

**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: January 19, 2017
FROM: Garrett Toy, Town Manager
Linda Neal, Principal Planner
LAK Associates, Contract Planner
LOCATION: 2626 Sir Francis Drake Boulevard, Fairfax, CA 94930
ZONING: UR-7
PROJECT: Victory Village Senior Housing project
ACTION: Conduct study session as to Density Bonus and Parkland Dedication issues
APPLICANT: Resource for Community Development
OWNER: Christ the Victor Lutheran Church
CEQA STATUS: Mitigated Negative Declaration



**2626 SIR FRANCIS DRAKE BOULEVARD
Victory Village Senior Housing Project**

OVERVIEW

On December 15, 2016, the Planning Commission held a public hearing to consider an application submitted by Resources for Community Development ('RCD'), a non-profit affordable housing developer. RCD is requesting the Town approve a rent-restricted senior housing community at the former Christ Lutheran Church site located at 2626 Sir Francis Drake Boulevard (the "Site"). If approved and constructed, the project would be the first affordable senior housing to be built in Fairfax in over 30 years.

At the December 15th hearing, members of the public and the Commission raised a number of issues about which further information or a change in the course of the application processing were requested. One issue was the concurrent consideration of the project and a proposed change to the PDD ordinance. This simultaneous review and analysis was questioned by some individuals, who voiced the opinion that any proposed changes to the PDD ordinance should proceed in advance of the Commission's consideration of the project itself. In addition, some members of the public requested further time in which to consider the Mitigated Negative Declaration that had been prepared to study the project for purposes of CEQA.

As a result of the information shared at the meeting, staff decided to separate the proposed PDD ordinance amendment from consideration with the Victory Village project. That ordinance amendment, which will affect other sites in Town, as well, will thus proceed on its own course in advance and independent of the project. Further, staff heeded the request of the public and extended the deadline for the receipt of public comment on the Mitigated Negative Declaration an extra two weeks, from December 21, 2016, to January 4, 2017.

Since the PDD ordinance change will now proceed in advance of the project, and the project will seek to use a revised PDD process if it is adopted, this meeting of the Planning Commission is no longer a public hearing on the project. The Commission can take no formal action on the project at this time, so staff has opted to use the time to conduct a study session to address some of the issues raised at the December 15th hearing. A full public hearing will be conducted when the project is ready to have a recommendation made to the Town Council.

The staff report prepared for the December 15th meeting discussed the project in detail. This staff report focuses on the following issues:

- **Parkland Dedication.** At the December meeting, questions arose regarding (1) the amount of parkland required to be dedicated by the project as a result of the subdivision of the 20-acre site into three parcels, and (2) the manner in which the project proposes to satisfy the parkland dedication requirements.
- **Density Bonus Law.** The Applicant proposes to offer 100% affordable senior housing units and thus qualifies for a density bonus, as well as concessions and parking reductions, under the state Density Bonus Law (Government Code § 65915). At the December meeting, questions arose as to the application of the Density Bonus Law, including whether the Town (1) must allow the requested concession as to the proposed height of the project, (2) can require more parking be provided by the project, and (3) can require the applicant to impose rent restrictions in perpetuity, rather than allow them to expire after 55 years.

PROJECT DESCRIPTION

A full project description was included in the December 15 staff report. For tonight's purposes, the following summarizes the project: Applicant proposes to subdivide the existing 20-acre site into three parcels: one 2-acre parcel (Lot 1) and two remaining 9-acre parcels (Lot 2 & 3). Lot 1 will keep its existing General Plan land use designation (PDD) and will be rezoned PDD. Lots 2 and 3 will require General Plan land use designation amendments (to UR-7-10) and will retain their existing zoning (UR-7). No development is proposed on lots 2 or 3 at this time, and any future development proposal for those parcels would require an application to the Town.

A new Planned Development District ordinance would need to be adopted for the 2-acre lot to establish the land uses and development standards applicable to the senior housing development. This development would offer 54 residential units, of which 53 would be rent-restricted affordable apartments for low-income seniors and one would serve as a manager's apartment (the "Senior Housing Community"). Applicant also proposes to provide 39 uncovered parking spaces to serve the Senior Housing Community.

Because the Senior Housing Community will provide 100% affordable units, it qualifies for a density bonus of 35% under the state Density Bonus Law. The base density of 20 dwelling units per acre applicable to the Senior Housing Site under Housing Element Policy HE-2.1.1.1 is thus increased to 27 dwelling units per acre. Qualifying for a density bonus at this level also makes the project eligible for three concessions and a reduced parking requirement under the same law. Applicant had requested concessions for height, covered parking and a portion of the project's parkland dedication requirement. This final request has now been withdrawn. The remaining requested concessions are addressed below.

DISCUSSION:

Parkland dedication. Applicant wants to subdivide the existing 20-acre site into three parcels. This subdivision process is governed by the California State Subdivision Map Act (starting at Government Code § 66400, and commonly called 'the Map Act').

