



SUBJECT

Appeal of the Planning Director's Decision to Approve a Two-year Extension of the Approved Mixed Use Development consisting of 72 Residential Townhomes and 8,000 square feet of commercial space on a 5.88-acre parcel located at the Southwest corner of Mission Boulevard and Industrial Parkway (APNs: 078G-2651-012-08, 078G-2651-011-02, 078G-2651-010-03, 078G-2651-009-02, and 078G-2651-008-00) requiring Approval of a Vesting Tentative Tract Map and Site Plan Review; Application No. 201504677; (Appellant: Rosemarie Aguilar and Glenn Kirby); (Applicant: Doug Rich, Valley Oak Partners).

RECOMMENDATION

That the Planning Commission deny the appeal and uphold the Planning Director's decision to approve the two-year extension of the entitlements based on the analysis set forth in this report, including the required Findings, and subject to the original and amended Conditions of Approval (Attachments V and VI).

SUMMARY

The Mission Village project, consisting of 72 townhomes and 8,000 sq. ft. of commercial space requiring a Vesting Tentative Tract Map and Site Plan Review, was approved by the Planning Commission in January 2017¹. Since approval, the developer has been working closely with the Regional Water Quality Control Board (RWQCB) related to clean up efforts on the site previously caused by a dry-cleaning establishment. While the developer has continued to move forward to obtain approval of the Improvement Plans and Final Map, the coordination with the RWQCB took longer than anticipated and the developer approached the City to request an extension of their approved entitlements to allow them time to finalize those plans and construct the project. As part of the extension, staff imposed some new conditions of approval to address timely demolition of the existing buildings on site and to ensure the commercial component of the project is developed simultaneously with the residential component. Shortly following approval of the entitlement extension, that decision was appealed. The appellant's basis for the appeal is that there was not a housing crisis when the project was first approved in 2017 and that the expiration of the entitlements was an opportunity to deny the request and to seek higher density development, including affordable housing, given the site's proximity to transit and services. The developer has invested a considerable amount of effort and money into the environmental clean-up of the site to

¹ Planning Commission Meeting:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=2924977&GUID=76A9CE61-FEEE-4905-992F-C02C0ED2575D&Options=&Search=>

ultimately allow for development of this site which has been vacant for nearly 15 years to develop with much needed housing and retail development at a key location along Mission Boulevard and as such staff is recommending the Planning Commission deny the appeal and uphold the Planning Director's decision to extend the entitlements with the additional conditions requiring timely demolition of the existing structures and simultaneous development of the commercial component with the development of the townhomes. This project was originally scheduled to be heard by the Planning Commission on June 25, but due to the receipt of some late correspondence (Attachment III), the applicant requested a continuance so they could properly review the letter and provide a detailed response (Attachment IV).

EXTENSION CRITERIA AND DECISION

Requests for extensions of time are evaluated based on the type of entitlement, each of which have their own review criteria. The following are the criteria for the extension of the entitlements involved in this appeal:

Site Plan Review

Pursuant to Hayward Municipal Section 10-1.3055, "In making a decision on approval of an extension, the following shall be considered: (a) the cause for delay in submittal of the building permit; and (b) whether the proposal is in conformance with existing development regulations." This section also permits conditions of approval to "be added or modified by the Planning Director as a result of the processing of an extension of time." This is not an exhaustive list of considerations, but they are the mandatory considerations in evaluating an extension request.

Vesting Tentative Map

Under Section 10-3.246 of the Hayward Municipal Code, an extension may be granted in relation to a tentative map as follows:

Upon application of the subdivider, the first extension of the term of the map, not exceeding 36 months, may be granted by the Planning Director, who is designated the advisory agency for this purpose, upon the determination that circumstances under which the map was approved or conditionally approved have not changed to the extent which would warrant a change in the design or improvement of the tentative map.

Decision

Upon reviewing the above criteria, the Director of Development Services found that there was sufficient support for the requested extension. The cause of the delay was determined to be delays in the environmental cleanup of the site which were out of the direct control of the project proponent. Additionally, the project is still in conformance with current development regulations, including density as set forth below. There were no circumstances which would

warrant a change in design or improvement as the project still complies with all City requirements. Conditions of approval were added to ensure prompt demolition and construction of the entitled retail further mitigating any impact to the residents caused by the delay. Based on these findings and conditions, the extension was administratively granted.

