



Office of the City Manager

INFORMATION CALENDAR

November 15, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: 1116–1132 University Avenue, Berkeley – Certification and review of Planning Commission approval of Tentative Tract Map 7661

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 September 14, 2005 the Planning Commission approved Tentative Tract Map 7661 for a proposed sixty-nine unit condominium project comprised of two commercial units, two live/work units and sixty-five residential units to allow condominium ownership, subject to the attached findings and conditions. As a result of this condominium map, the project will provide eleven units at 80% of Area Median Income (AMI). This level of affordability exceeds the requirements of the City's Inclusionary Ordinance and the State Density Bonus law.

Condition 1 of the Planning Commission's approval relates to the inclusionary housing requirements for the project, which are outlined in the memo from staff to the Planning Commission dated September 14, 2005. Tentative Tract Map 7661 was found to be consistent with Use Permit #03-10000078, the inclusionary housing requirements of Section 23C.12 of the Berkeley Municipal Code (BMC), and the State of California density bonus requirements included in Government Code Section 65915. These inclusionary housing requirements can be satisfied if condominium units are created and if the inclusionary housing units in the project are rented, or sold, to qualifying households. To ensure compliance with these inclusionary housing requirements, the Planning Commission imposed Condition 1, which reads as follows:

Prior to the approval of a Final Tract Map, an Affordable Housing Agreement shall be entered into with the City's Housing Department that specifies the number,

location and pricing of units that will be affordable in accordance with Condition No. 60 of Use Permit #03-10000078.

BMC Section 21.16.060 provides that the Council may certify and review the Planning Commission action. In order for the Council to review the decision on its merits, the Council must certify the Notice of Decision by moving this Information Item to Action. Certification of the Planning Commission's decision will stay all proceedings in the same manner as the filing of a notice of appeal. The certification would need to be noticed, heard and determined in the same manner as provided in BMC Section 21.16.050 - Appeal of Planning Commission action.

POSSIBLE FUTURE ACTION

The Council may choose to certify and review the decision by the Planning Commission and set a public hearing at a later date.

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, 510-981-7410.

Attachments:

1. Tentative Tract Map 7661
2. Memo to Planning Commission, September 14, 2005
3. Notice of Decision, September 22, 2005

1116 - 1132 University Avenue
Tentative Tract Map 7661

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Attachment 1

1116 - 1132 University Avenue
Tentative Tract Map 7661

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Attachment 2



Planning and Development Department

MEMORANDUM**DATE:** September 14, 2005**TO:** Members of the Planning Commission**FROM:** Mark Rhoades, Land Use Planning Manager/Zoning Officer
By: Stephen Ford, Associate Planner**SUBJECT:** 1116 – 1132 University Avenue -- Proposed sixty-nine (69) Unit condominium project comprised of two commercial units, two (2) live-work units and (65) residential dwelling units to allow condominium ownership – Tentative Tract Map 7661**Recommendation:** Staff recommends that the Planning Commission approve Tentative Tract Map 7661 based on the attached findings and conditions.**Applicant:** Mr. Gary Varum, 470 Arlington Avenue, Berkeley, CA 94708**Application complete:** August 1, 2005.**Deadline for action:** September 30, 2005 (Section 21.16.046 of the *Subdivision Ordinance*).**CEQA determination:** The project involves the subdivision of an approved mixed-use building (multiple family residences, live-work and commercial uses) and is categorically exempt under Section 15315 of the *California Environmental Quality Act Guidelines*.**Background:** Use Permit #03-10000078 was granted on November 29, 2004 by the Zoning Adjustments Board (ZAB) for the construction of a sixty-nine unit, mixed-use condominium project consisting of a five-story, mixed-use building on the northern portion of the lot and a three-story residential building on the southern portion of the lot. The project is not yet under construction. This application will not result in any physical change to the permitted buildings. Land use matters were addressed as part of the assessment of the use permit and any conditions previously imposed by the ZAB will not be altered by the approval of this project**Project description:** The applicant proposes to create units to allow condominium ownership. The buildings are permitted as two new buildings with shared subterranean parking. The five-story building on the northern portion of the lot will contain two commercial and two live-work units on the ground floor and 48 residential units on the floors above. The three-story building on the southern portion of the lot will contain seventeen residential units.

