

RESOLUTION NUMBER R-305654

DATE OF FINAL PASSAGE MARCH 2, 2010

A RESOLUTION APPROVING PLANNED DEVELOPMENT PERMIT NO. 700701/SITE DEVELOPMENT PERMIT NO. 598260/VARIANCE NO. 700706 AND NEIGHBORHOOD DEVELOPMENT PERMIT NO. 700705, FOR THE 55TH AND HARDY – PROJECT, PROJECT NO. 166781.

WHEREAS, 55th and Hardy, LLC, a California limited liability company, Owner/Permittee, filed an application with the City of San Diego for a planned development permit/site development permit/variance/neighborhood development permit for the construction of an approximately 74,000-square foot, 4-story, 50 unit multi-family residential building including two levels of an underground parking garage and 800 square feet of ground level commercial retail on a vacant 0.68-acre site known as the 55th and Hardy project, located at 5505 Hardy Avenue, and legally described as Lots 1, 2, 24 and 25, Block 18 of College Park Unit No. 3, Map No. 2527, Township South Range West, San Bernardino Base Meridian, within the College Area Community Plan, in the RM-3-9 zone and the Campus Parking Impact Overlay Zone; and

WHEREAS, on January 21, 2010, the Planning Commission of the City of San Diego considered Planned Development Permit [PDP] No. 700701, Site Development Permit [SDP] No. 598260, Variance No. 700706, and Neighborhood Development Permit [NDP] No. 700705, and pursuant to Resolution No. 4565-PC voted 6-0 to recommend City Council approval of the permit; and

WHEREAS, under Charter Section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the

decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on MAR 02, 2010, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to PDP No. 700701/SDP No. 598260/Variance No. 700706 and NDP No. 700705:

A. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0604

1. The proposed development will not adversely affect the applicable land use plan. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The proposed site is designated for high density residential use (45-75 Dwelling units per acre) in the College Area Community Plan, and could accommodate between 31 and 51 dwelling units. The proposed project would provide 50 residential units and would implement the recommended density range of the plan. Although the project is not specifically constructed for fraternity use, the applicant has demonstrated, should the need arise, that the project has the ability to be converted to fraternity uses by changing apartments into multi-purpose rooms, and dividing community rooms into chapter and multi-purpose rooms. The project's ability to be converted to fraternity use will implement the recommendations of the College Area Community Plan.

The project would provide strong pedestrian links to San Diego State University (SDSU) campus and with adjacent development. Pedestrian links would be provided by sidewalks up to 10 feet wide along Hardy Avenue, 12 feet wide along 55th Street and up to 17 feet long Lindo Paseo. Non-contiguous sidewalks would be provided along Hardy Avenue, Lindo Paseo and 55th Street. Pedestrian linkages would also be provided by improved street corner crosswalks and pedestrian ramps. The pedestrian orientation would also be reinforced by street level commercial retail space. The project would provide off-street parking, motorcycle and bicycle parking, and bicycle storage which would implement the recommendations of the College Area Community Plan, therefore the proposed development will not adversely affect the applicable land used plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial

retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. A Mitigated Negative Declaration was prepared for this project in accordance with the State of California Environmental Quality Act (CEQA) Guidelines. The proposed project includes mitigation measures to offset potential impacts to the environment in the area of paleontology. Implementation of the Mitigation, Monitoring and Reporting Program would require paleontological monitoring during grading and excavation that would reduce potential impacts to below a level of significance.

All Uniform Building, Fire, Plumbing, Electrical and Mechanical Code regulations and permitting requirements governing the construction and continued operation of the development apply to this project. Therefore, the project as proposed would not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with the regulations of the Land Development Code. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The project site is within the RM-3-9 zone and is subject to those regulations. The zoning allows for the development of multi-family residential units as well as retail commercial. The use is consistent with the Land Development Code and the project design meets or exceeds all the development regulations with the exception of deviations allowed through the Planned Development Permit and Variance processes for setbacks, private exterior open space and tandem parking requirements. The design of the structures proposed for the project incorporate architectural elements that help diminish bulk and blend into the surrounding community.

