

RESOLUTION NO. 2025-07

**RESOLUTION OF THE SAUSALITO PLANNING COMMISSION
UPHOLDING IN PART AND DENYING IN PART AN APPEAL OF AN ADMINISTRATIVE
DETERMINATION REGARDING THE CONSISTENCY OF THE PROJECT WITH THE CITY'S
APPLICABLE PLANS AND THE PROJECT'S ELIGIBILITY FOR AN EXEMPTION FROM
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), WITH REGARD TO A
PROPOSED MIXED USE DEVELOPMENT AT
605-613 BRIDGEWAY (APN: 065-132-16) PROJECT ID: 2024-00014**

WHEREAS, on August 15, 2023, a preliminary application was filed for a proposed mixed-use development at 605-613 Bridgeway by Ms. Linda Fotsch, Managing Partner on behalf of property owner Willy's LLC; and

WHEREAS, on January 31, 2024, a formal project application for a proposed mixed-use development at 605-613 Bridgeway was filed by Linda Fotsch Managing Partner on behalf of property owner Willy's LLC, and upon review by staff was determined to be incomplete on February 28, 2024; and

WHEREAS, following multiple resubmittals, meetings with the project proponents and additional written determinations finding the project as filed to be incomplete, the application was then determined to be complete on October 17, 2024; and

WHEREAS, as required by Government Code Section 65589.5(j)(2), on November 14, 2024 the City provided the applicant with written documentation of any applicable "plan, program, policy, ordinance, standard, requirement, or other similar provision" that the project does not comply with, identifying the provisions and explaining the reasons the project was not compliant; and

WHEREAS, on November 27, 2024, the applicant's representative Brian O'Neill of Patterson & O'Neill PC responded to staff's November 17, 2024, letter, requesting the opportunity to appeal staff's determinations; and

WHEREAS, on December 17, 2024, the City provided a written response and stated that the applicant may appeal staff's determinations to the Planning Commission; and

WHEREAS, On December 27, 2024, the applicant filed a formal appeal of staff's determinations of consistency and the project's eligibility for an exemption from the California Environmental Quality Act; and

WHEREAS, on April 2, 2025, the Planning Commission held a duly and properly noticed public hearing on the appeal of the staff administrative determinations and reviewed and considered the information contained in the staff report as well as any and all oral and written testimony on the appeal. Based on the totality of the record, the Planning Commission upholds the appeal in part and denies the appeal in part and makes the determinations and findings below.

NOW, THEREFORE, THE PLANNING COMMISSION HEREBY RESOLVES:

Section 1. The recitals above are true and correct and are incorporated by reference into this action.

Section 2. The Planning Commission upholds the portion of the appeal based on the affordability level of the proposed affordable units, based on the findings attached hereto in Exhibit A.

Section 3. The Planning Commission denies the remaining portions of the appeal, based on the findings attached hereto in Exhibit A.

Section 4. The Planning Commission's action on this appeal is not a project because it merely determines whether the City properly determined the project's consistency with the City's applicable plans, programs, policies, ordinances, standards, requirements, and similar provisions and whether the project was eligible for an exemption from the California Environmental Quality Act. However, if a court of competent jurisdiction shall determine that the Planning Commission's action effectively denies the project, the Planning Commission adopts the findings allowing denial attached hereto in Exhibit A.

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Sausalito Planning Commission on the 2nd day of April 2025 by the following vote:

AYES:	Planning Commissioner:	Feller, Luxenberg, Marlatt, Saad
NOES:	Planning Commissioner:	Junius
ABSENT:	Planning Commissioner:	
ABSTAIN:	Planning Commissioner:	


Nastassya Saad (Apr 7, 2025 12:03 PDT)

NASTASSYA SAAD
CHAIR

ATTEST:

