



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: September 15, 2020

TO: Christine Daniel, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: 47th Street Homes, 1034-1042 47th Street (UPDR18-002)

Resolution Of The City Council Of The City Of Emeryville Approving A Conditional Use Permit And Design Review Permit For “47th Street Homes”, To Demolish Four Existing Single-Unit Homes And Replace Them With Three Duplexes On One Parcel (APN: 49-1175-8-3) (CEQA Determination: Exempt Pursuant To CEQA Guidelines Sections 15303(b) and 15061(b)(3))

OR

Resolution Of The City Council Of The City Of Emeryville Denying A Conditional Use Permit And Design Review Permit For “47th Street Homes”, To Demolish Four Existing Single-Unit Homes And Replace Them With Three Duplexes On One Parcel (APN: 49-1175-8-3) (CEQA Determination: Exempt Pursuant To CEQA Guidelines Section 15270)

RECOMMENDATION

Staff recommends that the City Council consider the attached resolutions, one for approval subject to the attached Conditions of Approval, and one for denial, of a Conditional Use Permit and Major Design Review Permit to demolish four existing single-unit homes and replace them with three duplexes on one parcel at 1034-1042 47th Street (UPDR18-002).

PROJECT DESCRIPTION

The applicant proposes demolishing four existing single-unit homes on the same property located at 1034-1042 47th Street and replacing them with three duplexes for a net gain of two residential units. Per Section 9-5.1203(b) of the Planning Regulations, demolition of residential units requires a recommendation from the Planning Commission and City Council approval.

All of the six proposed units are two-bedroom flats, with all three upstairs units providing an additional office/guest room. All downstairs units have private open space in the form of porches, and all upstairs units provide private open space as balconies. Seven off-street parking spaces, including one accessible space, accessed via a single driveway, are provided (one space per unit plus one guest parking space). Each of the three garages

contains three bicycle racks for long-term bicycle parking, and the plans demonstrate that there is enough space to park, in addition to vehicles, as least one cargo-style bicycle. Two bicycle racks for short-term bicycle parking are provided adjacent to the sidewalk, each accommodating two bicycles, for a total of four short-term bicycle parking spaces.

As this development consist of fewer than 10 residential units, the design is not subject to unit mix requirements or the Family-Friendly section of the Emeryville Design Guidelines. While affordable housing impact fees must be paid, per Section 9-4.204(b)(1) projects of fewer than 10 units in the RM zone are not required to provide community benefits for development bonuses nor are they required to provide affordable units within the development. This is a moot point since the proposed project does not require any development bonuses (see “General Plan and Zoning” below.)

BACKGROUND

The proposed project would occur on part of a single large property, consisting of two parcels, that spans from 47th Street to 53rd Street, and containing 15 existing single-unit homes. Four of these existing homes front 47th Street; the others are accessed from 48th Street and 53rd Street. The proposal is to demolish the four houses fronting on 47th Street and replace them with six new units in three two-unit duplex structures.

An application for 47th Street Homes was originally submitted in 2018. Initial staff comments included a requirement for a survey and the need to define the existing parcels and the proposed project area. In follow-up, inconsistencies in the title report and parcel descriptions needed to be addressed before the project was able to move forward. In order to facilitate this project, the applicant has submitted a lot line adjustment application to modify the property lines to be consistent with the proposed project area. The proposed lot line adjustment relocates the existing property line between the two parcels so that the four existing homes fronting on 47th Street would be on one parcel and the remaining 11 homes would be on the other parcel. This would make the proposed project site a discreet parcel not involving the other existing homes on the property. The lot line adjustment is reviewed by staff and is independent from this Conditional Use Permit and Design Review application.

On Thursday, September 5, 2019 the applicant held a community meeting at the Emeryville Center of Community Life (ECCL). Staff provided a notification list to the applicant extending 300 feet from the subject property, and the applicant mailed notices ahead of the meeting. Approximately 20 community members attended the meeting in which the applicant presented the project and answered questions raised by those in attendance. Concerns included:

- meeting notification (not everyone at the meeting received a notice) and the need for information to be provided in Spanish;
- the displacement of existing tenants and the impacts of having new, more expensive, units on the neighborhood;
- that the applicant is not required to include affordable units in the project and that affordable housing impact fees are inadequate to address affordability and displacement;

- the potential for future development and impacts on existing residents in the units owned by the property owner directly north of the project site;
- that there has been insufficient maintenance of the existing units, that the existing units would not need to be demolished if they had been maintained properly, and neighbors questioned if the new units would be maintained better than the existing units; and
- the potential for hazardous materials and exposure to residents during construction (for example, from lead and dust).

