

# Zoning Administrator Hearing

Wednesday, February 28, 2024  
10:00 AM

Join In-Person Meeting:  
Community Development Small Meeting  
Room, San Rafael City Hall  
1400 Fifth Avenue, 3<sup>rd</sup>  
Floor,  
San Rafael, CA 94901

Join Virtual Meeting:  
Zoom Website/App: <http://tinyurl.com/ZA-Hearing-2024>  
or  
Telephone: (669) 444-9171  
Webinar ID: 827 0869 6241#

## Agenda

### **1. 88 Vivian Street, Entitlement Extension – PLAN23-169**

Request to extend the existing approved entitlements (ED21-042; UP21-017) for a 70-unit for-sale townhome development at 88 Vivian Street

### **2. 80 Medway Road, 7-Eleven – UP24-003 (PLAN23-153)**

Request for a Use Permit to increase alcohol sales at the existing 7-11 convenience store at 80 Medway Road

### **3. Adjournment**



**SAN RAFAEL**  
THE CITY WITH A MISSION

Community Development Department –  
Planning Division

**Meeting Date:** February 28, 2024

**Project Number(s):** PLAN23-169

**Project Planner:**  
Renee Nickenig, Associate Planner

**Agenda Item:** 1

## REPORT TO ZONING ADMINISTRATOR

**SUBJECT:** **88 Vivian Street.** Request to extend the existing approved entitlements (ED21-042; TS21-004; UP21-017) for a 70-unit for-sale townhome development at 88 Vivian Street; APN: 008-092-02; Neighborhood Commercial (NC) Zoning District; PLAN23-169

### EXECUTIVE SUMMARY

Pursuant to San Rafael Municipal Code (SRMC) Sections 14.22.140 and 14.25.150, a use permit and/or environmental and design review permit may be extended prior to the established expiration dates with the approval of the zoning administrator if the respective findings remain valid and there have been no substantial changes to the approved project. The applicant is requesting that the following approved entitlements be extended:

- **Major Environmental and Design Review (ED21-042)**  
Approved: May 10, 2022 (Planning Commission)  
Set to Expire: May 10, 2024
- **Use Permit (UP21-017)**  
Approved: May 10, 2022 (Planning Commission)  
Set to Expire: May 10, 2024
- **Tentative Map (TS21-004)**  
Approved: May 10, 2022 (Planning Commission)

### PROJECT DESCRIPTION

The associated approved project at 88 Vivian Street includes the demolition of the existing building and construction of 70 for-sale residential units in 14 separate building. This included six (6) units available to low-income households. The project required the following entitlements:

- **Environmental and Design Review (ED21-042).** Pursuant to SRMC § 14.25.040.A, the construction of residential structures with three or more dwelling units requires a Major Environmental and Design Review Permit, subject to review by the DRB and approval by the Planning Commission.

- **Use Permit (UP21-017).** Pursuant to SRMC § 14.05.020, an administrative use permit is required for multifamily residential uses in the NC zoning district. However, where a single development project seeks multiple approvals, the highest decision-making body is responsible for review of all requested entitlements and as such the use permit was ultimately reviewed by the Planning Commission.
- **Tentative Subdivision Map (TS21-004).** Pursuant to SRMC § 15.12.030, all condominiums of two or more units are subject to Planning Commission approval of a tentative map.

The current request to extend the entitlements does not include any changes to the approved project.

## FINDINGS

The following tables reference the findings previously made to approve ED21-042 and UP21-017 and denotes if the finding remains valid.

### Findings for Environmental and Design Review Permit (ED21-042)

| CEQA Finding  |     |       |  |
|---|-----|-------|--|
|   | Yes | VALID |  |
| The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) and none of the exceptions of Section 15300.2 apply.       | X   | YES   | Section 15332 ("Infill Development Projects")  |
| Environmental and Design Review Permit (SRMC §14.25.090)  |     |       |  |
| <i>Findings referenced from Resolution No. 22-08</i>  |     |       |  |
|   | Yes | VALID |  |
| Finding A   |     |       |  |
| That the project design is in accord with the general plan, the objectives of the zoning ordinance and the purposes of this chapter:                                  | X   | YES   | The site is designated as Neighborhood Commercial on the General Plan 2040 Land Use Map which conditionally allows for residential uses. At the time of approval, the project was found to be consistent with the General Plan and applicable General Plan Policies and with the applicable regulations contained in the City of San Rafael Zoning Ordinance. No significant changes have been made to the General Plan or Zoning Ordinance that would impact the previous findings. As such, this finding remains valid.  |
| Finding B   |     |       |  |
| The project design is consistent with all applicable site, architecture and landscaping design criteria and guidelines for the district in which the site is located: | X   | YES   | The Design Review Board evaluated the design of the project on February 20, 2019 as part of the conceptual design review, and on December 7, 2021, and March 22, 2022 as part of formal design review. On March 22, 2022, the Design Review Board found the project design to be consistent with applicable regulations and guidelines and recommended approval of the project design to the Planning Commission, subject to conditions of approval. The request for an extension does not include any design revisions, and as such this finding remains valid. |
| Finding C   |     |       |  |
| That the project design minimizes adverse environmental impacts:  | X   | YES   | Staff conducted a "preliminary review" of the project application, plans and supportive studies and reports and determined that the application is defined as a "project" under the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15060. A project is exempt from CEQA if it qualifies for a Categorical Exemption under Article 19, Section 15300. Given the   |

|  |   |     |  |
|--|---|-----|--|
|  |   |     | project location, scope and use, staff recommended that the project qualifies for an exemption under CEQA Guidelines Section 15332. Section 15332 exempts “infill development projects”. The request for an extension does not include any change to the project scope, and as such this finding remains valid.  |
| <b>Finding D</b>   |   |     |  |
| That the project design will not be detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity. | X | YES | The project was reviewed by the City of San Rafael and appropriate agencies and where applicable, conditions of approval were incorporated to ensure the project will not be detrimental to the public health, safety, or welfare, nor materially injurious to properties or improvements in the project vicinity. The conditions or approval will continue, and as such this finding remains valid. |

### Findings for Use Permit (UP21-017)

| CEQA Finding   |     |       |  |  |
|--|-----|-------|--|--|
|  | Yes | VALID |  |  |
| The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) and none of the exceptions of Section 15300.2 apply.  | X   | YES   | Section 15332 (“Infill Development Projects”)  |  |
| Use Permit (SRMC §14.22.080)   |     |       |  |  |
| <i>Findings referenced from Resolution No. 22-08</i>   |     |       |  |  |
|  | Yes | VALID |  |  |
| <b>Finding A</b>   |     |       |  |  |
| That the proposed use is in accord with the general plan, the objectives of the zoning ordinance, and the purposes of the district in which the site is located:   | X   | YES   | The site is designated as Neighborhood Commercial on the General Plan 2040 Land Use Map which conditionally allows for residential uses. At the time of approval, the project was found to be consistent with the General Plan and applicable General Plan Policies and with the applicable regulations contained in the City of San Rafael Zoning Ordinance. No significant changes have been made to the General Plan or Zoning Ordinance that would impact the previous findings. As such, this finding remains valid.  |  |
| <b>Finding B</b>   |     |       |  |  |
| That the proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city: | X   | YES   | The project was previously reviewed by appropriate city departments, including the Building Division, Fire Department, Department of Public Works, and Marin Sanitary Service. As conditioned, the project requires application of a building permit that complies with all applicable Building and Fire Code requirements prior to construction. In addition, the applicant will be required to comply with conditions of approval imposed by the Department of Public Works and Marin Sanitary Service as contained herein. As such, the project will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city and this finding can be made. |  |
| <b>Finding C</b>   |     |       |  |  |
| That the proposed use complies with each of the applicable provisions of the zoning ordinance:   | X   | YES   | For the reasons described above, the project, as proposed and conditioned, complies with Chapter 14 Zoning) of the San Rafael Municipal Code (SRMC) and therefore this finding can be made.  |  |