BACKGROUND

Pre-dating a formal submittal to develop this site, the applicant prepared a conceptual plan for consideration which was presented to the City Council at a work session on July 15, 2014² and the Planning Commission at a work session on July 24, 2014³. The formal submittal was received by the City on October 8, 2015, incorporating feedback received at those July work sessions. On September 21, 2016, the developer also held a community meeting at the Mission Hills Golf Club. On January 12, 2017, the Planning Commission held a public meeting whereby they approved the Vesting Tentative Tract Map and Site Plan Review to construct 72 townhomes and 8,000 sq. ft. of commercial space on the 5.88-acre parcel at the corner of Mission Boulevard and Industrial Parkway.

Prior to the approval and in the years following the Planning Commissions' decision, the site has been the subject of a series of investigations to characterize the nature and extent of impacts to soil, soil vapor, and groundwater so that construction of new residential units could move forward (Attachment VII). Understanding the process with the RWQCB was taking longer than anticipated, in December 2019, the developer requested a two-year extension of the entitlements to allow them time to finalize: (1) clean-up efforts with the RWQCB, (2) the Improvements Plans and Final Map and (3) the construction plans. The RWQCB finally conditionally approved the Vapor Intrusion Mitigation Plan in February 2020. In March 2020, Staff issued a decision approving a two-year extension of the project, subject to additional conditions of approval requiring timely demolition of the buildings on site and simultaneous development of the commercial component with the residential component. On March 23, 2020, staff's decision was appealed (Attachment II) by the appellant, on the basis that they believe the project site should contain a project with a higher density and increased number of affordable units.

The appeal was originally scheduled to be heard by the Planning Commission on June 25, however, at the request of the applicant the item was continued. Staff received some late correspondence from legal firm Lozeau Drury, LLP, representing the Laborers International Union of North America (LIUNA) Local Union 304 (Attachment III), which claimed the City needed to reevaluate the CEQA analysis for the project based on new information. The applicant requested the continuance so they could fully analyze the details of that letter and provide a detailed response (Attachment IV). The applicant's response to the LIUNA letter in summary states that the comments were not timely filed as an appeal and cannot be considered by the City. However, the response also states that the trigger for subsequent

² City Council Work Session:

<https://hayward.legistar.com/MeetingDetail.aspx?ID=454201&GUID=5E7ABCBF-4D5D-4F97-A37A-6BC87706476A&Options=info&Search=>

³ Planning Commission Work Session:

<https://hayward.legistar.com/MeetingDetail.aspx?ID=454245&GUID=DF635C9B-1355-4D78-AA54-0A8453D9F44D&Options=info&Search=>

environmental review under CEQA was not made and as such the arguments, even if the comments could be considered, have no merit in this particular case.

PROJECT DESCRIPTION

Existing Conditions: The proposed mixed-use project is proposed on an approximately 5.88-acre site within the South Hayward BART/Mission Boulevard Form-Based Code area at the southwest corner of Mission Boulevard and Industrial Parkway, which is the former Holiday Bowl use that consisted of a bowling alley and restaurant/banquet facility that closed in 2005, and a small commercial strip center along Industrial Parkway that is currently vacant. The site is located within an urbanized area consisting of a mix of commercial, residential and recreational uses constructed after World War II, including a multi-family residential apartment complex to the southwest, Mission Hills Golf Course to the south, multi-family residential complexes and a commercial center across Industrial Parkway to the northwest and a variety of commercial uses across Mission Boulevard to the east. The Holiday Bowl structure was recently partially destroyed by a fire and is in demolition pursuant to the Fire Chief's ability to abate the fire damage for public health and safety.

Approved Project Subject to Appeal: The previously approved Mission Village project is a mixed-use development designed to create a destination for the South Hayward area comprised of 72 primarily three-story townhomes and an 8,000 square foot commercial space developed around a common green plaza. The development proposes eight different floor plans, which are configured in either 4plex, 5-plex or 7-plex buildings. The units range in size from a little over 1,600 square feet to a little over 2,000 square feet. Each unit has a minimum of three bedrooms while some plans offer a den or option for a fourth bedroom. All units have a side by side two- car garage. Two of the floor plans or seven of the total units (one per townhome building) have only two stories and are identified as ADA accessible, meaning the unit provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. Four units offer a ground floor bedroom and bathroom on the same level as the primary living space which supports aging in place.

