

City of Albany
Planning and Zoning Commission
Staff Report

Meeting Date: February 26, 2008 **Prepared by:** _____

Agenda Item: 6b **Reviewed by:** _____

Subject: **934 San Pablo. Planning Application 06-074. Design Review. Density Bonus. Affordable Housing.** Study session to discuss construction of a new three-story mixed-use building with thirteen residential units and two retail units. A density bonus & other concessions, as described below, are also requested as part of the approval.

**Applicant/
Owner:** Hoss Azimi with Gansek, Inc.

Recommendation

Discuss the proposed project. Receive testimony from the applicant and members of the public. Provide direction to staff on issues of interest during the review process. *No action is to be taken at this time.*

Previous Action

No recent major improvements have been made to the property.

Project Description

The subject property is a 7,500sq.ft. interior lot that is currently vacant and used as a parking area for local businesses. The applicant would like to construct an approximately 22,000sq.ft., three-story, mixed-use building with twelve residential units and two retail units. Thirteen units were originally proposed during the first study session on the project. The applicant has reduced the number of units, which was recommended during the study session and is later discussed in further detail.

There are two retail spaces that total 1,410sq.ft., which front onto San Pablo Avenue. There are a number of different floor plans for residential units, which include both one and two-bedroom units. Each unit has a small balcony area facing west. There is useable open space provided for tenants on the roof. The building is built out to all the property lines, as permitted, incorporating a 45-degree daylight plane at the rear, which is later discussed in further detail.

The proposed project includes a parking garage located at the rear of the ground floor with the entrance accessing the garage located on the north side of the lot. The parking spaces are provided in the form of lifts that provide 24 parking spaces for the residential portion of the project. Originally the applicant was going to ask for a reduction to allow 24 parking spaces where 26 would be required for thirteen residential units. With the reduction of one residential unit the project is conforming in parking since 1,500sq.ft. of commercial retail space is exempt from parking requirements.

The proposed design of the building is of a contemporary style with a cement board finish, flat roof, repeated rectangular shapes and large windows.

The application will require design review approval for the project. The applicant has also requested a Density Bonus to allow a waiver in the minimum lot size to allow for the increase in units and a concession to allow an increase in the allowable floor-area-ratio. Under state law, certain density bonuses and concessions to standard requirements can be allowed if additional affordable housing is incorporated in the project.

Background on Application

The applicant has met with staff for a number of months discussing project concept and the development standard issues. The formal application was received on October 9, 2006 and deemed complete, for a study session, on October 19, 2007. The Commission reviewed the project at a study session on October 23, 2007 where the applicant was provided preliminary feedback and direction on proposed changes to the project. The minutes from the October 23, 2007 meeting. INSERT The applicant has revised the project and is now presented at the Commission for another study session.

Environmental Analysis

Staff's preliminary analysis is that the proposed project is categorically exempt from the requirements of California Environmental Quality Act (CEQA) per Section 15332 of the CEQA Guidelines, which exempts Infill Development Projects if the following conditions are met:

- (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.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare, or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

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

Identification of Key Issues

Application Process

Municipal Code Section 20.40.040(H4) states that the Planning and Zoning Commission shall act on all requested approvals for a development project. The City Council, however, shall be the decision making body on all applications involving a density bonus. The Planning and Zoning Commission shall make a recommendation supporting approval or denial of the density bonus but does not formally act on the request.

Affordable Housing

Inclusionary Housing

Municipal Code Section 20.40.030, Inclusionary Housing, requires that at least one inclusionary housing unit be provided for developments with seven to thirteen units. Thus, one unit would be required to fulfill the inclusionary housing requirement and additional housing units would be required to fulfill the density-bonus requirement. This requirement is independent of the Density Bonus requirement.

Staff acknowledges that cities have different interpretations of the inclusionary/density bonus units, one of which allows inclusionary units be counted as part of the density bonus units and not out of the base number of units allowed. Staff, in consultation with legal council, however, believes that these are two separate ordinances with the same goal of producing more affordable units, not to allow double counting of units. Inclusionary units should therefore be applied to projects independently from density bonus units.