## Findings for Tentative Subdivision Map (TS21-004)

| <b>CEQA Finding</b>  |     |       |  |
|--|-----|-------|--|
|  | Yes | VALID |  |
| The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) and none of the exceptions of Section 15300.2 apply.                              | X   | YES   | Section 15332 ("Infill Development Projects")  |
| <b>Environmental and Design Review Permit (SRMC §15.02.080)</b>  |     |       |  |
| <i>Findings referenced from Resolution No. 22-09</i>   |     |       |  |
|  | Yes | VALID |  |
| <b>Finding 1</b>   |     |       |  |
| The proposed map is consistent with the San Rafael general plan and any applicable, adopted specific plan or neighborhood plan;  | X   | YES   | The proposed map will consist of 70 condominium units, shown on the Tentative Map. The General Plan supports residential uses at the project site, and the applicant seeks Use Permit approval as required by the SRMC. There is no adopted specific plan or neighborhood plan for the project area. As such, the proposed map is consistent with the San Rafael General Plan.   |
| <b>Finding 2</b>   |     |       |  |
| The design or improvement of the proposed subdivision is consistent with the San Rafael general plan and any pertinent, adopted specific plan or neighborhood plan;                          | X   | YES   | The proposed project has been reviewed for consistency with applicable General Plan policies. As discussed in the required Use Permit and Environmental and Design Review findings, the design and improvement of the proposed project and associated map is consistent with the General Plan. As such, the proposed map is consistent with this finding.  |
| <b>Finding 3</b>   |     |       |  |
| The property subject to subdivision is physically suitable for the type or density of development that is proposed;  | X   | YES   | The proposed map has been reviewed concurrent with the proposed physical development. The subdivision will adequately accommodate the type and density of the proposed uses consistent with this finding.  |
| <b>Finding 4</b>   |     |       |  |
| The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; | X   | YES   | The project has been reviewed in accordance with the California Environmental Quality Act and has been found to be categorically exempt pursuant to CEQA Guidelines Section 15332 (In-Fill Projects). As such, the design of the subdivision and associated improvements will not cause a substantial adverse impact on the environment consistent with this finding.  |
| <b>Finding 5</b>   |     |       |  |
| The design of the subdivision or the type of proposed improvements is not likely to cause serious health problems; and   | X   | YES   | The project has been reviewed by appropriate city departments, including the Building Division, Fire Department, Department of Public Works, and Marin Sanitary Service. As conditioned, the project will require application of a building permit that complies with all applicable Building and Fire Code requirements prior to construction. In addition, the applicant will be required to comply with conditions of approval imposed by the Department of Public Works and Marin Sanitary Service as contained herein. As such, the design of the subdivision and associated improvements will not cause serious health problems and is therefore consistent with this finding. |
| <b>Finding 6</b>   |     |       |  |
| The design of the subdivision or the type of proposed  | X   | YES   | There are no existing public access easements onsite. As such, the proposed map is consistent with this finding.   |

|   |  |  |  |
|---|--|--|--|
| <p>improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the city may approve the map if it is determined that alternative easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired or secured for public use.</p> |  |  |  |
|---|--|--|--|

**CONDITIONS OF APPROVAL**

The conditions previously applied per Resolution No. 22-08 will remain in effect with the vesting dates adjusted:

**Conditions for Environmental and Design Review Permit (ED21-042)**

1. [This extension approval continues the approval of] Environmental and Design Review Permit [ED21-042], [which approved] ~~approves~~ a 61-foot 8-inch tall, 185-room hotel project with associated parking, access and landscape improvements at 1075 Francisco Blvd E and within the General Commercial ( GC) Zoning District. Plans submitted for building permit shall be in substantial conformance to the plans approved May 12, 2020 with regard to building techniques, materials, elevations, and overall project appearance except as modified by these conditions of approval.
2. ~~This~~ [As amended by this extension approval (PLAN23-169)], Design Review Permit (ED19-038) shall be valid for two additional years from approval or until May 10, 2024~~[6]~~ and shall be null and void if a building permit is not issued. ~~or a time extension granted prior to the expiration date.~~
3. Plans submitted for building permit shall incorporate the following Design Review Board recommendations and shall be reviewed for compliance by Planning Staff and the Chair of the Design Review Board.
  - a) Plans shall be revised to improve the sense of building entries for units facing Vivian Street. Options may include, but are not limited to projecting awnings or soffits that provide additional articulation or a new color for such elements.
  - b) Plans shall include revisions to the material of proposed planter boxes along Vivian Street from concrete masonry unit (CMU) block wall to stucco, stone, or other similar quality material. The applicant shall also consider methods for mitigating the potential for skateboards to affect these planter boxes. Plans submitted for building permit shall also provide additional planter boxes along the Vivian Street project frontage where feasible.
4. Plans submitted for building permit shall incorporate recommendations contained in the Geotechnical Report prepared by Geocon Consultants, Inc., dated January 2021, subject to review and approval by the City's Building Division.

5. Plans shall demonstrate compliance with regulations set forth in Section 14.16.295 (Sight distance) of the San Rafael Municipal Code.
6. Plans shall demonstrate compliance with regulations set forth in Section (14.16.320), requiring a minimum setback of five feet from the property line for all mechanical equipment.
7. The project shall be subject to a 90-day post installation lighting inspection to evaluate the need for adjustment and assure compliance with SRMC Section 14.16.227.
8. Prior to issuance of a building permit, the applicant demonstrate compliance with Marin Municipal Water District water conservation measures.
9. Prior to Issuance of Building Permit, the applicant shall submit the stormwater control plan, which includes written document, in addition to the erosion control plan shown on the plan set. A stormwater facility maintenance agreement shall be required.
10. A grading permit shall be required from the Department of Public Works, located at 111 Morphew St.
11. Prior to Issuance of a Building Permit the applicant shall provide improvement plans for proposed frontage improvements.
12. Prior to commencing work within the right- of-way, the applicant shall obtain an encroachment from the Department of Public Works located at 111 Morphew St.
13. In the event that any archaeological features, such as concentrations of artifacts or culturally modified soil deposits including trash pits older than fifty years of age, are discovered at any time during grading, scraping, or excavation within the property, all work shall be halted in the vicinity of the find, the Planning Division shall be notified, and a qualified archaeologist shall be contacted immediately to make an evaluation. If warranted by the concentration of artifacts or soils deposits, an archaeologist shall monitor further work in the discovery area.
14. If human remains are encountered during grading and construction, all work shall stop in the immediate vicinity of the discovered remains and the County Coroner and a qualified archaeologist shall be notified immediately so that an evaluation can be performed. The Coroner shall contact the Native American Heritage Commission, if the remains are deemed to be Native American and prehistoric, so the "most likely descendant" can be designated.

