



ALBANY CITY COUNCIL – MINUTES

Virtual Meeting
Albany, CA 94706
Wednesday, June 01, 2022

Date approved: June 21, 2022

SPECIAL MEETING – OPEN SESSION 7:00 PM

1. CALL TO ORDER

Vice Mayor Tiedemann read the Albany Land Acknowledgement Statement as adopted by the City Council per City of Albany Minute Action, November 15, 2021.

2. ROLL CALL

Present: Council Members McQuaid and Nason, Vice Mayor Tiedemann, Mayor Jordan

Absent: Council Member Gary

3. MAYOR'S STATEMENT

Mayor Jordan reported Pew Research Center finds that 81% of Americans support background checks for all gun purchases without exception, 64% support banning magazines that hold more than ten rounds, 63% support banning assault style weapons, and 79% oppose allowing concealed carry of a gun without a permit. In terms of women's right to choose, 61% of Americans support it in all or most circumstances. Without a filibuster, 16% of the population can elect senators to block a policy that is popular with the rest of the population, and 9% with a filibuster. This reality not only threatens the health and well-being of society, but also puts at risk the constitutionally established role of the Supreme Court. In addition, it is beginning to fail to hold the President accountable. In light of these growing concerns, it is evident that democracy in America needs major corrective action. It is encouraged that efforts are made to ensure that democracy is maintained, and that the wisdom of the American people be reflected in the policies of the country.

4. PUBLIC HEARING

- 4-1.** Categorical Exemption from The California Environmental Quality Act, Design Review, and Conditional Use Permit for a New 12-Unit Mixed Use Housing Project (PA#21-015) at 1600 Solano Avenue Pursuant to California Density Bonus Law (Government Code Sections 65915 – 65918)

Planning & Zoning Commission Recommendation: On April 27, 2022, the Planning and Zoning Commission adopted resolutions recommending that the City Council approve the proposed categorical exemption from the California Environmental Quality Act, Design Review, and Conditional Use Permit

Staff Recommendation: That the City Council adopt Resolution No. 2022-51, approving a new 12-unit mixed use housing project at 1600 Solano Avenue pursuant to California Density Bonus Law (Government Code Sections 65915 – 65918) including a Categorical Exemption from the California Environmental Quality Act, Design Review approval, and approval of a Conditional Use Permit



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Ex-Parte Communications:

- Council Member Nason reported that she had a brief conversation with Robert Cheasty near the project location, and she was approached by Allison Grinstead, to whom she explained she could not discuss the project.
- Council Member McQuaid reported that she met last week with Community Development Director Jeff Bond to gain a better understanding of the project.
- Vice Mayor Tiedemann stated that he did not have anything to report.
- Mayor Jordan reported that he met with Community Development Director Jeff Bond to discuss the project. Additionally, he spoke to Robert Cheasty by phone regarding an unrelated matter.

Community Development Director Jeff Bond presented the staff report and explained that Albany's General Plan and Zoning Ordinances are the result of decades of work by Planning & Zoning Commissioners, City Council Members, and members of the community who contributed to its development. State law has significantly changed over time and many of the standards no longer apply to multi-family residential projects. Over the past five or six years, state legislation has been drafted and signed into law by the State's former and current governors, which changed how applications are processed. Among the changes in the law are the California Density Bonus Regulations, California Housing Accountability Act, Housing Crisis Act of 2019 (Senate Bill 330), and amendments to the California Environmental Quality Act (CEQA). The legislative intent was to limit the City's discretion in processing applications that contain affordable housing. Staff has received correspondence regarding the project proposal, including concerns about parking, traffic congestion and road safety, the scale and massing of the building on Solano Avenue, and the impacts on neighboring properties. Several emails have indicated support for the project, emphasizing that Albany is experiencing a housing crisis, which this project can help alleviate. Resolution 2022-51 includes an in-fill exemption determination for CEQA, design review of the architecture and site planning, and a conditional use permit for the ground floor medical space. Director Bond read into the record a recommended addition to Exhibit A of Resolution No. 2022-51 detailing that upon project approval, an analysis is required to confirm all water quality concerns conform to state and federal law.