4. The proposed development, when considered as a whole, will be beneficial to the community. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The project will provide several features, amenities, and improvements in the community and provide additional support for the overall redevelopment of the area. It will provide housing appropriate for students and will aid in reducing automobile congestion, particularly during peak travel hours because of the project being located within walking distance to San Diego State University and a trolley or bus transit center. The on-site retail component of the project will provide 800 square feet of conveniently located commercial retail space reducing the need for residents and others to travel by car for small purchases. The proposed project would allow conditions and restrictions be placed on the use of the property to ensure that the development remains compatible with the surrounding residential uses. Therefore, the development, when considered as a whole, will be beneficial to the community.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The proposed project complies

with all applicable development regulations of the RM-3-9 zone, except for the four proposed deviations, which are allowed through the Planned Development Permit process and more fully described below.

Front Setback Deviation: The proposed project requests a deviation to allow a front yard setback of 0'-0" where the San Diego Municipal Code's (SDMC) minimum requirement is 10 feet and 20 feet respectively. The Land Development Code Section 131.0443(f)(1) states that up to 50 percent of the width of a building envelope may observe a minimum 10-foot setback, provided that the remaining percentage of the building envelope width observes a 20-foot setback. The proposed project would provide a 0-foot front yard setback. A 0-foot setback is consistent with the development standards set forth in the Core Sub-Area Design Manual ("Design Manual"), a document specifically established by the City to govern development of the portion of the community where the project site is located and implement the Master Plan. The Design Manual is also intended to be used in conjunction with the Land Development Code and other applicable regulations. (See Design Manual, at p.6.) As the Design Manual reflects a more specific level of regulation for the site, and it permits a 0-foot setback, the proposed deviation from the Land Development Code is appropriate. Further, the project will feature other architectural and design elements such as articulated elevations, enhanced window detailing, visible courtyard, modulation of streetscape, and articulation of roofline that ensure the project is compatible with the surrounding community. Moreover, a 0-foot setback will make the ground level retail more inviting to the public and will encourage pedestrian activity, as called for by the Master Project Plan. Lastly, a 0-foot setback will increase the efficient utilization of limited land available for multi-family development.

Side Yard Setback Deviation: The proposed project requests a deviation to allow an interior side yard setback of 5'-0" where 16'-0" is the maximum required. The Land Development Code section 131.0773(f) (2) would require a side yard setback of 16 feet (the greater of 5 feet or 10-percent of the premises width – 16 feet in this case). The project proposes to provide a 5-foot setback. This setback is consistent with the requirements of the Core Sub-Area Design Manual. As discussed above, the Design Manual provides more specific land used regulations applicable to the project site. Therefore, a reduced site setback will better reflect the community vision and goals of the Master Project Plan. Moreover, the project will feature architectural and design elements such as articulated elevations, enhanced window detailing, visible courtyard, modulation of streetscape, and articulation of roofline that integrate the project into the surrounding environment such that a 5-foot setback will be compatible with newer existing and any future development in the surrounding area. Lastly, a 5-foot setback will increase the efficient utilization of limited land available for multi-family development. As such, a 5-foot side setback would result in a more desirable project than would strict application of the Land Development Code.

Private Exterior Open Space Deviation: The proposed project requests a deviation to allow 1,069 square feet of private exterior open space where 2,280 square feet is the minimum required (for 75 percent of the units). The Land Development Code section 131.0455(c) would require the project to provide 60 square feet of private, exterior open space for at least 38-units. In lieu of private, exterior open space, the proposed project will provide 5,213 square feet of common area open space. This common area open space with canopy trellises offers some

privacy from the surrounding residential units. Most of the units are located above the ground floor and typically, private open space would be provided in the form of balconies. Given that project residents are likely to be college students, balconies present potential nuisance and public safety concerns. Therefore, substituting common open space for small exterior, private open space will avoid potential public health, safety, welfare and nuisance issues, will not adversely affect the operation and benefits associated with the development of the site and it will result in a more desirable project than would strict application of the Land Development Code. As such, a deviation from the private exterior open space requirements would result in a more desirable project than would strict application of the Land Development Code.