**Conditions for Use Permit (UP21-017)**

*The following Planning Division Conditions will remain in effect as amended. The Building Division, Fire Department, and Department of Public Works conditions will remain in effect as written in Resolution No. 22-08.*

1. [This extension approval continues the approval of] Use Permit [UP21-017], [which approved] ~~approves~~ construction of 70 for-sale residential units in 14 separate buildings at 88 Vivian Street and within the Neighborhood Commercial (NC) Zoning District. Plans submitted for building permit shall be in substantial conformance to the plans approved May 10, 2022 with regard to building techniques, materials, elevations, and overall project appearance except as modified by these conditions of approval.
2. Use Permit shall run with the land. ~~This Use Permit shall become null and void if not vested within two (2) years from the date of approval, or no later than May 10, 2024 unless a~~

~~time extension is granted before such time.~~ [As amended by this extension approval (PLAN23-169), this Use Permit (UP21-017) shall be valid for two additional years from approval or until May 10, 2024<sup>[6]</sup> and shall be null and void if a building permit is not issued.] Vesting shall include issuance of necessary building permits.

3. Plans submitted for building permit shall incorporate all recommendations included in the Noise Impact Study, prepared by RK Engineering Group Inc., on April 5, 2021.
4. Plans submitted for building permit shall incorporate all recommendations included in the Air Quality and GHG Impact Study, prepared by RK Engineering Group Inc., on April 5, 2021.
5. The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance, City Council Resolution 14890, and City Council Resolution 14891 and is therefore required to provide six (6) of the 70 units as affordable at the low income level. Prior to issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the six (6) affordable units shall be approved by the City Council and recorded on the property. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process.
6. Prior to Issuance of Building Permits, the applicant shall pay all outstanding Planning Division application processing fees.
7. Prior to Issuance of Building Permits, the applicant shall pay all applicable development impact fees required for this project, including those fees mentioned herein and other fees required by ordinance.
8. Minor modifications or revisions to the project shall be subject to review and approval by the Community Development Department, Planning Division. Modifications deemed greater than minor in nature by the Community Development Director shall require review and approval by the Planning Commission.
9. The project shall comply with the City construction operation limits as follows:
  - a. Construction hours shall be limited to
    - i. Weekdays between 7:00am and 6:00pm
    - ii. Saturdays between 9:00am and 6:00pm
    - iii. Sundays and holidays NO construction permitted.
  - b. Prohibit all unnecessary idling of internal combustion engines.
  - c. Equip all internal combustion engine- driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.
  - d. Locate stationary noise- generating equipment, such as air compressors or portable power generators, as far as possible from sensitive receptors as feasible. If they must be located near receptors, adequate muffling ( with enclosures where feasible and appropriate) shall be used reduce noise levels at the adjacent sensitive receptors. Any enclosure openings or venting shall face away from sensitive receptors.
  - e. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
  - f. Notify all adjacent noise sensitive land uses of the construction schedule in writing.
  - g. Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the

cause of the noise complaint ( e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.

10. Due to the extent and scope of the project, third party inspection may be required on behalf of the City and funded by the developer on a deposit basis.
11. Prior to sale of individual units, the seller shall provide the buyer with disclosure of the property' s location within the Special Flood Hazard Zone AE and the property' s vulnerability to sea level rise.

### **Conditions for Tentative Subdivision Map (TS21-004)**

1. [This extension continues the previously-approved] This Tentative Subdivision Map approve[ing] the proposed condominium subdivision as shown on plans approved May 10, 2022.
2. Prior to issuance of a building permit, the applicant shall submit an application for a Final Subdivision Map, which shall be in substantial conformance to the Tentative Map.
3. Upon submittal of the Final Map, the applicant shall submit draft CC&Rs for review by the Community Development Department and the City Attorney's office, consistent with Section 15.06.160 of the San Rafael Municipal Code.

### **PUBLIC COMMENT**

Notice of hearing for the project was conducted in accordance with noticing requirements contained in Chapter 29 of the Zoning Ordinance. A Notice of Public Hearing was mailed to all property owners and occupants within a 300-foot radius of the subject site and all other interested parties, 15 calendar days prior to the date of this hearing. No public comment has been received by the date of this staff report.

### **EXHIBITS**

1. *Resolution No. 22-08*
2. *Resolution No. 22-09*

RESOLUTION NO. 22-08

RESOLUTION OF THE SAN RAFAEL PLANNING COMMISSION APPROVING A USE PERMIT (UP21-017) AND ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED21-042) FOR DEMOLITION OF THE EXISTING COUNTRY CLUB BOWL AND CONSTRUCTION OF 70 FOR-SALE RESIDENTIAL UNITS, INCLUDING SIX AVAILABLE TO LOW-INCOME HOUSEHOLDS, IN 14 SEPARATE BUILDINGS LOCATED AT 88 VIVIAN STREET  
APN: 008-092-02

**WHEREAS**, the City of San Rafael has received an application for a Use Permit and Environmental and Design Review Permit (PLAN21-020, UP21-017, ED21-042) for a 70-unit for-sale residential project in 14 separate buildings at 88 Vivian Street in the Neighborhood Commercial (NC) Zoning District; and

**WHEREAS**, on February 20, 2019, the project received Conceptual Design Review by the City of San Rafael Design Review Board pursuant to Section 14.25.030(B) of the San Rafael Municipal Code; and

**WHEREAS**, on December 7, 2021, the project received Formal Design Review by the City of San Rafael Design Review Board pursuant to Section 14.25.070 of the San Rafael Municipal Code and the Board made a motion recommending continuation of the project to a date uncertain with direction to the applicant to revise the site plan to include more tenant amenities, usable outdoor space, and more landscaping; and

**WHEREAS**, on March 22, 2022, the revised project was reviewed by the Design Review Board who recommended approval of the design, with conditions; and

**WHEREAS**, on May 10, 2022, the San Rafael Planning Commission held a duly noticed public hearing on the proposed Use Permit and Environmental and Design Review Permit, accepting all oral and written public testimony and the written report of the Community Development Department staff; and

**WHEREAS**, upon review of the application, the Planning Commission finds that the project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the CEQA Guidelines because it involves an infill development project that meets the following criteria:

- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designations and regulations.
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c. The project site has no value as habitat for endangered, rare or threatened species.
- d. Approval of the project would not result in any significant effects related to traffic, noise, air quality, or water quality.
- e. The site can be adequately served by all required utilities and public services.

NOW THEREFORE BE IT RESOLVED, the Planning Commission makes the following findings relating to the Use Permit (UP21-017), Environmental and Design Review (ED21-042), and Major Subdivision (TS21-004) for the proposed 70-unit for-sale residential project in 14 separate buildings.

