



Office of the City Manager

INFORMATION CALENDAR
OCTOBER 25, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Daniel Marks, Director, Planning and Development Department

Subject: 1728-1730 Hearst Avenue, Berkeley – Certification and review of Planning Commission approval of Tentative Tract Map 7587

INTRODUCTION

This item is submitted to the Mayor and City Council pursuant to Berkeley Municipal Code (BMC) Section 21.16.060, which states, "...the City Council may certify and review any action taken by the Planning Commission on a tentative subdivision map or exceptions requested". (Ord. 5793-NS § 2 (part), 1987).

CURRENT SITUATION AND ITS EFFECTS

None.

BACKGROUND

On July 13, 2005 the Planning Commission approved Tentative Tract Map 7587 for a proposed five-unit condominium project comprised of two residential buildings with one unit in the rear building and four units in the front building, to allow condominium ownership, subject to the attached findings and conditions.

Affordable Housing Fee Does Not Apply

The report to the Planning Commission indicated that the affordable housing fee required for the conversion of existing units into condominiums did not apply to this project. Berkeley Municipal Code, (BMC) Chapter 21.28 regulates the conversion of existing residential units into condominiums. The subject application was submitted before June 16, 2005 and was considered under the BMC Chapter 21.28 in effect prior to that date. BMC Section 21.28.060(G), in effect prior to June 16, 2005, exempted units in TIC projects of twelve or fewer units from the Affordable Housing fee where at least 40% of the units were owner occupied on August 20, 1992. The subject property is currently in Tenancy In Common (TIC) ownership. Sixty percent of the units on the subject property were owner-occupied in 1992. Staff concluded that the Affordable Housing fee does not apply to this condominium application.

POSSIBLE FUTURE ACTION

The Planning Commission's action has not been appealed, however, the Council may choose to certify and review the decision by the Planning Commission and set a public hearing at a later date. If the Council chooses to certify the Commission's action, the item will need to be noticed, heard and determined in the same manner as any other appeal of a Planning Commission action.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Additional staff time would be required to prepare the necessary Council reports and resolution.

CONTACT PERSON

Mark Rhoades, Land Use Planning Manager, Planning Department, 510-981-7410.

Attachments:

1. Tentative Tract Map 7587.
2. Memo to Planning Commission, July 13, 2005.
3. Notice of Decision, August 8, 2005.

Attachment 1

1728 - 1730 Hearst Avenue
Tentative Tract Map 7587

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Attachment 2



Planning and Development Department

MEMORANDUM

DATE: July 13, 2005

TO: Members of the Planning Commission

FROM: Mark Rhoades, Land Use Planning Manager/Zoning Officer
By: Stephen Ford, Associate Planner

SUBJECT: 1728 – 1730 Hearst Avenue, Berkeley - Five (5)-unit residential project in two existing buildings – four (4) units in a two-story building near the front of the property and a single unit in a two-story building near the rear of the property -- to allow condominium ownership – Tentative Tract Map 7587

Recommendation: Staff recommends that the Planning Commission approve Tentative Tract Map 7587 based on the attached findings and conditions.

Applicant: Larry Neal, 2332 Browning Street, Berkeley, CA, 94702.

Application complete: May 30, 2005.

Deadline for action: July 19, 2005 (Section 21.16.046 of the *Subdivision Ordinance*).

CEQA determination: The project involves the subdivision of two existing two-story, residential buildings on one lot and is categorically exempt under Section 15301(k) of the *California Environmental Quality Act Guidelines*: existing multiple family residences.

Background: The subject property is currently in Tenancy In Common (TIC) ownership. Berkeley Municipal Code, (BMC) Chapter 21.28 regulates the conversion of existing residential units into condominiums. On June 16, 2005, BMC Section 12.28 was revised to eliminate the sections that refer to TIC conversions. They are now all referred to as condominium conversions. The subject application was submitted before June 15, 2005 and is considered under the BMC Section 12.28 in effect prior to that date.

Notice of Local Law Compliance Issued

As required under BMC Section 21.28.110, the Planning and Development Division issued a Notice of Local Law Compliance for the property on July 15, 2004. The notice indicates that the property was inspected and found to comply with City of Berkeley building, zoning and fire code laws applicable to the Condominium Ordinance.

Affordable Housing Fee Does Not Apply

BMC Section 12.28.060 establishes an Affordable Housing fee to be applied to units that convert to condominiums. BMC Section 12.28.060(G), in effect prior to June 2005, at the time of application, exempts units in TIC projects of twelve or fewer units from the Affordable Housing fee if at least 40% of the units were owner occupied on August 20, 1992. According to the applicant and to City Rent Stabilization Board records, three of the five units (60%) on the subject property were owner-occupied in 1992. Staff concludes that the Affordable Housing fee does not apply to this condominium application.

Project description:

The subject property is a 6,250 square foot (50 ft x 125 ft) rectangular-shaped lot containing two, two-story residential buildings: 1730 Hearst Avenue, units 1-4, near the front of the lot and 1728 Hearst Avenue, near the rear of the lot, five units total. The applicant proposes to create five condominium units in the two, two-story buildings on the subject property: four units in the building near the front of the property (1730 Hearst Avenue, units 1-4) and one unit in the building near the rear of the property (1728 Hearst Avenue). The units are described in Attachment No. 1 and the attached Condominium Plan.

Analysis:

General Plan: Housing Element Policy H-1(H) - Low and Moderate Income Housing -- Emphasize providing entry-level home ownership for teachers, City employees and others in Berkeley's workforce... The project helps to provide lower-priced home-ownership opportunities in the city.

