City Council
AGENDA REPORT

DATE: 4/26/2024

AGENDA OF: 4/30/2024

DEPARTMENT: Planning and Community Development

SUBJECT: **1130/1132 Mission Street: CP23-0103** (APN 006-203-24, -25) Appeal of the Planning Commission Approval of the Development Proposal at 1130 Mission Street Involving Nonresidential Demolition Authorization Permit to Demolish Two Commercial Buildings, Boundary Adjustment to Combine Two Parcels, and a Design Permit, Special Use Permit, Watercourse Development Permit and Heritage Tree Removal Permit to Construct a Five-Story Mixed-Use Building Consisting of 2,627 Square Feet of Ground Floor Commercial Space and 48 Single Room Occupancy (SRO) Residential Units Above. The Project Also Includes a Request for Density Bonus Including Waivers to Exceed Building Height, Setbacks, and Floor Area Ratio (FAR), As Well As Proposes to Utilize AB2097 to Reduce On-Site Parking. The Parcels Are Both Located in the CC (Community Commercial)/MU-M (Mixed-Use Medium Density) Zone District and the Mission Street Overlay Zone. Environmental Determination: Categorical Exemption 15332, In-Fill Development Projects. Owner: Douglas Wallace. (PL)

RECOMMENDATION: Motion to adopt a resolution denying the appeal(s) thereby upholding the Planning Commission's acknowledgment of the environmental determination (Categorical Exemption Section 15332, Class 32) and approval of the Nonresidential Demolition Authorization Permit; Boundary Adjustment; Density Bonus request, including waivers to exceed height and FAR and reduce setback requirements; and Design, Special Use, Watercourse Development Permits, and Heritage Tree Removal Permit, based on the findings listed in the draft Resolution and the Conditions of Approval attached as Exhibit "A."

BACKGROUND: This project involves a proposal to construct a five-story, mixed-use project consisting of ground level parking and commercial space and 48 Single-Room Occupancy (SRO) units. The subject parcels total 12,502 square feet and are currently zoned MU-M (Mixed-Use Medium Density). However, the previous CC (Community Commercial) zoning applies to this project as that was the zoning in place at the time preapplication pursuant to Senate Bill 330 was deemed complete in January of 2023 (discussed further below). The purpose of the CC (Community Commercial) zone district is to provide locations throughout the community for a variety of commercial and service uses for residents of the City of Santa Cruz (City) and the region which promote the policies of the General Plan and to encourage a harmonious mixture of a wide variety of commercial and residential activities including limited industrial uses, if they are compatible and nuisance free. SRO developments of sixteen or more units and mixed residential

and commercial developments with ten or more multiple dwellings above commercial are permitted with the approval of a Special Use Permit and Design Permit. The project also requires approval of a Nonresidential Demolition Authorization Permit to demolish the existing commercial structures on the site, a Boundary Adjustment to combine the two subject parcels, a Watercourse Development Permit for development within the creek setbacks, and a Heritage Tree Removal Permit to remove two heritage trees.

At the January 18, 2024 Planning Commission hearing, thirty members of the public spoke, both in support and in opposition to the project. Speakers opposing the project expressed concerns including but not limited to:

- No dedicated location for commercial deliveries,
- Height and massing of the structure too large for the neighborhood,
- Parking concerns,
- Privacy issues, and
- Shading of an adjacent home.

Speakers in support of the project expressed the following:

- City is in need of sustainable, affordable housing;
- Project is in a great, central location within walking and biking distance of amenities, jobs, and transit, walkable neighborhood;
- No need for parking, only adds expense to the project;
- Project maintains a long-time local market (*Food Bin*) on site;
- Project provides much needed student housing near University of California Santa Cruz (UCSC); and
- Great project for elderly retirees and students alike.

The Planning Commission listened to the public testimony and discussed some of the issues raised by the speakers. The Commissioners each commented on the project, expressing the following:

- Support for high density projects along the major corridors;
- Appreciation that *Food Bin* market can remain on site;
- Project is consistent with the General Plan, and density along the corridors is a long-standing strategy for sustainably accommodating the City's growth;
- The project meets fundamental value of saving surrounding open green spaces by locating density along corridors in existing neighborhoods;
- Proposed five story structure is quite large, but meets Density Bonus law;
- City is in desperate need of housing;
- Mission Street corridor can be dangerous, and the project will improve pedestrian safety.

The Planning Commission voted 5-1 (Conway, Dawson, McKelvey, Polhamus, Kennedy in support; Maxwell opposed) to approve the project. As part of the motion, several revisions were made to the conditions of approval, including the following:

15. Plans submitted for building permit issuance shall show all exterior site lighting locations and fixture details. All exterior building lighting shall be shielded and contained in a downward direction. <u>No exterior lighting shall produce off-site glare. A photometric site plan shall be</u>

provided to verify this, and planning department staff shall observe the final lighting at night before Certificate of Occupancy is granted.

41. All new mechanical equipment and appurtenances, including, but not limited to, rooftop and ground-mounted equipment, including gas and water meters, electrical boxes, roof vents, air conditioners, antennas, etc. visible from the public way and from adjacent properties, shall be screened with material compatible with the materials of the building and shall be subject to the approval of the Zoning Administrator. Sound control shall be considered when designing this screening.

The following conditions of approval were added as part of the motion:

66. The developer shall work with the *Metro* to implement existing bus pass programs for the project tenants.

On January 29, 2024, two separate appeals of the Planning Commission decision were received: one from Ian and Natasha Guy and the second from Laurel and Cleveland Area Neighbors via their appointed representative, Laura Livingston. The appeal letters are attached to this report and discussed below.

DISCUSSION: The Planning Commission staff report provides an in-depth analysis of the proposed project and is attached to this report. The applicants submitted revised plans subsequent to the Planning Commission hearing, and the changes contained in those plans are analyzed in more detail in this section. The state laws that govern the project are discussed next. Finally, this section addresses the appeal letters. The appeal letters each discuss their reasons for the grounds of the appeal. This section summarizes the issues raised, followed by responses from staff for each item.

