

Town of Lakeview
Town Council Final Order
Planning File No. 788

ORDER from the Town of Lakeview Town Council conditionally approving Planning File No. 788, a site design review application for the construction of two multi-family dwelling projects consisting of two three-story apartment buildings (17 units total) and five duplex buildings (ten units total), on two replatted lots of approximately 0.93 acres under concurrent applications, with the subject lots being a portion of the land identified as 39S-20E-16AC, Tax Lot 100, and more specifically described as being located on the west side of South ‘U’ Street between South 3rd Street on the south, and New Mexico Avenue (vacated) on the north.

WHEREAS, on March 27, 2023, Matthew Bogatay submitted an application on behalf of BB Development, LLC (“Applicant”), requesting approval to develop the property as stated above; and

WHEREAS, the application was deemed complete on April 26, 2023; and

WHEREAS, on May 8, 2023, the Planning Commission held a duly noticed public hearing and testimony was taken by the Planning Commission on the application, and at the conclusion of the public hearing process the Planning Commission conditionally approved the application; and

WHEREAS, on May 23, 2023, Rene Strubel, on behalf of a group of community members, filed an appeal of the Planning Commission’s decision to the Town Council; and

WHEREAS, the appeal was duly noticed for the meeting of June 26, 2023; and

WHEREAS, the appeal was heard on June 26, 2023, at which time the Town Council received evidence and public testimony, closed the oral portion of the hearing, left the record open for any evidence and argument for a period of 14 days, and, at the request of the Applicant, provided the Applicant a period of 7 additional days for final argument; and

WHEREAS, the Town Council also voted to schedule deliberations for August 7, 2023;
and

WHEREAS, on August 7, 2023, after reviewing the entire record, the Town Council unanimously voted to uphold the Planning Commission's conditional approval and directed staff to prepare a final order for Town Council's review.

NOW THEREFORE, THE COUNCIL OF THE TOWN OF LAKEVIEW ORDERS, that:


Section 1. The Town Council hereby denies the appeal. The arguments raised by opponents (including arguments that the state has exceeded its authority or acted contrary to applicable law, that the City's housing needs analysis does not support the proposed development, that the nature and/or character of potential occupants present undue risk to health, safety, welfare, or property values, that the proposed mix of units is inappropriate, that private arrangements concerning sale, use, or development of the subject property preclude approval, that prior decisions concerning the subject property are invalid, that private amenities and services are unavailable, that property taxes would be adversely affected, that use and/or design are incompatible with adjacent development, and that funding for the project is better spent elsewhere) are either not responsive to applicable approval criteria or, to the extent responsive, are insufficiently developed to allow for review, are not supported by substantial evidence, or are in conflict with state requirements for evaluation of housing. To the extent sufficiently developed to allow for Town Council's review, arguments raised by the opponents that are responsive to applicable approval criteria (including arguments pertaining to access, transportation, availability of public facilities, floodplains, and stormwater) are sufficiently addressed by elements of the proposal or conditions of approval. Where there is conflicting evidence on applicable approval criteria, Town Council finds that the evidence in support of the opponent arguments does not overcome conflicting evidence supporting the application. Namely, many opponent arguments were too speculative and/or would require the Town to act in a manner inconsistent with applicable law. Further, City

staff and consultants did not identify any deficiencies in public facilities or services that warranted denial or the imposition of conditions above and beyond that imposed by this decision. Any other arguments raised in these proceedings were not sufficiently developed to allow the Town Council a fair opportunity to understand and respond to the issue. The foregoing findings are not to say that Town Council does not appreciate the concerns raised by opponents, but simply that such arguments do not provide Town Council cause to deny the application.

Section 2. In addition to the findings and conclusions set forth in this Order, Town Council hereby approves and adopts by reference the Findings of Fact and Conclusions of Law in the staff report dated May 1, 2023 as supplemented by the Applicant's findings, conclusions and evidence all set forth in the record. In the event of conflict between findings in this order and the foregoing referenced documents, this order will control.

Section 3. Town Council hereby approves Planning File No. 788 subject to the conditions of approval set forth in the attached Exhibit A.

Accepted and approved by the Town Council and signed by me in authentication of its passage on this 22 day of August, 2023.