**USE PERMIT FINDINGS  
(UP21-017)**

**A. That the proposed use is in accord with the general plan, the objectives of the zoning ordinance, and the purposes of the district in which the site is located:**

The site is designated as Neighborhood Commercial on the General Plan 2040 Land Use Map which conditionally allows for residential uses. In addition, the project is consistent with the General Plan including applicable General Plan Policies for the reasons described in the General Plan Consistency Table, included as Exhibit 4. The project is also consistent with applicable regulations contained in the City of San Rafael Zoning Ordinance, including performance standards applicable to residential uses in commercial districts, as detailed in the Zoning Ordinance Consistency Table included in Exhibit 5. For the reasons described in Exhibits 4 and 5, the proposed use is in accord with the General Plan, the objectives of the Zoning Ordinance, and the purposes of the district in which the site is located, and therefore this finding can be made.

**B. That the proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city:**

The project has been reviewed by appropriate city departments, including the Building Division, Fire Department, Department of Public Works, and Marin Sanitary Service. As conditioned, the project will require application of a building permit that complies with all applicable Building and Fire Code requirements prior to construction. In addition, the applicant will be required to comply with conditions of approval imposed by the Department of Public Works and Marin Sanitary Service as contained herein. As such, the project will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city and this finding can be made.

**C. That the proposed use complies with each of the applicable provisions of the zoning ordinance:**

For the reasons described in the Planning Commission Staff Report and Zoning Ordinance Consistency Table, the project, as proposed and conditioned, complies with Chapter 14 (Zoning) of the San Rafael Municipal Code (SRMC) and therefore this finding can be made.

**ENVIRONMENTAL AND DESIGN REVIEW FINDINGS  
(ED21-042)**

**A. That the project design is in accord with the general plan, the objectives of the zoning ordinance and the purposes of this chapter:**

The site is designated as Neighborhood Commercial on the General Plan 2040 Land Use Map which conditionally allows for residential uses. In addition, the project is

consistent with the General Plan including applicable General Plan Policies for the reasons described in the General Plan Consistency Table, included as Exhibit 4. The project is also consistent with applicable regulations contained in the City of San Rafael Zoning Ordinance, including performance standards applicable to residential uses in commercial districts, as detailed in the Zoning Ordinance Consistency Table included in Exhibit 5. For the reasons described in Exhibits 4 and 5, the proposed use is in accord with the General Plan, the objectives of the Zoning Ordinance, and the purposes of the district in which the site is located, and therefore this finding can be made.

**B. That the project design is consistent with all applicable site, architecture and landscaping design criteria and guidelines for the district in which the site is located:**

The Design Review Board evaluated the design of the project on February 20, 2019 as part of the conceptual design review, and on December 7, 2021, and March 22, 2022 as part of formal design review. On March 22, 2022, the Design Review Board found the project design to be consistent with applicable regulations and guidelines and recommended approval of the project design to the Planning Commission, subject to conditions of approval. As such, this finding can be made.

**C. That the project design minimizes adverse environmental impacts:**

Staff conducted a “preliminary review” of the project application, plans and supportive studies and reports and determined that the application is defined as a “project” under CEQA, pursuant to CEQA Guidelines Section 15060. A project is exempt from CEQA if it qualifies for a Categorical Exemption under Article 19, Section 15300. Given the project location, scope and use, staff recommends that the project qualifies for an exemption under CEQA Guidelines Section 15332. Section 15332 exempts “infill development projects” that meet the following conditions:

**a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.**

The project, as a multi-family residential use is conditionally permitted in the NC Zoning District. The project is consistent with the General Plan, as detailed in the General Plan Consistency Table (Exhibit 4) and Zoning Ordinance as detailed in the Zoning Ordinance Consistency Table (Exhibit 5). Therefore, the project is consistent with applicable the general plan designation, general plan policies, and applicable zoning designation and regulations

**b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.**

The project site is approximately 2.4 acres and is located within an urbanized area surrounded by existing residential, commercial, and retail development. Therefore, the project is within city limits on a project site of no more than five acres substantially surrounded by urban uses.

**c. The project site has no value, as habitat for endangered, rare or threatened species.**

The project site is currently developed as a bowling alley with a large surface parking lot. The site contains minimal ornamental landscaping and is surrounded by roadways and existing urbanized uses. As disturbed, urban habitat, the site does not contain suitable habitat for endangered, rare or threatened species.

**d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.**

**Traffic.** As evidenced by the Trip Generation and VMT Analysis, prepared by RK Engineering Group, Inc. dated February 3, 2021 (Exhibit 11), the proposed use will result in 78 net additional daily trips including one net additional AM peak hour trip and five net fewer PM peak hour trips as compared to the existing bowling alley. Pursuant to the City's adopted VMT Guidelines, project's resulting in 110 or fewer average daily trips are presumed not to result in traffic impacts. Therefore, the project will not result in a significant effect relating to traffic.

**Noise.** No significant effects related to noise or traffic are anticipated. As evidenced in the Noise Impact Study, prepared by RK Engineering Group, Inc., dated April 5, 2021 (Exhibit 11), recommendations are included to prevent any off-site impact, as well as achieve the minimum interior noise standard of 45 dBA for all residential units, consistent with the requirements of the California Building Code. The project also includes CMU walls which serve to attenuate noise from adjacent noise sources to outdoor areas. Therefore, the project will not result in a significant effect relating to noise.

**Air Quality.** The Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines provide preliminary screening for a lead agency to consider in making a conservative determination of a project's potential impacts on air quality based on proposed land-use. Projects that are below the screening criteria contained in Table 3-1 of the BAAQMD CEQA Guidelines are reasonably expected to result in less than significant impacts to air quality since pollutant emissions would be minimal. The screening level criteria for an apartment, low rise (presumed to be analogous with 70 residential units in three-story buildings) is 451 dwelling units for operational criteria pollutants, 78 dwelling units for operational GHG emissions, and 240 dwelling units for construction-related emissions. Furthermore, an Air Quality and Greenhouse Gas Assessment (Exhibit 11) was prepared for the project and includes recommendations to control for emissions during construction and at operation. Based on the size of the project and through incorporation of recommendations contained in the Assessment, the project will not result in a significant effect relating to air quality.

**Water Quality.** The project will incorporate stormwater management, consistent with applicable requirements therefore, the project will not result in a significant effect relating to water quality.

**e. The site can be adequately served by all required utilities and public services.**

The project site contains existing uses that are fully served by utilities and public services. The site is located within an urbanized area, in the Canal neighborhood of San Rafael, within the Urban Growth Boundary and is well served by all requisite utilities and public services

**D. That the project design will not be detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity.**

The project has been reviewed by the City of San Rafael and appropriate agencies and where applicable, conditions of approval have been incorporated to ensure the project will not be detrimental to the public health, safety, or welfare, nor materially injurious to properties or improvements in the project vicinity. As such, this finding can be made.