Parking: The proposed project requests a deviation to allow tandem parking outside of the Tandem Parking Overlay Zone. Land Development Code (LDC) section 132.0902(c) provides that tandem parking is permitted in specific areas of the City that are in close proximity to the public transit. The project area site is less than 1,000 feet away from a transit center trolley stop. According to a two-year study conducted by Caltrans, residents living in a multi-family projects within close proximity to transit stations are five times more likely to use the transit. Additionally, with the close proximity of San Diego State, it is expected that the trolley and other non-traditional methods (such as walking and biking) will be the preferred means to travel to and from school and work. As such, the proposed project will have a reduced parking demand as compared to similar projects located in other parts of the City. The deviation would also allow a reduction in the scale of the garage and create more project open space on-site for residents. A reduction in the scale of the parking structure also reduces the amount of excavation necessary to construct the parking structure, and reduces truck trips hauling earthwork from the site. As such, allowing tandem parking is consistent with the purpose and intent of Land Development Code section 132.0902(c) and will result in a more desirable project than would strict application of the Land Development Code.

A. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0504

1. Findings for all Site Development Permits SDMC section 126.0504(a).

a. The proposed development will not adversely affect the applicable land use plan. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The proposed site is designated for high density residential use (45-75 Dwelling units per acre) in the College Area Community Plan, and could accommodate between 31 and 51 dwelling units. The proposed project would provide 50 residential units and would implement the recommended density range of the plan. Although the project is not specifically constructed for fraternity use, the applicant has demonstrated, should the need arise, that the project has the ability to be converted to fraternity uses by changing apartments into multi-purpose rooms, and dividing community rooms into chapter and multi-purpose rooms. The project's ability to be converted to fraternity use will implement the recommendations of the College Area Community Plan.

The project would provide strong pedestrian links to SDSU campus and with adjacent development. Pedestrian links would be provided by sidewalks up to 10 feet wide along Hardy Avenue, 12 feet wide along 55th Street and up to 17 feet long Lindo Paseo. Non-contiguous sidewalks would be provided along Hardy Avenue, Lindo Paseo and 55th Street. Pedestrian linkages would also be provided by improved street corner crosswalks and pedestrian ramps. The pedestrian orientation would also be reinforced by street level commercial retail space. The project would provide off-street parking, motorcycle and bicycle parking, and bicycle storage which would implement the recommendations of the College Area Community Plan, therefore the proposed development will not adversely affect the applicable land used plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. A Mitigated Negative Declaration was prepared for this project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. The proposed project includes mitigation measures to offset potential impacts to the environment in the area of paleontology. Implementation of the Mitigation, Monitoring and Reporting Program would require paleontological monitoring during grading and excavation that would reduce potential impacts to below a level of significance.

All Uniform Building, Fire, Plumbing, Electrical and Mechanical Code regulations and permitting requirements governing the construction and continued operation of the development apply to this project. Therefore, the project as proposed would not be detrimental to the public health, safety and welfare.

c. The proposed development will comply with the regulations of the Land Development Code. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The project site is within the RM-3-9 zone and is subject to those regulations. The zoning allows for the development of multi-family residential units as well as retail commercial. The use is consistent with the Land Development Code and the project design meets or exceeds all the development regulations with the exception of deviations allowed through the Planned Development Permit and Variance processes for setbacks, private exterior open space and tandem parking requirements. The design of the structures proposed for the project incorporate architectural elements that help diminish bulk and blend into the surrounding community.

C. Variance – Section 126.0504

2. Findings for all Variances.

a. There are special circumstances or conditions applying to the land or premises for which the variance is sought that are peculiar to the land or premises and do not apply generally to the land or premises of the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone

regulations. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The project requires a Variance from the Planned Development Permit and Master Project Plan regulations imposing a maximum lot coverage of 60 percent (the project proposes a lot coverage of 67 percent) even though the underlying zoning imposes no maximum lot coverage requirement.

