

Resolution for Approving/Denying Permits

(R-INSERT)

RESOLUTION NUMBER R-NUMBER

ADOPTED ON DATE

WHEREAS, , BFC-Fashionwalk, LLC, Tenant-In-Common, Eric C. Luna, President/Manager and Member; AND Fashion Walk, L.P. Tenant-In- Common, Fashionwalk GP, LLC, General Partner, J. Stephen Quinn, Trustee, AND American Property Enterprises, and Eric C. Luna, Limited Partners, Owner(s)/Permittee(s), filed an application with the City of San Diego for a Planned Commercial Development and Resource Protection Ordinance Permit to develop 161-multi-family residential dwelling units for sale as condominiums (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval) known as the Fashion Walk project, located at 7148 Friars Road, and legally described as Lots 1 and 2 of Fashion Ridge, Map 11871, in the Linda Vista Community Plan area, in the CO-1-2 (Commercial-Office) Zone; and

WHEREAS, on April 22, 2004, the Planning Commission of the City of San Diego considered PCD/RPO Permit Nos. 80170 and 80579 respectively, and Tentative Map No. 80580, and pursuant to Resolution No. 3502-PC voted to "approve the permit"; and

WHEREAS, Mark Polinsky and Michael Shames appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, the matter was set for public hearing on August 3, 2004, 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 PCD/RPO Permit Nos. 80170 and 80579:

I. Planned Commercial Development Permit (Municipal Code Section 101.0910.I.2.) –

A. The proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or Community Plan.

The 8.0-acre site of the proposed development was zoned for commercial-office (CO) use in 1983. This Zone allows residential development of one dwelling unit per 1,500 square-feet of lot area, which would provide for up to 232 dwelling units where 161 dwelling units are proposed. The project fulfills a community need by providing additional housing where vacancy rates are low and demand remains high. The project is superior in design and follows the goals and recommendations of the Linda Vista Community Plan (Page 118) and the Progress Guide and

General Plan by clustering the development in a small portion of the site. This preserves sensitive environmental resources and respects the adjacent hillsides. The project also provides adequate parking, screening and landscaping on the site.

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and potential impacts to the environment have been reviewed and considered. It has been determined that these potential impacts can be reduced to a level below significance through the incorporation of mitigation measures. These mitigation measures have been incorporated into the project as conditions of the draft permit and will be implemented through a Mitigation, Monitoring and Reporting Program.

Therefore, due to these efforts it has been concluded that the proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or Community Plan.

B. The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety, and general welfare of persons residing or working in the area and will not adversely affect other properties in the vicinity.

The project is sensitive to the site and surrounding properties and complements the existing commercial and residential development located to the north, west and south. The project has been designed to occupy a small 1.8-acre portion of the 8.0-acre site and to preserve the existing steep slopes and sensitive environmental resources located on the remaining 6.2-acres. This remaining portion of the site will be preserved through an open space easement, or other acceptable means. The structures are placed at the bottom of the slope and do not adversely impact the views or light and air of the neighboring residential properties. Access to the property is controlled via an existing traffic signal and second driveway, and will not significantly impede the traffic flow along Friars Road.

Prior to construction, the project plans will be submitted and reviewed by staff for compliance with all applicable Uniform Building Codes, including plumbing, mechanical, electrical and fire Codes. In addition, staff will ensure that the project plans accurately depict the project approved by the Decisionmaker at a noticed public hearing.

Therefore it has been determined that the proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety, and general welfare of persons residing or working in the area and will not adversely affect other properties in the vicinity.

C. The proposed use will comply with the relevant regulations of the Municipal Code.

The proposed use of the property for development of a multi-family residential use is consistent with the community plan land use designation of the site for commercial-office and open space uses, which allow for residential development and preservation of open space and environmentally sensitive resources. The zone designation of the property for commercial-office development also allows for residential development of the site at a density of 29 dwelling units per acre, which would allow for a total of up to 232 units on the 8.0-acre site. Although the Municipal Code requires incorporation of a commercial use component on one-half of the ground floor, the Code provides for a deviation from this requirement.

The project is designed to comply with the development regulations for Planned Commercial Developments with the exception of one deviation which is required due to the entirely residential development in lieu of mixed residential and commercial development. Separate findings have been made to permit the deviation and are noted below.

