

City of Culver City, California
City Council and Redevelopment Agency Agenda Item Report

Meeting Date: 11/17/2008

Item Number: JPH-1

AGENDA ITEM: JOINT PUBLIC HEARING: 1) City Council Consideration of the Appeal of the Planning Commission's Approval of Site Plan Review, SPR P2007116, and Negative Declaration for the Construction of a Mixed-use Building with 26 Residential Condominium Units and 3,370 Square Feet of Office Space Located at 4043 Irving Place; and 2) Redevelopment Agency Consideration of the Project as it Relates to the Redevelopment Plan. (Public Hearing Continued from August 18, , September 15, and October 20, 2008).

Contact Person/Dept.: Thomas Gorham, Phone Number: (310) 253-5727
Planning Manager

Fiscal Impact: Yes ☐ No ☒ General Fund: Yes ☐ No ☒

Public Hearing: ☒ Action Item: ☐ Attachments: ☒

Public Notification: Notices were mailed regarding the Public Hearing to all of the property owners and occupants within a 300-foot radius of the site extended to the end of each block; speakers from the April 9, 2008 Planning Commission meeting; and persons who submitted written comments (07/28/08 and 08/18/08); Master E-Mail Notification List (07/28/08 and 08/18/08, 09/10/08, 10/16/08, and 11/13/08).

Department Approval:
Sol Blumenfeld, Director (11/12/08)

City Attorney Approval:
Carol Schwab (by H. Baker (11/12/08)

Fiscal Impact Review:
Jeff Muir (11/10/08)

City Manager Approval:
Jerry B. Fulwood (11/13/08)

RECOMMENDATION:

Staff recommends the City Council consider the appeal of the Planning Commission's approval of the Negative Declaration and Site Plan Review, and either:

A. Deny the Appeal and **uphold** the Planning Commission's approval.

If the City Council upholds the Planning Commission's approval, staff will return with the appropriate resolution adopting the Mitigated Negative Declaration and outlining the findings for denial of the appeal.

B. Grant the appeal, but **modify** the Planning Commission's approval of the Project and direct staff to return to the Council with the appropriate resolution adopting the Mitigated Negative Declaration and outlining the findings for modifying the project; or

C. Grant the Appeal and **overturn** the Planning Commission's approval.

If the City Council overturns the Planning Commission's approval, staff will return with the appropriate resolution outlining the findings for denial of the Site Plan Review.

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Redevelopment Agency (if necessary)

If the City Council denies the appeal and upholds the Planning Commission's approval of the project (or takes action to approve a modified project), then Staff recommends the Redevelopment Agency determine that the proposed project (as presented or modified by the City Council) is consistent with the Redevelopment Plan for Component Area No.3, the Downtown Culver City Design for Development ("DFD") and applicable Agency documents. Should the City Council uphold the appeal, then staff recommends the Agency take no action on this item.

PROCEDURE:

1. Mayor calls on staff for a brief staff report.
2. Mayor seeks a motion to open the public hearing to allow for public comment, if any.
3. Receive comment from the applicant and public.
4. Mayor seeks a motion to close the public hearing after all testimony has been presented.
5. Council discusses the matter and arrives at its decision.
6. Agency discusses the matter and arrives at its decision (if necessary).

BACKGROUND:

On April 9, 2008, the Planning Commission held a public hearing regarding Sal Gonzales' (the "Applicant") request for Site Plan Review approval to allow the construction of a mixed-use project varying from 3 and 4 stories and ranging in height from 37 to 46 feet with 26 residential condominium units, 3,380 square feet of office space and subterranean parking (the "Project"); a Tentative Tract Map to subdivide the property into 26 residential and three commercial condominium airspace units; and an Administrative Use Permit to allow tandem parking spaces. At the public hearing the Planning Commission adopted Resolution No. 2008-P005 adopting a Negative Declaration finding pursuant to the California Environmental Quality Act (CEQA) and approving the Site Plan Review, Tentative Tract Map and Administrative Use Permit for the Project subject to the conditions of approval contained therein (Attachment No. 4).

On April 24, 2008, Culver City residents Michael and Judith Miller and Jim and Michelle Benke (the "Appellants"), filed a timely appeal of the Planning

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Commission's decision with subsequent revisions received on April 28 and May 20, 2008 (Attachment No. 5).

