



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** October 6, 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 “47<sup>th</sup> 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 “47<sup>th</sup> 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)**

## INTRODUCTION

On September 15, 2020, the City Council held and closed a public hearing on the 47<sup>th</sup> Street Homes project, and then continued the item to the next City Council meeting on October 6, 2020. In continuing the item, the Council directed staff to determine the date on which the application was deemed complete, and to report this information at the October 6, 2020 meeting. This report provides that information, and also proposed modifications to a condition of approval regarding tree replacement.

## RECOMMENDATION

Staff recommends that the City Council conduct a public hearing on the application, consider the attached staff report from the September 15, 2020 City Council meeting, as well as 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 47<sup>th</sup> Street (UPDR18-002).

## **PROJECT DESCRIPTION**

The applicant proposes demolishing four existing single-unit homes on the same property located at 1034-1042 47<sup>th</sup> 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, at 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.

## **BACKGROUND**

On September 15, 2020, the City Council held a public hearing for the 47<sup>th</sup> Street Homes project. During public comment six community members spoke, all raising concerns about the project, including architectural compatibility with the neighborhood, the lack of affordable units, parking design and impacts, long term care and maintenance of the proposed project by the landlord based on the lack of care of the existing buildings, responsibility of the landlord towards the community, and impacts of tree removal.

### **Application Deemed Complete**

After closing the public hearing, the Council deliberated on the project, and inquired as to when the application was deemed complete. Staff was unable to determine the exact date that the application was deemed complete during the meeting, so the Council continued the item to the October 6, 2020 meeting.

Staff has now reviewed the record and has determined that the application was deemed complete and in compliance with all objective standards on December 18, 2019.

### **Tree Replacement**

There are no changes to the proposed project from what the City Council reviewed on September 15, 2020. The dates on the attached resolutions have been revised to reflect October 6, 2020, and the conditions of approval have been revised to reflect the request made by the applicant regarding tree replacement.

Section 9-4.503(c) of the Planning Regulations 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 of the applicant’s arborist 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 included Condition of Approval VII.A.2.a 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.

After reviewing the conditions of approval, the applicant raised concerns about the feasibility of the proposed 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,” stating:

“We are committed to replacing trees and implementing the spirit of the peer reviewer’s report. However, after reviewing this condition with our project arborist, we believe it is physically infeasible for us to implement this condition. The three existing trees are mature trees with diameters of 52, 36, and 20/21.5/36/44 (multibranch), respectively. Adding those up (including averaging the multibranch maple), we would need to provide 118+ inch diameter of tree area. For a 24" or 36" box tree, even with a 4-inch diameter,

this equates to 30 replacement trees! As you can imagine, we don't have enough site or soil area to achieve this on site, at the time of planting. We are proposing 24" box, 36" box and 15-gallon sized trees in order to balance a desire for quick-to-mature trees, with younger trees that will take well on the property and mature into larger trees with a sufficient amount of soil area. We can explore how to add more trees onto the site, but this may reduce the usable open space area intended to meet the family-friendly guidelines."

In response to this concern, and in consultation with the City Consulting Arborist, Condition VII.A.2.a regarding tree replacement has now been revised to read:

"Additional on-site medium or large stature trees shall be added to the landscape plan to help provide additional canopy lost by the removal of the three large on-site trees (two Lombardy Poplars and one Silver Maple), with the revised landscape plan subject to approval by the Community Development Director following a review and recommendation by the City Consulting Arborist."

## **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 is not subject to 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, and on September 15, 2020 the City Council held a public hearing and then continued the item to October 6, 2020.

## **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 conduct a public hearing, consider the attached staff report from the September 15, 2020 City Council meeting and 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 47<sup>th</sup> 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:

- Staff Report from September 15, 2020
- Attachment 1 - Applicant Statement 05/04/2020
- Attachment 2 - Site Photographs and Locations
- Attachment 3 - 47<sup>th</sup> 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