

**PLANNING COMMISSION MINUTES OF OCTOBER 27, 2008**

**2008-0870 – Cherry Garden Apartments LLC** [Applicant] **Ryan Madson** [Owner]: Application for related proposals located at **1248 Brookfield Avenue** (near S. Knickerbocker Dr.) in R-3 (Medium Density Residential) Zoning District. (APN: 198-15-013) RK;

- **Rezone** from R-3 (Medium-Density Residential) to R-3/PD (Medium Density Residential/Planned Development) Zoning District;
- **Special Development Permit** to convert an existing 8-unit apartment complex to 6 condominiums;
- **Tentative Map** to create 6 new condominium units.

**Ryan Kuchenig**, Associate Planner, presented the staff report. He said staff finds adequate justification to approve the requested deviations subject to the conditions of approval. He said that this project is scheduled to be considered by City Council at the November 18, 2008 Council meeting.

**Comm. Klein** confirmed with staff that the ash tree is the only protected tree on site that the applicant is requesting permission to remove. Comm. Klein asked staff to comment about the City rules regarding maintaining a certain percentage of rental units versus ownership units and asked how the City is maintaining an appropriate stock of rentals and what are the appropriate qualifications for condominium conversions. Mr. Kuchenig said there are a number of improvements required for the conversion of rental units to ownership units which are noted in the report. Mr. Kuchenig said that the proposed project meets all density requirements of this specific zoning district. Comm. Klein asked whether the City is meeting the City goals regarding the number of rental versus ownership units. **Trudi Ryan**, Planning Officer, said City policy is to encourage the development of ownership, and said that the City cannot require the development of ownership units. She said the condominium conversion regulations were put in place to protect tenants and potential buyers, discussing the history of the regulations. Ms. Ryan said the original regulations severely limited the ability to convert to condominiums as the establishment of the regulations occurred during a period when the City Council was trying to encourage rental housing. She said the tides have turned a bit and the City is currently about 50% rental/50% ownership units. She said the condominium conversions are now more simplified. Ms. Ryan said the Commission needs to decide whether the proposed project satisfies all the conditions for conversion. Comm. Klein commented that the Planning Commission sees almost zero proposals for rentals. Ms. Ryan said that some of the projects recently reviewed

were mapped and initially may be used for rental housing, eventually being converted to condominiums.

**Comm. Hungerford** commented that the CC&Rs (Conditions, Covenants and Restrictions) in Attachment B, page 1 seem more detailed than usual and asked staff if the increased details are an outgrowth of the current Study Issue regarding enforceability of CC&Rs. **Kathryn Berry**, Senior Assistant City Attorney, said that most of the applications that come through have this level of detail in the CC&Rs. Ms. Berry said the CC&Rs have been expanding over time and that the City has been trying to create CC&Rs that can be enforced by the Homeowners' Association (HOA) so the City can be sure that the issues that are a concern of the City are addressed. She said that staff is now requiring that the Conditions of Approval (COAs) be incorporated into the CC&Rs. Comm. Hungerford confirmed with staff that the CC&Rs for the proposed project are not dramatically different than in the past, however there has been some evolutionary change. Comm. Hungerford discussed with staff that the conditions should include that the HOA be identified with contact information provided to the City so if there are issues it is evident who to contact. Ms. Ryan said that this possible condition was discussed at study session and the Commission could add a condition if they would like to.

**Chair Rowe** asked staff what the reasoning is for the external stairway in the back. Mr. Kuchenig said the stairway is for access to the upper units. Chair Rowe asked additional questions clarifying with staff that the stairway is only in the courtyard.

**Chair Rowe opened the public hearing.**

**Bill Maston**, architect for the project, represented the applicant. He said they have worked with staff over a period of time and are in support of the staff report and recommendations. He discussed the outdoor landscape elements. Mr. Maston said overall that the site has more open space, better privacy, less focus on cars and more focus on landscaping. Mr. Maston offered to answer any questions the Commission might have.