**USE PERMIT CONDITIONS OF APPROVAL  
(UP21-017)**

**Community Development Department**

*Planning Division*

1. This Use Permit approves construction of 70 for-sale residential units in 14 separate buildings at 88 Vivian Street and within the Neighborhood Commercial (NC) Zoning District. Plans submitted for building permit shall be in substantial conformance to the plans approved May 10, 2022 with regard to building techniques, materials, elevations, and overall project appearance except as modified by these conditions of approval.
2. This Use Permit shall run with the land. This Use Permit shall become null and void if not vested within two (2) years from the date of approval, or no later than May 10, 2024 unless a time extension is granted before such time. Vesting shall include issuance of necessary building permits.
3. Plans submitted for building permit shall incorporate all recommendations included in the Noise Impact Study, prepared by RK Engineering Group Inc., on April 5, 2021.
4. Plans submitted for building permit shall incorporate all recommendations included in the Air Quality and GHG Impact Study, prepared by RK Engineering Group Inc., on April 5, 2021.
5. The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance, City Council Resolution 14890, and City Council Resolution 14891 and is therefore required to provide six (6) of the 70 units as affordable at the low income level. Prior to issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the six (6) affordable units shall be approved by the City and recorded on the property. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process.
6. Prior to Issuance of Building Permits, the applicant shall pay all outstanding Planning Division application processing fees.
7. Prior to Issuance of Building Permits, the applicant shall pay all applicable development impact fees required for this project, including those fees mentioned herein and other fees required by ordinance.
8. Minor modifications or revisions to the project shall be subject to review and approval by the Community Development Department, Planning Division. Modifications deemed greater than minor in nature by the Community Development Director shall require review and approval by the Planning Commission.
9. The project shall comply with the City construction operation limits as follows:
  - a. Construction hours shall be limited to
    - i. Weekdays between 7:00am and 6:00pm

- ii. Saturdays between 9:00am and 6:00pm
    - iii. Sundays and holidays NO construction permitted.
  - b. Prohibit all unnecessary idling of internal combustion engines.
  - c. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.
  - d. Locate stationary noise-generating equipment, such as air compressors or portable power generators, as far as possible from sensitive receptors as feasible. If they must be located near receptors, adequate muffling (with enclosures where feasible and appropriate) shall be used reduce noise levels at the adjacent sensitive receptors. Any enclosure openings or venting shall face away from sensitive receptors.
  - e. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
  - f. Notify all adjacent noise sensitive land uses of the construction schedule in writing.
  - g. Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.
10. Due to the extent and scope of the project, third party inspection may be required on behalf of the City and funded by the developer on a deposit basis.
11. Prior to sale of individual units, the seller shall provide the buyer with disclosure of the property's location within the Special Flood Hazard Zone AE and the property's vulnerability to sea level rise.

### **Building Division**

12. The design and construction of all site alterations shall comply with the 2019 California Residential Code (CRC), 2019 California Building Code (CBC), 2019 California Plumbing Code (CPC), 2019 California Electrical Code (CEC), 2019 California Mechanical Code CCMC), 2019 California Fire Code (CFC), 2019 California Energy Code, 2019 California Green Building Standards Code and City of San Rafael Ordinances and Amendments.
- A building permit is required for the proposed work. Applications shall be accompanied by four
  - (4) complete sets of construction drawings to include:
    - Architectural plans
    - Structural plans
    - Electrical plans
    - Plumbing plans
    - Mechanical plans
    - Site/civil plans (clearly identifying grade plane and height of the building)
    - Structural Calculations
    - Truss Calculations
    - Soils reports

- Green Building documentation
  - Title-24 energy documentation
13. School fees will be required for the project. Calculations are done by the San Rafael City Schools, and those fees are paid directly to them prior to issuance of the building permit.
  14. You must apply for a new address for this building from the Building Division.
  15. Each building must have address identification placed in a position that is plainly legible and visible from the street or road fronting the property. Numbers painted on the curb do not satisfy this requirement. In new construction and substantial remodels, the address must be internally or externally illuminated and remain illuminated at all hours of darkness. Numbers must be a minimum 4 inches in height with ½ inch stroke for residential occupancies and a minimum 6 inches in height with ½ inch stroke for commercial applications. The address must be contrasting in color to their background SMC 12.12.20.
  16. The maximum area of unprotected and protected openings permitted in the exterior wall in any story of a building shall not exceed the percentages specified in CBC Table 705.8 "Maximum Area of Exterior Wall Openings Based on Fire Separation Distance and Degree of Opening Protection." To calculate the maximum area of exterior wall openings you must provide the building setback distance from the property lines and then justify the percentage of proposed wall openings and include whether the opening is unprotected or protected.
  17. If proposed fencing exceeds 6' in height, a building permit is required.
  18. Bollards must be placed in the garage to protect mechanical equipment, water heater, and washer dryer from vehicular damage when located in the path of a vehicle.
  19. Any demolition of existing structures will require a permit. Submittal shall include three (3) copies of the site plan, asbestos certification and PG&E disconnect notices. Also, application must be made to the Bay Area Air Quality Management District prior to obtaining the permit and beginning work.
  20. A portion of the subject property appears to be in a flood zone, which is identified as an area of special flood hazard. All new construction and in some cases, existing improvements, are to be designed to ensure that the potential for flooding is minimized. This may involve grading to elevate the building pad or raising of existing building components to a level above the highest flood level.

Regarding any grading or site remediation, soils export, import and placement; provide a detailed soils report prepared by a qualified engineer to address these procedures. The report should address the import and placement and compaction of soils at future building pad locations and should be based on an assumed foundation design. This information should be provided to Building Division and Department of Public Works for review and comments prior to any such activities taking place.

A grading permit may be required for the above-mentioned work.

21. Prior to building permit issuance for the construction of each building, geotechnical and civil pad certifications are to be submitted.
22. Based on the distance to the property line (and/or adjacent buildings on the same parcel), the building elements shall have a fire resistive rating not less than that specified in CBC Table 601 and exterior walls shall have a fire resistive rating not less than that specified in CBC Table 602.

23. Cornices, eaves overhangs, exterior balconies and similar projections extending beyond the floor area shall conform to the requirements of CBC 705.2. Projections shall not extend beyond the distance determined by the following two methods, whichever results in the lesser projection:
- A point one-third the distance from the exterior face of the wall to the lot line where protected openings or a combination of protected openings and unprotected openings are required in the exterior wall.
  - A point one-half the distance from the exterior face of the wall to the lot line where all openings in the exterior wall are permitted to be unprotected or the building is equipped throughout with an automatic sprinkler system.
  - More than 12 inches into areas where openings are prohibited.
24. CRC Section 302 - Based on the distance to the property line, single family residential and their associated accessory buildings, depending whether the structure(s) have an automatic fire sprinkler system, have specific requirements and limitations regarding:
- Fire resistive rating of exterior walls
  - Projections of eaves and decks
  - Wall openings (doors and windows)
- Generally, structures within 5 feet of the property line require additional review.
25. Ventilation area required, the minimum openable area to the outdoors is 4 percent of the floor area being ventilated CBC 1203.5.1 or mechanical ventilation in accordance with the California Mechanical Code.
26. Natural light, the minimum net glazed area shall not be less than 8 percent of the floor area of the room served CBC 1205.2 or shall provide artificial light in accordance with CBC 1205.3.

