

15 APR 23 PM 2:00 OAKLAND CITY COUNCIL

RESOLUTION NO. 85602 C.M.S.

A RESOLUTION DENYING APPEAL #CMD13067-A01 AND UPHOLDING THE DECISION OF THE CITY PLANNING COMMISSION TO APPROVE AN APPLICATION TO CONVERT A VACANT SENIOR FACILITY INTO 40 CONDOMINIUM UNITS AT 4690 TOMPKINS AVENUE, SUBJECT TO REVISED CONDITIONS OF APPROVAL

WHEREAS, on April 6, 2012, Mr. Kevin Skiles of Urban Green Investments (Applicant) submitted a Zoning Pre-Application (#ZP120015) to the Bureau of Planning requesting feedback on a concept to convert a site with a vacant senior facility at 4690 Tompkins Avenue into forty apartment units; and

WHEREAS, community meetings were held to introduce the proposal to the neighbors; and

WHEREAS, on February 20, 2013, the Applicant submitted an application for a Major Conditional Use Permit (CUP), Minor CUPs, Regular Design Review, CEQA Class 32 Infill Development Project environmental review exemption, and Tree Removal Permit to convert a vacant senior facility into forty apartment units, and other site improvements at 4690 Tompkins Avenue, as case # CMD13067/T1300012; and

WHEREAS, additional community meetings were held to continue the dialogue regarding the proposal with neighbors; and

WHEREAS, the application was agendaized for the Design Review Committee hearing of June 26, 2013, and public notices were duly distributed; and

WHEREAS, on June 26, 2013, the Design Review Committee reviewed and considered the application and provided direction to staff and the Applicant regarding issues of design, vehicular exiting, slope stability, tree preservation, and privacy issues related to trees, windows, and balconies; and

WHEREAS, additional community meetings were held to continue the dialogue regarding the proposal with neighbors and to solicit their input for incorporation into the proposal; and

WHEREAS, the Applicant conducted a parking study, redesigned the plans to include greater tree preservation, more parking spaces, and stairs on grade, and generated a subdivision map for lot split and condominium purposes to enhance the application; and

WHEREAS, on November 14, 2013 the Applicant submitted an application for a Tentative Parcel Map (#TPM10191) to subdivide the property and to complete the forty new apartment units as condominium units, as an enhancement to the pending application; and

WHEREAS, the application was agendized for the Planning Commission hearing of January 29, 2014, and public notices were duly distributed; and

WHEREAS, on January 29, 2014, the Planning Commission independently reviewed, considered, and determined that the Project is exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15332 (infill development projects) and section 15183 (projects consistent with a community plan, general plan or zoning); and

WHEREAS, on January 29, 2014, the City Planning Commission reviewed and approved the application for a Major CUP, Minor CUPs, Tentative Parcel Map, Regular Design Review, and Tree Removal Permit to convert a vacant senior facility into 40 condominium units (#CMD13067/TPM10191/T1300012) (Project) subject to findings, additional findings, and conditions of approval; and

WHEREAS, on February 10, 2014, the appellant Ms. Leila Moncharsh, on behalf of BEST Neighborhood Association, Gabriel Reynoso, Danford Cieloha, and Benjamin Lau (Appellants), filed a timely Appeal (# CMD13067-A01) of the Planning Commission's decision to approve the Project; and

WHEREAS, Appellants Gabriel Reynoso and Benjamin Lau have since assigned their rights on Appeal to Danford Cieloha; and

WHEREAS, since the Appeal was filed, the Appellants and the Applicant have worked together to reach an agreement on additional conditions of approval (Additional COAs) to be imposed on the Project as a way to resolve the Appeal; and

WHEREAS, the City of Oakland hereby determines that the conditions of approval for the Project consist of all the conditions of approval included in Attachment B to the January 29, 2014 Planning Commission staff report, which remain in full force and effect, as modified by the Additional COAs, which are attached hereto as Exhibit A and incorporated herein; and

WHEREAS, the City of Oakland hereby determines that the Additional COAs are not CEQA mitigations but are imposed to address the Appellants' concerns and to resolve the Appeal; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council for a duly noticed public hearing on May 5, 2015; and