One element of the Map Act is the Quimby Act, which authorizes towns to require residential subdivision applicants to dedicate land for park purposes. (Government Code § 66477.) Generally, the Fifth Amendment to the United States Constitution prohibits governments, including local governments such as the Town, from depriving any person of his private property for public use without providing just compensation. Under the Quimby Act, however, local governments, such as the Town, are allowed to require either (1) the dedication of land, or (2) the payment of a fee in lieu of dedicating that land in order to provide parkland for new project residents, subject to strict limitations. Government Code § 66477(a)(2).

The purpose of the Quimby Act is to ensure that when new subdivisions are approved, the new residents brought into a community have recreational space available to them and do not overtax existing parks. Towns and cities are required to pass local ordinances to implement this process, which is subject to state law. Fairfax has adopted such an ordinance (Town Code § 16.24.100, 'Dedication of Land for Public Purposes').

One of the things a town must consider in writing its parkland dedication ordinance is calculating how much 'existing' parkland the town already has. This calculation is expressed as a ratio of acres of parkland to town residents and is calculated as provided under Government Code § 66477(a)(2)(A). That section requires comparison of the actual acreage of existing neighborhood

and community parks of the town as shown on its records, plans, recreational element, maps, or reports with the total population of the town. This gives the baseline of the existing parkland to resident ratio.

Thereafter, the Quimby Act allows towns to require subdivision applicants to dedicate a minimum of 3 acres of land per thousand new subdivision residents (or the payment of an in-lieu fee). However, if the amount of existing parkland in the town is more than three (3) acres per thousand residents, the town may require the dedication of the ratio of existing parkland per thousand residents, up to a maximum of five (5) acres per thousand future residents of a proposed subdivision. See Government Code § 66477(a)(2), providing:

the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

See also *Homebuilders Ass'n of Tulare/Kings Counties, Inc. v City of Lemoore* (2010) 185 Cal.App.4th 554, 565.

Fairfax's local ordinance establishes a 5/1,000 ratio. Applicant proposes to fully meet this requirement as to the two 9-acre parcels by paying the in-lieu fee. With regard to the requirement vis-à-vis the Senior Housing Project, which is a planned development, Applicant had made two requests:

- (1) Under Town Code § 16.24.100(B)(10)(b), planned developments are eligible to receive a credit, as determined by the Town Council, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses. For the purposes of this section, private open space is that open space which is available to all residents within the development. Applicant requests the Town Council issue such credit for the open space on the Senior Housing Project site, given its service to low-income seniors.
- (2) As is discussed in further detail below, under the state density bonus law (Government Code 65915), the Applicant is entitled to request a number of concessions. To the extent the open space provided on the Senior Housing Site does not satisfy the Senior Housing Site's entire parkland dedication requirement (after the credit mentioned above is given), Applicant had requested the Town grant it a concession waiving the remaining dedication requirement, which had been calculated to come to 0.3 acres (valued at \$15,583). The Applicant has now advised the Town that it is willing to dedicate 0.3 acres of Lot 2 which encompass a trail that has been used by the public over time. Staff and Applicant will work together to determine the exact parameters of the land to be dedicated.

At the December meeting, the question was raised: can the Town simply require the Applicant to dedicate the entire 18 acres that constitute Lots 2 and 3? The takings clause of the United States Constitution would prohibit this as an uncompensated seizure of private property for public use. Under the Quimby Act, we are limited to requiring the dedication (or payment in lieu of) 5 acres of land for every 1,000 project residents.

Density Bonus Law. Applicant proposes to offer 100% of the resident units at rent-restricted housing rates affordable to low income seniors. As such, the Senior Housing Project qualifies for a density bonus of 35% and associated concessions under the state density bonus law. (Government Code § 65915.)

Under the state density bonus law, if a project provides 20% or more of its units to low-income households or 11% or more of its units to very low-income households, it qualifies for a density bonus of 35% above the otherwise maximum allowable residential density. (Government Code § 65915(f).) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, per Government Code § 65915(o)(2). In addition, for projects that provide at least 30% of the total units for low income households, the Applicant is entitled to three incentives or concessions (Government Code § 65915(d)(2)(C)), which are defined as:

- A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.
- Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
- Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(Government Code § 65915(k).) Under the law, a density bonus applicant may submit to the Town a proposal for the specific incentives or concessions that it is requesting. Thereafter, the Town "shall grant the concession or incentive requested by the applicant unless the [Town] makes a written finding, based upon substantial evidence, of any of the following" reasons for denial:

- The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units to be set as specified in the statute; or
- The concession or incentive would have a "specific, adverse impact"¹ upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily

¹ As defined in Government Code § Section 65589.5(d)(2) to mean "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety."

mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households; or

- The concession or incentive would be contrary to state or federal law.