### **Fire Department**

27. The design and construction of all site alterations shall comply with the 2019 California Fire Code, current NFPA Standards, and all applicable City of San Rafael Ordinances and Amendments.
28. Deferred Submittals for the following fire protection systems shall be submitted to the Fire Prevention Bureau for approval and permitting prior to installation of the systems:
- Fire Sprinkler plans (Deferred Submittal to the Fire Prevention Bureau)
  - Fire Alarm plans (Deferred Submittal to the Fire Prevention Bureau)
  - Private Hydrant plans (Deferred Submittal to the Fire Prevention Bureau)
29. The fire apparatus access roadway must conform to all provisions in CFC Section 503 and Appendix D.
30. A fire apparatus access plan shall be prepared for this project. Fire apparatus plan shall show the location the following:
- Designated fire apparatus access roads.
  - Red curbs and no parking fire lane signs.
  - Fire hydrants.
  - Fire Department Connection if applicable (FDC).
  - Double detector check valve if applicable.
  - Street address signage.
  - Recessed Knox Boxes.

- Fire Alarm annunciator panel.
  - Provide a note on the plan, as follows: The designated fire apparatus access roads and fire hydrants shall be installed and approved by the Fire Prevention Bureau prior construction of the building.
31. A Knox Box is required at the primary point of first response to the building or at certain pre identified key areas such as rooms containing alarm panels, electrical panels or other critical building systems. A recessed mounted Knox Box # 3200 Series is required for new buildings; surface mount for all others. the Knox Box shall be clearly visible upon approach to the main entrance from the fire lane. Note the Knox Box must be installed from 72" to 78" above finish grade; show the location on the plans. <https://www.knoxbox.com/commercial-knoxboxes/>
  32. A Knox key switch is required for driveway or access road automatic gates. <https://www.knoxbox.com/gate-keys-and-padlocks/>
  33. On site fire hydrants could be required. Residential model: Clow 950. Commercial Model: Clow 960. The Prevention Bureau will identify the locations & type if needed.
  34. When additions or alterations are made, the nearest existing fire hydrant shall be upgraded. Residential model: Clow 950. Commercial Model: Clow 960. This could be required for the hydrant(s) located along Vivian Street:
  35. When a building is fully sprinklered all portions of the exterior building perimeter must be located within 250-feet of an approved fire apparatus access road.
    - The minimum width of the fire apparatus access road is 20-feet.
    - The minimum inside turning radius for a fire apparatus access road is 28 feet.
    - If the fire apparatus access road serving this complex is more than 150-feet in length; provide an approved turn-around. Contact the Fire Prevention Bureau for specific details.
  36. If the building is over 30 feet in height, an aerial fire apparatus access roadway is required parallel to one entire side of the building.
    - The Aerial apparatus access roadway shall be located within a minimum 15 feet and a maximum of 30 feet from the building.
    - The minimum unobstructed width for an aerial fire apparatus access road is 26-feet.
    - Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway, or between the roadway and the building.
  37. Fire lanes must be designated; painted red with contrasting white lettering stating, "No Parking
  38. Fire Lane" A sign shall be posted in accordance with the CFC Section 503.3 and to the satisfaction and approval of the San Rafael Parking Services Division.
  39. Provide address numbers plainly visible from the street or road fronting the property. Numbers painted on the curb do not qualify as meeting this requirement. Numbers shall contrast with the background and shall be Arabic numbers or letters. Numbers shall be internally or externally illuminated in all new construction or substantial remodels. Number sizes are as follows: For residential – 4" tall with ½" stroke. For commercial – 6" tall with ½" stroke. Larger sizes might be required by the fire code official or in multiple locations for buildings served by two or more roads.
  40. Contact the Marin Municipal Water District (MMWD) to make arrangements for the water supply serving the fire protection systems.

## **Department of Public Works**

41. Prior to occupancy, the Final Map shall be recorded with the Marin County Recorder's Office.
42. All backflow preventers, fire department connections (FDC), and other above ground utility structures shall be placed on private property.
43. A third-party geotechnical peer review of the project geotechnical report will be required prior to issuance of a building permit. The peer review shall be paid for by the project sponsor and contracted by the City.

The project geotechnical engineer shall review the grading and building permit construction documents and provide plan review letter(s) prior to issuance of a building or grading permit.

44. A storm drain profile detailing the connection between the private property and storm drain pipe will be required prior to issuance of a building permit to ensure the proposed connection does not conflict with existing infrastructure.
45. Frontage Improvements in the public right-of-way adjacent to the proposed development shall include the following:
  - a. Pavement restoration per a paving plan reviewed and approved by the DPW. Note that both Vivian St. and Belvedere St. are moratorium streets. Pavement restoration on each street shall be full width.
  - b. Provide ADA compliant pedestrian crossings at the intersection of Vivian and Belvedere Streets.
  - c. The applicant shall coordinate with DPW to increase the width of the sidewalk within the public right-of-way from 4 feet to 6 feet along the project frontage. The sidewalk shall be compliant with current ADA standards.
  - d. Existing overhead utilities on the Belvedere St. frontage not removed as part of the project shall be undergrounded. All utilities servicing the project shall be undergrounded.
46. Prior to issuance of a building permit, provide a maneuvering exhibit with the appropriate fire apparatus and emergency vehicles using Autoturn or equivalent to demonstrate access to the satisfaction of the Fire Prevention Bureau.
47. Provide a sight distance exhibit demonstrating vehicles entering and exiting the main entrance to the development have adequate visibility.
48. Prior to issuance of a building permit, a striping and signage plan for the development shall be submitted to DPW for review.
49. The property is located within FEMA Special Flood Hazard Area Zone AE. The project shall be designed in accordance with applicable FEMA regulations including the provisions of ASCE 24-14: Flood Resistant Design and Construction.

Elevation and flood proofing certificate(s) will be required prior to occupancy.
50. A grading permit is required from DPW prior to commencement of grading and construction work.
51. A construction management plan shall be provided for review and approval by the City prior to issuance of building permit or grading permit.
  - a. All materials and equipment shall be staged on-site, unless otherwise approved.
  - b. The construction management plan shall include the traffic control plan to address on-site and off-site construction traffic.

- c. A screened security fence approved by the City shall be placed and maintained around the perimeter of the project and removed immediately following construction work.
  - d. Proposed construction phasing and approximate timeline.
52. This project includes more than 5,000 square feet of total impervious area replacement and creation and therefore is considered a regulated project. The project also proposes to use non-LID facilities and will need to show equivalent effectiveness to bioretention areas in accordance with Bay Area Stormwater Management Agencies Association (BASMAA) requirements. The following documents are required to be provided in accordance with Marin County Stormwater Pollution Prevention Program (MCSTOPPP) and the BASMAA requirements:
- a. Stormwater Control Plan.
    - A written document to accompany the plan set used primarily for municipal review to verify compliance with stormwater treatment requirements. (Needed to obtain a grading or building permit.)
  - b. Stormwater Facilities Operations and Maintenance (O&M) plan.
    - A written document and exhibit outlining facilities on-site and maintenance activities and responsibilities for property owners. (Provide prior to occupancy)
  - c. Operations and Maintenance Agreement.
    - A formal agreement between the property owner and the city that shall be recorded with the property deed. (Provide prior to occupancy)
53. All public streets and sidewalks that are impacted by the grading and construction operation for the project shall be kept clean and free of debris at all times.
54. Prior to commencing work within the right-of-way, the applicant shall obtain an encroachment permit from the City of San Rafael Department of Public Works.
55. A construction vehicle impact fee shall be required at the time of building permit issuance, which is calculated at 1% of the valuation, with the first \$10,000 of valuation exempt.

