

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 02/10/2015 by the following vote:

AYE: ☒ 5 **John Gioia**
Candace Andersen
Mary N. Piepho
Karen Mitchoff
Federal D. Glover

NO: ☐

ABSENT: ☐

ABSTAIN: ☐

RECUSE: ☐



Resolution No. 2015/41

A Resolution of the Board of Supervisors of the County of Contra Costa, State of California, overturning the recommendation of the County Planning Commission to approve the rezoning and a development plan applications for a proposal to rezone the 0.53 acre property from Single-Family Residential District, R-15 to Planned Unit District, P-1 to allow a 13-unit apartment complex for a property located in the unincorporated Walnut Creek area. (County Files #RZ12-3221/DP12-3017) (District IV)

WHEREAS, rezoning and development plan applications filed by Herand Der Sarkissian, applicant was submitted on August 9, 2012 to allow rezoning of a 0.53 acre property to allow the to allow a 14-unit apartment complex, removal of 19 trees (ranging in size from 5.5 inches to 72 inches in diameter) and work within the drip line of 21 trees (ranging in size from 15 inches to 40 inches in diameter) for the demolition of the existing residence and accessory buildings, and construction of the apartment complex and the following variances: to allow three guest parking spaces on Del Hombre (where four spaces are required) and to allow the rezoning of a 0.53-acre property to P-1 (where a minimum of 5 acres is required for residential uses) is included in the project. The subject property is located at 3010 Del Hombre Lane in the unincorporated Walnut Creek area; and

WHEREAS, for purposes of compliance with the provisions of the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, a Mitigated Negative Declaration and Mitigation Monitoring Program dated August 15, 2014, was prepared; and

WHEREAS, the Mitigated Negative Declaration/Initial Study identified potentially significant impacts related to Air Quality, Biological Resources, Cultural Resources, and Noise, and the Initial Study recommended mitigation measures which would reduce the identified impacts to a less-than-significant level; and

WHEREAS, on August 15, 2014, the County published a Notice of Public Review and the Intent to Adopt a Proposed Mitigated Negative Declaration, which the Notice recited the foregoing facts, indicated that the applicant agreed to accept each mitigation measure recommended in the Initial Study, started a period for public comments on the adequacy of the environmental documents related to the Project until September 4, 2014; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled before the County Planning Commission on October 14, 2014, where all persons interested therein might appear and be heard; and

WHEREAS, on October 14, 2014, the County Planning Commission conducted the public hearing and accepted testimony, the County Planning Commission recommended denial of the project; and

WHEREAS, the County Planning Commission recommended denial of the project since it was too dense, lack of guest parking, lack of Americans with Disabilities Act (ADA) parking, and inability to make variance findings; and WHEREAS, on November 13, 2014, the Applicant submitted revisions of the project, proposing 13-units, which eliminated a unit and the gazebo to provide two on-site guest parking spaces that are in compliance with the Americans with Disabilities Act (ADA) and one guest parking space on Del Hombre Lane; and

WHEREAS, after notice having been lawfully given a public hearing was scheduled before the County Board of Supervisors on Tuesday, February 10, 2015, where all persons interested therein might appear and be heard; and

WHEREAS, after having fully reviewed, considered, and evaluated all the testimony and evidence in this matter.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors ("this Board") takes the following actions:

1. FIND that on the basis of the whole record before it, including the Initial Study and the comments received, the Board of Supervisors find that there is no substantial evidence that the project with the proposed mitigation measures will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the County's independent judgment and analysis.
2. ADOPT the Mitigated Negative Declaration (MND) and Mitigation Monitoring Program dated August 15, 2014, finding it to be adequate and complete, finding that it has been prepared in compliance with the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, and finding that it reflects the County's independent judgment and analysis.
3. OVERTURN the County Planning Commission's recommendation to deny the Rezoning and Final Development Plan stated in their Resolution No. 13-2014.
4. ADOPT the findings contained in this Board Resolution as the basis for the Board's approval.
5. ADOPT Ordinance No. 2015-03 to rezone the 0.53-acre property to Planned Unit District, P-1 from Single-Family Residential, R-15, giving effect to aforementioned rezoning.
6. APPROVE the proposed Preliminary and Final Development Plan, including the request for a variance to allow a 0.53 acre property to be rezoned to P-1 (where a 5 acre minimum is required) and to allow three guest parking spaces – two on-site and one on Del Hombre Lane (where four spaces are required), and the removal of 19 trees and to work within the drip line of 21 trees.