The potential for sharing used building materials with neighbors prior to, and during, demolition was also discussed. The applicant also clarified that the proposed units are intended to be rentals, not condominiums (units for sale).

Due to concerns raised at the applicant's community meeting regarding notification, both the applicant and staff independently reviewed the notification list, and both found the list to be complete and to include all known addresses within a 300 foot radius of the project. Several names have been added to the notification list replacing the default addressee title of "community member." Staff and the applicant speculate that it is possible that some people did not notice the meeting notification letters, or thought they were junk mail, because of the way the envelopes were designed and labeled. (Note that these notices were sent by the applicant, not by the City. Notices sent by the City are in bright yellow envelopes with the notation "Official Notice of Public Meeting" in large letters on the front and the City's return address.) As a result, in the future, staff will recommend to project applicants that their community meetings be noticed using post cards.

On October 24, 2019, the Planning Commission held a study session to consider the application. Neighbors and tenants raised concerns including:

- the rights of existing tenants;
- the treatment of the tenants by the property owner;
- lack of investment and care in the property by the owner;
- impacts of the proposed project on social and neighborhood cohesion;
- questioning the need to demolish the existing buildings, stating that if there had been ongoing maintenance, demolishing the existing buildings would not be necessary;
- impacts on neighborhood affordability;
- the aesthetics of the project; and
- potential impacts of cutting on-site trees on the local bird population.

The Planning Commission asked staff for clarification on their scope and purview in reviewing the application. Staff clarified that the roll of the Planning Commission is to assess if the project conforms to the General Plan and zoning, and that state law limits the ability of local jurisdictions to reject proposed housing projects. It was noted that there are both City and State laws regarding tenants' rights, but that these are not administered by the Planning Commission. The City's Housing Coordinator was introduced, and interested parties were advised to refer questions regarding tenant-landlord issues to her.

The Planning Commission provided comments, including:

- wanting more information on how the proposed project is environmentally friendly and energy-efficient;
- a mix of reactions as to the aesthetics of the project and whether it fits into the context of the neighborhood; and
- the potential for providing more private open spaces, particularly on the roof of the first floor for the second-floor units to access.

Based on questions from the neighbors, the Commission requested information about whether the proposed project is in a flood zone and, if so, how the project design needs to respond to that. The Commission also provided feedback on site design, including appreciation of the continuous curb on 47th Street with parking at the rear of the project, and that the discards enclosures are incorporated into the rear of the buildings and not detached.

Regarding the question about flood zone location, per General Plan Map Figure 6-7, there is no flood zone associated with Temescal Creek in Emeryville. The project location is in the Temescal Dam Failure Inundation Area, as is most of Emeryville south of Powell Street.

On January 21, 2020, the City Council held a study session to review the application. The Council reviewed the same application materials that the Planning Commission reviewed at their October 29, 2019 meeting. No changes or revisions were made to the plans between the meetings. The Council took public comment from six speakers who all raised concerns about the project similar to those expressed at the Planning Commission study session. During their deliberations, the Council stated that they did not feel that they could make the required findings to approve the project, specifically the finding required for the demolition of a residential unit that states that “The elimination of the residential structure would not be materially detrimental to the housing needs or the public interest of the affected neighborhood or the City.”

In April, the City Consulting Arborist conducted a site inspection from the sidewalk and provided a peer review of the arborist report provided by the applicant (see Attachment 5). Through this process, it was discovered that, of the three street trees shown on the survey originally conducted in 2017, only one street tree remains. The Public Works Department confirmed that the two missing street trees had been removed by the Public Works Department as they had died and posed a hazard. The applicant responded to the City Consulting Arborist peer review report as follows:

- Revised plans (all sheets, except the original survey and photograph locations) show that only one street tree remains and that three additional street trees are proposed.
- The applicant has provided Addendum #2 to their Arborist Report, to acknowledge the change in site conditions with respect to trees.
- Sheet L1 shows modified tree species, as recommended by the City Consulting Arborist: Western Redbud (*Cercis occidentalis*) replaced with Eastern Redbud (*Cercis canadensis* ‘Hearts of Gold’) and Valley Oak (*Quercus lobata*) replaced with Hungarian Oak (*Quercus frainette* ‘Schmidt’).

- Sheet L1 has also been modified to indicate that root barriers shall not be used (note 12) and to identify soil volumes (note 13).