Land Development Code section 143.0420(d), provides that “building coverage shall not exceed 60 percent of the site area.” Although the project’s main structure covers only slightly more than 50 percent of the lot, the proposed project will have a building coverage of 67 percent, and thus requires a variance from Section 143.0420(d). This variance is necessary because of the unique conditions existing on the project site and the project’s compliance with the Core Sub-Area Design Manual’s (“Design Manual”) recommendation that parking structures be undergrounded. Namely, the project site is on a sloping lot. Most of the parking garage will be below grade and will not count towards lot coverage. Because of the slopes existing on the property, portions of the parking garage will be more than 3 feet above-grade. Pursuant to Land Development Code section 113.0240(d), all portions of the underground parking garage lying more than 3 feet above grade are included for purposes of calculating lot coverage. The requested Variance would allow for reasonable use of the property while accommodating the pre-existing conditions of the sloping lot. These conditions have not resulted in from any act of the applicant after the adoption of the applicable zone regulations.

b. The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The proposed project requires a variance from building coverage requirements to accommodate unique physical constraints existing on the project site and the parking structure recommended by the Design Guidelines. The proposed project site is designated for high density residential development under the applicable land use plans. A parking structure is required to provide parking necessary to accommodate a residential development that conforms with the applicable land use plans. Moreover, applicable land use plans express a preference for underground parking structures. The proposed project will minimize the size of the parking structure, and thus the extent of variance required, by providing tandem parking spaces. While a small portion of the project’s underground parking structure is more than 3 feet above grade and technically qualified as part of the coverage calculation, the public will not perceive the project as exceeding the maximum coverage as the main project structure covers less than 60 percent of the project site. This open space will be aesthetically appealing. It should also be noted that in the RM-3-9 zone, no building coverage limitations apply. The proposed project is subject to building coverage limitations only because it seeks a planned development permit. Other than the requested Variance and the deviations requested by the Planned Development Permit, the project would conform with all applicable development regulations for this site. Therefore, the requested Variance is the minimum necessary to provide for a reasonable use of the land or premises.

c. **The granting of the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety, or welfare.** The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. A Mitigated Negative Declaration was prepared for this project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. The proposed project includes mitigation measures to offset potential impacts to the environment in the area of paleontology. Implementation of the Mitigation, Monitoring and Reporting Program would require paleontological monitoring during grading and excavation that would reduce potential impacts to below a level of significance.

All Uniform Building, Fire, Plumbing, Electrical and Mechanical Code regulations and permitting requirements governing the construction and continued operation of the development apply to this project. Therefore, the granting of the variance would harmonious with the general purpose and intent of the applicable regulation and will not be detrimental to the public health, safety or welfare.

d. **The granting of the variance will not adversely affect the applicable land use plan. If the variance is being sought in conjunction with any proposed coastal development, the required finding shall specify that granting of the variance conforms with, and is adequate to carry out, the provisions of the certified land use plan.** The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The project requires a Variance from the Planned Development Permit and Master Project Plan regulations imposing a maximum lot coverage of 60 percent (the project proposes a lot coverage of 67 percent). The proposed site is designated for high density residential use 45-75 Dwelling units per acre) in the College Area Community Plan, and could accommodate between 31 and 51 dwelling units. The proposed project would provide 50 residential units and would implement the recommended density range of the plan. Although the project is not specifically constructed for fraternity use, the applicant has demonstrated, should the need arise, that the project has the ability to be converted to fraternity uses by changing apartments into multi-purpose rooms, and dividing community rooms into chapter and multi-purpose rooms. The project's ability to be converted to fraternity use will implement the recommendations of the College Area Community Plan.

The project would provide strong pedestrian links to SDSU campus and with adjacent development. Pedestrian links would be provided by sidewalks up to 10 feet wide along Hardy Avenue, 12 feet wide along 55th Street and up to 17 feet long Lindo Paseo. Non-contiguous sidewalks would be provided along Hardy Avenue, Lindo Paseo and 55th Street. Pedestrian linkages would also be provided by improved street corner crosswalks and pedestrian ramps. The pedestrian orientation would also be reinforced by street level commercial retail space and the project would provide off-street parking, motorcycle and bicycle parking, and bicycle storage. The project is not in the coastal zone so no certified land use plan applies. The

proposed project conforms with, and is adequate to carry out, the provision of the College Area Community Plan.