The project has been reviewed for compliance with applicable regulations of the Municipal Code in effect prior to January, 2000. Staff review has determined that with the exception of the deviation as noted, the project as proposed complies with the provisions of the Code pertaining to Planned Commercial Developments and the Resource Protection Ordinance. Conditions have been imposed on project implementation and are noted in the Permit. These Conditions will ensure that the project, when implemented, further complies with relevant regulations of the Municipal Code, including those pertaining to the provision of affordable housing. Prior to building permit issuance, the project will be assessed fees to address affordable housing issues in the community.

Based on the aforementioned, it has been determined that the project and proposed use will comply with the relevant regulations of the Municipal Code.

I.A. Findings for Deviations from Minimum Standards (SDMC Section 101.0910.M.2)

The minimum development standards for Planned Commercial Development permits require that a minimum of 50% of all gross ground floor area be used for retail commercial and personal service uses. Because this project is entirely residential, findings must be made in order to deviate from the minimum standards. Deviation findings are provided below -

- A. Because of special circumstances applicable to the property, including but not limited to size, shape, topography, location or surroundings, the strict application of the requirements deprives such property of privileges enjoyed by other property in the vicinity under identical zone classification.**

The property is approximately eight 8.0-acres in size and irregularly shaped. Most of the site is covered by steep slopes and sensitive biological resources. Northerly portions of the property are constrained by a 100-foot wide utility easement and a 20-foot wide drainage easement. Easterly portions of the site are constrained by an irregularly shaped slope easement. In addition, vehicular access rights have been waived for the entire easterly frontage of the property and a significant easterly portion of the Friars Road frontage due to their proximity to Ulric Street and SR-163. A small flat portion of property of approximately one-half (1/2) acre in size exists on the westerly portion of the site. This flat portion of the lot is elevated approximately twelve (12) feet above the adjacent roadway along Friars Road. This flat portion of the lot is also very narrow.

The unique shape, topography, and location of this lot make it unsuitable for commercial retail uses. Such uses require easy access and parking for drivers familiar with the development and a high visibility from the street. The small size of the developable portion of the lot limits the access and parking configurations for commercial uses. In addition, the elevation difference between the building site and the street limits the visibility to any ground floor commercial use from the street. The project is also located across the street from Fashion Valley, a major regional shopping center with good access and high visibility. Any commercial business use on the project site would be in direct competition with Fashion Valley. These combined conditions severely reduce the commercial viability of the site and warrant a deviation from the ground floor commercial requirement.

In addition, commercial uses on this site would result in higher trip generation rates and increased traffic volumes along this segment of Friars Road (beyond the number of vehicle trips/traffic which would be generated by the proposed residential project). Commercial uses on the site would also be incompatible with existing residential development to the north. It is also economically infeasible to retain viable commercial uses on-site due to direct competition with the existing regional shopping center (Fashion Valley) located across the street from the project site.

Therefore, because of these special circumstances, the strict application of these requirements would otherwise deprive the property of privileges enjoyed by other property in the vicinity under identical zone classification, and therefore relief from this provision of the Municipal Code is justified.

- B. Any deviation granted will assure that the adjustment thereby authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which property is situated because of the conditions imposed.**

The deviation allows reasonable development to occur on the site while preserving the steep slopes and sensitive environmental resources. Commercial uses are not only incompatible with adjacent residential uses, but are also potentially non-viable because of the location across from a full-service regional shopping center. Traffic impacts would be exacerbated by commercial development. In addition, the project is consistent with the goals and recommendations of the Linda Vista Community Plan which allow residential only development in areas designated for commercial offices and promote the preservation of hillsides and environmental resources. The Planned Commercial Development Permit is the identified permitting procedure for accommodating these proposals.

Therefore, it is determined that the deviation being granted to allow residential only development on the site, in lieu of a requirement for inclusion of a commercial component on the ground floor, does not constitute a grant of special privileges inconsistent with limitations on other properties in the vicinity and zone in which the property is situated due to the conditions imposed.

- C. The granting of the deviation does not adversely affect the Progress Guide and General Plan for the City of San Diego, or any adopted community or precise plan of the City or the adopted plan of any other appropriate governmental agency.**

The granting of the deviation enhances conformance with the Linda Vista Community Plan. The project overall respects the adjacent hillsides on the property by clustering development on the flat portion of the property. Minimal encroachment into steep slopes preserves sensitive resources. Construction is sited downslope from the adjacent residential project above, minimizing potential adverse view impacts and offering a large natural buffer between the two residential developments. The residential only project conforms to the Linda Vista Community Plan which specifically allows residential only development to locate within areas designated for office commercial designations, subject to approval of a Planned Commercial Development Permit.