In response to feedback from the Planning Commission, City Council, community, and staff, the applicant made the following revisions to the plans:

- Dimensions for all bike parking areas (short and long-term) have been added. See Sheet A1.2.
- Updated landscaping details and demonstrated Water Efficient Landscape Ordinance (WELo) compliance are now shown on Sheets L.1 and I1.4:
- The floor area has been reduced slightly, from 6,693 square feet to 6,681 square feet. This change is small enough that there is no change to the proposed FAR of 0.5.
- The ADA unit has been modified to improve access and constructability, and now includes a wheelchair lift at the rear entrance of the unit. See Sheets A1.1 and A2.1.
- The top-floor units now include larger second-story balconies. See Sheet A2.1.
- The driveway width has been reduced to 10 feet to comply with the Emeryville Design Guidelines (see the Off-Street Parking section, below); planters and hardscape area have been reduced in the rear portion of the driveway to increase circulation clearance. See Sheet A1.1.

The applicant also updated other documents, aside from the project plans, to address comments:

- While this project is fewer than 10 units and therefore not subject to the Family Friendly Design Guidelines, in response to a comment by the City Council, the applicant has revised their Applicant Statement document and addressed Family Friendly project features in Table 1.
- In response to comments by the City Council, the applicant statement now includes an expanded response to demolition findings.
- Housing Conditions Illustrated: this new document responds to City Council inquiries about the status of the housing units and possibilities for repair, and supports the cost of rehabilitation analysis provided in the applicant statement.

A Planning Commission public hearing on the project was held via Zoom on June 25, 2020. Prior to the meeting, the Planning Commission received three letters regarding the project, one in favor and two opposed (see Attachment 6). During the public hearing, seven people spoke, raising concerns about the aesthetics of the proposed units; the feasibility of the proposed on-site parking and impacts to neighborhood parking; loss of affordable units in the neighborhood and the high cost of rent for the proposed units; impacts to the existing residents in a unit to be demolished that is a family with a senior and child who would need to relocate; negative impacts to the social, racial, and economic diversity of the neighborhood; and environmental impacts due to the loss of the large trees on the property. The Planning Commission echoed the concerns of the public speakers. The Commission voted with four ayes, two abstentions, and one absence to take no action on the staff recommended resolution for approval and to recommend to the City Council that the project be denied based on the net loss of affordable units; that the project is detrimental to the existing conditions; its failure to meet the General Plan goal to have a mix of housing types; its failure to meet the Housing Element goal of meeting RHNA

requirements for affordable units, which the City is behind on; and the detriment to the city and neighborhood of the loss of mature trees that provide ecological benefits, including reducing air pollution and providing mental and physical health benefits.

On August 25, 2020, the applicant submitted a letter responding to the comments and action by the Planning Commission at their June 25, 2020 hearing (See Attachment 7). This letter addresses three points: (1) the project's compliance with the Housing Accountability Act; (2) response to comments received from the Planning Commission and the public during the June 25 meeting addressing project design, including tree preservation, architectural compatibility, parking, and affordability; and (3) the project's compliance with the City's Residential Landlord and Tenant Relocation Ordinance.

DISCUSSION

General Plan and Zoning

Use: The existing property contains multiple units in single unit structures, and, as such, is classified as multi-unit residential. There is no proposed change in use. However, the project involves two additional units, which requires a conditional use permit. In addition, the proposal includes the demolition of existing residential units. Per Section 9-5.1203(b) of the Planning Regulations, demolition of residential units requires City Council approval following a recommendation from the Planning Commission. In order to approve the demolition of existing residential units and their replacement structures, the following findings must be made per Section 9-5.1206(b)(2):

- a. The applicant will provide at least the same number of dwelling units as the demolished structure, either on-site or elsewhere within the City of Emeryville; and
- b. The replacement structure would feature design quality that is as high as or higher than the structure to be demolished and that it is compatible with the character of the neighborhood; and
- c. The elimination of the residential structure would not be materially detrimental to the housing needs or the public interest of the affected neighborhood or the City.

In addition, the general findings for a conditional use permit in Section 9-7.505 must be made. These include:

- a. The proposed use is consistent with the General Plan.
- b. The location, size, coverage, density, design and operating characteristics of the proposed use will be compatible with, and will not adversely affect, the surrounding area, including neighborhood character, street design and capacity, safety, noise, and lighting.
- c. The proposed use is consistent with the capability of the water supply, wastewater disposal, fire, and police systems to operate adequately and cost effectively.

- d. The proposed use at its proposed location will provide a service or facility that will contribute to the general well-being of the surrounding neighborhood or community.
- e. The proposed use complies with all applicable standards and requirements of these Planning Regulations.

