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May 8, 2023

Via E-Mail Only

City Council
City of San Rafael
1400 Fifth Avenue, Room 203
San Rafael, CA 94901

Re: Response to appeal of 1515 Fourth Street- ED22-016

Dear Members of the City Council:

Our office represents the applicant for the proposed housing project at 1515 Fourth Street in San Rafael. This letter is in response to the April 18, 2023, appeal of the Planning Commission's approval of this project.

EXECUTIVE SUMMARY

This appeal must be denied because:

- 1. The project does not violate any of the City's objective development standards.**
- 2. It has not been proven, based on a preponderance of the evidence, that the project will have significant, quantifiable, direct, and unavoidable public health and safety impacts based on objective, identified written public safety standards.**

Because this is a Housing Accountability Act project and also subject to the State Density Bonus Law, these are the only two ways this project can be denied. Since the project does not violate the City's objective development standards or cause the type of health and safety impacts that would warrant denial, the project is required to be approved by the City and the appeal must be denied.



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LEGAL BACKGROUND

The Housing Accountability Act (“HAA”) greatly limits a city’s ability to reject or reduce housing projects that comply with “applicable, objective general plan and zoning standards and criteria.” (Govt. Code § 65589.5(j).) AB 1584 amended the HAA to clarify that the receipt of an incentive, concession, waiver, or reduction of development standards pursuant to a density bonus is **not** a valid basis on which to find a project inconsistent with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision for purposes of the HAA.

Once it is established that a project complies with applicable objective standards, a city’s discretion to disapprove or reduce the density of the project is very limited.

A City can only disapprove a project or reduce its density if the city can prove, based on a preponderance of the evidence, that the project will have **unavoidable public health and safety impacts**, which must be, “significant, quantifiable, direct, and unavoidable impacts, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (Govt Code 65589.5 (j)(1)(B).) Furthermore, it must be proven that any such impacts cannot be mitigated.

The State Legislature has emphasized its expectation that this type of “public health or safety” impact will “**arise infrequently**.” (Govt Code 65589.5(a)(3).) So, other than determining noncompliance with applicable objective standards, **this is the only manner in which this project could be denied or reduced by the City**.

THE APPEAL

The appeal makes broad assertions that the project will negatively impact Shaver Street and the wider San Rafael traffic system. The appeal also alleges the project will exacerbate drainage and flooding conditions. Very importantly, **the appeal fails to identify a single objective standard the project violates**, nor does the appeal come anywhere close to proving, by a preponderance of the evidence, that the project will have unavoidable and quantifiable public health and safety impacts, based on objective, identified written public health or safety standards.



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Both the appeal, and the April 30, 2023, PHA traffic peer-review relied upon by the appellant, **fail to identify a single objective, identified written public health or safety standard that the project violates.** The PHA report contains opinions of its author regarding the traffic report for the project, and suggests areas of the report that should be updated. This is not enough. The legislature very purposefully amended the government code to require that any project denial based on alleged “safety” impacts now meet the incredibly high threshold of a preponderance of the evidence standard, with reference to identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The days of broad claims of “safety” impacts being used to stop a project are over.

Because this appeal fails to provide the necessary evidence of a safety impact, it must be denied.

CONCLUSION

An *objective* standard “involves no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application.”

Here, both the City staff and the Planning Commission have found that this project does not violate any of the City’s *objective* development standards or *objective* public safety standards. The appeal provides no new or changed evidence that would support a conclusion different from that of the staff and Commission the City has tasked with analyzing projects such as these. Accordingly, pursuant to state law, the appeal must be denied, and the project approved.

Thank you.

Very Truly Yours,

A handwritten signature in blue ink that reads "Riley F. Hurd III". The signature is written in a cursive style.