BE IT FURTHER RESOLVED that the reasons for this Board's actions are based on the following: **Growth Management Performance Standards**

1. **Traffic:** Policy 4-c under the Growth Management Program (GMP) requires a traffic impact analysis be conducted for any project that is estimated to generate 100 or more AM or PM peak-hour trips. The construction of a 13-unit apartment complex would have insignificant impact on the traffic in the area, and would not create 100 additional peak hour traffic trips to and from the site. Therefore, a traffic impact analysis is not required.
2. **Water:** The subject property is currently serviced by Contra Costa Water District (CCWD). No significant increase in the demand for water supplies is expected from the construction of a 13-unit apartment complex. The applicant is required to comply with CCWD's requirements.
3. **Sanitary Sewer:** The subject property is currently serviced by Central Contra Costa Sanitary District. No significant increase in the demand for sanitary sewer service is expected from the construction of a 13-unit apartment complex. No comments on the project were received from the District; however, the applicant is required to comply with the District's requirements.
4. **Fire Protection:** The subject property is currently serviced by the Contra Costa County Fire Protection District. The District has provided comments on the project requiring access driveway to have all-weather driving surface and capable of supporting loading of 37 tons, installation of access signs, emergency apparatus access, fire sprinklers and adequate and reliable water supply. The applicant is required to comply with the District's requirements. The project will not substantially increase the demand for fire protection services.
5. **Public Protection:** The 13-unit apartment complex will not significantly increase population in the area, and therefore, would not increase the demand for police service facilities.
6. **Parks & Recreation:** The 13-unit apartment complex will not significantly increase population in the area, and therefore, would not increase the demand for parks or recreational facilities. Payment of Park Impact fees would be required prior to submittal of building permits. The fees would be used to purchase land and develop parks within this area of the County.
7. **Flood Control & Drainage:** The project is not located within a flood-prone area as determined by the Federal Emergency Management Agency (FEMA). The subject property is located within Drainage Area 22, an "unformed" drainage area. The nearest public drainage facility is an existing 84-inch diameter storm drain in Coggins Lane, west of the property. The applicant is required to verify its adequacy prior to discharging run-off. Off-site storm drain improvements extending as far north as Las Juntas Way may be necessary to install facilities within public right-of-way and avoid conflicts within existing utilities.

Rezoning

1. **Required Finding:** The change proposed will substantially comply with the general plan.

Project Finding: The proposed 13-unit apartment complex is a permitted use in the Multiple-Family Residential-Very High Density (MV) General Plan land use designation. This General Plan land use designation provides for higher density multiple-family development (30 - 44.9 units per net acre). The property is 0.53 acres (0.42 acres – net) and the density of the property would yield a range of 12-18 units. The proposal to establish an apartment complex of 13 units is within this density

range. As proposed, the project is consistent with the County General Plan, especially the goal to reduce greenhouse gas emissions by establishing housing within an area that provides multimodal access.

2. Required Finding: The uses authorized or proposed in the land use district are compatible within the district and to uses authorized in adjacent district.

Project Finding: The proposed 13-unit apartment complex is a use consistent with the MV General Plan land use designation. The surrounding area primarily consists of apartments within P-1 Zoning District or Multiple-Family Zoning District. Additionally, the property is adjacent to the Contra Costa Centre, a transit village that includes commercial uses and residential units. The project is an example of a Transit Oriented Development (TOD). Although the subject property is not located within the boundaries of the Pleasant Hill BART Station Area Specific Plan, the project is immediately adjacent and meets the intent of the Specific Plan providing housing near various transit modes. Overall, the project is in harmony with the surrounding area and the uses established in the area.

3. Required Finding: Community need has been demonstrated for the use proposed, but this does not require demonstration of future financial success.

Project Finding: The subject property has an existing residence that is proposed to be demolished. The proposed 13-unit apartment complex provides a modest number of housing units that utilizes an infill property near transit that will assist in meeting the housing development targets identified in the Housing Element of the County's General Plan. Further, the project is consistent with the surrounding area consisting of high-density development near transit.

Findings for Approval of a P-1 Zoning and Final Development Plan

1. Required Finding: The applicant intends to start construction within two and one-half years from the effective date of the zoning change and plan approval.

Project Finding: The applicant has indicated that they intend to commence construction within 2 ½ years off the effective date of the zoning change and plan approval.