Land Use Classification: The General Plan Land Use Diagram (Figure 2-2) classifies the project site as Medium Density Residential. In this land use classification, the General Plan includes: “Single family detached and attached housing. Multifamily housing types may be a conditional use, as specified in the Zoning Ordinance.”

General Plan Figure 2-1, the “Areas of Change and Stability – 2009” map, designates the project site as an area of stability, which is described as “those parts of the city that are not anticipated to change significantly in character, land use or development intensity over the next 20 years. These include the older residential neighborhoods on the east side of town as well as the Watergate residential neighborhood on the peninsula, the Watergate office complex, Pacific Park Plaza, and more recent developments such as residential projects in the North Hollis and North Bayfront areas, the Emery Station complex and the Woodfin and Marriott hotels.” It should be noted that this designation does not preclude demolition of existing structures or the construction of new structures. The proposed project is consistent with the character, land use, and development intensity of the area, and therefore conforms to the General Plan designation of this neighborhood as an “area of stability”.

Zoning District: This property is located in the Medium Density Residential (RM) Zone. Multi-Unit Residential uses are conditionally permitted in the RM Zone.

Floor Area Ratio (FAR): The base FAR permitted is 0.5, with a maximum 1.0 FAR available with a bonus. The project site (following approval of the proposed lot line adjustment) is approximately 13,245 square feet, which allows a maximum of 6,623 square feet of total floor area under the base FAR of 0.5, and up to 13,245 square feet of total floor area with a maximum bonus FAR of 1.0. The applicant is proposing a total floor area that includes all six units, of 6,681 square feet. This equals an FAR of 0.5 under the rules for rounding of numbers in Section 9-1.203. Therefore, the proposed project is within the permitted base FAR, and no development bonus is required for FAR.

Building Height: The existing four buildings are all about 25 feet tall; the three proposed duplexes are all just over 27 feet tall. The proposed building are all less than 30 feet tall, which is the maximum height permitted (no bonus is available).

Residential Density: The base residential density is 20 dwelling units per acre; with a bonus the maximum residential density is 35 dwelling units per acre. At 0.30 acres, 6 dwelling units are permitted at 20 dwelling units per acre, and up to 11 dwelling units (rounded up from 10.5) may be built at the maximum residential density of 35 dwelling units per acre. The proposed six-unit development therefore is within the permitted base density, and does not require a conditional use permit for bonus density.

Off-Street Parking: The estimated vehicle parking demand for residential units is one parking space per unit, plus 0.2 guest parking spaces per unit for multi-unit developments with five or more units. For a six-unit multi-unit residential development this results in an estimated parking demand of seven spaces (six spaces, one per each unit; plus one guest space, rounded from 1.2 guest parking spaces). As of May 21, 2020, there are no longer required parking minimums for projects with fewer than 26 spaces (which then require accessible parking based on the estimated parking demand, regardless of how many spaces are actually provided); the maximum parking is 10% more than the estimated demand, or 7.9, which rounds to eight spaces. The applicant is proposing seven vehicular parking spaces: five covered spaces in garages attached to the rear of each building (one of which is accessible), and two uncovered parallel parking spaces adjacent to the driveway on the west side of the property. Thus, the project complies with the off-street parking regulations.

The proposed vehicle parking is compatible with the Emeryville Design Guidelines which state that parking “should be located where it has the least visual and physical impact on the street,” and that “the lot frontage should provide a minimum of 70% active non-parking related uses, provided that a maximum ten-foot width driveway is attainable” (Guideline I-13). The applicant is proposing a single 10-foot wide driveway (a reduction from the current four driveways and curb-cuts), which is consistent with the guidelines.

The bicycle parking requirement is one long-term space per unit plus one short-term bicycle parking space for every 20 dwelling units. Previously, the applicant proposed that each covered garage include space for two secure hanging bicycle racks, for a total of six long-term bicycle parking spaces; and one bicycle rack between the sidewalk and curb on 47th Street for two short-term bicycle parking spaces. The applicant has revised the plans so that each of the three garages contains three bicycle racks for long-term bicycle parking, and the plans demonstrate that there is enough space to park, in addition to vehicles, at least one cargo-style bicycle in each garage. Two bicycle racks for short-term bicycle parking are provided adjacent to the sidewalk, each accommodating two bicycles, for a total of four short-term bicycle parking spaces. Thus, the project complies with the bicycle parking requirements.

Setbacks: The proposed project meets all setback requirements (3-foot minimum side-setback; 15 foot minimum rear setback; and front setback equal to the average of the front setbacks on the adjacent lots) listed under Section 9-4.301(a).

