

RESOLUTION NO. 2020-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS

1. RESCINDING IN ITS ENTIRETY, RESOLUTION NO. 2019-13, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS DENYING AN APPEAL AND AFFIRMING STAFF'S DETERMINATION THAT THE PROPOSED PROJECT AT 40 MAIN STREET IS NOT SUBJECT TO MINISTERIAL STREAMLINED PERMIT PROCESSING OF A DEVELOPMENT APPLICATION PURSUANT TO GOVERNMENT CODE SECTION 65913.4 (SB 35)

2. RESCINDING THE CITY OF LOS ALTOS COMMUNITY DEVELOPMENT DEPARTMENT LETTERS OF DECEMBER 7, 2018 AND FEBRUARY 6, 2019 REGARDING THE PROPOSED PROJECT AT 40 MAIN STREET, AND

3. APPROVING THE APPLICATION REFERENCED AS NO. 1108545 ON THE APPLICATION FORM SUBMITTED ON NOVEMBER 8, 2018 TO THE LOS ALTOS PLANNING DIVISION, FOR A PROPOSED MIXED-USE RESIDENTIAL DEVELOPMENT PROJECT AT 40 MAIN STREET IN THE CITY OF LOS ALTOS.

WHEREAS, On November 8, 2018 40 Main Street Offices, LLC (the "Applicant") submitted applications, plans and materials (collectively, the "Application") for a project (the "Project"), consisting of a five-story mixed use building with two levels of underground parking, to be accessed by a single-vehicle lift from Public Parking Plaza 10. Uses within the proposed building include office space on the first level and fifteen (15) residential rental units on levels two to five. Two of the fifteen (15) residential rental units are proposed as below market rate (BMR) units; and

WHEREAS, the Applicant applied for a streamlined ministerial permit pursuant to Government Code Section 65913.4 (SB 35), asserting that the Project is eligible for a density bonus of seven market rate rental units above an assumed base of eight rental units, concessions/incentives, waivers, and application of the parking standards for residential units provided by SB 35; and

WHEREAS, on December 7, 2018, in accordance with SB 35, Staff timely responded in writing to the Application, finding that the Project is not eligible for SB 35 because, among other things, it is inconsistent with objective City development standards for access/egress to the proposed off-street underground parking and providing written notification with the accompanying Notice of Incomplete Application, which stated the Application's incompleteness and listed the Application's deficiencies and the additional information necessary to enable the City meaningfully to evaluate the Application; and

WHEREAS, by letter submitted on January 17, 2019, by Applicant's attorney, Daniel R. Golub, of Holland and Knight LLP, asserted that the Project was "deemed to comply with all of SB 35's qualifying criteria as a matter of law" and that the Project was entitled to issuance of a streamlined ministerial permit under SB 35 no later than February 6, 2019; and

WHEREAS, on February 6, 2019, the City provided a written response to Applicant, reiterating the City's position that the Project does not qualify for SB 35 streamlined ministerial permitting and that the Application (including all plans, and materials submitted), did not contain sufficient information to enable the City to make a meaningful and lawful determination on the Application; and

WHEREAS, on February 21, 2019, the Applicant's attorney submitted an appeal of Staff's determination to the City Council; and

WHEREAS, on April 9, 2019, in accordance with Los Altos Municipal Code Chapter 1.12, the City Council conducted a public hearing, evaluated and considered the appeal, together with all information and evidence presented by the Applicant and all other information in the record, including public testimony and information presented by Staff; and

WHEREAS, at a meeting on April 23, 2019 the City Council of the City of Los Altos denied the appeal and affirmed Staff's determination that the Project is not subject to ministerial streamlined permit processing of a development application pursuant to Government Code Section 65913.4 (SB 35), through the adoption of Resolution No. 2019-13; and

WHEREAS, following denial of the appeal, 40 Main Street Offices LLC and California Renters Legal Advocacy and Education Fund; San Francisco Bay Area Renters Federation; Victoria Fierce and Sonja Trauss filed in the Santa Clara County Superior Court petitions for writ of mandate challenging the City's actions. On April 27, 2020, the Court granted the petitions for writ of mandate. On May 13, 2020 the Court issued its peremptory writ of mandate (Order). The Order requires that the City rescind its resolution of denial of the Project, rescind the letters of denial from the Community Development Department dated December 7, 2018 and February 6, 2019, and grant ministerial approval of the Project pursuant to Government Code Section 65913.4 (SB 35); and

WHEREAS, the approval of this Project is exempt from further environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15268 because the Courts have determined this project qualifies for ministerial streamlined permit processing of a development application pursuant to Government Code Section 65913.4 (SB 35) and ministerial projects are exempt from the requirements of CEQA; and

WHEREAS, SB 35 and the California Department of Housing and Community Development's SB 35 Guidelines authorize the imposition of "standard conditions of approval as long as those conditions are objective and broadly applicable to development within the locality regardless of streamline approval," and they further authorize the imposition of "standard conditions that specifically implement the provisions of these Guidelines such as commitment for recording covenant and restrictions and provision of prevailing wage."

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Altos hereby takes the following actions;

1. Rescinds, in its entirety, Resolution No. 2019-13, A Resolution of the City Council of the City of Los Altos Denying an Appeal and Affirming Staff's Determination that the proposed project at 40 Main Street is not subject to ministerial streamlined permit processing of a development application pursuant to Government Code Section 65913.4 (SB 35).
2. Rescinds, in their entirety, the Community Development Department letters dated December 7, 2018 and February 6, 2019 denying the Application.
3. Approves, pursuant to Government Code Section 65913.4 (SB 35), the Application referenced as No. 1108545 on the application form submitted on November 8, 2018 to the Los Altos Planning Division, for a proposed residential mixed-use development project to replace an existing single-story office building located at 40 Main Street in the City of Los Altos. The project proposes to include 15 for rent apartment units, two of which will be affordable to low income households (to households earning below 80% of the Area Median Income). In addition, the project will provide 5,724 square feet of office space on the ground floor and a below-grade parking structure with 18 spaces. The gross project floor area totals 29,566 square feet. Application No. 1108545 will be subject to the standard conditions of approval attached hereto as Exhibit 'A' and incorporated herein by this reference, consistent with SB 35 and California Department of Housing and Community Development's SB 35 Guidelines.
4. Acknowledges that the streamlined ministerial permit issued in Paragraph 3 supplants any requirements that might otherwise exist to obtain discretionary approvals to construct the building as it is described in the Application.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 10th day of September 2020 by the following vote:

AYES: Council Members Bruins, Enander, Lee Eng, Vice Mayor Fligor and Mayor Pepper
NOES: None
ABSENT: None
ABSTAIN: None



Jan Pepper, MAYOR

Attest:


Andrea Chelemengos, CMC, CITY CLERK

EXHIBIT 'A'
STANDARD CONDITIONS OF APPROVAL
40 MAIN STREET, CITY COUNCIL RESOLUTION NO. 2020-33

GENERAL

1. Approved Application and Plans

Project approval is based upon the Application, plans, and materials received by the Los Altos Planning Department on November 8, 2018, except as may be modified by these conditions. The Project as built must be consistent with the approved Application, plans, and materials.

2. Compliance with SB 35

The developer shall comply with the requirements of SB 35, consistent with its Application, including by recording a land use restriction or covenant for the affordable units and complying with prevailing wage requirements.

3. Subsequent Permits

The City may take lawful actions in connection with Project implementation and construction, specifically including reviewing and acting on subsequent permits under Government Code section 65913.4, subdivision (f)(2).