Riley F. Hurd III

CC: Client

From: Scott Prentice [REDACTED]
Sent: Monday, May 8, 2023 12:15 PM
To: Distrib- City Clerk <city.clerk@cityofsanrafael.org>
Subject: Tonight's council meeting

Council members:

I attended the last planning meeting, which felt like the planning commission members' hands were tied and could do nothing but accept the proposal. All in all it felt like a bit of a sham, and there seemed to be no room for the opinions of concerned residents. I do understand that the new CA State laws limit the options available to the City, but I cannot believe that there is no room for compromise, when it comes to public safety and quality of life.

I have a degree in architecture and worked in the profession for a number of years. This proposed building is nothing more than a developer taking advantage of new laws and trying to make a buck at the expense of San Rafael residents. In my opinion, the architectural plans provided by the developer are intentionally misleading, in an attempt to disguise the fact that it is absurdly oversized and out of place. There are no "contextual" drawings that compare the size of this building with those of the surrounding buildings. The perspective drawings that do include the neighboring buildings were created in such a way as to minimize the difference in size and massing. I created street elevations that show the actual relative sizes ..

<https://iarch.net/sanrafael/1515-4th-context-elevations.pdf>

There is nothing in the City that compares to this type of structure. I'm not at all opposed to providing housing, which is definitely needed, but at what expense? There are plenty of available sites in the city to build housing, it just doesn't need to be so big and all in one location.

Aesthetics and "community feel" aside, the issue on Shaver Street should be the gating factor with project. It's barely big enough to support the current traffic, let alone the additional load caused by the volume of cars entering and exiting this building. If the city wants to allow this to proceed, they should require a complete rework of this road, which may mean widening it (and buying property on one side of the street). This situation needs to be studied and properly resolved long before any project is approved for 1515 4th. It's completely irresponsible and negligent of the City to allow it to go through with the current plans.

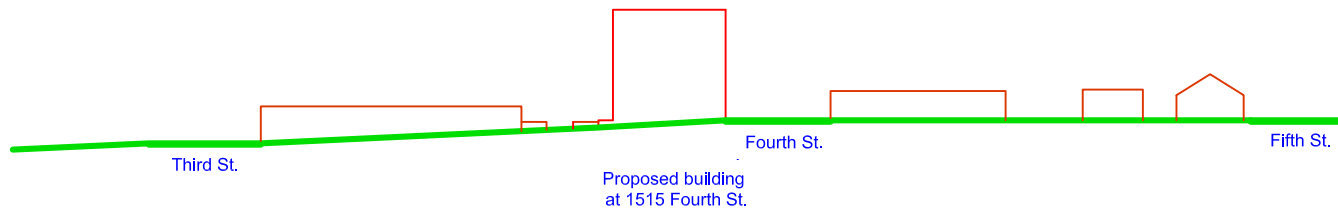
I know it's not the most efficient (for the developer), but the auto access to this building should be on E Street, which is sized much better for this type of traffic. Alternatively, perhaps the upper level parking could be accessed from E Street and the lower level from Shaver. Something needs to change, or this will be a disaster for all involved.

I'm hoping that cooler and more sensible heads will prevail, and we don't get sucked into the rush to provide more housing at all costs. A well designed City requires careful analysis and likely compromises on all sides.

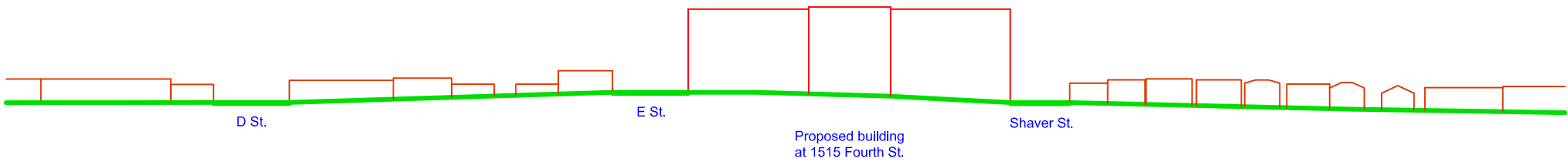
Regards,

Scott Prentice
San Rafael resident

Proposed Structure at 1515 Fourth St. in Context with Surrounding Buildings



East Elevation - through E Street



North Elevation - through Fourth Street