Carla Violet, Urban Planning Partners, advised that the project proposes twelve residential units within a four-story building, approximately sixty feet in height with two proposed income restricted units at the low-income level. A medical facility would be located on the ground floor, occupying 2,753 square feet. In addition to thirty protected bicycle parking spaces, there would be two off-street parking spaces. Primary access for medical patients and employees is from Solano Avenue, and the main residential entry is from Ordway Street. A call box will be used to facilitate access for patients and employees who use Ordway Street entrance. An elevator call button inside the building allows access to the first-floor medical space. The proposed unit mix includes three one-bedroom units and nine two-bedroom units. The façade has been enhanced with burnt orange accents at the Solano Avenue/Ordway Street view. Corrugated metal panels were added to increase the visual interest to the view from Ordway Street. Windows from the south side of the building were enlarged, and niches were added to the east side. Approximately



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1,000 square feet of open space is proposed for the roof deck and one larger balcony. Solano Commercial (SC) zoning district density standard is sixty-three units per acre and the project site could accommodate up to eight units. A 50% density bonus is being requested by the applicant to achieve twelve units. In exchange, the project proposes two units on site, affordable to low-income households. State Density Bonus Law allows unlimited waivers and up to three concessions for projects proposing 25% low-income units. The project is seeking three waivers, including an increase to the mixed-use development floor area ratio from 1.25 to 3.75, an increase in building height from thirty-five to sixty feet, and a reduction in the open space requirements from 2400 square feet to 998 square feet. The concession is to reduce the number of required off-street parking spaces from twenty-six to two. The project provides no vehicular parking spaces for residential use and two spaces for medical services.

Leila Kasrovi, property owner/applicant, explained that the property was purchased over sixteen years ago for the intent of developing. The current proposal meets all requirements and would provide much needed housing for the City. She clarified that each orthodontics medical suite is envisioned as being integrated into a single practice to include an administration and a laboratory.

Kava Massih, architect/applicant, reported that the site measures approximately 46 feet wide and 111 feet long, and the previous design was not feasible due to the excavation needed for the parking lot that extended to Solano Avenue. There is an eight-foot drop from the upper left-hand corner of the site to the lower right-hand corner. Applicant decided to excavate only half of the site to minimize the cost of installing the eight-foot retaining wall. Housing is located on three floors, each with four units. The building reads as a four-story building from Solano Avenue, and a portion of the building from the Ordway Street side includes a basement floor. He advised that in accordance with the building code, a building may extend up to four feet over the property line; however, the proposed structure extends only a few inches in two places and potentially 2.5 feet in another. The plans will be modified per Mayor Jordan's comment on the front two-bedroom residence on the fourth floor impinged by a closet placed in bedroom two and the corner of the 120 square foot courtyard needs a door. The number of units that can be built are limited. Reducing the size of units may reduce the size of the building, but it would not provide any affordable two-bedroom units.

City Attorney Mala Subramanian advised that Council must present written findings supported by substantial evidence to deny concessions or waivers. It is the purpose of Density Bonus Law to incentivize the creation of affordable housing, and one of the ways it achieves this is by allowing for greater densities, concessions, or incentives from the standard requirements of the General Plan, Specific Plan, and Zoning. Additionally, it allows for unlimited waivers of development standards. Written findings must demonstrate that the reduction of twenty-four parking spaces does not result in identifiable cost reductions, and that it was not necessary to avoid physically precluding construction of the development. The burden is on the City to make the finding and not the applicant. If Council loses a court case in which it is challenged, attorney fees would be necessary to both defend a lawsuit and to compensate the applicant's legal counsel. The applicant shall defend and indemnify the City if the City approves the application, and a lawsuit



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arises from that application. Local government may apply objective, quantifiable written development standards, conditions, and policies to the entirety of the mixed-use project, which means much of the design criteria standards are no longer allowed to be applied. A subjective standard routinely seen in the past is that the development is cohesive, while an objective standard is not subject to any form of interpretation. The amendment to SB 330, the Permit Streamlining Act now calls for sixty days when using a CEQA exemption. Under the Density Bonus Law, a housing development project must be comprised of at least five residential units and can include mixed-use projects. Commercial aspects of the project are factored in.

Community Development Director Jeff Bond explained that Senate Bill (SB) 330 puts a limit of five meetings. Two to three meetings have been held to-date. According to law, there is a ninety-day period following a CEQA determination, but the legislature intended to process applications promptly. Staff would be required to demonstrate that reducing the size of the medical offices would be more economically feasible than what the applicant proposed. One unit of the project will be inclusionary subject to the City's requirements. There are no setbacks required on the eastern or southern sides of the property. Other than certain sections of Albany Hill, there are no provisions in the Planning and Zoning Code regarding tree protection on private property. A request for proposals concerning a Street Tree Master Plan is being prepared. Exterior walls on some corners project over the property line, and actions directed by Council can be reflected in the Conditions of Approval.

A summary of public comment is as follows: the City may encounter legal challenges if it denies dense housing with limited parking along Solano Avenue or other areas; more active transportation based housing is needed; a preference for more bike storage to be included in the project; the City should investigate a parking permit process; support for the project; opposition to the conditional use permit for medical offices due to parking and additional reasons; the project will be a hazard to public health and safety; Council has the authority to intercede and include a special condition of approval called off-site mitigation; there would be no financial cost savings if the commercial space were to be removed; support for lawsuits against the project; a question regarding space for trash cans; a super majority of the Planning and Zoning Commission voted for and support the project; state laws intended to encourage housing production and affordable housing production; the building is not out of scale with the neighborhood; a suggestion for the project to be continued; removing the commercial space is essential; the overall size of the project is too large for the street; a request that Council postpone a decision until all possibilities to reduce the building size have been investigated or reject the project; the project does not fit with the Solano Avenue landscape; support for the requirements of State Density Bonus Law and the Housing Accountability Act; significant physical site constraints were described by the architect; suggesting that individuals may be exposed to undue hazards is not reflective with analysis provided by staff; the roof is not considered open space.