2. Required Finding: The proposed planned unit development is consistent with the County General Plan.

Project Finding: The proposed 13-unit apartment complex is a permitted use in the Multiple-Family Residential-Very High Density (MV) General Plan land use designation. This General Plan land use designation provides for higher density multiple-family development (30 - 44.9 units per net acre). The property is 0.53 acres (0.42 acres – net) and the density of the property would yield a range of 12-18 units. The proposal to establish an apartment complex of 13 units is within this density range.

The County's General Plan also provides goals and policies that promote and encourage projects, such as this 13-unit project that provides housing close to transit. Goal 6 of the County's Housing Element identifies the need to provide adequate sites with the appropriate land use and zoning designations to accommodate the County's share of regional housing. The proposed project will be providing 13 rental units on a property that is underutilized and adjacent to other apartments. Policy 3-2 of the County's Housing Element encourages and provides incentives for the production of housing within close proximity to public transportation and services. The project is consistent with this policy, since it is 200 feet from the Pleasant Hill BART Station and near bus transit. Policy 7-3 of the County's Housing Element encourages P-1 zoning in areas with concentrations of variances sought. The project includes the rezoning of the property to P-1, which is consistent with the General Plan Land Use designation of Multiple-Family Residential-Very High Density. The variance to the lot area for P-1 (where a minimum of five acres is required) is also consistent with properties along Treat Boulevard that are less than five acres and have been rezoned to P-1.

Several Transportation Policies of the County's Transportation Element also supports the project. Policy 5-13 encourages the use of pedestrian and bicycle facilities. The Iron Horse Regional Trail is located adjacent to the property and a pedestrian bridge is also located south of the property. The applicant will also provide bicycle spaces located at the rear of the property. Policy 5-24 encourages the use of alternative forms of transportation, such as transit, bike, and pedestrian modes. The Pleasant Hill BART Station and the bus transit are located within close proximity to the property and are accessible for the housing provided. As proposed, the project is consistent with the County's General Plan, especially the goal to reduce greenhouse gas emissions by establishing housing within an area that provides multimodal access.

3. Required Finding: In the case of residential development, it will constitute a residential environment of sustained desirability and stability, and will be in harmony with the character of the surrounding neighborhood and community.

Project Finding: The surrounding area consists of a variety of designs of multiple-family buildings constructed from the late 1970s to more recent construction in the mid-2000s. The eclectic designs of the multiple-family buildings consist of exterior

materials such as stucco, cedar shingle siding, and horizontal wood siding. The proposed 13-unit apartment complex is an infill project that will provide high density multiple-family residences close to transit, consistent and in harmony with the surrounding area.

4. Required Finding: The development of a harmonious integrated plan justifies exceptions from the normal application of this code.

Project Finding: The subject property is half an acre in size on a property currently zoned Single-Family Residential, R-15. The MV General Plan land use designation permits multiple-family residences, such as townhomes, condominiums, or apartments. However, the current zoning is not consistent with MV and does not permit multiple-family residences. Therefore, the proposed project includes a rezoning of the property to a Planned Unit District, P-1 to allow the construction of the apartments. The surrounding area consists of other properties zoned P-1 and that has multiple-family buildings.

Variance Findings

1. Required Finding: That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations of other properties in the vicinity and the respective land use district.

Project Finding for Lot Area: The proposed project requires two variances. The first variance is to allow the rezoning of a 0.53-acre property from R-15, single-Family Residential Zoning to Planned Unit District, P-1. Under the P-1 Zoning District, a minimum of five acres is required. The applicant has solicited to the adjacent property owners that are currently zoned R-15 the idea of collectively rezoning the remaining properties to P-1. There was no agreement with the proposal. The remaining R-15 properties are primarily surrounded by P-1 zoning (where some properties are substandard in size) and several properties zoned Multiple-Family Residential District, M-17. The current R-15 zoning is not consistent with the MV General Plan. As found on Table 3-5 of the County's Land Use Element, the proposal to rezone the property to P-1 will be consistent with the MV General Plan land use designation.

Additionally, Table 6-41 of the County's Housing Element identifies the removal of the five acre minimum lot requirement for the P-1 zoning. This would allow the development of small infill properties near transit centers. Approval of the variance request would not be a grant of special privilege, as several properties along Treat Blvd (south of Del Hombre) are zoned P-1 and have smaller or comparable lot size. Other properties in the County that are less than the required five acres have been rezoned to P-1. More recently, the Board of Supervisors approved the rezoning of a 1.12-acre property located off Tice Valley in Walnut Creek to P-1.