Open Space: Per Section 9-4.303(a)(2) a minimum of 60 square feet of required open space shall be provided per dwelling, consisting of 40 square feet of private open space and 20 square feet of common open space.

All units exceed the amount of required private open space, with downstairs units providing front porches, and all upstairs units providing balconies facing 47th Street. The plans have been revised to increase the size of all second-floor porches from 99 square feet to 255 square feet. The first-floor units all have porches and front yards: the porches provide 96 square feet of private open space, while the front yards all provide over 300 square feet of landscaping.

Two common open space areas are proposed, one between each of the duplex buildings. The proposed common open space between the center and east duplexes has been revised to slightly increase its size to 195 square feet, and it is located along a pedestrian pathway that connects from the rear of the property directly to 47th Street. The proposed common open space between the center and west duplexes has also been revised to increase its size, and is now 286 square feet and adjacent to a garden area with raised planters. Thus, the project meets the open space requirements.

Landscaping: Landscaping requirements are set forth in Article 5 of Chapter 4 of the Planning Regulations. Section 9-4.504 stipulates that development projects in any zone other than industrial zones must include landscaped areas consisting of at least ten percent of the project site.

Section 9-8.212(a) defines “landscaping” as “living vegetation, planted in the ground, including some combination of trees, ground cover, shrubs, vines, flowers, or lawns. In addition, the combination or design may include natural features such as rock and stone; and structural features, including but not limited to, fountains, reflecting pools, artworks, screen walls, fences and benches, but not including swimming pools or spas.”

The project site is approximately 13,245 square feet, requiring a minimum of 1,325 square feet of landscaping. The proposed plans exceed the minimum landscaping requirement by designating 2,420 square feet as landscaping.

Trees. Section 9-4.503(c) states that “For projects on private property that require discretionary City approval, the Director, Planning Commission, or City Council, as the case may be, may require that existing healthy on-site trees be preserved and incorporated into the project unless this is shown to be infeasible. An arborist report, prepared at the expense of the applicant, may be required. At the applicant’s option, this may be prepared either by the City’s arborist, or by an arborist selected by the applicant and peer-reviewed by the City’s arborist.”

In her peer review report, the City Consulting Arborist recommended that the health rating of the three large on-site trees be upgraded, with the two Lombardy Poplars being revised from Fair to Good-Excellent, and the Silver Maple being revised from Fair to Good. Concerning the feasibility of retaining these trees, she observed that “It should be clear that the reason why retention of the large Lombardy (*Populus nigra* ‘Italica’) and Silver Maple (*Acer saccharinum*) is not feasible is due to the potential for significant root loss from project construction which may compromise both health and stability of the trees.”

Concerning tree replacement, she commented that “The trees currently growing on site contribute significantly to the neighborhood. If removed, an equal or greater replacement planting is recommended. Landscape Architect is encouraged to review additional planting locations. It is recommended that large stature trees be utilized in replacement planting and be provided with soil volumes commensurate with their sizes at maturity.”

In response to this, staff has included a condition of approval requiring that additional on-site trees be added to the landscape plan with cumulative diameters equal to or greater than the trees to be removed, with the revised landscape plan subject to approval by the Community Development Director following a review and recommendation by the City Consulting Arborist. A Tree Protection Plan for the remaining existing street tree has also been included in the conditions, are recommended by the City Consulting Arborist.

Design Review: All new building construction, except Single Unit or Two Unit residential uses, requires Major Design Review approval, in this case from the City Council. In making a decision on the project, the Council will need to determine whether it conforms to the Emeryville Design Guidelines. To approve a design review application, all of the findings under Section 9-7.407 must be made:

- a. The design of the project is consistent with the General Plan, including but not limited to its Urban Design goals and policies.
- b. The design of the project conforms to the Emeryville Design Guidelines and any other applicable design guidelines or criteria. If strict compliance with the provisions of such design guidelines or criteria is not achieved, the applicant must convincingly demonstrate that the intent of the guidelines or criteria is met.
- c. The project is of a high design quality that is compatible with, and will not adversely affect, the surrounding area.

Staff Comments

The 47th Street Homes application was reviewed by staff at the January 16, 2019 Development Coordinating Committee (DCC) meeting. Staff was generally supportive of the design and noted the need for the applicant to comply with regulations regarding the relocation of tenants. Staff noted that new curb, gutter, sidewalks, and street trees will be required as part of this project, which is included in the conditions of approval. Staff noted that, while the applicant provided an arborist report that included the trees in the public right-of-way, the City Consulting Arborist would need to assess the existing street tree and a tree protection plan would need to be developed to protect the street tree during construction and during the replacement of the curb, gutter and sidewalk. The City Consultant Arborist's peer review has resulted in revisions to these plans, discussed under the Background section of this report, and the conditions of approval require the development of a tree protection plan prior to the issuance of a demolition plan. In addition, staff has included a condition of approval requiring additional on-site trees, as recommended by the City Consulting Arborist.

