

RESOLUTION NO. 140-08

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND APPROVING A DESIGN REVIEW PERMIT FOR THE GARRITY APARTMENT PROJECT.

WHEREAS, on May 6, 2008, Tony Hladeck (the “Project Sponsor” or the “Developer” [as used hereinafter shall mean Hladeck, his successors and assigns]) filed a land use application with the City of Richmond (the “City”) for the Garrity Way Apartments Development project (the “Project”) consisting of a proposed 127 residential dwelling units complex. The land use application included a request for Rezoning and a General Plan Amendment pursuant to the Richmond Zoning Ordinance and the General Plan. The proposed Project would occupy a 2.2-acre site with street frontage on Garrity Way in the Hilltop Mall area (the “Project Site”); and

WHEREAS, the applicant requested the following approvals in support of said proposal:

1. General Plan Amendment: The existing General Plan land-use designation for the site is Regional Office and/or Shopping/930, which requires that all residential developments incorporate a commercial component as a mixed-use project. The applicant is requesting the General Plan Amendment that would permit a completely residential project without the commercial component. Under the existing land use designation, the density range of the residential component of a mixed-use project is 28 to 43 dwelling units per acre. Therefore, if the project were to incorporate a commercial space, the maximum number of units permitted on this 2.2. acre site would be 95 units. In this instance, the proposed project would exceed the General Plan density by 32 units. Therefore, the applicant has requested the General Plan land-use designation of High Density Residential/962 (43-60 units/net acre) to allow development of 127 units on the site.
2. Rezoning: The proposed development exceeds the permitted density under the current Zoning Ordinance regulations and the General Plan land use density. The site is located in the C-3 Commercial Regional Commercial Zoning District which allows the residential density of the MFR-2 Medium Density Residential District (1,250 square feet of lot area per unit). Consequently, the maximum number of units permitted on this 2.2. acre (±95,832 square feet) parcel is 77 residential units, equivalent to 35 dwelling unit per acre. The proposal is for 127 dwelling units, which exceeds the current residential density under the existing provisions of the Zoning Ordinance by 50 units. Therefore, the applicant has requested the creation of a Zoning District (MFR-4), which allows a density of 750 square foot per dwelling unit and is consistent with the new General Plan designation.
3. Design Review Permit: Section 15.04.930.020 of the Zoning Ordinance requires design review for any exterior construction of a building which is subject to a building permit, including site improvements and landscaping plans. Since the project is subject to approval of a Rezoning of the site and a General Plan Amendment, the decision of the Design Review Board and Planning Commission regarding the project’s design is only in the form of a recommendation to the City Council.

WHEREAS, pursuant to CEQA, a Mitigated Negative Declaration was prepared for the Project in October 2008 (EID110442) which consists of the Proposed Mitigated Negative Declaration and the Mitigation Monitoring and Report Program; and

WHEREAS, the Initial Study/Draft Mitigated Negative Declaration was circulated for public and agency review on October 10, 2008 and the twenty-day review period ended on October 30, 2008 and this comment period provided an opportunity for the public and agencies to review the issues addressed and offer comments on any aspect of the process, or the adequacy of the evaluation and mitigation measures; and

WHEREAS, no comments were received, no response to comments was prepared; and

WHEREAS, no later than December 6, 2008, the Intent to Adopt the Mitigated Negative Declaration was noticed in the West County Times, and notice was also sent to all property owners within 300 feet of the Project site as well as to interested local agencies and parties; and

WHEREAS, the Project Applicant submitted a letter to the City of Richmond dated October 16, 2008 agreeing to all mitigation measures set forth in the Mitigated Negative Declaration that are required to be implemented pursuant to CEQA; and

WHEREAS, on November 12, 2008 the Design Review Board held a duly noticed public hearing and recommended to the Planning Commission to forward a positive recommendation to the City Council based on the design changes that have been incorporated into the Project; and

WHEREAS, at a duly noticed public hearing on December 4, 2008, the Commission heard public comment on the Mitigated Negative Declaration. After reviewing the Mitigated Negative Declaration, and considering all oral and written information regarding the Mitigated Negative Declaration presented at or before that hearing, the Commission recommended City Council adoption of the Mitigated Negative Declaration for purposes of approving the 127 residential dwelling units Project (also known as the Garrity Way Apartments) with a Design Review Permit, Rezoning and General Plan Amendment.