Project Modifications

The project was continued from August 18th, September 15th and October 20th in order to provide an opportunity for the developer to address neighborhood concerns. Staff and the applicant have had on-going meetings with the appellants and neighbors in the project area and the revised plans reflect the developer's efforts to address their concerns. The project has been revised to eliminate the 4th floor, changing the roofline of the northerly building so that the maximum building height is 41 feet.

The revisions are proposed by the developer with the understanding that a portion of the project commercial space will be reduced and converted to two residential units. These plan revisions are only proposed if the conversion of space is favorably considered by City Council. The revised project plans are shown as Attachment No. 1.

Because there have been changes to the project from initial project submittal to the present, staff has summarized the changes to the development program in the table on Attachment No. 2.

Planning Commission Staff Report

Attachment No. 3 contains the April 9, 2008 Planning Commission staff report, with all attachments including the Negative Declaration and Initial Study. The report describes the Project in detail, including analysis on architectural design, parking, traffic and circulation, landscaping, noise, construction and area compatibility.

DISCUSSION:

Planning Commission

The Commission received input from approximately 40 members of the public at the April 9, 2008 hearing. The majority were opposed to the Project. Primary concerns were related to compatibility of the Project to the surrounding neighborhood, parking and traffic. In addition there was a concern raised over construction impacts to the adjoining historical residential structures.

Following thorough discussion of the matter, the Commission recognized the concerns raised by the public, but felt that they were sufficiently addressed in the Applicant's proposal and the conditions of approval. The Commission on a 3 to 1

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vote adopted the Negative Declaration finding that the Project would not have an adverse effect on the environment and approved the Project determining that the required findings could be made. The dissenting Commissioner expressed concerns over the Project's size and its compatibility with the surrounding neighborhood.

Attachment No. 6 contains the minutes of the meeting.

Residents' Appeal

The concerns raised in the appeal documentation (Attachment No. 5) can be placed in three categories and are discussed below (paraphrased from the Appellant's letter):

1. The Planning Commission failed to exercise its legal, discretionary authority. The Appellants contend the Commission made statements "...indicating their belief that they had no authority to make any decisions counter to what had been outlined for the parcel by the Redevelopment Agency..." and that the outcome was "pre-determined."

Response:

The Commission reviews Project applications and renders decisions pursuant to the Zoning Code, General Plan and the California Government Code. The Redevelopment Agency implements the City's Redevelopment Plans pursuant to California Redevelopment Law. Though there is coordination between these decision making bodies, their responsibilities are unique and their decisions independent. The Agency sold the property at 4043 Irving Place to a developer to ensure that it was developed with a building that is consistent with the property zoning and the General Plan and included deed restrictions reiterating the maximum development standards allowed under the City's land use laws. The Agency was engaged in a real estate transaction that has no bearing on the entitlements for the property. The authority to approve or deny the Project, resides exclusively with the Planning Commission and City Council, if appealed. The Commission lawfully considered the Project by conducting a public hearing at which public testimony was received and based upon its deliberations approved the Project consistent with its discretionary authority.

2. The Project is not consistent with the City's General Plan.

The Appellants contend the project is not consistent with the existing neighborhood located on Irving Place and Lafayette Place in that the neighborhood is made up of

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one and two story single family homes and apartment structures that are "much smaller in scale than the proposed project," and the Project is "in direct contradiction to the goals and objectives of Culver City's General Plan."

Response:

The Project was designed pursuant to the requirements of the General Plan and the Zoning Code. The property is zoned CD -Commercial Downtown and designated "Downtown" under the General Plan which allows mixed use development. The Mixed Use Ordinance in effect when the Project application was filed permits development at 65 units per acre with a maximum building height of 56 feet providing the Project conforms to all setback and step-back requirements. The Project is designed to meet these requirements since it varies from 3 to 4 stories and ranges in height from 37 feet to 46 feet. Further it is to be developed at 47 units per acre with 26 residential units and three commercial condominium units. The Project application includes a request for an Administrative Use Permit (AUP) to allow 54 tandem parking spaces which may also be approved under the requirements of the Zoning Code. The "Downtown" designation of the property "is intended to support desirable existing and future commercial uses and mixed use housing within the Downtown areas and to encourage a pedestrian friendly environment." The proposed development is consistent with this goal. Therefore the project is consistent with the General Plan.