**Comm. Hungerford** confirmed with Mr. Maston that the proposed project started with eight units and then after working with staff was cut down to six units. Mr. Maston said that this was a non-conforming condition and that sometime since 1957 the zoning in this area changed so the existing site was over the allowable maximum units for the zoning district.

**Vice Chair Chang** asked Mr. Maston if any trees would be planted on the site. Mr. Maston said he they are adding 13 new trees that are either 24-inch or 36-inch box size depending on the placement on the site. Mr. Maston explained the justification for the proposed removal of the ash tree due to its poor health and commented that removing the tree opens up the roof for the photo voltaic panels.

**Comm. McKenna** asked Mr. Maston about the placement of two of the bathrooms. Mr. Maston explained that the downstairs units are slab on grade and they did not want to move the bathrooms, however with the upstairs units the bathrooms can be moved more easily. He said also, the existing units are eight, the proposal is for six units, and they are trying to take advantage of where the plumbing is.

**Angela Omorad**, a long-time Sunnyvale resident and tenant in the Cherry Garden Apartments, said that if these apartments are converted she will be displaced. She said that she would probably have a difficult time finding a similarly situated, affordable apartment in Sunnyvale. She said as far as she knows Sunnyvale has always had a commitment to moderate income housing and converting these apartments will take them out of that range. She said depending on the ultimate price of the converted condominiums that she does not know whether she could afford to buy one of the units. She said these units would be in an area almost completely surrounded by other apartments which could affect the value of the converted condominiums. She asked, considering the downward trend in condominium prices and the current economy, whether this project is a wise decision at this time. Ms. Omorad said that she had a discussion with the owner, Ryan Madson, and he said, depending on the market, he might convert them and keep them off the market for a while so price would go up before he sells them. She asked the Commission to vote no on the approval of this proposed conversion as she said she does not think she would be able to afford the same unit after the upgrade.

**Comm. Travis** asked staff if there are going to be BMR (Below Market Rate) units with this conversion. Ms. Ryan said no, as the minimum number of units to require BMR is nine.

**Chair Rowe** asked staff if there are any requirements regarding providing assistance to help tenants move. Ms. Ryan said there are no requirements like there are for closing mobile home parks. Ms. Ryan said generally bigger developments might hire a housing specialist to help displaced tenants and a requirement for this could be included in the COAs. Ms. Ryan said there are minimum standards required by State law. Chair Rowe asked if one of the

standards is a timeframe for notification. Ms. Berry explained that the City's local ordinance provides some tenant protections including: that the developer shall offer an extension of tenancy to expire not less than 90 days after the units go on the market for sale; that the developer shall permit any tenant to terminate the lease without any penalty if the tenant finds another place to move; that there are expenses for temporary location and some moving costs; that rent cannot be increased during the remaining period of residency; and that the tenants are offered the opportunity to purchase the units as a type of right of first refusal.

**Comm. Klein** commented that the applicant will be refurbishing both the interior and exterior of the units and asked Ms. Berry how the time frames work with the City's ordinance mentioned. Ms. Berry said that sometimes tenants can be moved out temporarily while the units are being upgraded, and if the tenant plans on staying in the unit, the applicant and owner would have to help pay for the temporary relocation. Ms. Berry confirmed with Comm. Klein that his question was regarding the 90 days after the project is completed and how that would work. Ms. Berry said she is not sure what establishes the end date, that it would probably be the certificate of occupancy, and then the 90 days would follow that. Comm. Klein asked how it would work if the owner decided not to sell the units immediately and instead re-rented the units. Ms. Berry said she thinks the rents could go up as there is no rent control in Sunnyvale.