Based on staff review and analysis, it is determined that the granting of this deviation will not have an adverse affect on the Progress Guide and General Plan for the City of San Diego, or the Linda Vista or Mission Valley Community Plans.

II. RESOURCE PROTECTION ORDINANCE ~ (Municipal Code Section 101.0462.K.)

1. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan.

The project conforms to the requirements of the Linda Vista Community Plan. It is clustered on a small flat portion of the slope thereby preserving the majority of steep slopes and sensitive environmental resources on the site. The residential only project is also in conformance with the Linda Vista Community Plan which specifically allows residential only development to locate within areas designated for office commercial developments.

The General Plan and the Linda Vista Community Plan designates the site for commercial-office and residential uses. The zoning of the property provides for residential development of one dwelling unit per 1,500 square-feet of lot area which would allow up to 232 units on the site. The proposed project of 161 dwelling units is below this maximum and provides for needed medium density residential development in the community.

Based on staff review and analysis of the proposal with the adopted plans, it is determined that implementation of the project will not have an adverse affect on the City of San Diego's Project Guide and General Plan, nor the adopted community plan for the area.

The project complies with the applicable development regulations for Planned Commercial Developments and the Resource Protection Ordinance with the exception of one deviation for which special findings can be made. The unique shape, topography, and location of this lot constitute special circumstances which require a deviation from the standard development regulations. In order to preserve as much of the steep slopes and sensitive environmental resources as possible, development on this site is limited to that area around the flat and narrow portion of the lot. This project is also entirely residential and does not contain the required 50% ground floor commercial retail. The shape, topography, and location of this lot make it unsuitable for commercial retail uses. The difference in elevation between the building pad and the street makes commercial access difficult and degrades the ability of any business to be seen from the street. The site is located across the street from the regional shopping center at Fashion Valley. Competition from the shopping center which has good access and visibility would further impair the ability to do any kind of retail business on the site.

The project is clustered on a section of flat land at the western end of the lot and is designed to avoid steep slopes and sensitive vegetation. The development will encroach into no more than

13.4% of the steep slope area where 14% is the maximum encroachment allowed, and is within the allowable thresholds of the Resource Protection Ordinance.

The project is located on the flattest, most disturbed portion of the site. The vast majority of the site will remain untouched by the development. The proposed development is consistent with the MSCP in that it minimizes impacts upon sensitive biological resources and provides for necessary mitigation of adverse impacts. This project requires mitigation for impacts to coastal sage scrub, southern willow scrub, and a documented pair of California gnat-catchers. Proposed mitigation includes off-site acquisition of additional habitat or payment of a mitigation fee into the Habitat Acquisition Fund calculated to alleviate the proposed negative impacts.

2. The proposed development will conform to the community plan for the area and any other applicable plans, policies and ordinances.

The 8.0-acre site of the proposed development is zoned for commercial-office (CO) use, which allows residential development of one dwelling unit per 1,500 square-feet of lot area. This would provide for up to 232 dwelling units where 161 dwelling units are proposed. The project fulfills a community need by providing additional housing where vacancy rates are low and demand remains high. The project is superior in design and follows the goals and recommendations of the Linda Vista Community Plan (Page 118) and the Progress Guide and General Plan by clustering the development in a small portion of the site. This preserves sensitive environmental resources and respects the adjacent hillsides. The project also provides adequate parking, screening and landscaping on the site.

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and potential impacts to the environment have been reviewed and considered. It has been determined that these potential impacts can be reduced to a level below significance through the incorporation of mitigation measures. These mitigation measures have been incorporated into the project as conditions of the draft permit and will be implemented through a Mitigation, Monitoring and Reporting Program.

Therefore, due to these efforts it has been concluded that the proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or Community Plan.

3. The proposed development will be sited, designed, constructed and maintained to minimize, if not preclude, adverse impacts on environmentally sensitive lands.

The project is clustered on a small flat portion of the slope thereby preserving the majority of steep slopes and sensitive environmental resources on the site. The residential only project is also in conformance with the Linda Vista Community Plan which specifically allows residential only development to locate within areas designated for office commercial developments.

The project is clustered on a section of flat land at the western end of the lot and is designed to avoid steep slopes and sensitive vegetation. The development will encroach into no more than 13.4% of the steep slope area where 14% is the maximum encroachment allowed, and is within the allowable thresholds of the Resource Protection Ordinance.