Findings

Findings for Approval. In order to approve this Project, the Emeryville Municipal Code requires that the City Council make all of the general conditional use permit findings in Section 9-7.505, all of the findings for demolition of existing residential units in Section 9-5.1206(b)(2), and all of the design review findings in Section 9-7.407, as discussed above.

Draft findings for approval are included in the attached resolution for approval of the Project and listed below.

Conditional Use Permit

In order to approve a Conditional Use Permit, the City Council must make the findings required by Section 9-7.505. The following findings are included in the attached resolution for approval:

1. The proposed use is consistent with the General Plan:

The proposed Project is consistent with the following General Plan goals and policies:

LU-G-5 Preservation of residential neighborhoods - Residential use, structures, low-rise scale, and character of the Triangle, Doyle Street, and Watergate neighborhoods preserved, and the scale of other areas of stability maintained.

The Project preserves residential uses in a Medium Density Residential zone. The Project conforms to the height, floor area ratio (FAR), and residential density limits of the neighborhood as designated by the General Plan, and therefore is in scale with this area of stability and is in character with the Triangle neighborhood.

LU-P-1 Land uses will be consistent with the Land Use Classifications in section 2.4 and the Land Use Diagram, Figure 2-2.

The Project is consistent with the Medium Density Residential Classification in section 2.4 and the Medium Density Residential land use designation in the Land Use Diagram, Figure 2-2.

LU-P-10 Maximum building height will be defined by the Maximum Building Heights diagram, Figure 2-4.

The Project is consistent with the maximum building height of 30 feet as set forth in Figure 2-4.

LU-P-11 Maximum floor area ratios (FARs) and residential densities for sub-areas of the city, will be defined by Figure 2-3 and 2-6, respectively.

The Project is consistent with the base floor area ratio and residential densities as set forth in Figure 2-3 and 2-6.

2. The location, size, coverage, density, design and operating characteristics of the proposed use will be compatible with, and will not adversely affect, the surrounding area, including neighborhood character, street design and capacity, safety, noise, and lighting.

The Project is consistent with the coverage, density, design, and operating characteristics of the surrounding area, as required by the Planning Regulations. Neighborhood character, design, and quality will not be adversely affected because the proposed development preserves the existing residential use while providing new multi-bedroom units with more landscaping and open space than required. The Project is compatible with the neighborhood because it consists of three duplexes on one parcel in a neighborhood that contains a diversity of housing types including single units, duplexes, and multi-unit buildings. The Project reduces the number of curb cuts from four to one, making the Project compliant with the current Design Regulations, and improving street design by providing more on-street parking and street trees. The reduction in curb cuts also improves safety by reducing the number of potential vehicle-pedestrian conflicts, and the new construction will provide safer buildings that meet current Building and Fire codes, including sprinkler systems.

3. The proposed use is consistent with the capability of the water supply, wastewater disposal, fire, and police systems to operate adequately and cost effectively.

The Project is consistent with the capability of the water supply, waste water disposal, fire, and police systems to operate adequately and not add to their burden because the Project maintains the current site's use as a residential use and is compliant with all maximum floor area ratio (FAR), building height, and residential density maps (Figures 2-3, 2-4, and 2-6) in the General Plan.

4. The proposed use at its proposed location will provide a service or facility that will contribute to the general well-being of the surrounding neighborhood or community.

The Project will contribute to the general well-being of the surrounding neighborhood and community by adding two new high quality residential units in a residential neighborhood; meeting all requirements of the Planning Regulations; and increasing the number of multi-bedroom residential units in the City. This Project will add two additional units of housing during the City's declared emergency shelter crisis and the State housing crisis. The redesigned curb, gutter and sidewalk reduce the total number of curb cuts from four to one, improving the well-being of the surrounding neighborhood by adding three new street trees, and improving safety by reducing potential pedestrian-vehicle conflicts at driveways.

5. The proposed use complies with all applicable standards and requirements of these Planning Regulations.

The Project complies with all applicable standards and requirements of the Planning Regulations, as outlined in the above section titled “General Plan and Zoning.”