Plan Revisions Following Planning Commission

The plans reviewed by the Planning Commission included a request for 59 SRO units above 2,627 square feet of commercial space. Following the Planning Commission hearing, the applicant submitted revised plans to the Planning Department (attached) proposing 48 SRO units with 2,627 square feet of commercial space. A letter from the applicants explaining the proposed changes is also attached to this report. The revisions to the plans include the following:

1. **Base Density Diagram**. The applicant has revised Sheet GP0.05 which demonstrates the base density calculations for the project. The base density calculation is necessary in order to determine the allowed Density Bonus calculations, which are based on the maximum number of units that would be permitted under the City's zoning code (i.e., the "base density"). In areas where there is no density range, or in the case of a project that proposes SRO units such as this, Section 24.16.255(6) of the Zoning Ordinance requires an applicant to submit base density plans, or plans showing a project that fully conforms to objective standards (i.e. height, setbacks, open space, etc.), in order to determine the number of units that could be constructed on the site, thus establishing the base density.

   Following the Planning Commission hearing it was brought to staff's attention that the base density diagram was inaccurate, because it did not show the correct rear yard setbacks and did not meet the allowed FAR (1.75). While the CC Zoning requires a 15-foot rear yard

setback as was depicted on the original base plan, the Mission Street Urban Design Overlay District Community Commercial (CC) sub-district calls for increased setbacks per Zoning Code Section 24.12.4340(1)©(8) which reads, “Parcels adjacent to a residential district shall maintain a rear setback of 25 feet for first and second stories, and a 35 foot setback for a third story.” The revised plan now accurately depicts the correct setbacks with a 1.72 FAR which falls within the allowed 1.75 FAR.

The updated plans also include a new page that provides details on how the proposed project meets the requirement of average unit area, since Section 24.16.255(6) specifies that the average unit area of the proposed project cannot exceed the average unit area in the base density calculation. The latest plans show that the base project and density bonus project comply with this provision, with the average base density unit size being 280.3 net square feet and the average project unit size being 273.1 net square feet. Through the course of the revisions, the number of base density units was reduced from 40 (in the Planning Commission plan set) to 33 units, and the FAR was recalculated using the gross lot area instead of the net area which deducted the riparian setback area, as was presented in the Planning Commission staff report. Recent state laws (SB330) require that the city uses the General Plan density for the FAR calculation, which is based on gross acreage. The corrected FAR calculation follows:

Gross Lot Area	12,501 square feet
Allowed FAR 1.75	1.75 x 12,501 sq. ft = 21,877 square feet
Proposed Base Density Area	Level 1: 5,295 square feet Level 2: 8,939 square feet Level 3: 7,310 square feet Total = 21,544 square feet
Proposed Base Density FAR	21,544/12,501 = 1.72 FAR

As is demonstrated in the table, the base density FAR calculation results in an FAR of 1.72, thus not exceeding the maximum 1.75 FAR of the base zoning. The prior plan incorrectly included the covered parking area in the FAR calculations, as Section 24.22.366 of the Zoning Ordinance only “includes covered residential parking.” Because this is all commercial parking, the area is not included in the above FAR calculation.

As previously mentioned, the Planning Commission approved plans showed 40 base units allowing for a 50% density bonus (20 units) for a total of 60 units in accordance with Density Bonus law. The revised set shows 33 base units allowing for a 50% density bonus (17 units) for a maximum of 50 units. The revised project is now proposing 48 units, falling within the permitted 50 units allowed per Density Bonus law.

The revised unit count results in changes to the affordability requirement however, the property owner has volunteered to provide eight Very Low Income (VLI) inclusionary units consistent with the original project. Pursuant to Zoning Code Section 24.16.020(5)(b), “SRO Developments. In a rental residential development comprised of SRO units, twenty percent of the single-room occupancy units shall be made available for

rent to very low-income households at an affordable rent." Additionally, the development of 11 Accessory Dwelling Units (ADUs) is subject to a separate inclusionary requirement for conversion ADUs under Zoning Code Section 24.16.020(8) which requires 20 percent of the ADUs to be restricted at the Low Income (LI) level.

With a new base density of 33 units, six (20%) of the residential units will be required to be deed-restricted as affordable housing units at the VLI level (50% AMI) and two ADU's will be required to be restricted at the LI level (80% AMI). However, as mentioned above, the property owner has volunteered to provide all eight units at the VLI level, consistent with the original proposal heard by the Planning Commission.

2. **Storage Spaces to be Converted to ADUs.** The floor plans for levels 2 through 5 have been revised to replace three units with separate storage spaces on each floor. Additionally, the rear setback along the western property line has been reduced from 15' to 6'-3" in the location of the new storage spaces (floors 2-5). Prior to this change, a portion of the building encroached into the setback at this elevation, resulting in a zero setback for approximately 26' of the south western portion of the building. The proposal would reduce a previously proposed 15' setback to 6'3" for approximately 42' of the remaining portion of the building. The reduction is proposed to be added to the original waiver request for a zero setback as described above and pursuant to State Density Bonus law. As further described in response #g to the Appeal Letter From Laurel and Cleveland Area Neighbors and the State Laws Applicable to the Project sections below, cities are generally obligated to grant density bonus waivers, or reductions in development standards, so long as the proposed development complies with the applicable affordability requirements and the waivers do not result in specific adverse impacts on health and safety for which there is no feasible method to satisfactorily mitigate. Case law has also established that the city is also limited in requiring modifications to the project, as proposed, that would have the effect of reducing project amenities in order to meet development standards. The requested modified waiver can be supported in that compliance with the full 15' setback would reduce storage amenity space for future residents, as proposed by the applicant. This modification could also be supported as an incentive/concession in that the reduction in the number of units results in an identifiable and actual cost reduction to the project in the form of reduced impact fees.

   The applicant indicates that the intent of the added storage spaces is to take advantage of recent state ADU laws (Govt Code Section 66323(a)(3)) which allows the conversions of "the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings." The following is the full code section:

   66323.
   (a) Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

   > *(3) (A) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.*

(B) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(*In this case, that means that 25 percent of 48 units allows for up to 12 ADUs, where 11 are anticipated.)

