

**CITY OF HAYWARD PLANNING COMMISSION
VARIANCE & SITE PLAN REVIEW
APPLICATION NO. VAR-25-0005
DRAFT FINDINGS FOR APPROVAL**

Variance. Pursuant to HMC Section 10-1.3325, the decision-making body shall make the following findings prior to recommending approval or approving a variance:

A. There are special circumstances applicable to the property including size, shape, topography, location, or surroundings, or other physical constraints.

The project site is composed of two parcels: Parcel A (APN: 439-0070-006-01) located at the southeast corner of the Depot Road and Whitesell Street intersection and Parcel B (APN: 439-0070-006-02) located across the street at the southwest corner of the intersection. Both parcels are remnant parcels that resulted from the City's extension of Whitesell Street in 2017. Prior to this roadway extension, the parcel was an approximately 5-acre (217,800 sf) rectangular parcel with frontage along Depot Road. Due to the resulting irregular parcel formation and the Whitesell Street design, these parcels now do not resemble in shape or size other parcels within the zoning district.

Parcels A and B are substandard to current General Industrial (IG) zoning district lot standards in that they are smaller, have a proportionally large frontage and depth compared to other parcels within the IG district and are irregularly shaped with Parcel A resembling a teardrop shape and Parcel B being a thin curved shape. In addition, the parcels are further encumbered by City and PG&E easements. Most of the parcels within the IG District are rectangular and are significantly larger than the subject parcels. The project site size, shape and encumbrances make it more challenging to adhere to the applicable zoning district standards.

B. Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity under the same zoning classification.

As described in *Variance Finding A*, the subject parcels are substandard, irregularly shaped, remanent parcels created through the City's extension of Whitesell Street. Strict application of zoning standards, specifically the minimum side street yard setback, the maximum floor area ratio and the maximum fence height, would deprive this property of development features that can be seen throughout the district today as described below.

Minimum Street Side Setback. Within the IG Zoning District, the minimum street side yard setback is 10 feet however, the project is proposing a 4-foot setback. Other parcels within the district do not have a proportionally long side street frontage like Parcel B which has a 398 ft long frontage and an average lot width of 36.19 ft. Adhering to the street side setback of 10 feet would result in the loss of 3,980 sf of

developable area, equivalent to a 12% reduction in the parcel area. Typically, adherence to the side setback would result in an approximate 5% reduction in parcel area. The developable area is further reduced by approximately 7,543 sf due to the existing easements.

Maximum Floor Area Ratio. Within the IG Zoning District, the maximum floor area ratio (FAR) is 0.8 but the project is proposing a FAR of 1.53. The purpose of a FAR requirement is to limit a site's developable area. However strict application of the FAR limit in this case would severely restrict the potential development of the site in that the small size, irregular shape and easement encumbrances make development of a taller building the only feasible alternative to developing this site. Thus, due to the parcel's substandard nature, strict adherence to the FAR standard would further deprive the site of developable area. Further, increases in FAR beyond the 0.8 are permitted under the applicable Zoning Ordinance in recognition that the overall Industrial Corridor is generally comprised of lower intensity development.

Maximum Fence Height. Within the IG Zoning District, the maximum fence height within the required street side yard setback is 4 feet however, the project is proposing a 14-foot decorative fence within the required street side yard setback. As noted previously, other parcels within the district do not have as proportionally long side street frontage as Parcel B. Other parcels within the district have the area to setback the fence in order to achieve a 14-foot tall fence. This is just not possible on the subject property given its substandard width and the proposed use of a taller secure fence is necessary to protect the proposed development.

C. The variance does not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.

The variance will not grant the project site a special privilege as it is not similar to any of the other parcels within the IG zoning district. As described in *Variance Finding A*, the parcels are substandard, disproportional and irregularly shaped. The development limitations that exist on the project site cannot be found elsewhere in this district because these parcels are remnants from the Whitesell Street extension. The other parcels resulting from the Whitesell Street extension are significantly large and proportional, which allows them to be developed without the deviations described in these findings.

Site Plan Review. Pursuant to HMC Section 10-1.3025, the decision-making body shall make the following findings prior to recommending approval or approving the Site Plan Review:

A. The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City.

The development would result in the redevelopment of a vacant parcel with an approximately 65,000 square foot Mental Health Rehabilitation Center (MHRC). The

proposed site layout makes efficient use of the site by placing one building on Parcel A to create an aesthetically pleasing and engaging frontage while Parcel B is utilized for parking. The project also uses a decorative fence to create a buffer between the building and adjacent uses.

Furthermore, the development is an attractive addition to the City with a building that emulates a contemporary architectural style with a series of recesses and projections, ample glazing, a mix of materials and colored accent panels. The project has a large variety of shared open spaces including indoor seating areas, a 3,877 square foot ground-level courtyard gathering space, a 3,632 square foot roof courtyard, a 1,112 square foot indoor activity room and landscaping. The building also has an inviting entry with landscaping, glazing, mural, seating and shade structures.