Demolition: Replacement of Residential Structures

In order to approve the demolition and replacement of residential structures, the City Council, upon the recommendation of the Planning Commission, must make the findings required by Section 9-5.1206(b)(2). The following findings are included in the attached resolution for approval:

1. The applicant will provide at least the same number of dwelling units as the demolished structure, either on-site or elsewhere within the City of Emeryville.

The Project replaces four residential units with six new residential units on the same site.

2. The replacement structure would feature design quality that is as high as or higher than the structure to be demolished and that it is compatible with the character of the neighborhood.

The Project features design quality that is higher than the existing structures to be demolished by providing larger units with family-friendly features that comply with the City’s family-friendly guidelines despite not being required to do so because the project consists of fewer than ten units; by exceeding open space and landscaping requirements; and by exceeding minimum bicycle parking requirements. The Project is compatible with the character of the neighborhood in that the number of dwelling units does not require a bonus, respecting the density of the neighborhood. The design of the Project, which utilizes gabled roofs and large front porches, is consistent with the existing building styles and character of the neighborhood.

3. The elimination of the residential structure would not be materially detrimental to the housing needs or the public interest of the affected neighborhood or the City.

The Project would not be materially detrimental to the housing needs or the public interest of the neighborhood or the City because it replaces existing units with higher quality units and adds two new residential units, all of which contain multiple-bedrooms and family-friendly features which diversifies the types of residential units available in Emeryville which has a high number of studio and one-bedroom units compared to neighboring cities.

Design Review

In order to approve a Design Review permit, the City Council must make the findings required by Section 9-7.407. The following findings are included in the attached resolution for approval:

1. The design of the project is consistent with the General Plan, including but not limited to its Urban Design goals and policies.

The proposed Project is consistent with the following General Plan Urban Design goals and policies:

UD-G-2 A diversity of building types and scales – Variation to reinforce the identity of individual districts and foster a variety of options for living and working, with continuity in development scale and character and careful transitions between densities and design typologies.

The Project is consistent with the scale and character of the Triangle neighborhood, which contains a variety of residential homes and modern condominium complexes that use a variety of building styles (including gabled roofs) and various building materials (including wood shingles, wood siding, and stucco). The residential use type supports the identity of the district by maintaining a residential use and conforming to the Emeryville Design Guidelines and Planning Regulations.

UD-G-5 Neighborhood Preservation - Preservation of the existing small-scale residential quality of older neighborhoods.

The demolition and replacement of the existing four single-unit homes with three duplexes maintains the existing residential use in the Triangle neighborhood, which includes a mix of housing types. The Project consists of six units with family-friendly features on a project site that is zoned for up to 11 residential units with a bonus, and uses building design and setbacks to be sensitive to the existing structures and neighbors on adjacent properties.

UD-P-15 Infill residential development should incorporate the scale, character and identity of adjacent existing development. To avoid a continuous row of garages along the street, the lot frontage should provide a minimum of 70% active non-parking related uses, provided that a driveway of maximum ten-foot width shall be permitted.

The Project is compatible with the scale, character and identity of the adjacent existing developments by adhering to setback and height requirements, incorporating gabled roofs, and using building materials found elsewhere in

the neighborhood. To avoid a continuous row of garages along 47th Street, all vehicular parking is located at the rear of the property in garages accessed by a single driveway that is 10 feet wide. This leaves about 140 feet of the 150 foot street frontage, or about 93%, for active non-parking related uses.

UD-P-19 Infill development shall provide activation at the lot frontage and minimize visible off-street parking.

The Project provides an active residential use, with each unit having large, street-facing porches. The visible impacts of off-street parking are minimized by having vehicular parking located at the rear of the property in garages accessed by a single driveway that is 10 feet wide.

2. The design of the project conforms to the Emeryville Design Guidelines and any other applicable design guidelines or criteria. If strict compliance with the provisions of such design guidelines or criteria is not achieved, the applicant must convincingly demonstrate that the intent of the guidelines or criteria is met.

The proposed Project conforms to the applicable provisions of the Emeryville Design Guidelines, including the following:

C-5 Screen refuse bins and other waste containers by placing them indoors, locating them away from the street, and/or shielding them with fencing and/or landscaping. Prevent contamination of waste in stormwater runoff by maintaining covered bins and prevent empty bins from tipping during storms or due to wind.

The Project locates all discards enclosures (trash, compost, and recycling) in covered, secured enclosures adjacent to garage entrances at the rear of the property. None of the bins are visible from the street, and bins are covered and secured to prevent tipping over and contamination of waste in stormwater runoff.