UDensity Bonus

State law requires the City to adopt an ordinance that grants a density bonus and provide “concessions” on projects if housing affordability standards are met. In particular, Municipal Code Section 20.40.040 requires a density bonus to be granted if:

“the applicant agrees to construct a housing development that includes a proportion of dwelling units be designated for very low-income households, low-income households, or persons and families of moderate-income, or a senior citizen housing development or mobile home park” and

“Any housing development for which a density bonus and related incentives or concessions is proposed shall be planned to achieve the maximum density permitted for the zoning district in which the project would be located.”

The specific affordability standards and associated bonuses allowed are as follows (Note: a recent Court of Appeals ruling concluded that the density bonus required by state law is a minimum, and that nothing should prohibit the City from considering a density bonus greater than the minimum requirements (see attachment 4)

There is an ambiguity in the ordinance in that the R-3 (high-density residential) development requirements are applied to the residential portion of mixed-use projects. The “maximum density” in Municipal Codes Section 20.24.020, table 2A is 63 dwelling units/acre, which would allow 11 units on the subject 7,500sq.ft. lot. Footnote 9 of table 2A “minimum lot size,” however, states that only 8 units are permitted for lots between 7,310sq.ft and 7,964sq.ft. in size. The density bonus section of the ordinance (20.40.040) refers only to “maximum density” and not “minimum lot size;” therefore, it’s open to interpretation as to whether 8 units or 11 units are used as the baseline for calculating the number of density bonus units.

Staff interprets 8 units per acre as the baseline because staff does not believe that the development requirements are obsolete or waived because the density bonus section of the ordinance uses the wording of “units per acre” instead of “minimum lot size.” With 8 units as the baseline for the project 10 units would be permitted with the density bonus. Density bonus is calculated with Municipal Code Section 20.40.040, table H-1:

Number of Affordable Units	Density Bonus
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1. 10% of the units affordable to low income households; or	Minimum of 20% increase in density plus a minimum of 1.5% increase in density for every 1% of additional affordable housing
2. 5% of the units affordable to very low income households; or	Minimum of 20% increase in density plus a minimum of 2.5% increase in density for every 1% of additional affordable housing
3. 10% of units affordable to moderate income households (if a condo project)	Minimum of 5% increase in density plus a minimum of 1% increase in density for every 1% of additional affordable housing

The density bonus units based on 8 units as the baseline is calculated, based on the table above, as the following:

$$\frac{1 \text{ (affordable unit provided)}}{8 \text{ (baseline units)}} = 0.125 \text{ or } 12.5\% \text{ of units are affordable}$$

10% of pre-bonus total allows 20% above the maximum allowed units per acre. 12.5% of the units are affordable, therefore (8 units x .20 = 1.6)

1% increase above the 10% pre-bonus total (12.5 - 10.0 = 2.5%) allows 1.5% of additional (1.5% x 2.5% = 3.75%)

(20% + 3.75%) x 8 units = 1.9 units, rounded up to 2 units

8 baseline units + 2 density bonus units = 10 units total.

The applicant is proposing 12 units; therefore, exceeds the 10 allowed with staff's interpretation of 8 units as the baseline. The code also states that the Commission has discretion to allow up to a 35% density bonus if they deem a project appropriate. If 35% bonus is applied, 3 density bonus units would be allowed for a total of 11 units permitted.

If the Commission wishes to interpret the maximum units per acre of 11 units as the baseline the density bonus would be calculated, based on the table above, as the following:

$$\frac{2 \text{ (affordable unit provided)}}{11 \text{ (baseline units)}} = 0.18 \text{ or } 18.2\% \text{ of units are affordable}$$

10% of pre-bonus total allows 20% above the maximum allowed units per acre. 18.2% of the units are affordable, therefore (11 units x .20 = 2.2)

1% increase above the 10% pre-bonus total (18.2 - 10.0 = 8.2%) allows 1.5% of additional (1.5% x 8.2% = 12.3%)

(20% + 12.3%) x 11 units = 3.55 units, rounded up equals 4 units.

11 baseline units + 4 density bonus units = 15 units total. The maximum total of units is 15 with the 35% maximum bonus so would not increase.