Analysis:

General Plan: The proposal is consistent with *General Plan* goal No. 1 and goal No. 2 which encourage the development of appropriate infill development and additional housing.

Subdivision Ordinance and Subdivision Map Act: The Public Works Department has determined that the Tentative Tract Map is suitable for review by the Planning Commission.

Condominium Ordinance: The project is exempt from the affordable housing fee requirements of the Condominium Ordinance pursuant to Section 21.28.040.D since the dwelling units have not been rented or leased.

Inclusionary Housing (Section 23C.12 of the BMC): As part of the projects ZAB review, staff calculated that the project would have a base number of units (the number of units allowed without a density bonus) of 52 units. Under BMC Section 23C.12 of the Zoning Ordinance (Inclusionary Ordinance), ten of the base project's 52 units are required to be priced below market rate (inclusionary units). The applicant is proposing that eleven units be priced below market rate.

Inclusionary Unit Pricing: For this project, the Use Permit required that inclusionary unit sales prices will be affordable to households earning no more than 80 % of Area Median Income (AMI). Condition No. 60 of Use Permit #03-10000078 states: "The inclusionary units in this project shall be sold at a price that is affordable to an appropriate-sized household whose income is no more that 80% of the area median income reported for the Oakland PSMSA for households of that size. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation."

This condition of the Use Permit is consistent with Section 23C.12.070(A)(1) of the BMC which indicates that inclusionary condominium units:

1. *"...shall be sold at a price that is affordable to an appropriate-sized Household whose income is no more than 80 percent of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation;*

Under Section 23C.12.070(A)(2) of the BMC, sales prices are allowed to rise to be affordable to households earning as much as 120% of AMI. Section 23C.12.070(A)(2) states that:

2. *Where the per unit cost of development exceeds the allowable inclusionary sales price, the price may be set at the cost of development as defined below, but may not in any case exceed a price that is three times a gross household income of 120 percent of area median income;"*

Staff notes that while the City's Inclusionary Ordinance allows for sales prices to rise to a level affordable to households earning as much as 120% of AMI, this project's sales prices will be capped at levels affordable to households with incomes not exceeding 80% of AMI.

Government Code Section 65915 (density bonus):

Tentative Tract Map 7661 will also not conflict with the State of California density bonus requirements included in Government Code Section 65915 that were in effect at the time the ZAB approved the project. State law required a density bonus of at least 25% where 20% of the units would be affordable to households with incomes not exceeding 120% of AMI (moderate income). In the subject case, the project received a 25% density bonus with 20% of the units affordable to households with incomes not exceeding 80% of AMI (lower income).

Inclusionary Housing and Density Bonus Related Condition: According to Condition No. 60 of Use Permit #03-10000078, “The inclusionary units in this project shall be sold at a price that is affordable to an appropriate-sized household whose income is no more than 80% of the area median income reported for the Oakland PMSA for households of that size. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation.” In order to implement inclusionary price limitations, the developer will be required to execute an Affordable Housing Agreement with the City.

Condition No. 1: Prior to the approval of a Final Tract Map, an Affordable Housing Agreement shall be entered into with the City’s Housing Department that specifies the number, location and pricing of units that will be affordable in accordance with Condition No. 60 of Use Permit #03-10000078.

Public notice:

A public hearing notice:

- appeared in The Daily Californian on September 2, 2005;
- was posted adjacent to the subject property on September 2, 2005;
- was mailed to the applicant and owner of the subject property on September 2, 2005;
and
- was mailed to owners and occupants within 300 feet of the property on September 2, 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 7661 based on the findings and the conditions listed in Attachment No. 1.