The area is comprised of projects that are smaller in scale, though not necessarily less dense than the proposed Project. Further the Project height is proposed to be 46 feet which is 10 feet less than the maximum height limit and in many instances is consistent with building heights in the area since the commercial property to the north of the project is constructed to a height of 46 feet. The historic designation for property to the south of the Project was considered in Project design with portions of the building close to the interior property lines next to the historic residential properties being shorter producing the effect of a gradual increase in height ranging from 11 feet at the ground floor with a 10 foot setback from the property line, 22 feet at the second floor with a 16 foot setback from the property line, and 33 feet at the third floor with a setback of 22 feet from the property line increasing to a maximum of 37 feet at the pitched roof peak setback 38 feet from the property line. Staff surveyed the surrounding properties to ascertain prevailing setbacks on Lafayette Place and Irving Place south to Braddock Drive and found that the average setback for the residential properties on Lafayette Place is 18 feet and on Irving Place is 16 feet. The Meralta Plaza building has a 10 foot setback along Lafayette Place and the City Fire Station has a 5 foot setback along Irving Place. The proposed project has a 5 foot setback along both the Lafayette Place and Irving Place frontages. The fact that the project is dissimilar to other surrounding properties is not necessarily grounds for denying the project since the minimum standard for review of the application is consistency with the General Plan and

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Zoning Code. As outlined above, the Project as proposed is consistent with the "Downtown" designation of both the General Plan and the Zoning Code and meets all of the applicable development standards of said designations.

3. The Negative Declaration is in error.

The Appellants contend the Project would have a significant negative environmental impact on the community and that the negative declaration did not adequately address impacts in the following areas: traffic; parking; air quality; area compatibility; historic resources; biological resources; and cumulative impacts and an EIR should be required.

Response:

The California Environmental Quality Act or CEQA is California's environmental assessment law. The Act applies to all state and local agencies in California. Under CEQA, an "Initial Study" (preliminary analysis) is used to determine if a project will have a "significant" effect on the environment. The Initial Study is comprised of a list of objective criteria that the City must use in evaluating the potential environmental effects of a project. The Initial Study provides detailed information to use as the basis for deciding whether to prepare an EIR or Negative Declaration or Mitigated Declaration for the project. The project was evaluated pursuant to CEQA and it was determined that the project would not have a significant impact upon the environment since it is consistent with the General Plan, the proposed development primarily consists of residential uses which are low traffic generators, the project is fully parked, the project does not eliminate or disturb historic resources and it does not create impacts upon biological resources and cumulative impacts and therefore the Planning Commission adopted a Negative Declaration.

Subsequent to the adoption of the Negative Declaration by the Planning Commission, additional information was discovered pertaining to potential hazardous materials on the subject site. Phase I and Phase II studies prepared as part of the original initial study, identified hazardous material (including asbestos, lead, and other chemicals) at the site and a Remediation Action Plan (RAP) was prepared. When the Agency purchased the property in 1996 and demolished the old Coast Media building, all hazardous substances were removed from the building and the surface of the site pursuant to the RAP prior to the site being paved for use as a parking lot. Lead that had leached into the soil was not removed.

Subsequently, in January 2007 the applicant/developer conducted a "Further Site Characterization" study to address the release of lead into the soil (Please see Attachment No. 13). A total of 16 soil samples were analyzed and traces of lead

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were found to exist that were below the threshold to pose a threat to human health if left undisturbed. The study determined that the excavation of the site should be sufficient to remediate that portion of the site soil which still contains lead with the provision that the soils must be properly disposed of. Based on the findings of the Site Characterization Study staff has revised the initial study and prepared a Mitigated Negative Declaration with two mitigations added requiring that the impacted soil be separated from the excavated clean soil; that it be transported to an appropriate disposal facility; and that further confirmation testing be completed during excavation to confirm the removal and disposal of all lead impacted soil. On that basis a Mitigated Negative Declaration will be recommended and all development impacts will have been fully addressed. This analysis is summarized in Attachment No. 14.

Review of Neighborhood Concerns

Staff has met numerous times with both Appellants and the Applicant. The Appellants have expressed their primary concern is related to the size and density of the proposed Project and its alleged incompatibility with the residential neighborhood. They have asked that the height of the project be lowered and that the building be setback further to comport to the existing setbacks in the neighborhood. In addition they have asked that vehicular access be provided from both Lafayette Place and Irving Place to help address their traffic concerns.