In addition to granting requested concessions and/or incentives, the Town is also required to waive or modify development standards that would physically preclude the utilization of the density bonus, incentives, and concessions that the applicant is entitled to on a particular site. Government Code § 65915(e). This applies both to standards that would preclude construction of the housing development itself and to project amenities. *Wollmer v City of Berkeley* (2011) 193 CA4th 1329, 1346.

“Development standards” are defined by the law as “a site or construction condition, including, but not limited to, a height limitation, setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter or other local condition, law, policy, resolution or regulation.” Government Code § 65915(o)(1). Thus “development standards” that are subject to waiver or modification are limited to conditions affecting the physical location or type of construction, and would not include use restrictions, procedural requirements, affordable housing requirements, and impact fees.

The Town is not required to waive provisions of a local ordinance unrelated to development standards. Government Code § 65915(j)(2).

If the Town refuses to grant a requested concession, the Applicant may bring a lawsuit, and the Town would need to show that it had denied the request due to one of the factors listed above. (Government Code § 65915(e)(1).) Otherwise, the Town would potentially be liable for payment of the Applicant’s attorney’s fees and costs of suit, as well as required to grant the requested concession. The statute does, however, also provide that the requirement to provide concessions “does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.” (Government Code § 65915(l).)

1) Must the Town grant the requested concession as to the proposed height of the project?

The Applicant has requested a concession whereby the Town’s existing 28’6” height limitation would be modified to allow a maximum project height of 40’10.” This request seeks a ‘reduction in site development standards or a modification of zoning code requirements or architectural design requirements,’ as contemplated by the Density Bonus Law. If the Town wishes to deny this request, it should be prepared to demonstrate that it did so because granting it would (a) not have resulted in identifiable and actual cost reductions necessary to provide for affordable housing costs or for rents for the targeted units to be set as specified in the statute or (b) would have resulted in “a specific, adverse impact ... upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.” The Town would also need to be prepared to show that refusing to waive or modify the height limit would not physically preclude the utilization of the density bonus, incentives, and concessions that the Applicant is entitled to here. Otherwise, if the Applicant sought legal relief on the issue, the Town may be subject to a court’s determination that the concession must be granted and that the Town must pay the Applicant’s attorney’s fees and the costs of the lawsuit.

2) Can the Town require more parking be provided by the project?

Generally, the Town may establish its own parking requirements, subject only to the requirement that the requirement be reasonably related to the public welfare. The Town has exercised this authority and adopted off-street parking requirements that typically apply to new projects (Town Code Chapter 17.052, 'Off-Street Parking and Loading Requirements'). However, for projects that qualify to use the Density Bonus Law, that law contains its own parking provisions, which trump local requirements.

As applicable here, the Density Bonus Law allows senior housing developments where residents are 62 years or older to provide parking at a ratio of .5 spaces per unit, provided the project is located within one half mile of a fixed bus route that operates at least eight times per day or the project offers paratransit service. (State Government Code § 65915(p)(3)(B).) The Applicant is prepared to execute a Density Bonus Agreement that will limit occupancy in the Senior Housing Community to adults age 62 and older. In addition, we are informed that a fixed bus route that operates at least eight times per day is accessible outside of the project on Sir Francis Drake Boulevard. It thus appears that Victory Village qualifies for this reduced parking standard, which preempts local requirements.

Applying a ratio of .5 spaces per unit, the project's 54 units would only require 27 parking spaces. The project proposes to include 39 on-site parking spaces and therefore, exceeds by a third the state law minimum requirement for the on-site parking.

The Density Bonus Law does provide that:

If a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

Government Code § 65915(p)(7).

To date, the Town has conducted no such study, which would be the only basis for locally amending the state's otherwise-established reduced parking requirement.

3) Can the Town require the Applicant to impose rent restrictions in perpetuity, rather than allow them to expire after 55 years?

The Town is authorized to require a deed restriction whereby units in the Senior Housing Community will only be available to individuals of specified incomes. The source of the Town's

authority in this regard is the Density Bonus Law, which limits the deed restriction period to 55 years. (See Government Code 65915(c).) The Town has no legal basis for requiring additional time be added to this restriction period, although a longer period of time may be required by a project's construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

CONCLUSION

Staff is aware that there are many issues that the Planning Commission and public wish to consider with regard to this project. This staff report and this study session have been narrowly framed in an attempt to give participants a chance to focus on the issues addressed above. The project will come before the Commission at a later date for further public hearings, at which time additional project elements will again be open for discussion. If the Commission would like further information on any project element discussed tonight, please let staff know for the preparation of future materials.

RECOMMENDATION

1. Conduct study session, hear from members of the public, and provide feedback to staff.

ATTACHMENTS

- Attachment A – December 15, 2016 staff report
- Attachment B – RCD's response to comments from the 12/15/16 meeting
- Attachment C – Public Comments on CEQA document
- Attachment D – Comments in support of the project
- Attachment E - Comments expressing concern about the project
- Attachment F – Town Engineer's comments on drainage plan