B. The development takes into consideration physical and environmental constraints.

The development takes into consideration physical and environmental constraints in that it will result in redevelopment of an underutilized industrial infill site in West Hayward. The development is designed to integrate well with the surrounding development that is near industrial business parks and transportation routes. The placement of the buildings also allows for the preservation of a large existing redwood tree along the Depot Road project frontage and eastern property line of Parcel A. Additionally, the project utilizes the existing sanitary sewer and public utility easements on site to minimize land-disturbing activities.

C. The development complies with the intent of City development policies and regulations.

With the variances requested above, the project is fully consistent with all applicable requirements of the IG district, Zoning Ordinance, Off-Street Parking Regulations, Industrial Design Guidelines, Tree Preservation Ordinance and all other applicable sections of the Hayward Municipal Code. The development is also fully consistent with the *Hayward 2040 General Plan* as described in *California Environmental Quality Act Finding A*. Furthermore, project is also consistent with the following Land Use (LU) and Community Health and Quality of Life (HQL) policies within the *Hayward 2040 General Plan*:

- *LU-1.3 Growth and Infill Development.* The City shall direct local population and employment growth toward infill development sites within the city, especially the catalyst and opportunity sites identified in the Economic Development Strategic Plan.
- *LU-1.4 Revitalization & Redevelopment.* The City shall encourage property owners to revitalize or redevelop abandoned, obsolete, or underutilized properties to accommodate growth.

- *LU-9.3 Medical Centers.* The City shall coordinate with the owners of existing and planned medical centers to encourage site development or redevelopment in a manner that is compatible with surrounding areas.
- *HQL-4.1 Adequate Health Care Facilities.* The City shall encourage the development and maintenance of a full range of healthcare facilities, including hospitals, acute care facilities, neighborhood health portals/clinics, and mental health facilities, to meet the needs of all residents.

D. The development will be operated in a manner determined to be acceptable and compatible with surrounding development.

Once constructed, the proposed building will resemble other office and institutional buildings within the IG zoning District. Furthermore, in accordance with California Welfare and Institutions Code (WIC) Section 5960.33, the use is permitted by right and therefore allowed to operate within this district. During construction, the project will be subject to all applicable provisions of the Hayward Municipal Code for construction, maintenance, and landscaping, including standard procedures of site preparation and development, including permitted hours of construction activity, as well as the incorporation of Best Management Practices (BMPs) for construction noise, grading, and use of equipment to prevent adverse impacts to surrounding development.

California Environmental Quality Act

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15332 (Class 32) of the CEQA guidelines for In-fill Developments. An evaluation of the proposed project supports the conclusion that the project meets the categorical exemption criteria included in Section 15332 of CEQA as follows:

A. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

The project site is designated Industrial Corridor (IC) in the *Hayward 2040 General Plan*, which allows a maximum FAR of 0.8. As discussed in the staff report prepared for the project, the development proposes a FAR of 1.53, which exceeds the allowable 0.8 FAR. Per Hayward Municipal Code (HMC) Section 10-1.1604, the additional FAR on the site would remain in compliance with the General Plan standards in that it will not result in collective FAR above 0.8 across the Industrial Corridor land use designation. In fact, the average FAR for all projects within the Industrial Corridor land use designation since the adoption of this regulation (2019) is 0.48 even when accounting for this project as shown in Table 1. Prior to 2019, the average FAR in the Industrial Corridor was 0.36.

Furthermore, the project will be fully consistent with all applicable provisions of the Zoning Ordinance, Off-Street Parking Regulations, and Bay-Friendly Landscape Ordinance as it requires approval of a Major Site Plan Review and Variance application

by the Hayward Planning Commission.

Application #	Approval Date	Address	Development Type	FAR
202200390	3/3/2022	3890/3989 Depot Road	Warehouse	0.48
202101456	8/27/2021	24101 Whitesell Street	Warehouse	0.29
SPR-23-0041	3/27/2025	24401 Whitesell Street	Office Building	0.03
202102725	9/22/2022	3636 Enterprise Avenue	Warehouse	0.46
201901039	2/15/2022	4150 Pt Eden Way	Warehouse	0.47
SPR-23-0043	11/14/2024	25375 Clawiter Road	Warehouse	0.52
202003917	12/9/2021	25450-25550 Clawiter Road	Warehouse	0.43
201906718	2/11/2021	25800 Clawiter Road	Warehouse	0.54
SPR-23-0036	5/22/2025	26062 Eden Landing Road	Data Center	0.76
202206056	10/20/2023	29469 Ruus Road	Warehouse	0.3
202201051	10/27/2023	1441 Industrial Pkwy	Warehouse	0.42
202104579	2/8/2022	1190 Zephyr Ave	Office Building	0.53
202200563	1/25/2023	31145-31153 San Antonio Street	Office Building	0.5
201802051	12/18/2019	31500 Hayman Street	Warehouse	0.43
202103815	3/4/2022	2429 Whipple Road	Restaurant	0.11
202003389	12/2/2021	24493 Clawiter Road	Warehouse	0.36
VAR-25-0005		3788 Depot Road	Office Building	1.53
Average FAR:				0.48

B. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The project meets this criterion in that the project would be located on two adjacent parcels that total 0.97-acres within the City of Hayward. Furthermore, the project site is substantially surrounded by urban uses with two industrial parks (Crocker-Hayward North Industrial Park and Cabot Business Park) to the north, a former automobile wrecker to the east, an automobile repair facility to the South (Chilton Auto Body Hayward), and contractor services (Golden Bay Construction and Transport Refrigeration Services & Trailer Repair) to the west.