Project Finding for Guest Parking: The second variance request is to the number of guest parking spaces (four guest parking spaces are required). The initial proposal requested a variance to allow three guest parking spaces on Del Hombre Lane. At the County Planning Commission public hearing in October 2014, the Commissioners indicated a concern for the lack of parking and lack of parking in compliance with the American with Disabilities Act (ADA). The Commission made a decision to recommend denial of the project. The applicant revised the project to eliminate one unit to provide two guest parking spaces on-site and one guest parking space on Del Hombre Lane to address the lack of on-site guest parking. The variance request has been revised to allow three guest parking spaces – two on-site and one on Del Hombre Lane (where four spaces are required). The revision also provides one ADA parking space on-site.

The proposed project is an example of a Transit Oriented Development "TOD." The property is located near the Pleasant Hill Bay Area Rapid Transit (BART) Station and bus transit. The Department's Transportation Section has also recommended that the three guest parking spaces initially proposed on Del Hombre Lane should be eliminated because of the close proximity to transit. Public Works Department also recommended that only one guest parking space on Del Hombre Lane should be granted because of the inadequate sight distance of for the parking space located between the proposed driveway and 12-foot access easement. Approval of the variance request would not grant a special privilege because of the property's close proximity to BART, which provides another mode of transportation other than vehicle use.

2. Required Finding: That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

Project Finding for Lot Area: The proposal to rezone the property to P-1 on a 0.53-acre property would allow the construction of an apartment complex, providing higher density multiple-family development closer to transit. The proposed project is consistent with the surrounding development in the area. Properties less than five acres have been rezoned to P-1 since 1978, including the recent approval to rezone the property less than five acres to P-1. The County's Housing Element identifies the removal of the minimum five acre requirement to encourage development of infill properties close to transit. Thus, implementing the current zoning standards would deprive the subject property of rights enjoyed by other properties developed as multiple-family

development.

Project Finding for Guest Parking: The property is located near the Pleasant Hill BART Station and bus transit. Applying the zoning standards that require four guest parking spaces is inconsistent with the intent of Transit Oriented Development and the variance request is supported by the Department's Transportation Section and the County's Public Works Department. The use of BART, transit or bicycles is encouraged in TOD projects. Additionally, Senate Bill (SB) 375 and the County's Housing Element encourage development as such, that are near transit centers. Given the location of the subject property and the efforts made by the applicant to reduce the number of units and provide on-site guest parking including the designation of one space as ADA compliant, Staff finds that the variances are justified. As such, denial of the variance would deprive the property owners of the ability to develop their property in a manner consistent with other properties in the area.

3. **Required Finding:** That any variance authorized substantially meets the intent and purpose of the respective land use district in which the subject property is located.

Project Finding for Lot Area: The proposal to rezone a property for residential use less than five acres will meet the intent of the P-1 Zoning District and the goal of the County's Housing Element to encourage small infill properties near transit centers. The P-1 Zoning District provides an opportunity for a cohesive design with flexible regulations. The proposal is to rezone the property will allow a 13-unit apartment complex and is determined to be compatible with the development in the surrounding area of multiple family residences. Further, the proposal is an example of Transit Oriented Development (TOD) that is highly encouraged for properties located adjacent to transit.

Project Finding for Guest Parking: The applicant proposes to allow three guest parking spaces – two on-site and one on Del Hombre Lane (where four spaces are required). Approval of three guest parking spaces, as proposed would provide parking, while access to transit is another option. The proposed project is an example of a TOD project and is encouraged by SB 375 and the County's Housing Element. Overall, the proposed project meets the intent and purpose of the P-1 Zoning District.

Tree Permit Findings

Required Factors for Granting Permit: The Board of Supervisors is satisfied that the following factor as provided by County Code Section 816-6.8010 for granting a tree permit has been fulfilled:

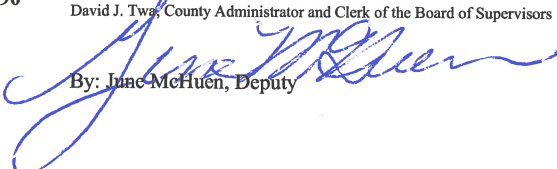
Project Finding: Reasonable development of the property would require the alteration or removal of the tree and this development could not be reasonably accommodated on another area of the lot.

Contact: Jennifer Cruz, (925) 674-7790

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 10, 2015

David J. Two, County Administrator and Clerk of the Board of Supervisors

By:  June McHuen, Deputy

cc: Chris Howard, GIS, DCD