City Attorney Mala Subramanian advised that the adjacent intersection does not provide a basis for a health and safety finding to deny approval. The finding is not just a health and safety finding, but finding a significant, quantifiable, direct, and unavoidable impact



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based on objective identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Additionally, there cannot be a feasible method to satisfactorily mitigate or avoid the impact. The impact would be associated with the project and not pre-existing. A nexus must be associated with the project and impacts that are created in response. Additionally, in response to public comment, City Attorney Mala Subramanian advised that Council Member Gary recused herself and there is no need to continue the meeting for her participation to avoid the appearance of a potential due process concern. She also clarified that Government Code 65915.7 did sunset on January 1, 2022 and is not applicable to this project.

Community Development Director Jeff Bond indicated that the project would not generate enough new trips and motorist movements to meet a test-in-place at the time the application was submitted for a significant impact. The same public notice was provided on this application as with other public hearings, which is largely dictated by California Government Code. Approximately 130 notices were mailed on Friday, May 20, 2022. There is a provision for a trash room, and both StopWaste and Waste Management are consulted. Other cities have approved Density Bonus projects where the project goes beyond the bare minimum of the requirements of the City and have been tested through litigation.

A summary of Council comment is as follows: removing the commercial aspect would not serve the purpose of the applicant; State Density Bonus and state law means that Council cannot require the commercial space to be removed; concern about the fear of big City changes being translated into vitriol against new development; the concessions for parking make the project feasible; there is a need for additional housing beyond just the San Pablo Avenue area; there is no justification for a continuance because the facts of what Council is being asked to consider will remain unchanged; the City does not benefit sufficiently from the project; the project would bring more individuals to Solano Avenue and benefit the business; concern regarding the lack of parking, which may be unintentionally exclusionary; a preference to continue the project to a date uncertain to allow for more discussion with the goal to create a project which reinforces the City's General Plan while supporting new housing; it may be appropriate for staff to discuss the project with Housing and Community Development (HCD); a suggestion that studio and one-bedroom apartments be considered; a preference for the units to be very low-income rather than low-income; a suggestion for two units available for seniors; a suggestion that one of the two-bedroom apartments be affordable; opposition to eliminating two-bedroom units; the City needs below market-rate (BMR) and market-rate housing; the medical offices seem like a beneficial aspect of the project; concern for waiving all parking for the commercial, but it is the law.

MOTION:

Moved by Vice Mayor Tiedemann, seconded by Council Member Nason, to extend the meeting to 10:45 p.m.

AYES: Council Members McQuaid and Nason, Vice Mayor Tiedemann, Mayor Jordan

NOES: None

ABSENT: Council Member Gary



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Motion carried and so ordered.

Community Development Director Jeff Bond indicated a preference to keep the special conditions in the resolution to ensure that they are achieved.

A summary of Council comment is as follows: a preference that the Conditions of Approval 1-D stating that the bike parking is on the ground; support for removing Conditions of Approval 1-E; a request that the applicant add bollards to protect the cargo bikes parked in the garage; suggestions to expand the Conditions of Approval to include having outlets by the cargo bike parking spaces in the garage, and to substitute the cutsheet for the bike racks.

MOTION:

Moved by Vice Mayor Tiedemann, seconded by Council Member Nason, to adopt Resolution No. 2022-51, approving a new 12-unit mixed use housing project at 1600 Solano Avenue pursuant to California Density Bonus Law (Government Code Sections 65915 – 65918) including a Categorical Exemption from the California Environmental Quality Act, Design Review approval, and approval of a Conditional Use Permit, with additional Conditions of Approval requiring that one of the intermediate-sized two-bedroom residences be affordable low-income; adjusting the power receptacle language to include charging ports at the cargo bike spaces in the garage; substitute specified bike racks in the public right-of-way; add language regarding stormwater management analysis to the CEQA analysis; and to remove Condition of Approval 1-E.

AYES: Council Members McQuaid and Nason, Vice Mayor Tiedemann, Mayor Jordan

NOES: None

ABSENT: Council Member Gary

Motion carried and so ordered.

5. ADJOURNMENT OF SPECIAL MEETING

10:44 p.m. There being no further business before the City Council, Mayor Jordan adjourned the meeting.

Minutes submitted by Anne Hsu, City Clerk.

Preston Jordan
Mayor

Attest:

Anne Hsu, City Clerk