Staff has relayed the Appellants' concerns to the Applicant and has asked the Applicant to study other design options that would reduce the Project's scale and mass. Staff suggested that lowering the building height by removing the upper level loft component may address the concerns related to the mass of the building. Further, staff suggested an increased setback along Lafayette Place in order to be more compatible with the prevailing setbacks in the neighborhood. In response the applicant provided revised drawings which showed a reduced building height for the northern most building along the Lafayette frontage from 46 feet to 34 feet for a distance of 42 feet where the building would then step back to 46 feet in height. No increased setback at the ground level was proposed. This modification resulted in the loss of two residential units on the top floor. The Applicant proposed to replace these lost units by changing two of the three ground floor commercial tenant spaces into residential units. Staff presented this plan was presented to the neighbors who felt it did not go far enough to address their concerns. This proposed revision was rejected by the neighbors.

Staff also drafted a modified project plan that provided a greater building setback on the Lafayette Avenue side providing an approximately 20 foot setback area consistent with the prevailing neighborhood setbacks. This setback area would

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provide landscaping and an open courtyard leading up to the building entrance. The applicant was not receptive to this plan as the increased setback would result in reduction in the residential unit sizes and potentially a reduction in the number of units.

From July through October, the applicant met with the appellants and other neighbors, now part of the Culver City Downtown Neighborhood Association (DNA) to discuss their concerns. The DNA expressed continued concern over the scale of the building and outlined its request for modifications in a letter dated July 30, 2008 (Attachment No. 8). The request includes the following:

- The building should be no higher than 32 feet in height with not more than 24 total residential and/or commercial units.
- Excavation adjacent to the Spanish Colonial houses should be limited to 3 feet from the property line.
- Setbacks on Lafayette Place and Irving Place should match the prevailing neighborhood setbacks.
- Vehicle access should be provided from both Lafayette Place and Irving Place.

The attached correspondence lists the areas of agreement and disagreement between the applicant and the appellant. (Attachment No. 9)

Redevelopment Agency

The proposed development is consistent with the land use designation for this site and other applicable provisions of the Redevelopment Plan for the Culver City Redevelopment Project Component Area No. 3.

The property is within the Downtown Culver City Design For Development (DFD). The DFD has provisions relating to height, setbacks, parking, landscaping, architectural design, building exteriors (Downtown storefront guidelines) signs, refuse areas, security fencing and uses. The proposed development is in conformance with all applicable provisions of the DFD as it complies with each of these development provisions.

On January 31, 2007, the Agency closed escrow on the sale of 4043 Irving to Metro Real Estate and Development. At the time of sale a restriction was placed on the grant deed that limited the use of the Site to a mixed use project consisting of 28 residential units and 3,500 sq.ft of office. The deed restriction ensured that the developer would not increase the number of residential units or commercial

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square footage beyond what Metro Real Estate and Development had proposed at the close of escrow.

The project approved by the Planning Commission on April 9, 2008 consists of 26 residential units and 3,370 square feet of office, which is consistent with the deed restrictions.

Discussion of Project Traffic Impacts

On August 12, 2008 the Applicant submitted a Supplemental Traffic Analysis (Attachment No. 10) which updated the existing morning (AM) peak traffic counts contained in the original traffic study presented to the Planning Commission. The counts in the previous analysis were conducted in June of 2007 during the last week of school and there was some discussion regarding these traffic volumes during the Planning Commission hearing. In order to address these concerns, new weekday AM peak hour counts were taken on May 21, 2008 during a typical school week. Using these new counts the AM peak hour traffic analysis was updated. The analysis concludes that the resulting conditions are similar to the previous analysis based on the 2007 counts and that none of the analyzed intersections or residential street segments would be significantly impacted by the Project. The City's Consulting Traffic Engineer has reviewed the supplemental analysis and concurs with its conclusions.

Additionally, the City's Consulting Traffic Engineer has prepared a memo (Please See Attachment No. 15) further discussing the methodology used in the traffic analysis done for the project.

CONCLUSION:

The Project that was approved by the Planning Commission has been redesigned to address issues of neighborhood compatibility and conforms with all applicable provisions of the CG Zone and all City development standards including the height and special setback requirements between commercial and residential districts. Although the site allows for a 56 foot high building, the building is 41 feet high at the highest point. The Zoning Code requires the 'stepping back' of the building to reduce the impact of a mixed use building located adjacent to residential zones. The Project complies with this requirement by reducing the height of portions of the building close to the interior property lines next to the historic residential properties where they gradually increase in height ranging from 11 feet at the ground floor with a 10 foot setback from the property line, 22 feet at the second floor with a 16 foot setback from the property line, and 33 feet at the third floor with a setback of

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22 feet from the property line increasing to a maximum of 37 feet at the pitched roof peak setback 38 feet from the property line. In addition, the Project is proposed at a residential density of 47 units per acre, less than the 65 dwelling units per acre permitted in the zone.

