



SAN RAFAEL
THE CITY WITH A MISSION

Community Development Department – Planning Division

Meeting Date: December 14, 2021
Agenda Item: 2
Case Numbers: UP21-006 & ED21-022
Project Planner: Steve Stafford
Steve.stafford@cityofsanrafael.org

DATE: December 9, 2021
TO: Chair Samudzi and Planning Commissioners
FROM: Steve Stafford, Senior Planner
SUBJECT: [UP21-006 & ED21-022] 800 Mission Ave. Project (“Aegis Living San Rafael”) – Corrected Resolution

In August, 2021, the City Council adopted the new General Plan 2040 and the Downtown Precise Plan which established a Form-Based Zoning Code for the Downtown zoning district.

On October 12, 2021, the Planning Commission (Commission) reviewed and conditionally approved (5-1-1 vote; Previtali no, Harris absent) a project proposing to construct a new 103-room/105-bed residential care facility with memory care services, located at the northwest corner of Lincoln and Mission Avenues (Approved project plans and staff’s report to the Commission are available electronically at <https://www.cityofsanrafael.org/1203-lincoln/>:

- https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2021/09/Aegis-San-Rafael-PC-revisions_9.01.21.pdf (Approved plans)
- <https://storage.googleapis.com/proudcity/sanrafaelca/uploads/2021/12/PC-Staff-report.pdf> (Staff’s 10/12/21 report to the Commission)

Prior to the Planning Commission’s meeting, staff raised the question with the City Attorney whether the application was subject to the newly adopted Downtown Precise Plan and accompanying Form-Based Code or to the previous General Plan and zoning. To that point, the project had been considered according to previous regulations, and planning staff had concluded that since the 800 Mission Avenue project was so far along in the application process, the City Council had not intended to apply the new land use regulations to the project.

Nevertheless, the City Attorney’s office recommended deferring consideration of the 800 Mission Avenue project while they researched which regulations should be applied; however, the applicant requested that the project not be delayed. In order to accommodate the applicant, staff agreed to proceed with October 12 Planning Commission hearing and to recommend approval of the application based upon its consistency with the previous land use regulations. However, as a precaution, staff advised the Planning Commission of its intention to place an ordinance on an upcoming City Council agenda for the Council to confirm that the project was exempt from the newly-adopted regulations, and requested that the Planning Commission make its approval effective only upon the City Council’s approval of that ordinance. The Planning Commission agreed to staff’s request, and included the following provision Planning Commission Resolution No. 21-08 approving the project:

“NOW, THEREFORE, BE IT RESOLVED, that this resolution shall become effective only upon the effective date of an ordinance adopted by the San Rafael City



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Council which ordinance requires that the City only apply to applicant's project those zoning ordinances, standards and regulations in place at the time of submission of applicant's complete development application. For purposes of this resolution "zoning ordinances, standards and regulations," means the City's general plan, precise plan, zoning, design review standards and criteria, and subdivision standards and criteria;

Subsequent to the October 12th Planning Commission meeting, the City Attorney's office has had the opportunity to adequately evaluate the provisions of the DPP and has determined that by its terms, the DPP contemplated that existing "pipeline projects", including the 800 Mission Avenue project, would be grandfathered and processed subject to the zoning regulations in effect prior to the adoption of the DPP. Consequently, no ordinance or other action by the City Council is required and the pre-condition included in the project resolution No. 21-08 is not needed.

Accordingly, as a housekeeping item to avoid confusion in the future, staff is recommending that the Planning Commission adopt a resolution to delete the pre-condition and certain now incorrect "Whereas" provisions from Resolution No. 21-08. (Exhibit 1) There are no changes to the project as conditionally approved by the Planning Commission on October 12. The proposed resolution provides that the effective date of that approval is deemed to be October 12, 2021, the date of adoption of Resolution No. 21-08.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY OF SAN RAFAEL PLANNING COMMISSION AMENDING THE
EFFECTIVE DATE OF PLANNING COMMISSION RESOLUTION NO. 21-08
(APPROVAL OF DEVELOPMENT PERMITS FOR 800 MISSION AVENUE)
(APNS: 011-184-08 & -09)**

WHEREAS, on September 4, 2018, the City Council denied an appeal and upheld the Planning Commission's conditional approval of a Use Permit (UP17-030) and an Environmental and Design Review Permit (ED17-090) to allow the construction and operation of a new 77-residential room assisted living facility with memory care services and associated garage parking, and site improvements on two (2) vacant Downtown parcels located at 800 Mission Avenue; and

WHEREAS, on September 8, 2020, the Community Development Director approved the consolidation (LLA19-006) of the two (2) parcels; and

WHEREAS, on March 8, 2021, Applicant Geoff Forner for Aegis Living submitted an application to amend the project approvals (Use Permit Amendment UP21-006 and Environmental and Design Review Permit Amendment ED21-022) by requesting an 11' 2" height bonus to allow expansion of memory care services, from 1 to 2 floors, and to increase residential rooms, from 77 to 103 rooms, and beds, from 88 to 105 beds (the "Application"); and