Further, the Zoning Ordinance's definition of a Conversion ADU is as follows:

"Conversion accessory dwelling unit" shall mean any accessory dwelling unit created primarily by the conversion of any permitted, ***entitled****, or legal nonconforming structure, or portion of such a structure. On property developed with multifamily structures only areas that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, shall be eligible to become conversion accessory dwelling units. Consistent with zoning standards, conversion accessory dwelling units shall be permitted to expand the existing footprint of the structure by up to one hundred fifty square feet, and the existing height by up to two feet, and must be in conformance with all requirements of Section 24.16.142* (emphasis added).

As is mentioned in the code section, a local agency is required to ministerially approve these types of conversions with a building permit. Therefore, if the project is approved, at the time of building permit application, the applicants will be proposing to convert the 11 storage spaces into 11 ADUs, resulting in a total of 59 units within the development (48 SROs/11 ADUs). As is explained in the applicant's letter there are three reasons for this change:

1. The revised base density diagram resulted in only 33 units of base density. The density bonus allows for 17 bonus units, for a total of 50 units. To reach the originally-proposed 59 units, the project would either have to use a second density bonus created by AB1287 or use Government Code § 66323(a)(3) to create conversion ADUs.
2. SCMC 24.12.1010 limits the net area of an SRO unit to 400 square feet, and the average unit size to no more than 345 square feet. The Conversion ADUs do not have the same size limitations as the SRO units.
3. ADUs that are under 750 square feet are exempt from impact fees, reducing the cost of the project, which helps the project provide the proposed very low income (VLI) units.

3. Additional Requested Concessions.

As is described in detail in the Planning Commission staff report, the Density Bonus project is requesting three waivers to development standards, including building height, setbacks, and FAR. Following Planning Commission approval, two concessions (also referred to as incentives) are now being requested:

- Future Food Service Use Condition of Approval. The following condition of approval has been a standard condition for commercial projects within the city:

Future Food Service Use. All commercial spaces shall each be constructed to support a future food service use. Plans must include ducting and venting plans for all commercial spaces. All ducting and venting should be designed to be hidden or incorporated into the building design. Plans shall also show the locations of grease traps, grease lines, and grease storage facilities, which shall be located outside of the public right of way.

The purpose of this standard condition has been to allow future flexibility of commercial spaces to accommodate restaurant uses which require special ducting, venting, and grease traps. Having these in place when the building is being constructed avoids issues in the future, when a potential restaurant use may want to move in and either these items cannot be physically incorporated or when they could potentially be accommodated but at significant expense. The applicants are requesting this condition be removed as a concession pursuant to Govt. Code Section 65915(d) and 65915(K)(3), stating that requiring construction of building features that are not necessary for the proposed uses unnecessarily increases costs to the project. This concession would result in identifiable and actual cost reductions to provide for affordable housing costs, is consistent with state law, and thus must be granted.

- Defer Payment of Impact Fees – The applicants are requesting that the City not require the payment of any impact fees until the time of issuance of a final certificate of occupancy for the development. This concession is requested pursuant to Government Code Section 65915(d) and 65915(k)(3). A standard condition of approval for projects in the city is that the impact fees be paid at the time of building permit issuance. As part of this request to defer the payment of the fees, the applicants have stated that the collection of the fees at building permit issuance increases costs to the project because of interest payments on those funds during the course of construction. Therefore, the granting of this concession will result in identifiable and actual cost reductions to provide affordable housing costs.

  Staff is in the process of analyzing this request per state law, in coordination with the applicant and the City Attorney, including for consistency with Government Code Section 65915(l) and will provide additional information and a recommendation on this requested incentive at the Council hearing.

Additionally, several additional conditions of approval have been added to the project (attached) and are indicated in a strikeout/underline format. Some conditions were added in response to concerns raised by the adjacent neighborhood and others are voluntary conditions on behalf of the property owner. These conditions are more specifically addressed in the response to appeal points below.

State Laws Applicable to Project:
The following California Government Code Sections are applicable to the project.

- **65863.2 (Minimum Parking Requirements, AB2097)**: Minimum parking requirements can increase the cost of housing and limit the number of residential units. Therefore, local jurisdictions shall not impose a minimum automobile parking requirement for residential,

commercial, or other development projects if the project is located within one-half mile of qualifying public transit.

- **65915 (Density Bonus Law):** To address California's need for affordable housing, the State enacted the Density Bonus law (Government Code §§ 65915 – 65918) in 1979 to encourage the provision of affordable housing units by offering a combination of benefits to developers. For projects housing projects consisting of five or more units that include the requisite number of affordable housing units, and upon the request of an applicant, cities are required to (i) allow more market rate units to be built than otherwise allowed by the applicable zoning designation), (ii) provide "incentives or concessions" such as reduced development standards that result in actual and identifiable cost savings for the project, (iii) provide "waivers or modifications" of development standards that would physically preclude the project from being constructed, and (iv) allow reduced parking requirements.

  Cities have very limited discretion when reviewing density bonus applications. Cities are generally obligated to grant a density bonus and incentives, concessions, waivers, or reductions in development standards to the developer so long as the proposed development complies with the applicable affordability requirements and the waivers or concessions/incentives meet certain standards. Projects that include a specified amount of affordable housing are entitled to a density bonus, even if the density bonus would allow a project to exceed the maximum density under the City's zoning code or general plan.

  The amount of the density bonus is based on the number of affordable units at each income level that are included in a project. To determine whether a project qualifies for a density bonus, the percentage of affordable units is based on the maximum number of units that would be permitted under the City's zoning code or general plan (i.e., the "base density"). Projects providing a higher number of affordable units or units at deeper levels of affordability are entitled to increased density of up to 100-percent in the total number of units that are allowed, depending on specified percentages and levels of affordability. The additional units help offset the increased costs associated with the increased number of or more deeply affordable units. The density bonus units themselves are not required to be affordable, and pursuant to Section 24.16.250(2) of the Zoning Code (and the State Density Bonus laws that said Zoning Code section mirrors), "density bonus units shall not be included in the "total units" when determining the number of affordable units required to qualify a housing development for a density bonus." Thus, by law, the percentages of affordable units that qualify a project for the density bonus are based on the base project only and not the base project plus the density bonus units.