The project is located on the flattest, most disturbed portion of the site. The vast majority of the site will remain untouched by the development. The proposed development is consistent with the MSCP in that it minimizes impacts upon sensitive biological resources and provides for necessary mitigation of adverse impacts. This project requires mitigation for impacts to coastal sage scrub, southern willow scrub, and a documented pair of California gnat-catchers. Proposed mitigation includes off-site acquisition of additional habitat or payment of a mitigation fee into the Habitat Acquisition Fund calculated to alleviate the proposed negative impacts.

The majority of the site is not suitable for development and will be preserved through open space easement, dedication or other suitable instrument. The site is further constrained from development by significant utility, drainage and slope easements in the mid, north and easterly portions of the site. These constraints also act to preserve environmentally sensitive lands and natural steep slopes and therefore preclude adverse impacts on environmentally sensitive lands.

4. The proposed development will be sited and designed to prevent adverse impacts on any environmentally sensitive lands and resources located in adjacent parks and public open-space areas and will provide adequate buffer areas to protect such resources.

Staffs review of the project and a site visit to the area has determined that there are neither parks nor public open-space areas adjacent to the site. Therefore there is no need to site or design the project to provide adequate buffer areas to protect such nonexistent conditions. However, the project is proposed to be developed on the flattest portion of the 8-acre site, in an area closest to Friars Road from which vehicular access will be provided. The vast majority of the site will remain untouched by the development.

5. The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and /or flood and fire hazards.

The project will be sited on the flattest portion of the site in close proximity to Friars Road, and will avoid the vast majority of steep slopes and sensitive vegetation on the 8-acre site. The project pad is comprised of approximately 1.8-acres located on the flattest and most westerly portion of the site. The structure will be imbedded into a portion of the hillside which will minimize and reduce unnecessary landform alteration.

Prior to issuance of any grading or building permits, staff review of submitted grading and building plans will determine suitability of the development for the geology of the site. Implementation of appropriate conditions and construction methods will be required to minimize undue risks from geological and erosional forces. A drainage easement will be utilized to convey site drainage into appropriate discharge areas. Due to the site being on a portion of a steep hillside, no risks of flooding are present. Site drainage will be directed into existing drainage basins within Friars Road. A brush management program will be implemented consisting of Brush Management Zones 1, 2 and 3 which will partially extend off-site. If the off-site condition is determined to be unacceptable, alternative compliance will be implemented which will reduce risks from fire hazards.

Based on these provisions, it has been determined that the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and /or flood and fire hazards.

6. Feasible measures, as defined in this section, to protect and preserve the special character or the special historical, architectural, archaeological or cultural value of the affected significant prehistoric or historic site or resource have been provided by the applicant.

A site analysis has been conducted and it has been determined that impacts to the paleontological resources may occur as a result of project implementation. Pursuant to the California Environmental Quality Act, mitigation measures have been made conditions of approval and will be fulfilled with project implementation. Implementation of these measures has been agreed to be the Applicant. Site evaluation and analysis has determined that the site has no special character, or special historical, architectural, archaeological, cultural or historic value. Mitigation monitoring of site grading activities will ensure that any paleontological/prehistoric resources discovered during construction will be appropriately preserved. Further, appropriate procedures are contained in the MMRP requiring pre-construction, during construction, and post-construction efforts to adequately implement mitigation measures.

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

[Approved] BE IT FURTHER RESOLVED, that the appeal of **INSERT APPELLANT(S) NAME(S)** is **INSERT "granted" or "denied"**; the decision of the Planning Commission is **INSERT "sustained" or "overruled"**; and **INSERT NAME OF PERMIT** Permit No. **NUMBER** is

granted to **INSERT NAME(S)**, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

[Denied] BE IT FURTHER RESOLVED, that the appeal of **INSERT APPELLANT(S)** **NAME(S)** is **INSERT "granted" or "denied"**; the decision of the Planning Commission is **INSERT "sustained" or "overruled"**; and **INSERT NAME OF PERMIT** Permit No. **NUMBER** is denied.

APPROVED: CASEY GWINN, City Attorney

By _____
NAME
Deputy City Attorney

ATTY/SEC. INITIALS

DATE

Or.Dept:Clerk

R-**INSERT**

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Reviewed by **NAME OF PROJECT MANAGER**