An 8,000 square-foot, one-story commercial building is proposed for the corner of Mission Boulevard and Industrial Parkway, which has been designed for either one or multiple tenants. As the plans show, on-site amenities include a 2,400 square-foot plaza located directly behind the proposed commercial building that can be utilized for outdoor seating and gathering, a 11,542 square-foot central green area connected to the plaza via a pedestrian crosswalk zone, a 1,500 square-foot zen garden, a 2,800 square foot tot lot, and a 2,400 square-foot view overlook area at the central rear portion of the site that would provide views toward the Mission Hills golf course. In addition to the covered residential parking, there are an additional 79 shared parking spaces for use by residential guests and by patrons of the commercial development.

Sustainability Features: The project as proposed will incorporate the following sustainability features:

Energy: The proponent proposes to install solar panels on the commercial building, but the exact size of the system has not yet been determined. This will be evaluated once a determination is made regarding existing cellular carriers that may be utilizing the commercial roof space to relocate their existing facilities. In addition, the project has been conditioned to be GreenPoint Rated, and that such rating or certification be submitted prior to issuance of certificates of occupancy.

Water: The project will follow the Bay Friendly Landscape standards incorporating the use of native species and reducing toxic herbicides into local waterways. The use of drought tolerant species, coupled with separate meters for both the outdoor landscaping and commercial space, will improve water conservation.

Solid Waste: The asphalt and concrete in the existing parking lots will be crushed and reused on-site as base material reducing the amount of public waste sent to landfill and also reducing greenhouse gas emissions as the number of trucking trips bringing in materials to the site will be reduced.

Transportation: The project provides bicycle parking, street trees along bike paths, accessible seating and overhead shade structures to promote walking, biking and utilization of surrounding public transportation. The project provides a continuous system of connected sidewalks and pedestrian paths from each home through the central park area and commercial building ultimately connecting to Mission Blvd and Industrial Parkway providing a safe mode of travel highlighted by convenient greenways. Sidewalks and paths have been designed at sufficient widths to accommodate pedestrians; parking for the commercial is located behind the building providing a safe buffer from the street and creating a buffered space for the outdoor plaza. The project provides long term bike lockers for four bicycles as well as short term bike racks for an additional 20 bicycles promoting the use of bicycles for both internal residents as well as those biking to the new commercial center.

POLICY CONTEXT AND CODE COMPLIANCE

Hayward 2040 General Plan: The *Hayward 2040 General Plan* was adopted in July of 2014 and designates the project site as SMU, Sustainable Mixed-Use, which generally applies to areas near regional transit that are planned as walkable urban neighborhoods. Typical building types will vary based on the zoning of the property, but will generally include single-family homes, duplexes, triplexes, fourplexes, second units, townhomes, live-work units, multi-story apartment and condominium buildings, commercial buildings, and mixed-use buildings that contain commercial uses on the ground floor and residential units or office space on upper floors. Allowed uses generally include retail, dining, and service uses, professional office uses, detached or attached single-family homes, multi-family homes, live-work units, and vertical mixed-use with multi-family homes or office on upper floors. The established maximum floor area ratio (FAR) is 2.0 for the Sustainable Mixed-Use designation. The proposed FAR is .76, based on a total project square footage of 196,186 sq. ft. on a 5.88-acre parcel. Per the SMU land use designation, the project, as proposed, is in compliance with typical land uses and allowable FAR and is also consistent with several goals and policies of the General Plan, including those detailed in the Site Plan Review Findings (Attachment V).

Zoning Ordinance: The project site is located in the S-T4, Urban General Zone, as part of the South Hayward BART/Mission Boulevard Form Based Code. The S-T4 Zone consists of mixed uses, but primarily a residential urban fabric. The general character of the S-T4 Zone is a mix of townhomes and apartment buildings with scattered commercial activity; a balance between landscape and buildings; and a presence of pedestrians. The project as proposed is consistent with the development standards of the S-T4 district as shown in the table below.