- **65589.5 (Housing Accountability Act, SB330):** The Housing Accountability Act (HAA) is a California state law designed to promote infill development, and it limits the ability of local governments to restrict the development of new housing. The Act applies to housing applications submitted to local agencies that meet the following criteria.

  - Meets a city's "objective general plan and zoning standards." Objective development standards are those which involve no personal or subjective judgement. They are independently and uniformly verifiable.
  - The development would not cause a "significant, adverse impact" to public health and
  - safety; and

- The development meets the standards of the California Environmental Quality Act and the California Coastal Act.

If an application meets these criteria, the City must approve the application and provide necessary permits within 60 days from the determination by the lead agency that the project qualifies for a CEQA exemption. If the city denies an application that meets the City's objective standards, it must make a written finding that the project creates a "significant, adverse impact" to public health and safety and provide substantial evidence to support said finding. The HAA also, among other things, eliminates the ability of jurisdictions from proposing modifications to a project that would reduce the number of units to be developed or passing new rules that would retroactively make the project non-compliant.

- **65905.5 (Five Hearing Rule):** A local government may not hold more than five hearings to consider a proposed housing development project if the project complies with all applicable, objective general plan and zoning standards.

Appeal Letter from Ian & Natasha Guy:

1. **Parking Requirements. The appellants assert that the development is not eligible for the parking requirement exemption detailed in AB2097 as it is not one-half mile from a "major mass transit stop" as defined in the state code.**

   Government Code Section 65863.2, enacted by State Assembly Bill AB 2097 on January 1, 2023, prohibits local jurisdictions from imposing minimum automobile parking requirements on most development projects located within a half-mile radius of a major transit stop, as is applicable to the subject site. A major transit stop as defined by Government Public Resources Code Section 21064.3 means a site containing any of the following:

   (a) An existing rail or bus rapid transit station.
   (b) A ferry terminal served by either a bus or rail transit service.
   (c) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

   Analyzing the transit stops within a half-mile radius of the subject site, it was found that there are four transit stops (1225, 1226, 1624, 1625) with frequency intervals of 15 minutes or less during the morning and afternoon peak commute periods, qualifying these stops as Major Transit Stops per the state definition (attached). Therefore, state law prohibits the City from imposing minimum automobile parking requirements for the project.

2. **State Parking Exception. The appellant asserts that the City Planning Committee has the option to challenge the state parking exception pursuant to AB 2097. Pursuant to Government Code Section 65863.2(b):**

   (b) Notwithstanding subdivision (a), a city, county, or city and county may impose or enforce minimum automobile parking requirements on a project that is located within one-half mile of public transit if the public agency makes written findings, within 30 days of the receipt of a completed application, that not imposing or enforcing minimum automobile parking requirements on the development would have a substantially negative impact, supported by a preponderance of the evidence in the record, on any of the following:

(1) The city's, county's, or city and county's ability to meet its share of the regional housing need in accordance with Section 65584 for low- and very low income households.
(2) The city's, county's, or city and county's ability to meet any special housing needs for the elderly or persons with disabilities identified in the analysis required pursuant to paragraph (7) of subdivision (a) of Section 65583.
(3) Existing residential or commercial parking within one-half mile of the housing development project.

(c) For a housing development project, subdivision (b) shall not apply if the housing development project satisfies any of the following:
(1) The development dedicates a minimum of 20 percent of the total number of housing units to very low, low-, or moderate-income households, students, the elderly, or persons with disabilities.
(2) The development contains fewer than 20 housing units.
(3) The development is subject to parking reductions based on the provisions of any other applicable law*.*

The City's Zoning Ordinance eliminates the potential to make findings that would allow the City to require parking primarily because exceptions within the language of the law itself mean that its exemptions have limited applicability within the City of Santa Cruz. Per section 65863.2(c)(1) above, the circumstances in which the City cannot use the exceptions include a housing development that complies with the City's inclusionary housing requirements by providing 20% of the project's units as affordable. If density bonus were used, as is the case for most large projects in the City, then the density bonus automatically qualifies a project for parking reductions under state law (65915(p)(2). Thus, the City would not be able to seek to impose minimum parking requirements under subsection "b" above for any density bonus project. These exclusions apply to all housing developments within the City limits, and the subject project falls under such exceptions. Therefore, there are no applicable instances where an exception to AB2097 for parking could be used for this project.

3. **Solar Access. The appellant asserts that the loss of solar access to sunshine by the immediate neighbor is in violation of:**

    1. **The 5th Amendment Taking Law which states that "nor shall private property be taken for public use, without just compensation." (U.S. Const. amend. V.)**

       The project involves construction of a mixed-use project on a private property for private use. It does not involve the taking of private property for public use. Therefore, there is no violation of the 5th Amendment.

    2. **The California Solar Shade Act (Public Resources Code §25980-25986) which prohibits neighbors from blocking 10% of solar collectors at any given time between 10am and 2pm (Public Resources Code §25982.)**

       The Solar Shade Act only addresses shading from trees or shrubs. (Public Resources Code §25982.) The law prohibits a property owner from allowing trees or shrubs to shade an existing solar collector installed on a neighboring property.

       The project involves construction of a building and not the installation of trees or shrubs. Therefore, the Solar Shade Act does not apply in this instance.

    3. **Violation of Santa Cruz County Ordinance 5439, Chapter 12.28.**

The subject property is located within the City of Santa Cruz jurisdiction. Therefore, the Santa Cruz County Ordinance does not apply to the project.