With two interpretations of the “baseline” number of units the number of potential affordable units are as follows:

Baseline	8 units “minimum lot area”	11 units “minimum units per acre”
Density Bonus	2 additional units	4 additional units
Affordable Density Bonus Units	1 unit	2 units
Inclusionary Units	1 unit	1 unit
Totals	10 units total, 2 of which are affordable	15 units total, 3 of which are affordable

Incentives and Concessions

As part of the Density Bonus process, the applicant may also request one concession, which are exceptions to the development standards (in addition to the Density Bonus itself). One concession is allowed for 10%-19% affordable units, two concessions for 20%, and three concessions for 30%. Based on the calculations above the applicant would be providing either 12.5% or 18.2% affordable housing; therefore, only one concession is allowed by the density bonus.

The applicant is requesting a concession to allow an increased floor-area-ratio (FAR) of 2.68 where 2.25 is the maximum allowable FAR in the SPC district. Originally the applicant requested a concession to allow an increase in height. The building has been lowered to meet the 38’ maximum height limit; therefore a concession is not requested. Building height is discussed in further detail below in the Design Review discussion.

In regards to parking, the applicant would like to utilize Municipal Code Section 20.40.040(F), which is also the state statute, allowing one parking space for zero to one-bedroom units. Standard development requirements require two off-street parking spaces for each residential unit, regardless of size or number of bedrooms. Staff needs to consult with legal council on whether the state statute for density bonus, regarding parking, supersedes local law. In regards to the commercial parking requirements, Municipal Code Section 20.28.030 allows the first 1,500sq.ft. of retail commercial area be exempt from parking in the SPC district. The retail spaces total 1,410sq.ft., which requires no additional parking spaces.

Financial Information

The underlying concept of the Density Bonus law is that it is a tool intended to increase the availability of affordable housing. In several places within the Density Bonus ordinance, there is a requirement that the applicant provide financial justification for the project:

- According to Municipal Code Section 20.40.040(D.b.) to grant approval of a concession “the applicant shall be responsible for presenting detailed financial information to demonstrate that such concession would result in necessary, identifiable, financially sufficient, and actual cost reductions that could not be achieved without the concession.

- Municipal Code Section 20.40.040(H.3.e.) requires “A project financial report to allow the City to evaluate the financial need for the specific incentives(s) or concession(s) required, and to demonstrate that any requested waiver or reduction of zoning, development or building standards is necessary to make the development of affordable housing units economically feasible.”
- According to Municipal Code Section 20.40.040 (H5) the applicant must “demonstrate, based on verifiable financial information, that any development standard that is applied as a condition of a City action on a housing development project that qualifies for a density bonus would preclude construction of the development project by making the housing units economically infeasible, the applicant may request that the City Council waive or reduce such a condition.”

Staff is currently working with the applicant on completing the financial analysis.

Building Height

There are single-story commercial uses located on either side of the building and residential uses located at the rear of the lot. A 45-degree day light plane has been provided at the rear, as required by Municipal Code 20.24.070. The rear wall of the garage abuts the rear property line and has a maximum height of 12' and the building steps up and away from the rear property line. The height of the building, for example, is 22' tall, 8' in from the rear property line and 30' tall, 18' from the rear property line, and 38' tall, 56' from the rear property line. The front (eastern) half of the lot sits at a slightly higher elevation than the rear (western) half of the lot, which makes the front portion of the building appear larger.

According to the code building height is measured from natural grade. The project, however, requires grading at the rear of the building, which would expose another 4' of wall at the rear property line, therefore, making the rear wall 16' in height. The maximum height is at the center of the building and although building height has been brought down to meet the 38' height requirement it will still appear taller at that section once it is graded. Essentially, the height requirements and 45-degree day light plane requirements are technically met; however, aesthetically the building will appear taller. Also, approximately 2' of the balcony railings on the second and third floors are encroaching into the 45-degree daylight. The applicant would like to use wire railing, which they believe will not impact the shadowing on adjacent neighbors. That railing, however, is part of the structure and will not prohibit tenants/owners from placing items on the balcony that may cast a shadow in the daylight plane area.

Finally, one of the units has a portion of the building area located at the roof, which creates habitable space on the roof, which also exceeds the three-story maximum height requirement.

Design Review

The proposed design of the building is of a contemporary style. It has repetitive rectangular and square shapes, which includes a pop out on the front façade that breaks up the visual mass of the building and provides some articulation to the facade. There are floor-to-ceiling rectangular shaped windows on the south end of the front elevation, which provide an open and airy feel to the front facade. The retail spaces also provide large, rectangular storefront windows that span a majority of the width of the building. A mix of materials are proposed, which include cement board siding, wood slats and stucco, all of which are consistent with the contemporary architecture of the building.