WHEREAS, on December 16, 2008, the City Council held a duly notices public hearing and heard public comment on the Mitigated Negative Declaration. After reviewing the Mitigated Negative Declaration, and considering all oral and written information regarding the Mitigated Negative Declaration presented at or before that hearing, the Council adopted the Mitigated Negative Declaration for purposes of approving the 127 residential dwelling units Project (also known as the Garrity Way Apartments) with a Design Review Permit, Rezoning and General Plan Amendment.

NOW, THEREFORE, BE IT RESOLVED that the City Council makes the following findings (Section I), approves the Design Review Permit for a development in substantial conformance to the drawings attached hereto as Exhibit A and subject to the following conditions (Section II):

**SECTION I: FINDINGS FOR APPROVAL OF DESIGN REVIEW PERMIT
(DR 110442)**

1. **The proposed design is suitable for its purpose, is harmonious with and relates properly to the surrounding neighborhood, contiguous parcels and the site itself.**
Statement: Criterion Satisfied. The proposed building is a well-composed and balanced design and relates well to the surrounding area. The units are well design, efficient floor plans with superior amenities. The project adds to the City's overall effort to provide a variety of residential rental units.
2. **The location, size, design and characteristics of the proposed project will be compatible with and will not be detrimental to the public health, safety, or welfare of persons residing in, working in or adjacent to the proposed project.**
Statement: Criterion Satisfied. The proposed design does not create visual impacts to persons living, working, or traveling through the neighborhood. Furthermore, potential adverse impacts to the adjacent and surrounding properties associated with the project, such as views, solar exposure, and privacy are not significant.
3. **The overall design will be of a quality that will preserve the integrity of and upgrade the existing neighborhood.**
Statement: Criterion Satisfied. The overall design of the project enhances the quality and value of the property and surrounding area, and will improve the streetscape along Garrity Way.
4. **The design of the proposed project is in accordance with the General Plan of the City of Richmond and all applicable provisions of the Zoning Ordinance.**
Statement: Criterion Satisfied. The applicant is pursuing a General Plan Amendment and Rezoning of the property. After these entitlements are approved, the criterion will be satisfied.

**SECTION II: CONDITIONS OF APPROVAL FOR DESIGN REVIEW PERMIT
(DR 1104490)**

Project Specific Conditions of Approval

1. Development is to be constructed in compliance with the Project Plans in Exhibit A, attached, submitted to and date stamped October 16, 2008, by the Planning Department. Any

modifications shall be reviewed by the Zoning Administrator who shall determine whether the modification requires additional approval.