G-14 Install roof terraces as an efficient way to use the site and to maximize sunlight access. Green roofs can fulfill common open space requirements, as long as they are usable and accessible to all units.

All second-floor units in the Project include large south-facing porches which maximize sunlight access.

I-10 Seek opportunities to improve landscaping, sidewalk condition, and overall streetscape during rehabilitation and new construction.

The Project improves landscaping by replacing the existing lawns with water efficient plants; improving the sidewalk condition by replacing the curb,

gutter, and sidewalk to provide only one 10 foot wide curb cut; and increasing the number of street trees from one to four.

3. The project is of a high design quality that is compatible with, and will not adversely affect, the surrounding area:

The Project uses gabled roofs, large porches, and landscaping that exceeds minimum requirements to create a project that is of a high design quality and that is compatible with, and will not adversely affect, the surrounding neighborhood.

Findings for Denial. At the January 21, 2020 study session, and at the June 25, 2020 public hearing, the City Council and Planning Commission, respectively, focused on the finding at Section 9-5.1206(b)(2)c as a possible basis for denial of the application. That finding states:

“The elimination of the residential structure would not be materially detrimental to the housing needs or the public interest of the affected neighborhood or the City.”

Failure to make the above finding does not necessarily mean that the project is denied. Any disapproval of the project must comply the Housing Accountability Act,¹ which governs the disapproval and conditional approval of housing development projects². The Housing Accountability Act is to be interpreted and implemented in a way that affords the greatest weight to the approval of housing.³ Under the Housing Accountability Act, the City may only deny (or condition approval of a project that may have the effect of denial) a fully market rate housing development project if it can make certain written findings, based upon a preponderance of the evidence in the record. Specifically, to deny a housing development project, Government Code Section 65589.5(j)(1) provides:

When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

- (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct,

1 Gov. Code, § 65589.5.

2 A housing development project may consist of residential units only, mixed use developments where at least two-thirds of the square footage is designated for residential use, or transitional/supportive housing. Gov. Code, § 65589.5(h)(2).

3 Gov. Code, § 65589.5(a)(2)(L).

and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

- (B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

This project is a housing development project under the Housing Accountability Act. In reading the Emeryville Municipal Code together with state law, the City Council may only decline to make a finding as required by Emeryville Municipal Code Sections 9-7.505, 9-5.1206(b)(2), and 9-7.407, if it can make the findings as required by Government Code Section 65589.5(j)(1), as described above. If the City Council cannot make the findings as required by Government Code Section 65589.5(j)(1), then the City has to approve the project. If the Council's decision is to deny the project, staff requests direction as to the findings for denial, which are blank in the attached resolution.

Environmental Review

The proposed project is exempt from environmental review under State CEQA Guidelines Section 15303(b), which applies to new construction or conversion of apartments, duplexes and similar structures designed for not more than six dwelling units, and the "common sense exemption" at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment. If the Council chooses to deny the application, this action would be exempt from environmental review under State CEQA Guidelines Section 15270, which specifies that CEQA does not apply to projects which a public agency rejects or disapproves.

FISCAL IMPACT

Approval or denial of the project will have no fiscal impact on the City.

STAFF COMMUNICATION WITH THE PUBLIC

As noted above, study sessions to review the proposed project were held by the Planning Commission on October 24, 2019, and by the City Council on January 21, 2020. On June 25, 2020, the Planning Commission held a public hearing on the project.

CONFLICT OF INTEREST

Vice Mayor Martinez owns her home within 500 feet of the project site, and therefore, will need to recuse on this item.

CONCLUSION

Staff recommends that the City Council consider the attached resolutions, one for approval subject to the attached Conditions of Approval, and one for denial, of a Conditional Use Permit and Major Design Review Permit to demolish four existing single-unit homes and replace them with three duplexes on one parcel at 1034-1042 47th Street (UPDR18-002).

PREPARED BY: Navarre Oaks, Assistant Planner

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Christine Daniel, City Manager

ATTACHMENTS:

- Attachment 1 - Applicant Statement 05/04/2020
- Attachment 2 - Site Photographs and Locations
- Attachment 3 - 47th Street Housing Conditions Photos
- Attachment 4 - Tree Inventory & Assessment 06/04/2020
- Attachment 5 - City Arborist Peer Review 06/03/2020
- Attachment 6 - Correspondence to Planning Commission 06/25/2020
- Attachment 7 - Applicant Response Letter 08/25/2020
- Attachment 8 - Plans Dated 06/25/2020
- Draft Resolution to Approve, including Exhibit A, Conditions of Approval
- Draft Resolution to Deny