, or approximately 1.50 FAR (with small variation possible due to rounding). Therefore, the project's proposed 2.46 FAR is inconsistent with the maximum allowed density of 1.0 FAR;

b. The proposed project would not be harmonious and compatible with existing and future developments within the zoning district and surrounding area because the proposed heights are not consistent with the maximum height and plate height requirements for project sites within 100' of Flynn Avenue, which results in inappropriate residential height transitions. The project is proposing three stories in lieu of two stories, with a wall plate height of nearly 33' in lieu of the maximum allowed of 22'. The height requirements are intended to preserve the character of the smaller-scaled residential sites located on Flynn Avenue, adjacent to this project site. Although State Density Bonus Law would prohibit the City from applying the City's height standards if the requirements physically precluded development at the density permitted, the project far exceeds the project site's maximum density, even if the largest possible density bonus were awarded. Therefore, compliance with the height standards continues to be required. Furthermore, the balconies that front the common open area are located approximately 20' from the adjacent one-story single-family residential properties and extend five stories. This design results in further privacy issues that are incompatible with the adjacent single-family residential homes north of the project site; and

c. The proposed project is not in compliance with the requirements of the East Whisman Precise Plan, and implementation of the proposed Planned Unit Development design would go against the East Whisman's Precise Plan's guiding principle of respecting the North Whisman neighborhood character because the project's proposed height and density are not compatible with the existing smaller-scaled residential uses that immediately abut this site as evidenced by the project's failure to comply with the City's objective, applicable height and density standards.

2. The Provisional Use Permit for the rooftop amenity area in the East Whisman Village Center is denied based upon the following findings per Section 36.48.25, Subsections (A), (C), and (D):

a. The proposed use is conditionally permitted within the East Whisman Precise Plan Village Center, but it does not comply with all of the applicable provisions of Chapter 36 (Zoning) of the City Code, including building height and residential transitions, as the current proposal and design of the rooftop amenity area exceeds height allowances for the project site. Waivers are proposed for building height and residential transitions to allow the roof deck amenity area location, but, as discussed above, the waiver requests do not demonstrate that modifications are required to accommodate the permitted density because the project far exceeds the density that is allowed on the project site.

b. The location, size, design, and operating characteristics of the proposed use are not compatible with the site and building character and environmental conditions of existing and future land uses in the vicinity based on the project location on a primarily residential street that is dominated by single-story residential homes and one- to two-story townhomes, as evidenced by the project's failure to comply with applicable, objective height and density requirements. The proposed rooftop amenity is located on the third floor of a building that is immediately adjacent to smaller-scaled residential and is not well-screened as its location and height make the amenity area difficult to successfully screen and integrate within the building architecture without increasing the height and massing. Additional operational impacts, such as noise, may negatively impact adjacent residential use because the applicant only proposes to use landscaping to buffer noise; and

c. Any special structure or building modifications necessary to contain the proposed use would impair the architectural integrity and character of the Precise Plan in which it is to be located because the architectural features increase the overall height of the amenity area. The rooftop amenity area is located at approximately 38' on the roof of a building that exceeds the allowable building height requirement of 30'. The noncompliant height is further accentuated with the additional height from the roof deck metal trellises which extend beyond 38'.

3. The Planned Community Permit is denied based upon the conditions contained herein and upon the following findings per Section 36.50.55, Subsections (A) and (B):

a. The proposed use or development is not consistent with the provisions of the East Whisman Precise Plan and is not in substantial compliance with the objective, applicable requirements in the Precise Plan, including the density allowances for the site. The permitted density, as set forth in the Precise Plan, is 1.0 FAR. State law allows a

maximum 50% bonus for projects with market-rate units on top of the base density, which is equivalent to a 1.5 FAR. The proposed density is 2.46 FAR and exceeds the FAR allowances. Additional waivers on the FAR, height, and setbacks are requested, but because the density requested exceeds the maximum possible density bonus, the waiver requests do not demonstrate that modifications are required because there is nothing to show that the standards physically preclude the allowed density. Furthermore, the FAR is the measurement of density and cannot be waived beyond the density bonus allowed under State law. Therefore, the proposed heights and setbacks result in further noncompliance of the project with the Precise Plan; and

b. The proposed project is not consistent with the East Whisman Mixed-Use Land Use Designation of the General Plan because the proposed density exceeds what is allowed in the General Plan. The General Plan states that FAR is the development standard used to measure density in mixed-use areas, including the project site. The maximum permitted density for the project site is 1.0 FAR, with the State Density Bonus Law allowing up to 50% density bonus for developments with market-rate units, or approximately 1.50 FAR (with small variation possible due to rounding). Therefore, the project's proposed 2.46 FAR is inconsistent with the maximum allowed density of 1.0 FAR.