**San Rafael Sanitation District**

56. Sewer peak flow calculations for the expected development outfall shall be submitted with the building permit application.
57. A sewer permit from SRSD shall be required from all exterior (outside building envelopes) private sewer lateral connections to the proposed sewer main connection point.
58. Building permit plans shall have the following notes on the Utility Plans:
- a. All sanitary sewer-related work shall be performed in accordance with the San Rafael Sanitation District Standard Plans and Specifications.
  - b. Independent of a Building Permit, a sewer permit from the San Rafael Sanitation District shall be required for all proposed sewer lateral construction. The contractor shall apply for a sewer permit at the District office located at 111 Morphew Street prior to the start of work.
  - c. Notify the San Rafael Sanitation District Inspector 72 hours prior to the start of sanitary sewer construction by phone at (415) 485-3194 or by email at Rolando.Calvo@cityofsanrafael.org.
59. Each separate unit shall have its own separate annual sewer fee assessed.

**ENVIRONMENTAL AND DESIGN REVIEW CONDITIONS OF APPROVAL  
(ED21-042)**

1. This Environmental and Design Review Permit approves construction of 70 for-sale residential units in 14 separate buildings at 88 Vivian Street and within the Neighborhood Commercial (NC) Zoning District. Plans submitted for building permit shall be in substantial conformance to the plans approved May 10, 2022 with regard to building techniques, materials, elevations, and overall project appearance except as modified by these conditions of approval.
2. This Design Review Permit (ED19-038) shall be valid for two years from approval or until May 10, 2024 and shall be null and void if a building permit is not issued or a time extension granted prior to the expiration date.
3. Plans submitted for building permit shall incorporate the following Design Review Board recommendations and shall be reviewed for compliance by Planning Staff and the Chair of the Design Review Board.
  - a. Plans shall be revised to improve the sense of building entries for units facing Vivian Street. Options may include, but are not limited to projecting awnings or soffits that provide additional articulation or a new color for such elements.
  - b. Plans shall include revisions to the material of proposed planter boxes along Vivian Street from concrete masonry unit (CMU) block wall to stucco, stone, or other similar quality material. The applicant shall also consider methods for mitigating the potential for skateboards to affect these planter boxes. Plans submitted for building permit shall also provide additional planter boxes along the Vivian Street project frontage where feasible.
4. Plans submitted for building permit shall incorporate recommendations contained in the Geotechnical Report prepared by Geocon Consultants, Inc., dated January 2021, subject to review and approval by the City's Building Division.
5. Plans shall demonstrate compliance with regulations set forth in Section 14.16.295 (Sight distance) of the San Rafael Municipal Code.
6. Plans shall demonstrate compliance with regulations set forth in Section (14.16.320), requiring a minimum setback of five feet from the property line for all mechanical equipment.
7. The project shall be subject to a 90-day post installation lighting inspection to evaluate the need for adjustment and assure compliance with SRMC Section 14.16.227.
8. Prior to issuance of a building permit, the applicant demonstrate compliance with Marin Municipal Water District water conservation measures.
9. Prior to Issuance of Building Permit, the applicant shall submit the stormwater control plan, which includes written document, in addition to the erosion control plan shown on the plan set. A stormwater facility maintenance agreement shall be required.
10. A grading permit shall be required from the Department of Public Works, located at 111 Morphew St.
11. Prior to Issuance of a Building Permit the applicant shall provide improvement plans for proposed frontage improvements.
12. Prior to commencing work within the right-of-way, the applicant shall obtain an encroachment from the Department of Public Works located at 111 Morphew St.

- 13. In the event that any archaeological features, such as concentrations of artifacts or culturally modified soil deposits including trash pits older than fifty years of age, are discovered at any time during grading, scraping, or excavation within the property, all work shall be halted in the vicinity of the find, the Planning Division shall be notified, and a qualified archaeologist shall be contacted immediately to make an evaluation. If warranted by the concentration of artifacts or soils deposits, an archaeologist shall monitor further work in the discovery area.
- 14. If human remains are encountered during grading and construction, all work shall stop in the immediate vicinity of the discovered remains and the County Coroner and a qualified archaeologist shall be notified immediately so that an evaluation can be performed. The Coroner shall contact the Native American Heritage Commission, if the remains are deemed to be Native American and prehistoric, so the “most likely descendant” can be designated.

The foregoing Resolution was adopted at the regular City of San Rafael Planning Commission meeting held on the 10<sup>th</sup> day of May, 2022. The Planning Commission’s Action is final unless it is appealed to the City Council within five (5) working days pursuant to San Rafael Municipal Code Section 14.28.030 - *Filing and time limit of appeals*.

Moved by Commissioner Samudzi and seconded by Vice Chair Saude.

AYES: Commissioners Harris, Haveman, Mercado, Samudzi, Vice Chair Saude & Chair Previtali  
 NOES: None  
 ABSENT: None  
 ABSTAIN: None

SAN RAFAEL PLANNING COMMISSION

ATTEST:   
 Leslie Mendez, Secretary

BY:   
 Chair

## RESOLUTION NO. 22-09

### RESOLUTION OF THE SAN RAFAEL PLANNING COMMISSION APPROVING A TENTATIVE SUBDIVISION MAP FOR 70 FOR-SALE RESIDENTIAL UNITS, INCLUDING SIX AVAILABLE TO LOW-INCOME HOUSEHOLDS, IN 14 SEPARATE BUILDINGS LOCATED AT 88 VIVIAN STREET APN: 008-092-02

**WHEREAS**, the City of San Rafael has received an application for a Tentative Subdivision map for a 70-unit for-sale residential project in 14 separate buildings at 88 Vivian Street in the Neighborhood Commercial (NC) Zoning District; and

**WHEREAS**, on May 10, 2022, the San Rafael Planning Commission held a duly noticed public hearing on the proposed Use Permit (UP21-017), Environmental and Design Review Permits (ED21-042), and Tentative Subdivision Map (TS21-004), accepting all oral and written public testimony and the written report of the Community Development Department staff; and

**WHEREAS**, upon review of the application, the Planning Commission finds that the project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the CEQA Guidelines because it involves an infill development project that meets the following criteria:

- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designations and regulations.
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c. The project site has no value as habitat for endangered, rare or threatened species.
- d. Approval of the project would not result in any significant effects related to traffic, noise, air quality, or water quality.
- e. The site can be adequately served by all required utilities and public services.

NOW THEREFORE BE IT RESOLVED, the Planning Commission makes the following findings Major Subdivision (TS21-004) for the proposed 70-unit for-sale residential project in 14 separate buildings.

#### **TENTATIVE SUBDIVISION MAP FINDINGS (TS21-004)**

- 1. The proposed map is consistent with the San Rafael general plan and any applicable, adopted specific plan or neighborhood plan;**

The proposed map will consist of 70 condominium units, shown on the Tentative Map. The General Plan supports residential uses at the project site, and the applicant seeks Use Permit approval as required by the SRMC. There is no adopted specific plan or neighborhood plan for the project area. As such, the proposed map is consistent with the San Rafael General Plan.

**2. The design or improvement of the proposed subdivision is consistent with the San Rafael general plan and any pertinent, adopted specific plan or neighborhood plan;**

The proposed project has been reviewed for consistency with applicable General Plan policies. As discussed in the required Use Permit and Environmental and Design Review findings, the design and improvement of the proposed project and associated map is consistent with the General Plan. As such, the proposed map is consistent with this finding.