WHEREAS, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on May 5, 2015; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332 (infill development projects) and section 15183 (projects consistent with a community plan, general plan or zoning), and the Environmental Review Officer is directed to cause to be filed a Notice of Determination/Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, hereby finds and determines that the Appellants have **not** shown, by reliance on appropriate/proper evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Planning Commission, or that the Planning Commission's decision was not supported by substantial evidence in the record. This decision is based, in part, on the May 5, 2015 City Council Agenda Report and the January 29, 2014 Planning Commission staff report, both of which are hereby incorporated by reference as if fully set forth herein, on the reports and testimony provided at the hearing, and on the City's General Plan, Planning Code, and other planning regulations as set forth below; and be it

FURTHER RESOLVED: That the Appeal is hereby denied, and the Planning Commission's decision to approve a Major Conditional Use Permit, Minor Conditional Use Permits, Tentative Parcel Map, Regular Design Review, and Tree Removal Permit to convert a vacant senior facility into 40 condominium units at 4690 Tompkins Avenue is upheld, subject to the findings, additional findings, and conditions of approval adopted by the Planning Commission, as modified by the Additional COAs, each of which is hereby separately and independently adopted by this Council in full; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to deny the Appeal and approve the Project, with amended Conditions of Approval, the City Council affirms and adopts as its own independent findings and determinations: (i) the May 5, 2015 City Council Agenda Report (including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this Council in full), and (ii) the January 29, 2014 Planning Commission staff report approving the Project, including without limitation the discussion, findings, additional findings, conclusions, and conditions of approval, including amendments, (each of which is hereby separately and independently adopted by this Council in full); and be it

FURTHER RESOLVED: The record before this Council relating to this Project Application and Appeal includes, without limitation, the following:

1. The Application, including all accompanying maps and papers;
2. All plans submitted by the Applicant and its representatives;
3. The notice of appeal and all accompanying statements and materials;
4. All final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials, and all final notices relating to the Application and attendant hearings;
5. All oral and written evidence received by the Planning Commission and City Council during the public hearings on the Application and Appeal; and all written evidence received by relevant City Staff before and during the public hearings on the Application and Appeal; and
6. All matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Oakland Municipal Code; (c) the Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable State and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are located at (a) the Planning and Building Department, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, First Floor, Oakland, California; and be it

FURTHER RESOLVED: Per standard City practice, if litigation is filed challenging this decision, or any subsequent implementing actions, then the time period for obtaining necessary permits for construction or alteration and/or commencement of authorized construction-related activities stated in Condition of Approval #2 is automatically extended for the duration of the litigation; and be it

FURTHER RESOLVED: The recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 19 2015

PASSED BY THE FOLLOWING VOTE:


AYES - BROOKS, GALLO, GUILLEN, KALB, KAPLAN, ~~REID~~, CAMPBELL WASHINGTON and PRESIDENT GIBSON MCELHANEY - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council of the
City of Oakland, California

LEGAL NOTICE:

PURSUANT TO OAKLAND MUNICIPAL CODE SECTION 17.134.070(A), THIS DECISION OF THE CITY COUNCIL IS FINAL IMMEDIATELY AND IS NOT ADMINISTRATIVELY APPEALABLE. ANY PARTY SEEKING TO CHALLENGE SUCH DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THIS DECISION, UNLESS A DIFFERENT DATE APPLIES.

EXHIBIT A

The conditions of approval for the Project consist of all the conditions of approval included in Attachment B to the January 29, 2014 Planning Commission staff report, which remain in full force and effect, as modified by the Additional COAs, which revise Condition of Approval #1 and add Condition of Approval #52. New language is shown in double underline.

1. Approved Use

Ongoing

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, **staff report**, and the plans dated **October 30, 2013 and November 7, 2013 (TPM)** and submitted on **February 20, 2013 and November 14, 2013 (TPM)**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall require prior written approval from the Director of City Planning or designee.

- b) This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes:

I. Major Conditional Use Permit to exceed 7 units on two lots in the RM-3 Zone on an existing site exceeding one acre; Minor Conditional Use Permits to create a Multifamily Dwelling Residential Facility in the RM-3 Zone, for lot split between existing buildings, for a shared access facility; Tentative Parcel Map to split one lot into two and establish 40 new dwelling units as condominiums; Regular Design Review for construction of new dwelling units and for exterior architectural and site modifications; CEQA Class 32 Infill Development Project environmental review exemption; and Tree Removal Permit to remove Protected Trees to: split the lot along the internal driveway; convert the vacant senior facility into 40 condominium units, with façade and site changes including balconies and patios; demolish the other vacant non-residential facility to create a surface parking lot on-site along Tompkins Ave; create additional parking stalls throughout the site; tree removal and replacement; installation of landscaping throughout the site; illumination; and other minor site modifications including stairs on grade leading to Fair Ave.