Appeal Letter From Laurel and Cleveland Area Neighbors

1. **Violations. The appellants assert that "several findings made by the Planning Commission (findings 8, 9, 10, 11, 12, 15, 18, and 19) to justify this development were erroneous or otherwise flawed."**

   a. **"Base building FAR calculations possibly exceeded 24.10.750"**

      Staff Response: Section 24.10.750 of the Zoning Ordinance provides the site development standards for the C-C zone district which do not include an FAR requirement; however, the parcel's General Plan designation (Mixed-Use Medium Density (MXMD)) includes an FAR range of 0.75- 1.75 and is based on the gross lot area. The staff report to the Planning Commission erroneously used the net lot area, which is referenced by the appellants in their letter. The gross lot area is 12,501 square total floor area and the development is 21,683, resulting in an FAR of 1.73 for the base project; therefore, the base project FAR falls within the range specified in the General Plan.

   b. **"Mobility Development Policy M3.2.11: The proposed project does not include any improvements to traffic flow and safety; it will greatly impact the current residential parking in our streets because there are no clustering facilities around interconnected parking areas; and traffic safety will be negatively impacted by increased truck traffic, traffic backing up as cars jockey for parking, and the lack of parking areas for Food Bin customers and new residents to use, other than the Laurel Street neighborhood. Additionally, the traffic study woefully underestimates the number of cars and trips that will be taken by employees and customers of the grocery store and residents and their visitors."**

      Staff Response: The project site is a corner lot with frontage on Mission Street and an exterior side yard on Laurel Street, west of Mission. Mission Street (Highway 1) is classified as a State Highway. Laurel Street east of Mission Street is classified as an "arterial" and west of Mission, is classified as a "collector." This policy seeks to improve traffic flow and safety on arterial streets by reducing points of access and removing on-street parking. The project site does not take access from or have frontage on an arterial, therefore this policy does not apply to the project.

      The City of Santa Cruz has adopted Transportation Impact Study Guidelines. These guidelines state that additional study must be completed if a project will generate 50 or greater peak hour trips. A Trip Generation Study was prepared by *Hexagon Transportation Consultants, Inc*. on August 26, 2023 which concluded that the project would generate an increase of 19 AM peak hour trips and 29 PM peak hour trips, which is less than 50 PM peak hour trips and thus does not require the preparation of a full traffic study for the project.

      The project is consistent with several other applicable General Plan policies related to mobility as noted below:

- **M1.1 Reduce automobile dependence by encouraging appropriate neighborhood and activity center development.**
  The project includes a mix of residential and commercial uses and is located within walking distance of various other commercial businesses and services, recreational facilities, open spaces, and public transit. The project takes access from Laurel Street but does not facilitate the need for vehicular movement through the residential area to the northwest. Vehicular trips to and from the site will be minimal as concluded by the Trip Generation Memo prepared by Hexagon Transportation Consultants, Inc., and will be concentrated on Mission Street/Hwy 1. Further the applicant has indicated that the owner will be prioritizing tenancy to those who do not own vehicles.

- **M1.5 Reduce the need for parking and promote parking efficiency.**
  State law prohibits the city from requiring on-site parking for the proposed development, however, the development design with minimal on-site parking also discourages tenant car ownership and encourages the use of alternative transportation.

- **M3.2 Ensure road safety for all users**
  The project includes various improvements to the public right of way to facilitate road safety, including driveway access from Laurel, a designated loading space on Laurel Street, building setbacks to provide clear visibility from the driveway and at the corner of Mission and Laurel Streets, and a bulb-out at the corner. The applicant has further volunteered to research the feasibility of providing signage that would indicate parking space availability within the garage and is voluntarily posting a $7,500 cash bond with the City or Metro (to be determined in coordination with Metro) to use towards bus stop improvements within the City.

- **M3.3 Discourage, reduce, and slow through-traffic and trucks on neighborhood streets.**
  The project site is adjacent to Mission Street which is a State Highway that provides a direct connection from the project site to Highway 17, as well as the east, west, and downtown areas of the city, and the coast. Additionally, traffic to and from the project site will be minimal, as noted above. Mission Street is therefore anticipated to handle the majority of traffic to and from the project site.

- **M4.1 Enable and encourage walking in Santa Cruz.**
  The project enables and encourages walking through the improvement and widening of adjacent sidewalks; the installation of street trees for shade, beauty, and street buffering; ground-level commercial uses with large windows and welcoming design; public bike parking; a central location; and minimal on-site parking to encourage the use of alternative forms of transportation.

Traffic flow and safety along Laurel Street and Mission Street was evaluated early in the project review process. A Trip Generation Study was prepared by *Hexagon Transportation Consultants, Inc*. on August 26, 2023 which concluded that the project would generate an increase of 19 AM peak hour trips and 29 PM peak hour trips, which is less than 50 PM peak hour trips and thus does not require the preparation of a full traffic study for the project. Staff have requested that the applicant update the *Hexagon* report and staff's initial

analysis indicates that the trip increase is not substantial and will not trigger the threshold for additional study under the City's Traffic Impact Study Guidelines.

c. **"Community Design CD3.3:** ***Encourage the assembly of small parcels along transit corridors to achieve pedestrian-oriented development compatible with neighborhoods. The development is not compatible with the immediately adjacent properties (all of which are residential) nor the neighborhood. The immediately adjacent residential buildings are dwarfed by this building and no other buildings on this section of Mission Street exceed three stories."***

Staff Response: The project includes the assembly (i.e. merger) of two parcels and the construction of a mixed-use development with frontage along a State Highway, driveway access via a side street, a ground floor commercial use that will serve pedestrians and surrounding neighborhoods, public right-of-way improvements that will enhance the sidewalk, and the establishment of multiple residences with minimal on-site parking to encourage alternative forms of transportation in a location that is central to commercial goods and services, recreational areas, schools, and open space. The development is located along a major transit corridor, and while adjacent to an established neighborhood, the development is utilizing State Density Bonus law to vary from the height limit in the zone district. As indicated above, the City has limited discretion on projects where the requisite number of affordable units have been provided and the incentives, concessions and waiver requirements have been met, as is the case here. This is a typical Density Bonus request in that the base density of a site is determined by the number of units that can fit with the given site standards, including the maximum height allowance. Where the base density project proposes a development that is fully built out, any request for additional density bonus units is likely to require a height increase to accommodate those units; otherwise the height limitation would preclude the construction of those units. Consistent with other recent developments along Mission Street and elsewhere in the City, it is expected that future development along Mission Street in Mixed-Use and Commercial Zone districts will also utilize Density Bonus state law to achieve additional market rate units and result in similar variations to the zone district site standards. Furthermore, as described above, the HAA has limited the ability of cities to reduce the number of units in a project based on subjective standards, such as neighborhood compatibility, with the state targeting this exact appeal contention in their legislative amendments. Prior to those state law changes, use of subjective compatibility standards had reduced and prevented housing production statewide.