**3. The property subject to subdivision is physically suitable for the type or density of development that is proposed;**

The proposed map has been reviewed concurrent with the proposed physical development. The subdivision will adequately accommodate the type and density of the proposed uses consistent with this finding.

**4. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;**

The project has been reviewed in accordance with the California Environmental Quality Act and has been found to be categorically exempt pursuant to CEQA Guidelines Section 15332 (In-Fill Projects). As such, the design of the subdivision and associated improvements will not cause a substantial adverse impact on the environment consistent with this finding.

**5. The design of the subdivision or the type of proposed improvements is not likely to cause serious health problems; and**

The project has been reviewed by appropriate city departments, including the Building Division, Fire Department, Department of Public Works, and Marin Sanitary Service. As conditioned, the project will require application of a building permit that complies with all applicable Building and Fire Code requirements prior to construction. In addition, the applicant will be required to comply with conditions of approval imposed by the Department of Public Works and Marin Sanitary Service as contained herein. As such, the design of the subdivision and associated improvements will not cause serious health problems and is therefore consistent with this finding.

**6. The design of the subdivision or the type of proposed improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the city may approve the map if it is determined that alternative easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired or secured for public use.**

There are no existing public access easements onsite. As such, the proposed map is consistent with this finding.

**TENTATIVE SUBDIVISION MAP  
CONDITIONS OF APPROVAL (TS21-004)**

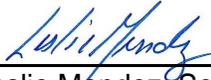
1. This Tentative Subdivision Map approves the proposed condominium subdivision as shown on plans approved May 10, 2022.
2. Prior to issuance of a building permit, the applicant shall submit an application for a Final Subdivision Map, which shall be in substantial conformance to the Tentative Map.
3. Upon submittal of the Final Map, the applicant shall submit draft CC&Rs for review by the Community Development Department and the City Attorney's office, consistent with Section 15.06.160 of the San Rafael Municipal Code.

The foregoing Resolution was adopted at the regular City of San Rafael Planning Commission meeting held on the 10<sup>th</sup> day of May, 2022. The Planning Commission's Action is final unless it is appealed to the City Council within five (5) working days pursuant to San Rafael Municipal Code Section 14.28.030 - *Filing and time limit of appeals*.

Moved by Commissioner Samudzi and seconded by Vice Chair Saude.

AYES: Commissioners Harris, Haveman, Mercado, Samudzi, Vice Chair Saude & Chair Previtali  
NOES: None  
ABSENT: None  
ABSTAIN: None

SAN RAFAEL PLANNING COMMISSION

ATTEST:   
Leslie Mendez, Secretary

BY:   
Chair



**SAN RAFAEL**  
THE CITY WITH A MISSION

Community Development Department –  
Planning Division

**Meeting Date:** February 28, 2024

**Project Number(s):** UP24-003 (PLAN23-153)

**Project Planner:**  
Renee Nickenig, Associate Planner

**Agenda Item:** 2

**REPORT TO ZONING ADMINISTRATOR**

**SUBJECT:** **80 Medway Road.** Request for a Use Permit to increase alcohol sales at the existing 7-11 convenience store at 80 Medway Road; APN: 008-091-20; Neighborhood Commercial (NC) Zoning District; UP24-003 (PLAN23-153)

**EXECUTIVE SUMMARY**

Pursuant to San Rafael Municipal Code (SRMC) Section 14.05.020, a conditional use permit is required sale of liquor when located less than 200-feet from a residential district.

**PROJECT DESCRIPTION**

The subject project proposes to include additional liquor sales at the existing 7-Eleven convenience store at 80 Medway Road. The additional spirits will be restricted to a small display shelf (approx. 4 ft. x 5 ft.) in a locked case that is only accessible to store employees. No other operational or physical exterior changes are proposed.

**FINDINGS**

**Findings for Use Permit (UP21-017)**

| CEQA Finding  |     |    |                                       |
|---|-----|----|---------------------------------------|
|   | Yes | No |                                       |
| The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) and none of the exceptions of Section 15300.2 apply. | X   |    | Section 15301 (“Existing Facilities”) |

**Use Permit (SRMC §14.22.080)**

|  | Yes | No |   |
|--|-----|----|---|
| <b>Finding A</b>   |     |    |   |
| That the proposed use is in accord with the general plan, the objectives of the zoning ordinance, and the purposes of the district in which the site is located: | X   |    | The site is designated as Neighborhood Commercial on the General Plan 2040 Land Use Map which conditionally allows for convenience stores and alcohol sales. The additional liquor sales does not require any other change to the business use or premises. |

|  |   |  |  |
|--|---|--|--|
| <b>Finding B</b>   |   |  |  |
| That the proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city: | X |  | The store currently holds a Type 20 Alcoholic Beverage Control (“ABC”) license, and is requesting to upgrade to a Type 21, which would allow for the sale of a nominal amount of distilled spirits (hard liquor) in addition to beer and wine. The applicant has provided confirmation that ABC will not requires a Public Convenience or Necessity (PCN) Determination. |
| <b>Finding C</b>   |   |  |  |
| That the proposed use complies with each of the applicable provisions of the zoning ordinance:   | X |  | For the reasons described above, the project, as proposed and conditioned, complies with Chapter 14 (Zoning) of the San Rafael Municipal Code (SRMC).  |

## CONDITIONS OF APPROVAL

1. Approved Use. The Conditional Use Permit allows for the sale of liquor at the existing 7-Eleven convenience store at 80 Medway Road, which is located less than 200 feet from a residential district, pursuant to SRMC §14.05.020.
2. Hours of Operation. The existing convenience store will continue to operate 24-hours per day, with limited alcohol sales from 2:00 am to 6:00 am.
3. Plans and Representations Become Conditions. Except as modified by these conditions of approval, all information and representations, whether oral or written, as presented for approval on plans, submitted **1/4/2024** and on file with the Community Development Department, Planning Division, shall be the same as required for the issuance of a building permit, except as modified by these conditions of approval. Minor modifications or revisions to the project shall be subject to review and approval by Planning staff. Modifications deemed not minor by the Community Development Director may require review and approval as an amendment to this Use Permit by Planning staff.
4. Subject to All Applicable Laws and Regulations. The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building Division, Public Works Department and other affected City divisions and departments. (SRMC §14.16.225.B.1).
5. Revocation. The City reserves the right to bring this application up for revocation per SRMC 14.21.150 and as provided in Chapter 14.29 of the San Rafael Zoning Ordinance for any use that is found to be in violation of any of these conditions of approval.
6. Permit Validity. This Permit shall become effective on March 7, 2024 and shall be valid for a period of two (2) years from the date of final approval or March 7, 2026 and shall become null and void if a valid City business license has been issued, and the permitted use has commenced on the property.

## PUBLIC COMMENT

Notice of hearing for the project was conducted in accordance with noticing requirements contained in Chapter 29 of the Zoning Ordinance. A Notice of Public Hearing was mailed to all property owners and occupants within a 300-foot radius of the subject site and all other interested parties, 15 calendar days prior to the date of this hearing. No public comment has been received by the date of this staff report.