WHEREAS, on August 3, 2021, the Design Review Board (Board) unanimously recommended approval of the Application subject to certain additional required design modifications; the Applicant subsequently revised the Application to include the requested additional design changes and worked with staff to tentatively schedule the application for review by the Planning Commission on October 12, 2021; and

WHEREAS, following a three-year review and revision of the City's general plan policies and regulations, at hearings held on August 2, and August 16, 2021, the City Council adopted a comprehensive new General Plan 2040 to set the City's General Plan goals, policies and programs through the year 2040, along with Ordinances No. 1996 and 1997 amending the zoning regulations for Downtown San Rafael to be governed by a new Downtown Precise Plan and Form-Based Code (the "New Zoning Ordinances"); and

WHEREAS, following the City's Council's actions in August 2021, Community Development Department staff recommended that the New Zoning Ordinances were not intended to apply to the Application and that the Application should continue to be reviewed for compliance with the zoning ordinances in effect prior to August 2021, and in early October 2021 staff requested confirmation from the City Attorney's office that their recommendation was correct; and

WHEREAS, although the City Attorney's office advised the Applicant in early October 2021 that the City had not yet formally determined whether or to what extent the Application was exempt from the New Zoning Ordinances, staff agreed to the Applicant's urgent request to go forward with the Planning Commission hearing on October 12, 2021 and agreed that staff would recommend approval of the Application based on the assumption that it was exempt from the New Zoning Ordinances, but with the understanding and the Applicant's agreement that any approval of the Application by the Planning Commission would be conditioned on the City Council adopting an ordinance recommended by staff to clarify that the New Zoning Ordinances were not intended to apply to those Downtown development applications deemed complete prior to August 16, 2021; and

WHEREAS, on October 12, 2021, Community Development Department staff presented to the Planning Commission an agenda item recommending approval of the Application based on its compliance with the general plan and zoning regulations in effect prior to August 2021, but requested that the Planning Commission include with its approval a precondition providing that the approval would become effective only upon adoption by the City Council of an ordinance to clarify that the New Zoning Ordinances were not intended to apply to those Downtown development applications, including the Application, deemed complete prior to August 16, 2021 (the" Precondition"); and

WHEREAS, on October 12, 2021, the Planning Commission held a duly noticed public hearing on the Application and accepted all oral and written public testimony and the written report of the Community Development Department staff, and adopted Planning Commission Resolution No. 21-08 conditionally approved (5-1-1 vote; Previtali no, Harris absent) the Application, with the requested Precondition; and

WHEREAS, since the October 12, 2021 Planning Commission meeting the City Attorney's office has concluded its analysis and has determined that there is no need for the requested City Council ordinance and recommends against adoption of such an ordinance, concluding that the terms of the Downtown Precise Plan show the City's intention that the New Zoning Ordinances would not be applied to certain specified "pipeline projects", including the 800 Mission Avenue; and

WHEREAS, to avoid confusion in the future staff is recommending that the Planning Commission delete the Precondition from Resolution No. 21-08 and confirm that the project approval and all remaining findings and conditions of that resolution are deemed to have become effective as of its adoption on October 12, 2021;

NOW, THEREFORE, BE IT RESOLVED by the San Rafael Planning Commission as follows:

1. The final five "WHEREAS" provisions in Resolution No. 21-08 are no longer correct and Resolution No. 21-08 is hereby amended to delete those provisions and replace them with the following:

WHEREAS, under the terms of the new Downtown Precise Plan, the project at 800 Mission Avenue is a "pipeline project" that is exempt from the new zoning regulations adopted by Ordinances No. 1996 and No. 1997, and should be reviewed for conformity with the zoning ordinances in effect prior to August 2021; and

2. The following provision of Resolution No. 21-08 is hereby deleted in its entirety:

NOW, THEREFORE, BE IT RESOLVED, that this resolution shall become effective only upon the effective date of an ordinance adopted by the San Rafael City Council which ordinance requires that the City only apply to applicant's project those zoning ordinances, standards and regulations in place at the time of submission of applicant's complete development application. For purposes of this resolution "zoning ordinances, standards and regulations," means the City's general plan, precise plan, zoning, design review standards and criteria, and subdivision standards and criteria;

3. Except as amended in this Resoltuion, Resolution No. 21-08 is confirmed in its entirety, and shall be deemed to be effective as of its date of adoption, October 12, 2021.

The foregoing Resolution was adopted at the regular meeting of the City of San Rafael Planning Commission held on the 14th day of December 2021.

Moved by Commissioner _____ and seconded by Commissioner _____
:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

SAN RAFAEL PLANNING COMMISSION

ATTEST: _____
Leslie Mendez, Secretary

BY: _____
Shingai Samudzi, Chair