The development will consist of a variety of materials and textures, and earth tones to achieve compatibility with other existing and future buildings along Mission Street and the variety of architectural styles in nearby neighborhoods. Conditions of approval are included that require the development to utilize fritted glass on the west-facing elevation within 40 feet above grade, consistent with the bird safe policy, which will help to minimize potential privacy impacts. Additionally, the property owner has volunteered to pay the remaining balance, up to $10,000, on the solar panels on the west adjacent property which will be shaded by the proposed development. However, there is no state law or objective standard that requires such a payment or the consideration of building shading on solar panels.

d. **City Zoning Ordinance Section 24.08.050. [Letter cites Criteria 1-3] "This project does not conform to several requirements of the Zoning Ordinance and General Plan as outlined throughout this appeal, especially related to height, setbacks, and traffic. No conditions have been imposed that will eliminate negative impacts to surrounding residential uses. This project brings a lot of negative consequences upon the neighborhood, without doing anything to improve the neighborhood. The developer should be subject to additional conditions to spread the impact of the new building to all parties."**

   Staff Response: The referenced code section contains the findings for approval of a Special Use Permit. Staff were able to make all findings in support of the development, as shown in the attached draft Resolution. The applicant is utilizing the State Density Bonus Law and has submitted the required justification to request waivers from building height and setbacks, which the City is obligated to approve as more fully addressed above. The staff response under number 1.b above describes the public improvements associated with the project to address traffic flow and enhance the pedestrian experience and surrounding area. Conditions of approval #1, #4, #6, #7, #9, #10, and #11 require the project to be constructed according to the approved plans and in conformance with the requirements of all City departments, which ensures that the public improvements such as widened sidewalks, street trees, and loading zones are constructed as part of the project. Condition of approval #75 requires that the applicant follow through on the voluntary action to research the feasibility of signage that indicates parking availability within the garage. Conditions of approval #37, #58, #59, #60, #61, #62, #63, #64, and #67 require protection of the creek. Conditions of approval #15, #16, #53, #60, and #67 require standards for lighting/illumination. Conditions of approval #5, #48, and #57 require compliance with the noise ordinance. Conditions of approval #38 and #68 require window and landscape features to enhance privacy to properties to the west. Condition of approval #57 requires the contact information for a property manager to be made public through the SRO management plan.

e. **City Zoning Ordinance Section 24.08.430: Land Use Permits and Findings. (Summarized) Criteria 2: The projects size, height, operation, and characteristics will adversely affect and degrade adjacent properties and the neighborhood. The proposed development and existing conditions of approval fail to mitigate these impacts.**
   - **Loss of sunlight and privacy**
   - **Increase of commercial use**
   - **Safety Hazards from delivery trucks and garbage trucks**
   - **Noise from garbage trucks and building equipment**
   - **Garage provides insufficient parking for non-EV and accessible cars**
   - **Shading of adjacent solar equipment**
   - **Height is not compatible with surrounding buildings**
   - **Surrounding uses are residential, not commercial**
   - **Privacy impacts**

   Staff Response: The referenced code section contains the findings for approval of a Design Permit. Staff were able to make all findings in support of the development, as shown in the attached draft Resolution. Conditions of approval #5, #38, #48, #57 and #68 address privacy and noise concerns. Further, conditions of approval #13 and #69 provide requirements to maintain a loading space on Laurel Street and to maintain a parking space

within the garage for loading and rideshare. Condition of approval #70 enforces the voluntary agreement by the property owner to pay the balance of the neighbor's solar panels to address shading impacts. While the existing parcel does have residential uses on two sides, the parcels to the north and south are zoned for mixed uses and are located in the Mission Street Area Plan that encourages ground level, pedestrian oriented commercial uses. As such, it is expected that future development of these sites will convert the residential uses along Mission Street to mixed use or commercial use. Lastly, the project has been found to comply with all relevant objective development standards. As no significant, adverse impacts to public health and safety have been found to occur, the City is precluded from denying or reducing the density of the project under the HAA.

Additionally, as further described in section g below, in the Bankers Hill 150 v. City of San Diego (2022) case, the Fourth District Court of Appeal rejected an argument by opponents of a 204-unit housing development project that relied on several policies that were subjective in nature, stating that new development should "sensitively and adequately transition to adjacent lower height buildings," "complement" the natural environment, and include design features that "enhance" views. The court found that under the HAA, "an agency may deny approval of a housing development project on the basis that it is inconsistent with development standards only if those standards are 'objective,'" further stating that "a standard is subjective, rather than objective, if it cannot be applied without personal interpretation or subjective judgement." (Rutan & Tucker LLP) Because this project was locked into the standards in place prior to the adoption of the city's objective standards, there are a limited number of objective standards in place to address compatibility with adjacent buildings, privacy impacts, and shading, and the project cannot be conditioned to comply with subjective standards. Even when additional objective standards apply to future development proposals, those projects can utilize density bonus laws to deviate from them, as is the case for the subject project with its deviations from the City's prior objective standards.

f. California Environmental Quality Act – (Summarized)
The Trip Generation Study is greatly flawed: trip generation is substantially low because it was conducted in August when UCSC is not in session; and the report utilized driveway counts however, visitors to the Food Bin more frequently park on Laurel Street.

Staff Response: With the adoption of SB 743, trip generation and associated level of service are no longer an Environmental Impact under CEQA.

Outside of CEQA considerations and to comply with City Transportation Impact Study Guidelines, a Trip Generation Study was prepared by *Hexagon Transportation Consultants, Inc*. on August 26, 2023 which concluded that the project would generate an increase of 19 AM peak hour trips and 29 PM peak hour trips, which is less than 50 PM peak hour trips and thus does not require the preparation of a full traffic study for the project. This study was conducted using standard methods of count collection and traffic engineering principles and best practices.