II. Project Description to be modified from building retrofit as 21 one-bedroom units and 19 two bedroom units to include: 17 one-bed units; 2 one-bed plus den/office units; 21 two-bed units (totaling 40 new units, in addition to dwelling units on site).

52. Additional Conditions of Approval

Prior to building permit application, during construction, and ongoing as applicable

- a. The applicant/property owner will construct and maintain a room ("supply room") in the basement of the proposed project that is approximately 250 square feet, which may be used by the local residents to store emergency supplies.

b. The supply room will be kept secured by a key. One key will be kept with the onsite manager and one with a representative designated by the community. Upon request by the City, a key will be provided to the Oakland Fire Department and Oakland Police Department. The applicant will ensure that a key is available at all times for emergency access to the supply room.

c. With the exception of the house located at 4701 Fair Avenue, the applicant/property owner agrees to execute a deed restriction on the property and record with the County of Alameda that will restrict tenancy of the eight bungalows (4690 Tompkins Ave #1A, #1B, #2, #3, #4, #5, #6, #7) to persons 55 years or older.

d. The proposed project door on the first floor closest to Fair Ave. and facing Wilkie Street will be solely for exiting from the Main building (4690 Tompkins). There will be no door handles or locks on the exterior side of each door.

e. The proposed project will include 62 off-street parking spaces that comply with the requirements of the Oakland Planning Code. Three of the legal parking spaces are to be tandem spaces and located behind the current garage spaces on the Wilkie Street side of 4690 Tompkins (UGI will excavate). Prior to issuance of the building permit, the applicant/property owner will submit a plan showing the final details and location of three legal tandem parking spaces, subject to the approval of the planning director.

f. The applicant will pay \$1,000 per month to the licensed neighborhood security patrol service chose by the neighborhood watch organization that includes the project site. In the event that the neighborhood watch organization does not wish to fund a security patrol service, the applicant is not required to pay the \$1,000. If the neighborhood watch organization chooses to resume using a security patrol service, the applicant will resume paying the \$1,000 per month the security patrol service.

g. Prior to receiving its building permit, the applicant/property owner will fund the qualified traffic engineering study based on the proposal by TJKM, attached hereto as Exhibit A, to study and report to the city on the feasibility of the following potential projects:

1. Converting Wilkie Street into a one-way street.
2. Installing stop signs in appropriate locations to create an all-way stop at the intersections of:
 - i. Buell and Tompkins;
 - ii. Cunningham and Fair; and
 - iii. Kaphan and Fair.
3. Installing speed bumps in the following locations:
 - i. Tompkins on both sides of Enos Street;
 - ii. Daisy Street between Fair Ave and Davenport; and
 - iii. Fair Avenue between Cunningham and Kaphan.
4. Installing additional freeway signage to facilitate freeway-bound traffic flow towards the Buell St. and Calaveras intersection which is near on-ramps and off-ramps to and from east and west bound 580.
5. Closing Davenport Avenue at Mountain Boulevard to create a cul-de-sac.

h. In the event that any or all of the above projects in subsection (g) are feasible, according to the traffic study, and if any or all of them are approved by the city, the applicant/property owner will fund any traffic control items, including, but not limited to, signage and speed bumps to effectuate the traffic controls, with the exception of the closing of Davenport Avenue. Applicant/property owner will pay for the study regarding the potential closing of Davenport Avenue, but will not be responsible to fund any such closing. The applicant/property owner will fund the traffic controls prior to issuance of the certificate of occupancy.

i. After construction and prior to issuance of a certificate of occupancy, the applicant will fill all potholes on the streets adjacent to the project site to the satisfaction of the city public works department.

j. After construction and prior to issuance of a certificate of occupancy, the applicant/property owner will plant at least 5 (five) trees that can grow to at least 20 (twenty) feet tall on Fair Avenue and reasonable landscaping adjacent to the project site. If permitted and consistent with City of Oakland standards, applicant/property owner will also provide an irrigation system and maintenance for the landscaping and trees. The applicant will choose the materials that conform with the city's approved tree list and will obtain approval for the landscaping, trees, and irrigation system from the City.