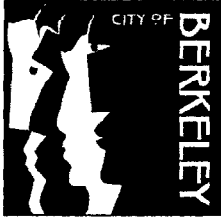
Attachments:

1. Findings and Conditions
2. Project Description
3. Public Hearing Notice
4. Tentative Tract Map 7661
5. Condominium Plans for Tentative Tract map 7661
6. Application for condominium
7. Table of 2005 Inclusionary Rents and Condominium Prices
8. *Standard conditions of approval for all subdivisions, new condominiums and commercial condominium conversions within the City of Berkeley, January 1994*
9. *Stormwater conditions of approval*
10. Use Permit #03-10000053 (including project plans)

1116 - 1132 University Avenue
Tentative Tract Map 7661

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Attachment 3



Planning and Development Department
Land Use Planning Division

September 22, 2005

Mr. Gary Varum c/o
1122 University Ave. LLC
480 Arlington Ave.
Berkeley, CA 94707

Dear Mr. Varum,

RE: Notice Of Decision: Tentative Tract Map 7661 – Sixty-nine (69) unit condominium project comprised of two (2) commercial units, two (2) live-work units and (65) residential dwelling units at 1116 – 1132 University Avenue

The Planning Commission of the City of Berkeley, after conducting a public hearing, **approved** Tentative Tract Map 7661 for a sixty-nine unit condominium project comprised of two commercial units, two live/work units and sixty-five residential units to allow condominium ownership, on September 14, 2005, subject to the attached findings, conditions and plan.

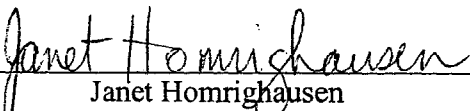
The Commission decision is subject to appeal to the City Council. It may be appealed by the subdivider or other persons aggrieved by the decision for a period of ten (10) days from the date of the Commission's action. Such appeal must be filed in writing with the City Clerk. The Commission's action may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

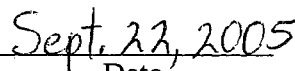
Commission Vote:

Ayes: Bronstein, Pollack, Samuels, Sheen, Shumer, Wengraf, Wrenn,
Noes: None
Abstain: None
Absent: Burke, Stoloff
Recused: None

Attest:



Janet Homrighausen
Secretary, Planning Commission



Date

cc: Steve Wollmer
1823 "B" Berkeley Way
Berkeley, CA 94703
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 and Conditions

Tentative Tract Map 7661
1116 –1132 University Avenue

Findings:

- A. The proposal is consistent with *General Plan* goal no. 1 and goal no. 2 which encourage the development of appropriate infill development and additional housing.
- B. The project does not alter the density of development or site/building plans approved for the site.
- C. The project will not have negative environmental impacts since it is limited to the subdivision of a permitted mixed-use building (multiple family residences and commercial uses). It is categorically exempt under Section 15301(k) of the *California Environmental Quality Act Guidelines*.
- D. The project will not cause serious public health problems since it is limited to the subdivision of a permitted mixed-use building (multiple family residences and commercial uses).
- 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 an existing mixed-use building (multiple family residences and commercial uses).
- G. The project is exempt from the affordable housing fee requirements of the *Condominium Ordinance* pursuant to Section 21.28.040.D since the dwelling units will be newly constructed and will have not been previously rented or leased.
- H. The project does not conflict with the inclusionary housing requirements of Section 23C.12 of the Berkeley Municipal Code (BMC) or the conditions of approval attached to Use Permit # 03-1000078.

Conditions:

Conditions of approval imposed by the Planning and Development Department:

1. Prior to the approval of a Final Tract Map, an Affordable Housing Agreement shall be entered into with the City's Housing Department that specifies the number, location and pricing of units that will be affordable in accordance with Condition No. 60 of Use Permit #03-1000078.
2. A copy of the Conditions, Covenants, and Restrictions shall be filed with the Planning and Development Department prior to approval of the Final Map.

Conditions of approval imposed by the Public Works Department:

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.