Section 24.08.2220: Need to consider shading impacts to birds and other wildlife. CEQA: Unclear how the project meets the following CEQA criteria, "The project site has no value as habitat for endangered, rare, or threatened species."

Staff Response: The referenced code section provides the procedural requirements for a Watercourse Development Permit, as the project is located adjacent to Laurel Creek, Reach 4. The Watercourse and Wetland factors of Laurel Creek were evaluated in the City Creeks and Wetlands Plan and this reach was assigned a total ranking of 7/15 due to the modified channel and low probability for expansion, enhancement and restoration due to adjacent residential and commercial constraints. The reach is further classified as a 'B' category, as it is located in an urban area with limited riparian habitat, limited areas to expand, and issues of water quality and flow conveyance. There is an existing commercial building on the site that encroaches into the riparian area and development setback at the ground level that will be demolished as a part of the project and the area restored pursuant to the recommendations of the biotic report. While a portion of the proposed mixed-use development also proposes to encroach into the setback and riparian areas, there will be no ground disturbance in those locations with the exception of restoration. That being said, the project requires a Watercourse Development Permit to allow for cantilevered portions to overhang the riparian and setback areas. The applicant has requested the use of a Density Bonus waiver to reduce creek setback requirements, thus eliminating the need for a Watercourse Variance. However, in order to ensure protection of the creek, the commensurate required evaluation was completed.

The applicant submitted a biotic report which recommends the use of shade tolerant plantings, and conditions of approval require compliance with the report's recommendations. The biotic report recommends the following measures related to lighting impacts: Standards 7-9, Prohibit lighting within riparian corridor and limit lighting in development setback area to low-level walkway, motion detection security, or entry lighting and direct lighting to be hooded and directed downward, away from the watercourse.

In response, staff included Condition of Approval #15 which requires all exterior building lighting to be downward-facing and shielded and to not produce off-site glare. The Planning Commission further added the requirement for a photometric plan and for staff to observe the lighting at night to confirm compliance prior to building permit final. In recent meetings, neighbors have also raised concerns about ambient lighting impacts on the creek from the building windows, specifically the amenity/laundry rooms on floors 2-4 which include large windows facing the creek.

Staff are recommending a new Condition of Approval #67, which requires the project to include motion sensor lighting within the amenity/laundry rooms consistent with the requirements of the 2022 Energy Code and to install blinds, shades, or other windows coverings on the west facing windows within these rooms with signage to indicate that windows shall be covered during hours of darkness.

The biotic report found no special plant species, or special status wildlife or habitat on the project site. The project is consistent with this section of code as it is implemented in conjunction with Density Bonus state law. The project remains eligible for a CEQA Categorical Exemption under Section 15332 (Infill Development) in that it meets the applicable standards of the exemption. For example, as a previously-developed urban infill site, the subject lot holds no value as habitat for endangered, rare, or threatened species, with none known to exist on the site. A biologist has evaluated the proposed project, and a

standard condition of approval requires compliance with the report's recommendations. There is also no possibility of cumulative impact, or impacts to scenic highways, and the project is not located on a hazardous waste site or a site with historical resources. Therefore, none of the exceptions to the exemptions apply.

2. **Density Bonus Waivers. (Summarized) The appellant requests that the City Council deny the requested waivers for height, FAR, and Setbacks. The project can meet its density bonus requirement (60 units) by adding one more floor for a total of 3 residential floors and 60 total units. Section 65589(j)(1) only applies if the project cannot be completed at the lower density. Per this interpretation, it is argued that the requirement to find a specific, adverse impact on public health or safety is only required when the city's conditions cause the project to be developed at a lower density. Reducing the project from 5 floors to 4 floors would not trigger this requirement as the number of units/density would not change. Additionally, since the base building was shown to support 20 units per floor without setbacks, it is argued that the waivers for setbacks are also capable of being disapproved without impact to project viability. The appellants further content that the Base Density calculations did not meet the MXMD FAR limit of 1.75 and that setback waivers were not used when designing the base building and are not required for the project to be built at the state required density.**

   Staff Response: The argument provided by the appellants is related to provisions included in State Density Bonus law, which allows for development standards to be waived (i.e. "waivers") that would physically preclude the project from being constructed at the density allowed. The City Attorney's Office provided an opinion in response to a similar claim for a project on Seabright Avenue in 2020. In that instance, the developer requested a waiver to open space requirements in order to provide larger residential units. The City Attorney's opinion was provided to the Planning Commission, as follows: "Section 65915(e)(1) does not authorize a city to require the developer to redesign the project so that the need to modify a development standard is eliminated thereby allowing the city to fully apply that development standard to the project. The court of appeal in *Wollmer v. City of Berkeley* (2011) 193 Cal. App. 4th 1329 made it clear that it is the density bonus project *as proposed by the developer* which determines the need for a development standard waiver/reduction. In *Wollmer* a density bonus project opponent argued that the city wrongfully allowed a series of development standard modifications when it could have required the developer to redesign the project to eliminate the need for development standard modifications. On this point the court, at pages 1346-1347 of its decision, stated:

   > Second, nothing in the statute requires the applicant to strip the project of amenities, such as an interior courtyard, that would require a waiver of development standards. *Standards may be waived that physically preclude construction of a housing development meeting the requirements for a density bonus, period ...* The statute does not say that what must be precluded is a project with no amenities, or that amenities may not be a reason that the waiver is needed. Wollmer's argument goes nowhere. Had the City failed to grant the waiver and variances, such action would have had the effect of physically precluding the construction of the development meeting the criteria of the density bonus law. If the project were not built, it goes without saying that housing units for lower income households would not be built and the purpose of the density bonus law to encourage such development would not be achieved. The trial court properly

> interpreted the statute, and the City proceeded in the manner *required by law* in granting the waivers." (emphasis added)

With respect to the Seabright project, the size of the units and the number of bedrooms they offer are certainly amenities that the developer took into account in designing the proposed housing development. Accordingly, in our opinion, a court, applying the *Wollmer* rationale, would in all likelihood conclude that the applicant here is entitled to the requested modifications and cannot be compelled by the City to reduce project square footage or bedroom count so as to increase project open space to City standards."