2. The main residential entry to the building shall be revised by either increasing the emphasis in the tower element and width of the lobby or relocating the entry to a more prominent location.
3. All shutters and awnings shall be eliminated, instead exposed lintels on each door and window shall be provided. All windows shall include exterior mullions (true divided) and pre-colored dark brown, brick red, or dark green.
4. All balcony doors shall be French doors with exterior mullions to match windows.
5. All balconies shall include decorative ornamental iron (painted or powder coated steel, or cast aluminum) railings that replicate traditional patterns.
6. Decorative ceramic tile should be installed around main entries as depicted and on faces of stair risers. Ceramic tile of 12" x 12" minimum shall be installed in all lobby and public areas.
7. The rectangular entry to the garage shall be changed into an archway that includes authentic texturing detailing.
8. Roof tile shall replicate traditional dimensions, color, and texture of traditional Spanish roof tiles product.
9. All posts on balconies shall be painted dark brown or other authentic dark color more appropriate for the style.
10. Pavers shall be installed instead of asphalt or concrete in walkways.
11. All design changes required by Condition 2 through 11, above, shall be approved by the Director of Planning and Building Services and reflected in the plans submitted to the Building Department as referenced in Condition 14.
12. Design Review approval shall expire two years from the date of final approval, unless made permanent by the issuance of building permits and the commencement of construction. If the use(s) or structure(s) approved by this action is not established within such period of time, this approval shall be terminated and shall, thereafter, be null and void, unless the applicant or owner applies for an extension of time prior to expiration of the Design Review approval.
13. All conditions of approval shall be written on the first page of the construction plans submitted for review and approval. All conditions of approval shall be on, at all times, all grading and construction plans, which shall be kept on the project site at all times. It is the responsibility of the building developer to ensure that the project contractor and construction crew is aware of, and abides by, all conditions of approval.
14. Prior written approval from the Planning and Building Services Department Director or his/her designee shall be received by the property owner before any changes are made to the site design, grade, building design, building colors or materials, or related exterior design elements.
15. Prior to issuance of any building permit, the applicant shall demonstrate that all exterior lighting has been designed and located so that all direct light is confined to the property and is satisfactory to the Planning and Building Regulations Department Services or his/her designee.
16. Failure to abide by and faithfully comply with any and all conditions attached to this design permit shall constitute grounds for revocation of the permit in accordance with the procedures set forth in Richmond Municipal code Chapter 15.04.
17. A final landscape plan shall be submitted for review and approval of the Planning and Building Services Department Director, incorporating drought-tolerant and native plants.

Project Mitigation Measures:

18. Mitigation Measure III.1: During construction, the applicant shall require the construction

contractor to implement the following BAAQMD's basic dust control measures:

- Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
 - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer)
 - Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.
19. Mitigation Measure IV.1: The applicant shall installed a temporary construction fence at the rear property line of a sufficient height and strength to prevent debris and soil materials to slide downhill to the designated open space preservation area.
20. Mitigation Measure V.1: If archeological or paleontological resources are encountered, the contractor shall immediately halt work in the immediate vicinity of the resource and consult a qualified archeologist to evaluate the potential resource, and
21. Mitigation Measure V.2: If human remains are encountered, the contractor shall immediately halt work and contact the Contra Costa County coroner to evaluate the remains. If required, the State Native American Heritage Commission shall also be contacted, and all State requirements shall be met concerning the preservation and disposition of Native American remains.
22. Mitigation Measure VI.1: The applicant shall implement the recommendations of the Geotechnical Engineer-of-record as detailed in the geotechnical investigation by Allwest Geosciences (Geotechnical Engineer-of-record) and in any subsequent revisions to the geotechnical work. The geotechnical report identified measures to mitigate the impacts of slope instability, unstable fill materials, and expansive soil. This would include reconstruction of the existing fill soils and potential landslide debris located within 80 feet of the top of slope on the north side of the property. The mitigation measure would include excavation of fill soils and underlying landslide debris, benching and keying engineered fill into bedrock, installation of subsurface drainage, and reconstruction of the slope at a steepness not exceeding 2 horizontal to 1 vertical (2:1). Once this is accomplished, the proposed development could be entirely constructed upon a structural beam footing grid type foundation in accordance with recommendations of the Geotechnical Engineer-of-record. Implementation of this mitigation requires a minimum setback of ten feet from the finished slope.
23. Mitigation Measure VI.2: All construction shall be performed in accordance with the 2007 California Building Standards Code, using the seismic design parameters. Compliance with the Seismic Design Criteria in the 2007 California Building Code would reduce the impact of seismically related ground shaking to a less-than-significant level.
24. Mitigation Measure VIII.1: The applicant shall implement a Drainage and Erosion Control Plan to minimize any impacts from erosion and sedimentation during grading. The grading plan may include, but is not limited to, the following methods. The best control method, as recommended by the San Francisco Bay Area Regional Quality Board, shall be used.
- restricting grading to the dry season, if necessary and practical; protecting all finished graded slopes from erosion using such techniques as erosion control matting and hydro-seeding; protecting downstream storm drainage inlets from sedimentation;
 - using silt fencing and hay bales to retain sediment on the project site; use of temporary water conveyance and water diversion structure to eliminate surface runoff; and,
 - any other suitable measures outlined in the Association of Bay Area Governments' (ABAG) Manual of Standards for Erosion and Sediment Control Measures or the San Francisco Bay Regional Water Quality Control Board's Erosion and Sediment Control Field Manual; in case of a conflict between the two Manuals, the latter shall prevail.