D. NEIGHBORHOOD DEVELOPMENT PERMIT – SECTIONS 126.0205, 126.0404

1. Findings for all Neighborhood Development Permits.

a. The proposed development will not adversely affect the applicable land use plan. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. The proposed site is designated for high density residential use (45-75 Dwelling units per acre) in the College Area Community Plan, and could accommodate between 31 and 51 dwelling units. The proposed project would provide 50 residential units and would implement the recommended density range of the plan. Although the project is not specifically constructed for fraternity use, the applicant has demonstrated, should the need arise, that the project has the ability to be converted to fraternity uses by changing apartments into multi-purpose rooms, and dividing community rooms into chapter and multi-purpose rooms. The project's ability to be converted to fraternity use will implement the recommendations of the College Area Community Plan.

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b. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. A Mitigated Negative Declaration was prepared for this project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. The proposed project includes mitigation measures to offset potential impacts to the environment in the area of paleontology. Implementation of the Mitigation, Monitoring and Reporting Program would require paleontological monitoring during grading and excavation that would reduce potential impacts to below a level of significance. All Uniform Building, Fire, Plumbing, Electrical and Mechanical Code regulations and permitting requirements governing the construction and continued operation of the development apply to this project. Therefore, the project as proposed would not be detrimental to the public health, safety and welfare.

c. **The proposed development will comply with the regulations of the Land Development Code.** The proposed project is a 4-story apartment building with 50 dwelling units over a subterranean parking structure with approximately 800 square feet of commercial retail space at the ground level on a 0.68-acre vacant site located at 5505 Hardy Avenue. Specific conditions of approval require compliance with all relevant regulations of the City effective for this site and have been written as such into the permit. The proposed development also complies with the regulations and development criteria of the RM-3-9 zone. Deviations, as allowed by the approval of a Planned Development Permit, are required to approve the proposed project. The project will include four deviations:

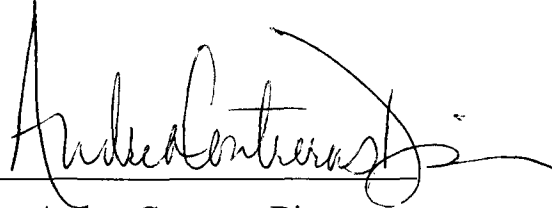
- i. A deviation to allow a front yard setback of 0'-0" which is consistent with the Core Sub-Area Design Manual where 10'/20' is the maximum required per the San Diego Municipal Code (SDMC);
- ii. A deviation to allow a interior side yard setback of 5'-0" which is consistent with the Core Sub-Area Design Manual where 16'-0" is the maximum required per the SDMC;
- iii. A deviation to allow 1,069 square feet of private exterior open space (for 75 percent of the units) where 2,280 square feet is the minimum required;
- iv. A deviation to allow tandem parking outside of the Tandem Parking Overlay Zone.

The setback deviations are needed to ensure consistency within the Core Sub-Area Design Manual. The project also requires a Variance from the Planned Development Permit and Master Project Plan regulations imposing a maximum lot coverage of 60 percent (the project proposes a lot coverage of 67 percent) even though the underlying zoning imposes no maximum lot coverage requirement. The proposed development complies with all other relevant regulations of the Land Development Code. Specific conditions of approval require the continued compliance with all relevant regulations of the City of San Diego effective for this site. Development of the property will meet all other requirements of these regulations. Other than the deviations and the variance requested, the project would conform to all applicable regulations. In these ways the proposed development will comply with the applicable development regulations of this site.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Planned Development Permit [PDP] No. 700701, Site Development Permit [SDP] No. 598260, Variance No. 700706, and Neighborhood Development Permit [NDP] No. 700705, is granted to 55th and HARDY, LLC, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JAN I. GOLDSMITH, City Attorney

By: 