Condominium Ordinance (Section 21.28 of the BMC): As stated above, the project is exempt from the affordable housing fee requirements of the Condominium Ordinance pursuant to Section 21.28.060(G) since at least 40% of the units in the project were owner-occupied in August 2005. The project meets the requirements of BMC section 21.28 (in effect prior to June 2005) that regulates the conversion of TIC units to condominiums.

Inclusionary Housing (Section 23C.12 of the BMC): The subject project is not subject to the inclusionary requirements of BMC section 23C.12, as it does not involve new construction (BMC Section 23C.12.020).

Public notice:

A public hearing notice:

- appeared in The Berkeley Voice on July 1, 2005;
- was posted at the subject property on July 1, 2005;
The notice correctly stated that five condominiums are proposed. The notice incorrectly stated that one condominium is proposed for the front building and four condominiums are proposed for rear building. Four condominiums are proposed for the front building. One condominium is proposed for the rear building.
- was mailed to the applicant and owner of the subject property on Jul 1, 2005; and
- was mailed to owners and occupants within 300 feet of the property on July 1, 2005.

At the time of the writing of this report, there have been no responses.

Recommendation: Staff recommends that the Planning Commission approve Tentative Tract Map 7587 based on the following findings and with the conditions listed in Attachment 1.

Attachments:

1. Findings and Conditions
2. Project Description
3. Public Hearing Notice
4. Tentative Tract Map 7587
5. Condominium Plans for Tentative Tract map 7587
6. Application for condominium
7. *Standard conditions of approval for all subdivisions, new condominiums and commercial condominium conversions within the City of Berkeley, January 1994*
8. *Stormwater conditions of approval*
9. Correspondence received

1728 - 1730 Hearst Avenue
Tentative Tract Map 7587

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Attachment 3



Planning and Development Department
Land Use Planning Division

August 8, 2005

Mr. Larry Neal
2332 Browning Street
Berkeley, CA 94702

To: Mr. Larry Neal

RE: Notice of decision: Tract Map 7587 - Five (5)-unit residential condominium project in two existing buildings – four (4) units in a two-story building near the front of the property and a single unit in a two-story building near the rear of the property at 1728 – 1730 Hearst Avenue, Berkeley

The Planning Commission of the City of Berkeley, after conducting a public hearing, approved Tentative Tract Map 7587 for a five-unit residential condominium project to allow condominium ownership, on July 13, 2005, subject to the attached findings, conditions and plan.

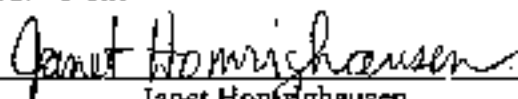
The Commission decision is subject to appeal to the City Council. It may be appealed by the subdivider or other persons aggrieved by the decision for a period of ten (10) days from the date of the Commission's action. Such appeal must be filed in writing with the City Clerk. The Commission's action may also be certified or reviewed by the City Council for a period of twenty-one (21) days from the date of the Commission's action.

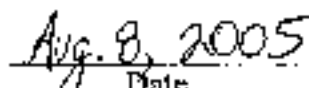
The approval of the Tentative Tract Map will expire twenty-four (24) months from the date of the Planning Commission's approval of the map subject to the conditions described in Section 66452.6 of the State Subdivision Map Act. An extension to the expiration date may be approved as provided in Section 21.16.080 of the Subdivision Ordinance.

Commission Vote:

Ayes: Burke, Fireman, Pollack, Poschman, Shumer, Stoloff, Tabb, Wengraf, Wrenn.
Noes: None
Abstain: None
Absent: None
Recused: None

Attest:


Janet Honrighausen
Secretary, Planning Commission


Date

cc: Building and Safety Division
City Clerk
Main Library - Reference Desk
Public Works Department

Attachments

1. Findings and Conditions
2. Tract Map
3. *Standard conditions of approval for all subdivisions, new condominiums and commercial condominium conversions within the City of Berkeley, January 1994*
4. *Stormwater conditions of approval*

Staff planner: Stephen Ford, sford@ci.berkeley.ca.us, (510) 981-7410.

Attachment 1

Findings:

- A. The proposal is consistent with the City's *2002 General Plan and adopted West Berkeley Plan*, as analyzed and presented in August 26, 2004 staff report to the ZAB and accompanying findings adopted by the ZAB and incorporated into Use Permit # 04-10000040.
- B. The project does not alter the density of development approved for the site.
- C. The project will not have negative environmental impacts since it is limited to the subdivision of existing multiple family residences. It is categorically exempt under Section 15315 of the *California Environmental Quality Act Guidelines*: minor land division.
- D. The project will not cause serious public health problems since it is limited to the subdivision of existing and approved structures.
- E. The project does not conflict with any public access easements.
- F. The project will not alter passive or natural heating or cooling opportunities since it is limited to the subdivision of permitted and existing structures.
- G. The project is consistent with the requirements of the City's Condominium Ordinance pursuant to Section 21.16 (Tentative Maps – Five or more Parcels).

Conditions:

1. The Final Map shall be submitted for certification and shall be recorded in compliance with the *Berkeley Municipal Code*, Title 21, and with the *Subdivision Map Act* of the State of California.
2. The *Standard conditions of approval for all subdivisions, new condominiums and commercial condominium conversions within the City of Berkeley*, dated January 1994, applies and shall be satisfied prior to approval of the Final Map.
3. The *Stormwater conditions of approval*, applies and shall be satisfied prior to approval of the Final Map.
4. A copy of the Conditions, Covenants, and Restrictions shall be filed with the Planning and Development Department prior to approval of the Final Map.