Raymond Turner, Mayor

Attest:

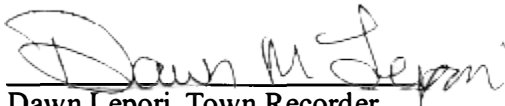

Dawn Lepori, Town Recorder

EXHIBIT A

CONDITIONS OF APPROVAL

1. Approval is based on the submitted plans and materials. Any significant deviation therefrom will require a modification of approval.
2. Prior to any construction within the public right-of-way or prior to vertical construction on the site, Applicant shall have public improvement plans reviewed and approved by the Town of Lakeview. The public improvement plans shall include the following improvements:
 - a. A declaration of intent to improve and rededicate the alley or New Mexico Avenue. If the intent is to improve and rededicate the alley or New Mexico Avenue, plans shall be provided to improve the facilities up to current Town Standards.
 - b. Public improvement plans for the South 'U' Street project frontage to improve the west half of the street to Town Standards, and up to an additional 10-feet beyond the centerline if the same is required by the Public Works Director.
 - c. Public improvement plans for the 3rd Street project frontage to improve the north half of the street to Town Standards, and up to an additional 10-feet beyond the centerline if the same is required by the Public Works Director. Given the existing drainage feature adjacent to the paving, the Public Works Director may approve an alternate cross-section putting the new sidewalk behind (north) of the existing drainage ditch and maintaining the shoulder/v-ditch cross-section (as opposed to installing curb and gutter with a planter strip and sidewalk immediately behind the planter strip). Applicant shall coordinate with the Public Works Director to obtain approval for alternate cross-section prior to undertaking detailed engineering on the project design.
3. Prior to final plat, Applicant shall provide water and sanitary sewer facility as-builts for Public Works to verify Town Standards are met. If as-builts are unavailable, Applicant shall provide copies of Public Works inspections. If as-builts and Public Works inspections are unavailable, Applicant's engineer shall provide a stamped statement that the existing water and sewer facilities were installed to the Town Standards in effect at the time they were constructed.
4. Prior to final plat, Applicant shall provide new water, sanitary sewer, and storm sewer line connections to Lot 1.
5. Prior to final plat, Applicant shall install all public improvements required by the approved public improvement plans.
6. New Mexico Avenue and the alley within Block 93 shall be improved to Town standards prior to final plat if Applicant intends to rededicate them to the Town at that time, otherwise, access easements for their use by the subject lots shall be set forth on the final plat and the plat shall note that these facilities are not maintained by the Town of Lakeview.
7. Prior to issuance of building permits for vertical construction, the final plat for the proposed replat shall be approved and recorded.
8. Prior to issuance of building permits for vertical construction, obtain required road approach permits for the two new driveways on South 'U' Street.
9. Prior to issuance of building permits for vertical construction, provide an updated landscape plan that satisfies all the landscape requirements at TLDC Section 3.2 including planting plan, street trees, installation plan, and automatic irrigation plan.

10. Prior to issuance of building permits for vertical construction, provide an updated site plan that demonstrates the required building separation between the Desert Horizons buildings is satisfied.
11. Prior to issuance of building permits for vertical construction, provide an updated site plan that demonstrates the required building separation between the maintenance building and the southwest duplex is satisfied.
12. Prior to issuance of building permits for vertical construction, the Applicant's engineer shall provide base flood elevation(s) on the subject sites rounded up to the nearest 1/10 of one foot.
13. Prior to issuance of building permits for vertical construction, the design shall be modified to ensure the private outdoor space provided for the ground floor units of the three-story apartment buildings and around the concrete patios behind each of the ten duplex units will be enclosed in a secure way.
14. Prior to certificate of occupancy or final inspection approval of the building permits for the respective buildings, elevation certificates demonstrating that the lowest floors are elevated to or above the base flood elevation.
15. Prior to certificate of occupancy or final inspection approval of the building permits for the respective buildings, all required site and public improvements shall be installed in accordance with the final site plan updated to reflect the conditions of approval herein and the final landscape plan approved by Staff.
16. If the alley is rededicated, provide updated site plans moving the accesses solely to the alley and provide updated dimensions demonstrating the 6-foot setback to the alley from the duplex storage units is satisfied.