4. The Development Review Permit is denied based upon the following findings pursuant to Section 36.44.70 of the City Code, Subsections (A), (D), and (E):

a. The project does not comply with the general design considerations as described by the purpose and intent of Chapter 36 (Zoning) of the City Code, the General Plan, and any City-adopted design guidelines since the project is proposing a density that exceeds the maximum allowed FAR. Waivers for exceptions to the FAR, height, and setbacks are proposed, but not supported, as these standards would only be required to permit a greater density than what is allowed. Furthermore, the project design is not compliant with other design guidelines in the Precise Plan, such as following alternative frontage design where a stoop frontage is recommended and not including ground-floor unit access to public sidewalks and amenity areas;

b. The general landscape design does not ensure visual relief, does not complement structures, does not provide an attractive environment, and is inconsistent with any adopted landscape program for the general area because the East Whisman Precise Plan requires native plantings to be used, but 20 of the 28 plant species used in the landscape palette (not including street trees) are not native plants; and

c. The design and layout of the proposed project will not result in well-designed vehicular and pedestrian access, circulation, and parking because the location of the trash staging area will result in the driveway to be blocked during trash collection days as it forces trash service in front of the driveway entrance.

5. Additionally, in accordance with City and State requirements, the Density Bonus is disapproved based on the following additional findings per Section 36.48.95, Subsections (A) and (K):

a. The project is a housing development that contains at least one (1) of the features described in Section 65915(b) of the State Density Bonus Law to qualify for a density bonus because it proposes to include a designated percentage of its units as affordable to lower-income households. However, the project proposes a density of 2.46 FAR, which is well beyond the maximum allowable base density of 1.0 FAR and in excess of the maximum density that is permitted following the application of the largest possible density bonus available to the project. Therefore, the project proposal exceeds the maximum allowed density even with a density bonus, and the applicant's requested density bonus to allow a density of 2.46 FAR on the site is denied; and

b. The development standard(s) requested to be waived would not physically preclude the units or incentives/concessions provided in the project as described in Section 65915(e) of the State Density Bonus Law because the seven proposed waivers (to allow 2.46 FAR in lieu of 1.0 FAR; waivers to height such as the ground-floor height requirement to permit a 9'2" wall plate height in lieu of 12'; allow a maximum building height of 57' in lieu of 50'; allow the portion of the building 100' of Flynn Avenue, a three-story height in lieu of two stories, a wall plate of 32.7' in lieu of 22', and a building height of 38.45' in lieu of 30'; and to allow an 11' street-side setback in lieu of 15') are to allow a density higher than what is permitted, so the application has not shown that these standards preclude construction of a compliant development.

6. The Heritage Tree Removal Permit is denied based on the following findings per Section 32.35, Subsection (B):

a. It is not necessary to remove the trees in order to construct the improvements and/or allow reasonable and conforming use of the property when compared to other similarly situated properties because the proposed project associated with the tree removal is a noncompliant project and is proposing a density that exceeds the maximum allowed even with a density bonus. Also, although many of the trees are proposed for removal for street improvements on Flynn Avenue, some trees, such as Tree 1, could be designed to be preserved.

NOW, THEREFORE, BE IT FURTHER RESOLVED by the City Council of the City of Mountain View that the Planned Unit Development Permit, Planned Community Permit, Development Review Permit, Density Bonus, Provisional Use Permit, and Heritage Tree Removal Permit are denied.

BE IT FURTHER RESOLVED that the City Council of the City of Mountain View finds the denial of the project is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270, which states that CEQA does not apply to projects which an agency disapproves.

TIME FOR JUDICIAL REVIEW

The time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6, as established by Resolution No. 13850, adopted by the City Council on August 9, 1983.

KP/1/RESO
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