Further, the Applicant has conducted several informational community meetings for the neighbors living near the Project. The Applicant met numerous times with the neighborhood group to consider their concerns. In addition, the Applicant held two community meetings prior to the April 9th Planning Commission meeting to present the Project to the neighborhood.

CEQA FINDING:

The initial study conducted for the project dated March 27, 2008 determined that there were not potential significant environmental impacts associated with the project that could not be mitigated to a level of insignificance. The initial study utilized four technical studies: (1) Traffic Study dated December 31, 2007 to assess the projects potential traffic impacts; (2) Preliminary Soil Investigation dated April 17, 2007 to access potential impacts related to excavation and shoring; (3) & (4) Phase 1 Environmental Site Assessment from 1993 and a Phase II Environmental Site Assessment from 1995 that analyzed potential hazardous material that may have previously existed on the site.

As noted above, additional information pertaining to potential hazardous materials on the site was discovered after adoption of the Negative Declaration by the Planning Commission. Therefore, staff has revised the initial study (Attachment No. 11) and prepared a Mitigated Negative Declaration (Attachment No. 12) with mitigations requiring that the impacted soil be separated from the excavated clean soil; that it be transported to an appropriate disposal facility; and that further confirmation testing be completed during excavation to confirm the removal and disposal of all lead impacted soil. Should the project be approved, staff recommends that the City Council adopt the Mitigated Negative Declaration. These requirements will also be part of the project resolution.

FISCAL ANALYSIS:

The Redevelopment Agency sold the subject property to the developer in FY 2006-07 for approximately \$3.1 million. This is a private venture project with no financial participation by the City or Agency. If the Project is approved, then the City would gain both commercial and residential taxes (i.e. business tax, sales tax, utility users tax, and additional tax increment) once construction is completed, all the units are sold, and all commercial/office space is leased.

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Additionally, there is staff time associated with the initial processing the Site Plan Review (and related entitlement applications) and the appeal of that review. A portion of the cost of staff's time is recovered through user fees and charges, as approved by City Council.

With the currently proposed project design, the City will derive somewhat less commercial revenue which will be offset to a certain extent by the added property tax revenues from the two additional dwelling units.

ATTACHMENTS:

1. Revised Project Plans
2. Development Comparison Table
3. April 9, 2008 Planning Commission Staff Report Including all Attachments as Listed Below:
 - Area Map
 - Aerial Photo
 - Project Summary
 - Negative Declaration
 - Initial Study
 - Traffic study for the 4043 Irving Place Mixed-Use Project prepared by Raju Associates, Inc. received on December 31, 2007
 - Preliminary Soil Investigation prepared by Hu Associates, Inc. dated April 17, 2007.
 - Written Public Comments
4. Planning Commission Adopted Resolution No. 2008-P005
5. Appeal filed on April 24, 2008
6. Minutes of the April 9, 2008 Planning Commission Public Hearing
7. Planning Commission Approved Plans
8. July 30, 2008 Culver City Downtown Neighborhood Association Letter
9. Correspondence between applicant and appellant
10. Supplemental Traffic Analysis
11. Revised Initial Study
12. Proposed Mitigated Negative Declaration
13. Further Site Characterization Summary Letter- January 30, 2007
14. Correspondence to Meghan Sahli Wells - October 27, 2008
15. City Consulting Traffic Engineer Memo - October 14, 2008

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MOTION(S):

That the City Council either:

- A. Deny the Appeal and **uphold** the Planning Commission's approval of the project; and direct staff to return to the Council with the appropriate resolution adopting the Mitigated Negative Declaration and outlining the findings for denial of the appeal and approval of the Project.; or
- B. Grant the appeal but **modify** the Planning Commission's approval of the Project and direct staff to return to the Council with the appropriate resolution adopting the Mitigated Negative Declaration and outlining the findings for modifying the project.; or
- C: Grant the appeal and **overturn** the Planning Commission's approval of the Project and direct staff to return to the Council with the appropriate resolution outlining the findings for denial of the Project.

AND (only if necessary)

That the Redevelopment Agency (only in the case of Motion A or B):

Determine that the proposed project at 4043 Irving is consistent with the Redevelopment Plan for Component Area No. 3 of the Culver City Redevelopment Project and the Project is consistent with the Downtown Culver City Design for Development.