Development Standard	Required	Proposed
Residential Density	17-35 units per net acre	18 units per net acre
Front Setback	6 ft. min / 24 ft. max	Townhomes: 10.1 ft. along Mission/ between 16 and 17 ft. along Industrial Commercial: Varies between 12 ft. and 20 ft.
Side Setback	0 ft. min	Varies between 9 ft. and 14 ft.
Rear Setback	3 ft. min	3 ft.
Building Height	2 stories min / 4 stories max (57 feet max measured to midpoint of ridge and eave)	Townhomes: 3 stories / 33 feet to midpoint of ridge and eave Commercial: 51 feet to midpoint of ridge and eave of corner tower element
Lot Coverage	80% max per lot	Townhomes: 72% of lot Commercial: 19% of lot

STAFF ANALYSIS

On March 23, 2020, staff received an appeal of the Planning Director's decision to extend the entitlements for the development of the Mission Village project. The appellant indicates that there was not a housing crisis when the project was first approved in 2017 and that the expiration of the entitlements was an opportunity deny the request and to seek higher density development, including affordable housing, given the site's proximity to transit and services.

While staff understands that the lack of housing, including affordable housing, has become a much bigger issue lately, the failure of the region to provide sufficient housing to meet its needs has been an ongoing issue for much longer than the past several years. In addition, the Mission Village project that was approved by the Planning Commission in 2017 complies with all development standards, including density, and those circumstances have not changed. Had the environmental clean-up issues not been so extensive, the development of this site would have already occurred.

The appellant recommends that the property be put out to bid for a plan that requires high density housing at 25-35 units per acre, that it set aside a percentage of units for low and

middle income and require that all vacant buildings be demolished within 60 days of the approval of that new development.

The property is privately owned and is currently under contract with the applicant to develop the site as it was originally entitled, which is consistent with all the development standards of the General Plan and Zoning Ordinance. The City cannot control who the property owner chooses to do business with. In addition, the City could not mandate a future project incorporate a percentage of units for low and middle income. Staff can only require compliance with the City's Affordable Housing Ordinance. The project as proposed and approved, was in compliance with those applicable requirements. Under the administrative extension, staff did impose a new condition requiring demolition of all vacant buildings within 60 days of that approval. Had there been no appeal, those buildings would be in demolition right now. In the scenario painted by the appellant, a new developer would need to be found at the discretion of the property owner. That developer would need to submit their development plan request for review and approval and then subsequently work with the RWQCB on a revised plan for environmental clean-up. Under this scenario, it could easily take another 3-5 years to obtain all those approvals as it has for the applicant, thus delaying the demolition of the vacant buildings and ultimate construction of much needed housing units. If the appeal is denied and the extension of entitlements upheld, the developer can move swiftly toward demolition of those vacant buildings, Improvement Plan and Final Map approval as well as begin construction within the next 6-9 months.

Required Findings: As previously mentioned, the Planning Commission is required to make the following findings related to the approval of the Vesting Tentative Tract Map and Site Plan Review. Staff believes the Planning Commission can make the same findings for approval to grant the extension of the Vesting Tentative Tract Map and Site Plan Review, as detailed below:

Vesting Tentative Tract Map Findings

1. The proposed map is consistent with applicable general and specific plans as specified in Section 64541 of the Subdivision Map Act. [Subdivision Map Act §66474(a)]
2. The design and improvement of the proposed subdivision are consistent with applicable general plan and specific plans. [Subdivision Map Act §66474(b)]
3. The site is physically suitable for the type of development, as demonstrated through the findings of the Initial Study and Mitigated Negative Declaration. Subdivision Map Act §66474(c)]
4. The site is physically suitable for the proposed density of development, as it is consistent with the General Plan designation for the site and the traffic infrastructure in the area is sufficient to support the density of the project. [Subdivision Map Act §66474(d)]
5. That the design of this infill project and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. A Mitigated Negative Declaration prepared pursuant to the guidelines of the

California Environmental Quality Act (CEQA) for the development of this site demonstrates that substantial adverse environmental damage, including to fish or wildlife and their habitat, would not result from the proposed project. [Subdivision Map Act §66474(e)]

6. That the design of the subdivision or type of improvements are not likely to cause serious public health problems as adequate capacity exists to provide sanitary sewer service to the Project site. There are no other aspects of the Project with the potential to cause serious public health problems. [Subdivision Map Act §66474(f)]