After construction is complete, all drainage culverts shall be inspected for accumulated sediment. If sediment accumulation has occurred, it is the applicant's responsibility to clear all drainage structures shall be cleared of debris and sediment.

26. Mitigation Measure VIII.2: The project sponsor shall prepare a drainage plan for the project site that would evaluate the percentage of increased impervious surface area, and consequential increase in surface water run-off volume and rate. If the increase in impervious surface area from the developed project results in surface water runoff volume or rates that exceed City storm drain capacity, the following mitigation measures shall be implemented:
 - provide increased drainage capacity; and
 - provide retention to accommodate the increase in runoff generated by the decrease in pervious area.
27. Mitigation IX.1: The applicant shall obtain City Council's approval of a General Plan Amendment and Rezoning of the site.
28. Mitigation Measure XI.1: Prior to issuance of a building permit, the applicant shall submit to the Building Department construction drawings and supported documents that demonstrate that the building would be able to comply with acceptable interior noise levels of less than 45 dB CNEL or L_{dn}. (Average Day-Night Levels) in any habitable room. The analysis must be prepared by a registered Engineer qualified in acoustical analysis with at least 5 years of experience in acoustic engineering. Noise insulation features may include measures to protect noise-sensitive outdoor activity areas (e.g., at residences, schools, or parks) or sound insulation treatments such as sound-rated windows to protect interior spaces in sensitive receptors.
29. Mitigation Measure XI.2: Prior to the issuance of a building permit, the applicant shall provide the Compliance Monitor, for review and approval: (1) the name and telephone number of the individual empowered to manage construction noise from the project, and (2) a photograph of a sign (at the front of the site and clearly) posted at the work site containing the following information:
 - a) The name and telephone number (both day and evening) of the individual responsible for noise management at the worksite;
 - b) The name and telephone number of the City staff person to contact with complaints about noise at the worksite; and
 - c) Permitted construction hours and days.

This sign shall be clearly posted for the duration of the construction and shall be of a size, color, and design so that it is easily legible from the street. The named individual shall record: (1) all noise complaints received at the site; (2) the action taken to resolve these complaints; (3) additional actions taken to prevent their future recurrence; and, (4) shall also submit written reports of such complaints and responses to the Building Inspector on a weekly basis.
30. Mitigation Measure XI.3: To ensure compliance with the City of Richmond's Noise Ordinance, the Planning and Building Services Director is authorized to place additional limitations on the hours of operation and/or halt construction until corrective measures are taken.
31. Mitigation Measure XI.4: To reduce daytime noise impacts due to construction to the maximum extent practicable, the project sponsor must develop a site-specific noise reduction program and submit it for the City's approval that includes the following measures:
 - Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds, wherever feasible).
 - Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered, wherever possible, to avoid noise associated with compressed-air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed-air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, which could achieve a

reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.

- Stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.

32. Mitigation Measure XI.5: The project sponsor shall require all construction contractors to follow appropriate time restrictions consistent with the Richmond Noise Ordinance. Specifically, contractors are required to limit noisy construction activities, including related on-road truck use in the immediate project vicinity, to the hours of 7:00 a.m. to 7:00 p.m. on weekdays and 8:30 a.m. to 6:00 p.m. on weekends and legal holidays. No construction activities shall take place on Sunday.

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond, California at a regular meeting held on December 16, 2008, by the following vote:

AYES:	Councilmembers Butt, Bates, Lopez, Sandhu, Vice Mayor Marquez, and Mayor McLaughlin.
NOES:	None.
ABSTENTIONS:	None.
ABSENT:	Councilmembers Rogers and Viramontes.

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California	}	
County of Contra Costa	}	: ss.
City of Richmond	}	

I certify that the foregoing is a true copy of Resolution No. 140-08, finally passed and adopted by the Council of the City of Richmond at a meeting held on December 16, 2008.