Andrea Contreras Dixon
Deputy City Attorney

ACD:cw
02/12/10
04/06/10 REV.
04/15/10 COR. COPY
Or.Dept:DSD
JO: 43-1699
Drawing No. 21039-B
R-2010-572
MMS: #11566

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 2343-1699

PLANNED DEVELOPMENT PERMIT NO. 700701
SITE DEVELOPMENT PERMIT NO. 598260
VARIANCE NO. 700706
NEIGHBORHOOD DEVELOPMENT PERMIT NO. 700705

This Planned Development Permit (PDP) No. 700701, Site Development Permit (SDP) No. 598260, Variance No. 700706, and Neighborhood Development Permit (NDP) No. 700705 is granted by the Council of the City of San Diego to 55th & HARDY, LLC, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 143.0402, 126.0502 (b)(4), 126.0801, and 129.0710 (b) (2). The 0.68-acre site is located at 5505 Hardy Avenue in the RM-3-9 Zone of the College Area Community Plan. The project site is legally described as portions of Lots 1, 2, 24, and 25, Block 18 of College Park Unit No. 3, Map No. 2527.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee for the construction of an approximately 74,000-square foot, 4-story, 50 unit multi-family residential building including two levels of an underground parking garage and 800 square feet of ground level commercial retail, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated March 2, 2010, on file in the Development Services Department.

The project shall include:

- a. Construction of an approximately 74,000-square foot, 4-story, 50 unit multi-family residential building including two levels of an underground parking garage and 800 square feet of ground level commercial retail;
- b. The following deviations are granted, as more fully described in Condition No. 38 this permit and as shown on Exhibit "A";
 - i. A deviation to allow a front yard setback of 0'-0" which is consistent with the Core Sub-Area Design Manual where the SDMC's minimum requirement are 10 feet and 20 feet respectively; allow a front yard setback

of 0'-0" which is consistent with the Core Sub-Area Design Manual where 10'-20' is the maximum required per the San Diego Municipal Code (SDMC);

- ii. A deviation to allow a interior side yard setback of 5'-0" which is consistent with the Core Sub-Area Design Manual where 16'-0" is the maximum required per the SDMC;
 - iii. A deviation to allow 1,069 square feet of private exterior open space (for 75% of the units) where 2,280 square feet is the minimum required;
 - iv. A deviation to allow tandem parking outside of the Tandem Parking Overlay Zone.
- c. A Variance for exceeding the supplemental PDP regulations' lot coverage maximum of 60 percent. The project is proposing 67% lot coverage.
 - d. A Utility Easement Abandonment as depicted on Drawing No. 21039-B and Resolution No. 305653
 - e. Landscaping (planting, irrigation and landscape related improvements);
 - f. Off-street parking;
 - g. Retaining walls with a maximum height of 16 feet and an total length of 360 feet
And;
 - h. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and

b. The Permit is recorded in the Office of the San Diego County Recorder.

3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to

the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. Prior to the issuance of any construction permit the Assistant Deputy Director (ADD) Environmental Designee of the Entitlements Division shall verify that Mitigation Measures for Biological Resources/Land Use (Multiple Species Conservation Program), Paleontology, and Transportation have been included in entirety on the submitted construction documents and contract specifications, and included under the heading, "ENVIRONMENTAL/MITIGATION REQUIREMENTS: 55th & Hardy (Project No. 166781)." In addition, the requirements for a Preconstruction Meeting shall be noted on all construction documents.

12. Prior to the commencement of work, a Preconstruction Meeting (Pre-con) shall be conducted and include the City of San Diego's Mitigation Monitoring Coordination (MMC) Section, Resident Engineer, Building Inspector, Paleontologist, Applicant and other parties of interest.

13. Evidence of compliance with other permitting authorities is required, if applicable. Evidence shall include either copies of permits issued, letters of resolution issued by the Responsible Agency documenting compliance, or other evidence documenting compliance and deemed acceptable by the ADD Environmental Designee.

14. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in MITIGATED NEGATIVE DECLARATION, NO. 166781, satisfactory to the Development Services Department and the City Engineer.

15. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas: **Paleontological.**

16. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.

AFFORDABLE HOUSING REQUIREMENTS:

17. Prior to the issuance of any building permits, the Owner/Permittee shall comply with the affordable housing requirements of the City's Inclusionary Affordable Housing Regulations (SDMC § 142.1301 et seq.) by paying an in-lieu fee.

ENGINEERING REQUIREMENTS:

18. The project proposes to export 13,000 cubic yards of material from the project site. All excavated material listed to be exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2003 edition and Regional Supplement Amendments adopted by Regional Standards Committee.

19. The drainage system proposed for this development, as shown on the site plan, is private and subject to approval by the City Engineer.

20. Prior to the issuance of any building permits, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for the sidewalk underdrains in the Hardy Avenue, 55th Street, and Lindo Paseo Right-of-Way.

21. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of two current City Standard 20 feet wide driveways, adjacent to the site on Hardy Avenue, satisfactory to the City Engineer.

22. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to construct a current City Standard curb, gutter and sidewalk, adjacent to the site on Hardy Avenue, 55th Street, and Lindo Paseo, satisfactory to the City Engineer.

23. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to construct a 10 feet length of transition from current City Standard curb and gutter to rolled curb, on the adjacent east property frontage on Lindo Paseo, satisfactory to the City Engineer.

24. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to reconstruct the existing curb ramps at the northeast corner of Lindo Paseo and 55th Street, and the southeast corner of Hardy Avenue and 55th Street, with current City Standard curb ramp Standard Drawing SDG-130 and SDG-132 with truncated domes.

25. Prior to the issuance of any construction permit, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.

26. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

27. Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

28. Prior to the issuance of any construction permit the Owner/Permittee shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, consistent with the approved Water Quality Technical Report.

29. Any party, on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within 90 days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code 66020.

LANDSCAPE REQUIREMENTS:

30. Prior to issuance of Public Right-of-Way Permits; the Owner/Permittee shall submit complete landscape construction documents demonstrating the right-of-way improvements to the Development Services Department for approval. Improvement plans shall indicate an area equal to 40 square feet around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

31. In the event that a foundation only permit is requested by the Owner/Permittee; a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as 'landscaping area.'

32. Prior to issuance of Building Permits; the Owner/Permittee shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual, Landscape Standards to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department.

33. Prior to issuance of a Certificate of Occupancy, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

34. The Owner/Permittee shall maintain all landscape in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

35. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual, Landscape Standards.

36. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee is responsible to repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to issuance of a Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

37. No fewer than 125 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the Development Services Department.

38. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

39. As a component of this project, four deviations are granted as shown on the approved Exhibit "A" dated January 27, 2010:

- a. A deviation allow a front yard setback of 0'-0" which is consistent with the Core Sub-Area Design Manual where 10'/20' is the maximum required per the San Diego Municipal Code (SDMC);
- b. A deviation to allow a interior side yard setback of 5'-0" which is consistent with the Core Sub-Area Design Manual where 16'-0" is the maximum required per the SDMC;
- c. A deviation to allow 1,069 square feet of private exterior open space (for 75% of the units) where 2,280 square feet is the minimum required;
- d. A deviation to allow tandem parking outside of the Tandem Parking Overlay Zone.

40. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.

41. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

TRANSPORTATION REQUIREMENTS:

42. A minimum of 125 automobile spaces (including 2 standard accessible spaces and 2 van accessible spaces), 7 motorcycle spaces, and 29 bicycle spaces shall be provided as required by the Land Development Code. 126 automobile spaces (including 2 standard accessible spaces and 2 van accessible spaces), 8 motorcycle spaces, and 62 bicycle spaces with rack or hooks will be

provided per the project's Exhibit "A". All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Director.

43. The Owner/Permittee shall install a call box, wired to the retail portion of the development, in the westerly project driveway on Hardy Avenue, satisfactory to the City Engineer.

44. The Owner/Permittee shall construct a 5 foot wide non-contiguous sidewalk within a 10 foot wide parkway along the project frontage on Hardy Avenue (to include tree wells and tree grates with porous pavers), as shown on the project's Exhibit "A", satisfactory to the City Engineer.