7. That the design of the subdivision or type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. There are no existing public easements within the boundary of the proposed subdivision, nor are any easements necessary. Upon completion of the proposed improvements, the streets and utilities would be adequate to serve the project. New public easements are to be offered for dedication as necessary. [Subdivision Map Act §66474(g)]

Site Plan Review Findings:

1. The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City in that the proposed mixed-use development is well designed and takes into consideration the mix of surrounding uses, including detached single-family homes, multifamily apartments and commercial development; takes advantage of the adjacent recreational golf course by providing units that front the golf course; and provides common open spaces that connect the commercial uses and the residential uses. In addition, the development proposes the redevelopment of a significant site which will help catalyze additional redevelopment of the Mission Boulevard corridor.

2. The development takes into consideration physical and environmental constraints in that appropriate structural design criteria and the California Building Code will be met to assure that the project can withstand an earthquake. In addition, since the project site is adjacent to Mission Boulevard, the development has been designed and will be conditioned to address potential noise and air quality impacts to ensure minimum standards are met for future residents of these townhome units.

3. The development complies with the intent of City development policies and regulations in that the project complies with land uses and density limits of the Sustainable Mixed Use General Plan Land Use designation, complies with the S-T4 Urban General Zone development standards and is consistent with many policies of the Hayward 2040 General Plan including:

Policy LU-1.3, Growth and Infill Development in that the project site is an infill development sites within the city, and identified as a catalyst site in the Economic Development Strategic Plan.

Policy LU-1.6, Mixed-Use Neighborhoods, in that the project provides new residential and commercial opportunities in an already developed area thus providing both existing and future residents with convenient access to goods, services, parks and recreation, and other community amenities.

Policy LU-2.8, South Hayward BART Urban Neighborhood and Mixed Use Corridor, in that the project has the potential to be a vibrant, compact, mixed-use and walkable urban neighborhood within the South Hayward BART Neighborhood and the South Hayward BART Mixed-Use Corridor.

Policy ED-1.11, Local Serving Retail, in that the project proposes an 8,000 square foot commercial building offering opportunities to expand retail opportunities that increase local spending within Hayward and can provide needed goods and services to local residents and businesses.

Policy ED-1.12, Neighborhood Commercial, in that project's proposed 8,000 square feet of commercial space provides integrated commercial and residential development to support the concept of "complete neighborhoods."

Policy H-3.1, Diversity of Housing Types, in that the project proposes a mixed-use development that incorporates both two- and three-story townhomes in an area that already has a mix of multi-family apartments and detached single family homes. The townhomes provide a different form of ownership housing that can provide the diversity in housing types.

4. The development will be operated in a manner determined to be acceptable and compatible with surrounding development, and a Homeowners Association will be required to be formed which will ensure that the development is maintained in good condition.

ENVIRONMENTAL REVIEW

An Initial Study/Mitigated Negative Declaration (IS/MND) evaluating the potential environmental Impacts of the project was prepared in accordance with the California Environmental Quality Act (CEQA). The Initial Study discussed potential impacts in the areas of Air Quality, Biological, Cultural Resources, Geology, Hazards and Hazardous Materials, and Noise and contains mitigation measures reducing the identified impacts to less-than significant levels. The draft Initial Study and Mitigated Negative Declaration was posted with the Alameda County Clerk on December 9, 2016 as well as posted at City Hall and on the city's website. In addition, copies were delivered to the Hayward libraries and notice was sent to all interested parties and property owners and residents within 1,000 feet of the project site. The public comment period for the proposed IS/MND expired on January 3, 2017. Following the Planning Commission's decision to approve the project on January 12, 2017, a Notice of Determination was filed with the Alameda County Clerk Recorder on January 26, 2017.

NEXT STEPS

Should the Planning Commission deny the appeal and uphold the decision of the Planning Director, that will start a 10-day appeal period. If there is no appeal or City Council call-up, that decision will remain final and the developer will move forward within 60 days toward demolition of vacant buildings and finalize the Improvements Plans, Final Map and

Construction drawings and begin construction. Should the Planning Commission uphold the appeal and deny the extension, the applicant may file an appeal to the City Council.

Prepared, Recommended and Approved by:



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