The Wollmer decision was further held in the Bankers Hill 150 v. City of San Diego (2022) case, in which case the Fourth Appellate District determined that density bonus projects are exempt by state law from standards such as setbacks, and that a local agency is "...obligated to waive those standards if they conflicted with the Project's design...". The court, citing the Wollmer case, rejected the opponents argument that the project could have complied with standards if it eliminated amenities, such as a project courtyard, claiming that "a city may not apply any development standard that would physically preclude construction of that project as designed, even if the building includes 'amenities' beyond the bare minimum of building components." (Rutan & Tucker LLP)

As applied to this project, the City cannot condition the applicant to redesign the project in order to meet the height or setback requirements, as it would require a reduction of amenity space, unit size, or similar features that are protected as part of the project as proposed.

The FAR and average unit size was not shown on the base plans submitted for review by the Planning Commission. Since that time, the applicant has made revisions to the plans and the FAR of the base project has been recalculated and found to be within the required General Plan density range as more fully described above.

ENVIRONMENTAL REVIEW: The project is categorically exempt from environmental review under Article 19 of the California Environmental Quality Act (CEQA) Guidelines, Section 15332, related to infill development. The Class 32 categorical exemption applies to a proposed project fulfilling the following criteria:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
- (c) The project site has no value as habitat for endangered, rare, or threatened species;
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
- (e) The site can be adequately served by all required utilities and public services.

The proposed project complies with all of the foregoing criteria and demonstrates eligibility for implementation of a Class 32 Categorical Exemption as afforded by CEQA. The application exhibits consistency with General Plan and zoning designations, policies, and regulations, with a project site comprising 12,502 square feet (0.287 acres) in size, below the maximum threshold of five (5) acres, located within city limits and surrounded by existing residential and commercial urban uses. As a previously-developed urban infill site, the subject lot holds no value as habitat for endangered, rare, or threatened species, with none known to exist on the site; development of the

project would not result in any significant impact relating to traffic, noise, air quality or water quality as supported by the submitted information; and the site can be adequately served by all required utilities and public services. Therefore, the proposal qualifies for the Categorical Exemption found in CEQA Guidelines Section 15332, infill exemption.

None of the exceptions to the exemptions under Section 15300.2 apply to the project in that the project site is not located in a mapped environmentally sensitive area, the project is not part of a larger project that could result in a cumulative impact, there are no unusual circumstances associated with the project or subject parcel, the project will not result in damage to resources associated with an officially designated scenic highway, the project site is not included on any lists compiled pursuant to Section 65962.5 of the Government Code related to Hazardous Waste Sites, and the project will not result in substantial adverse changes in the significance of a historical resource site in that there are no known historic resources on the property.

HEALTH IN ALL POLICIES (HiAP): HiAP is a collaborative approach to improving the health of all people by incorporating health considerations into decision-making across sectors and policy areas. HiAP is based on 3 pillars: equity, public health, and sustainability. The goal of HiAP is to ensure that all decision-makers are informed about the health, equity, and sustainability impacts of various policy options during the policy development process. The mixed-use project supports the pillar of equity by providing affordable rental units on a site in an area that is improved with sidewalks, street trees, and that is in close proximity to public transportation, commercial goods and services, and recreational areas. The development of residences in this central location encourages a sustainable and healthy lifestyle by promoting alternative forms of transportation. Therefore, the project is consistent with the three pillars of the HiAP and is recommended as an efficient use of the land.

SUMMARY AND RECOMMENDATION: This project involves a proposal to construct a five-story, mixed-use project consisting of ground level parking and commercial space, and 48 Single-Room Occupancy (SRO) units. The development will implement the City's vision for the "Westside Zone" area as expressed by the *General Plan* and the *Mission Street Urban Design Plan* by providing, after considering the future ADUs, eight much needed affordable units and 51 market rate residential units. Additionally, the applicant is voluntarily providing the two ADUs at the very low-income level instead of the required low-income level. As very low-income units are the most challenging to produce, every very low-income unit is an important addition to the City's affordable housing stock. As conditioned, the proposed project meets the requirements of the Zoning Ordinance and provides a development that is consistent with the vision for the Mission Street corridor.

Therefore, staff recommends that the City Council deny the appeal(s), thus upholding the Planning Commission's approval of the Nonresidential Demolition Authorization Permit, Boundary Adjustment, Design Permit, Special Use Permit, Watercourse Development Permit, Heritage Tree Removal Permit, and Density Bonus Request to exceed height, setbacks, and FAR for the proposed project based on the findings listed in the Resolution and the Conditions of Approval attached as Exhibit "A." The recommended conditions from the Planning Commission have been incorporated into the draft conditions.

FISCAL IMPACT: The applicant and appellants have paid fees to compensate for costs associated with staff time processing this application and subsequent appeals. The project will contribute to increased property tax and sales tax revenue to the City, and the project developer

will be required to pay City impact fees. The additional revenue generated by the project will help offset the costs of providing municipal services demanded by the project, though many residential uses typically have net negative fiscal effects over time.

Prepared By:	**Submitted By:**	**Approved By:**
Ryan Bane Senior Planner	Lee Butler Director of Planning and Community Development	Matt Huffaker City Manager

ATTACHMENTS:
1. Resolution
2. Resolution Exhibit A - Conditions of Approval
3. Project Plans (Approved by Planning Commission)
4. Project Plans (Revised post Planning Commission Approval)
5. Workbench Letter Describing Project Plan Revisions dated April 25, 2024)
6. Major Transit Stops Information
7. Appeal Letter from Ian & Natasha Guy, received January 29, 2024
8. Appeal Letter from Laurel and Cleveland Area Neighbors, received January 29, 2024
9. January 18, 2024 Planning Commission Staff Report
10. January 18, 2024 Planning Commission Minutes
11. Planning Commission Meeting Public Correspondence