45. The Owner/Permittee shall construct a 6 foot wide non-contiguous sidewalk within a 12 foot wide parkway along the project frontage on 55th Street (to include tree wells and tree grates with porous pavers), as shown on the project's Exhibit "A," satisfactory to the City Engineer.

46. The Owner/Permittee shall construct a 5 foot wide non-contiguous sidewalk within a 16 foot wide parkway along the project frontage on Lindo Paseo, as shown on the project's Exhibit 'A', satisfactory to the City Engineer.

47. The community room shall only be used by residents of the building.

48. Tandem parking spaces shall be assigned to the same dwelling unit.

49. The multi-purpose rooms in the fraternity/sorority option shall only be used by residents of the fraternity/sorority.

50. The retail component of this project shall not contain of any eating and/or drinking establishments.

51. If the proposed development is converted to a fraternity/sorority house, no more than 143 total persons may reside at the fraternity/sorority house.

52. If the proposed development is converted to a fraternity/sorority house, the Owner/Permittee shall provide a Tandem Parking Plan prior to the conversion, satisfactory to the City Engineer.

53. Prior to the issuance of the first building permit, the Owner/Permittee shall pay \$332,000 (\$1000/project ADT generated) towards transportation mitigation measures identified in *The College Community Redevelopment Final Program Environmental Report*, satisfactory to the City Engineer. This contribution shall be deposited into a separate interest bearing account, satisfactory to the City Engineer.

WASTEWATER REQUIREMENTS:

54. All structures, footings, walls, trees and shrubs exceeding three feet in height at maturity are required to be a minimum of 10 feet away from the sewer main and out of the easement.

55. Prior to the issuance of any building permits, the Owner/Permittee shall grant a minimum of 6-foot sewer access easement (walking easement) to the City of San Diego, in order to ensure that city crews will have access for maintenance to the proposed sewer manhole located on the east side of the property.

56. Prior to the issuance of any building permits, the Owner/Permittee shall vacate portions of a sewer easement located at 5505 Hardy Avenue, Approval No. 604350, as indicated on 21039-B and Resolution No. 305653.

57. Prior to the issuance of any building permits, the Owner/Permittee shall complete the dedication of the additional 6-foot sewer easement just to the north of the proposed manhole, as indicated on the grading and utility plan (C001, Revision 8-31-09).

58. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer facilities.

59. The developer shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

60. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Plumbing Code and shall be reviewed as part of the building permit plan check.

61. Prior to the issuance of any building or grading permits, the developer shall abandon all on-site public sewer mains or they will be converted to private, satisfactory to the Public Utilities Department Director. Any associated public easements shall be vacated, satisfactory to the Public Utilities Department Director.

WATER REQUIREMENTS:

62. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) outside of any driveway, and the removal of all existing unused services, within the right-of-way adjacent to the project site, in a manner satisfactory to the Director of Public Utilities and the City Engineer.

63. Prior to the issuance of any certificates of occupancy, the Subdivider shall assure, by permit and bond, the design and construction of private sub-meter for water for each condominium unit in a manner satisfactory to the Director of Public Utilities and the City Engineer.

64. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s), on each water service (domestic, fire and irrigation), in a manner satisfactory to the Director of Public Utilities and the City Engineer.

65. Prior to the issuance of any certificates of occupancy, all public water facilities shall be complete and operational in a manner satisfactory to the Director of Public Utilities and the City Engineer.

66. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, and associated easements, as shown on approved Exhibit "A" shall be modified at final engineering to comply with standards.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code §66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Council of the City of San Diego on March 2, 2010, Resolution No. R-305654.

Permit Type/PTS Approval No.:
Planned Development Permit No. 700701
Site Development Permit No. 598260
Variance No. 700706
Neighborhood Development Permit No. 700705
Approved March 2, 2010

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

Renee Mezo
Program Manager, Development Services

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

55th and Hardy, LLC., a California limited
liability company
Owner/Permittee

By _____
Its: _____
Dated: _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**