**Chair Rowe closed the public hearing.**

**Comm. Hungerford moved for Alternative 2, to introduce an Ordinance to Rezone 1248 Brookfield Avenue from R-3 to R-3/PD and approve the Special Development Permit and Tentative Map with modified conditions: to add a condition that detailed contact information for the Homeowners' Association be provided to and retained by the City; and to modify condition 7.E that of the new trees installed, 10% shall be 36-inch box size or larger and no tree shall be less than 15-gallon size.**

**Comm. Hungerford** said, before the public hearing tonight, he thought there would be little reason to oppose the idea of taking an apartment complex that needs some work and upgrading the complex. He said he still thinks that the upgrading overrides the concerns that have been expressed tonight. He said the City wants to keep affordable units in Sunnyvale, and has a program in place to add affordable housing requirements in the City. Comm. Hungerford said he is relying on that program to keep affordable units accessible and available and at the same time being able to promote needed improvements to existing units.

**Comm. McKenna** said she agrees with Comm. Hungerford. She said that this is not a particularly dilapidated building, but it probably did need some upgrading and would be a nice addition to the neighborhood. Comm. McKenna said that the major concern of the Commission is the people currently living in the units. She said she hopes with the COAs and other programs that the developer will hear the words, and that the people currently living there will have the first opportunity to take advantage of the upgrade. She said if the tenants cannot remain in the units she hopes that they will have opportunity to look for and relocate to other locations within Sunnyvale.

**Comm. Sulser** said he has mixed feelings about this proposal, and said he would be supporting the motion. He said he is not thrilled about removing rental units given the current housing market. He said this proposal is consistent with the General Plan and what the City wants to do as the City upgraded the conversion ordinance to make it easier for these types of conversions. He complimented the architect stating that he thinks the project is a nice upgrade to the site and that he likes the architecture and the green building features.

**Comm. Klein** commented that in the past when a mobile home park was closed that there was assistance with relocation. He asked staff about helping the existing tenants with relocation issues and if a condition could be added to address this. Ms. Ryan said there are differences between this situation and the mobile home park as the tenants in the mobile home park owned their coaches and these are rental units. Ms. Ryan said in the past there have been apartment complex projects and the conditions included the requirement that there be a tenant relocation assistance plan. Ms. Ryan said the Commission could include a condition for relocation assistance and suggested possible ways to include a relocation plan.

**Comm. Klein offered a Friendly Amendment that the applicant prepare a tenant relocation assistance plan subject to the approval by the Director of Community Development and that the plan includes that the developer pay for the services of a housing specialist.** Comm. Hungerford asked staff if priority for affordable housing could be given in this situation. Ms. Ryan said that is not something that could be provided as there is a well-defined program for BMR rentals and purchases. She said the tenants would need to apply to see if they are eligible for BMR units. **The maker and the seconder of the motion accepted the Friendly Amendment.** Comm. Klein said he had mixed feelings about the project and that the upgrades proposed are beneficial. He said his one worry is what happens to the existing tenants during the upgrade and if the units become rentals. He said that staff did not lay out a plan to assist the tenants and he feels the condition added will help with tenants. He commended the applicant

for working with the Build it Green checklist and said he looks forward to seeing this project completed.

**Chair Rowe** said she agrees with Comm. Klein's comment about the applicant working with the Build It Green checklist. She said she agrees with the efforts to help the tenants.

**ACTION:** Comm. Hungerford made a motion on 2008-0870 to introduce an Ordinance to Rezone 1248 Brookfield Avenue from R-3 to R-3/PD and approve the Special Development Permit and Tentative Map with modified conditions: to add a condition that detailed contact information for the Homeowners' Association be provided to and retained by the City; and to modify condition 7.E that of new trees installed, 10% shall be 36-inch box size or larger and no tree shall be less than 15-gallon size; and to add a condition that the applicant prepare a tenant relocation assistance plan subject to the approval by the Director of Community Development and that the plan includes that the developer pay for the services of a housing specialist. Comm. McKenna seconded. Motion carried unanimously, 7-0.

**APPEAL OPTIONS:** This recommendation will be forwarded to City Council for consideration at the November 18, 2008 City Council meeting.