C. The project site has no value as habitat for endangered, rare, or threatened species.

The project meets this criterion in that the project site has no value as habitat for endangered, rare or threatened species. According to the Figure 7-1, Existing Vegetation Communities of the City of Hayward General Plan Background Conditions Report (2014), the project site is identified as “developed” and “ruderal” which include properties that have been disked and previously disturbed in some manner, and/or consist of existing development dominated by human use which do not offer suitable habitat for sensitive species.

D. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Traffic: The project meets this criterion in that the proposed project is less than the significance thresholds set by the City’s 2020 Traffic Study Guidelines and the 2018 Governor’s Office of Planning and Research (OPR) Technical Advisory on Evaluating

Transportation Impacts in CEQA. The significance threshold for small projects is 110 trips per day or less. Projects that generate less than 110 trips per day generally may be assumed to cause a less-than-significant impact. Based on Institute of Transportation Engineers (ITE) Trip Generation rates, the City's transportation staff reviewed the proposed project and determined it will result in less than 110 trips per day. In addition, the project does not result in any inconsistency with a Sustainable Communities Strategy (SCS) or the Hayward 2040 General Plan. As such, the project would not result in any significant effects related to transportation.

Noise: The project meets this criterion in that the project will be subject to the City's existing Noise Ordinance within Chapter 4, Article 1 of Hayward Municipal Code. As such, construction noise and operational noise from this project would not exceed the City's thresholds of 86 dBA and 70 dBA, respectively and therefore, would not result in any significant effects related to noise.

Air Quality: The project meets this criterion in that the proposed project is less than the significance thresholds set for operational-related criteria pollutant screening sizes and construction-related screening sizes as prescribed by the 2022 Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines. The proposed mental health rehabilitation center use is most similar to the "Hospitals" and "Medical Office Buildings" Land Use Categories identified within the guidelines. The significance thresholds for "Hospitals" and "Medical Office Buildings" are 452,000 square feet for construction and 611,000 or 293,000 square feet for operation, respectively. The proposed development is approximately 65,000 square feet which is below these thresholds. Furthermore, the project will include best management practices, construction-related activities will not overlap operational activities, operational activities will not include stationary engines, and the project will not include certain construction-related activities (i.e. demolition, simultaneous occurrence of two or more construction phases, extensive site preparation, extensive material transport, stationary sources). The existing Navigation Center consists of temporary structures which will not be demolished but rather transported off-site. As such, the project would not result in any significant effects related to air quality.

Water Quality: The project meets this criterion in that the project would not introduce new surface water discharges, would not substantially increase runoff volumes, result in substantial erosion or siltation, or result in flooding on- or off-site. Furthermore, the project would not alter the existing drainage pattern of the site in that it incorporates stormwater control measures pursuant to Provision C.3 of Alameda County's Municipal Regional Stormwater Permit.

E. The site can be adequately served by all required utilities and public services.

The project meets this criterion in that the project would be located in an existing urban area served by existing public utilities and services. The City of Hayward will continue to provide water, sewer, and solid waste collection services to the project site. Other services, including electricity, will also be provided to the site by existing service

providers.

Furthermore, it is concluded that none of the exceptions to the applicability of a Categorical Exemption as outlined in CEQA Guidelines Section 15300.2 would apply as follows:

A. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

This criterion does not apply to this project in that there are no developments within the same place for which to create a cumulative impact. Within a one-mile radius, there are several proposed or under-construction developments including a speculative warehouse at 3890/3898 Depot Road, the City of Hayward Water Pollution Control Facility Administration Building at 24401 Whitesell Street, a speculative warehouse building at 4150 Point Eden Way, and a Data Center at 26062 Eden Landing Road.

B. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

This criterion on does not apply to this project in that there are no unusual circumstances which would have a significant effect on the environment.

C. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway.

The criterion does not apply in that there are no officially designated state scenic highways within the vicinity of the project site. The closest scenic highway is I-580 located approximately 4 miles northeast of the project site, which has been recognized as eligible for designation as a State Scenic Highway. The project will not be visible from this portion of I-580. Therefore, the project would not damage scenic resources within a highway officially designated as a state scenic highway.

D. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

This criterion does not apply in that the project site is not listed on the EnviroStor environmental database, the California Department of Toxic Substances Control Hazardous Waste and Substances Sites (Cortese) List, and the State Water Resources Control Board's (SWRCB) Geotracker Database.

E. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

This criterion does not apply in that project sites do not have any value as a historic resource. They are not listed or eligible for listing on the California Register of Historic Resources (CRHR) or the City's local historic register.

Hence, the project is Categorical Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the CEQA Guidelines for In-fill Development Projects.