Since the October 23, 2007 study session the applicant has provided side elevations with the south having small balconies with metal raining and accenting metal awnings throughout the façade. The north elevation has some variation in the faced with a mix use of material and large glass block windows. There are still, however, large portions of the building finished in stucco, which will be fully visible with the one-story commercial building adjacent to the site. The Commission had recommended that the applicant reduce the number of units with the implication that a fewer number of units are appropriate for the site and the mass of the building can be reduced. The applicant will present a light and shadow study at the public hearing to provide a visual of the potential impacts of the size and mass of the building.

As far as the use of interior space goes, the applicant has provided atrium and common space that would allow sunlight and create open, comfortable spaces for tenants. This area, however, contributes to the increase in FAR.

Conclusion

At this time, staff has not developed a recommendation on the proposed project. It appears that a relatively modest increase of one additional affordable, low-income unit triggers a significant increase in density of the project, including granting of a 64% increase in FAR requirements. This is the first time that density bonus and in-lieu fees have been formally requested under the new zoning code, thus will set a precedence for how the City will interpret the density bonus law.

In regards to design, the massing of the building is heavily dependent on the affordable housing issues, as previously discussed. At this time staff believes conceptually the project is appropriate for the site; however, as proposed is still quite large for the site and neighborhood. In regards to parking, the commercial retail space is exempt from parking; however, if the applicant wants to utilize the space as a café, restaurant or a similar use the parking requirements will increase since the parking exception only applies to retail. The applicant may want to consider requesting a parking waiver to allow a café/restaurant use at this time since it may be a likely use at the site.

Finally, it should be noted that a tentative condominium subdivision map should be submitted concurrently with the project application if the applicant wishes to individually sell and not rent out the units.

Green Building

The project is subject to the city's residential green building checklist since the majority of the project is residential. The applicant has exceeded the requirements by providing 116 green points where 50 are required. In attaining the required green points the applicant has included a large solar panel system on the roof area, which are reflected in the plans.

Attachments:

1. Analysis of Zoning Requirements
2. Application, Project Plans
3. Green Points Checklist

4. Density bonus statement
5. Staff report from 10/23/07 study session
6. Minutes from 10/23/07 study session
7. Reduced plans from 10/23/07 study session

ATTACHMENT 1 - ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

20.12 Zoning Districts And Permitted Uses

General Plan: SPC (San Pablo Commercial)
 Zoning: Commercial

20.16 Land Use Classifications

Mixed-use

Surrounding North - Commercial East - Commercial
 Property Use South - Commercial West - Residential

20.20.080 Secondary Residential Units.

Not applicable.

20.24.020 Table Of Site Regulations By District.

	Proposed (approx.)	Requirement
Setbacks		
Front (east)	0'	0'
Side (north)	0'	0'
Side (south)	0'	0'
Rear (west)	0'*	0'*
Area		
Lot Size	7,500	**
Lot Coverage	100%	100%
Maximum Height	38'	38'

*Day light plan requirement, as discussed.

**See minimum lot size/maximum units per acres discussion

20.24.030 Overlay District Regulations.

Not applicable.

20.24.040 Hillside Residential Regulations.

Not applicable.

20.24.050 Floor-Area-Ratio.

	Proposed	Requirement
Lot Size	7500	--
Floor Area		
First-floor	7500	--
Second-floor	6900	
Third-floor	6712	
Enclosed area at roof	599	
Total	21,711	--
Floor Area Ratio	2.89%	2.25

20.24.060 Setback Areas, Encroachments.

Not applicable.

20.24.100 Distances Between Structures.

Not applicable.

20.24.110 Fences, Landscaping, Screening.

Not applicable.

20.24.130 Accessory Buildings.

Not applicable.

20.28 Off-Street Parking Requirement.

See project description.

20.40 Housing Provisions

Not applicable.

20.44 Non-conforming Uses, Structures and Lot

Not applicable.

20.48 Removal of Trees

Not applicable.

20.52 Flood Damage Prevention Regulations

Not applicable.

20.100.030 Use Permits.

Not applicable.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on February 15, 2008 in the form of mailed notice to property owners and occupants within a 100-foot radius, and posted in three locations.

20.100.050 Design Review.

See Summary of Key Issues