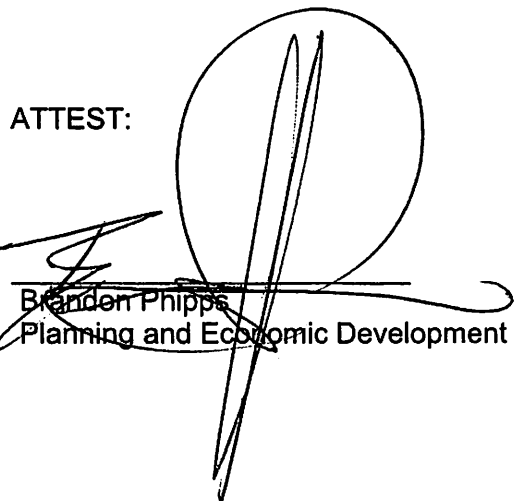

Brandon Phipps
Planning and Economic Development Director

EXHIBIT A

FINDINGS

1. **Findings to Uphold Appeal.** The Planning Commission upholds the portion of the appeal based on the affordability level of the proposed affordable units, in that lower income affordable units may replace moderate income affordable units, and finds that the project is consistent with Sausalito Municipal Code (SMC) Section 10.40.140.1.a and Section 10.44.190.C.2.a (portions of Items #11 and #12 in the consistency letter of November 14, 2024) , in that it contains 22 to 28 percent of the units as affordable to lower or moderate income households.
2. **Findings to Deny Appeal.**
 - a. **Project Density.** The Planning Commission finds that the project density is inconsistent with the City's zoning ordinance and general plan land use designation as specified in any element of the General Plan, including the Housing Element.
 - i. The zoning ordinance (SMC Sections 10.22.040, Table 10.22-2, and 10.24.050, Table 10.24-2) and Land Use Element of the General Plan allow a maximum density of 29 units per acre. The Housing Element allows a maximum density of 49 units per acre. No other element of the General Plan allows a different density. The project proposes 98 units per acre, which is not consistent with the zoning ordinance and general plan land use designation as specified in any element of the General Plan.
 - ii. The project is not eligible for a density bonus based on the Housing Element density because "base density," on which a density bonus is based, is defined as: "[T]he greatest number of units allowed under the **zoning ordinance, specific plan, or land use element of the general plan.**" (Government Code Section 65915(o)(6).) The zoning ordinance and the Land Use Element of the General Plan allow 29 units per acre, not 49 units per acre. The City has been advised by the Department of Housing and Community Development that the Housing Element density cannot serve as "base density."
 - iii. The project does not meet the requirements of Government Code Section 65589.5(f)(8) because it is not consistent with the density in the City's Housing Element. Nothing in the relevant code sections in the Housing Accountability Act (Section 65589.5) states that the Housing Element density may serve as the "base density."
 - b. **Inconsistency with Development Standards.** The Planning Commission finds that, with the exception of the portion of the appeal granted above, the letter of November 14, 2024, as modified by the letter of December 17, 2024, accurately describes the project's inconsistencies with the City's applicable plans, programs, policies, ordinances, standards, requirements, and similar provision. No evidence has been presented that the City's description of its requirements is inaccurate, or that the City has incorrectly determined the project's compliance with those requirements.

- i. **Concessions and Waivers.** The applicant may apply for concessions and waivers under density bonus law (Government Code Section 65915 *et seq.*), which if granted may resolve the inconsistencies. However, the number of concessions requested exceeds the number that the project is entitled to; multiple concessions – “a concession from all R-3 standards” – are requested as one concession. Each concession may request only one deviation from a development standard.
 - ii. **Alternative Development Standards.** The project does not meet the requirements of Government Code Section 65589.5(f)(8) because it is not consistent with the density in the City’s Housing Element. Only projects consistent with the density in the City’s Housing Element may specify alternative development standards applicable to the site.
 - iii. **Applicability of Ordinance No. 1022 (Fair Traffic Limits Initiative).** The text of Ordinance No. 1022 unambiguously applies to the portion of the site zoned CC, and its provisions may not be modified except by a vote of the people. State density bonus law permits the applicant to request waivers or concessions to the development standards contained in Ordinance No. 1022 and to request a density bonus based on the existing zoning.
 - iv. **Location and Size of Affordable Units.** The location and design of the affordable units does not meet the requirements of the City’s code regarding the number of bedrooms, with many fewer large units for families than in the market-rate units, and places the units in limited small areas on each floor, creating a disparate impact on families with children, in violation of California’s Fair Employment and Housing Act, the Fair Housing Act, the City’s obligation to affirmatively further fair housing, and Health and Safety Code Section 17929(a)(2).
- c. **Eligibility for Exemption from the California Environmental Quality Act.** The Planning Commission finds that the project is not eligible for the Class 32 Infill Exemption or the Guidelines Section 15183 exemption, based on the information submitted in the record, and that the staff may determine that a project is not eligible for a CEQA exemption due to its impact on historic buildings:
- i. The buildings at 605-613 Bridgeway are listed on the California Register of Historical Resources.
 - ii. The City has substantial evidence provided by four historic reports (either commissioned by or submitted to the City), that the project may cause a substantial adverse change in the significance of the existing buildings at 605-613 Bridgeway and in the size of the Sausalito Historic District. The project is therefore not eligible for the Class 32 Infill exemption. (Guidelines Section 15300.2(f).) Substantial evidence has not been provided demonstrating that the project would not result in any significant effects related to traffic, noise, air quality, or water quality.
 - iii. No required evidence has been submitted demonstrating that the project is

eligible for the Guidelines Section 15183 statutory exemption. The project density exceeds that examined in the City's General Plan EIR (98 units per acre proposed, v. 29 units per acre examined in plan).

- iv. The initial review of the project by City staff to determine if the project was exempt from CEQA conformed to the City's ordinances and guidelines, which do not require *public* environmental review until environmental documents are complete and require the staff to make the initial determination of whether a project is exempt or will need a negative declaration or EIR.
- v. The City has not been able to conduct further environmental review because the applicant has not paid the City's fee for conducting an initial study.

3. **Findings Allowing Project Denial.** The Planning Commission is not taking an action to approve or to deny the project. The Commission is only determining whether the City properly determined the project's consistency with the City's applicable plans, programs, policies, ordinances, standards, requirements, and similar provisions and whether the project was eligible for an exemption from the California Environmental Quality Act. However, the Commission is aware that some trial courts have determined that findings of inconsistency constitute an effective denial of a project. Should a court of competent jurisdiction make a finding that the City's action constitutes denial, the following findings would allow project denial:

- a. The proposed housing development project does not comply with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time the application was complete. The project proposes 98 units per acre, which is not consistent with the zoning ordinance and general plan land use designation as specified in any element of the General Plan. The project does not conform with numerous specific zoning and subdivision standards, as shown in Table One in the staff report. The applicant did not appeal all the inconsistency findings in the November 14 letter, as shown in Table One, and even if all the applicant's contentions are correct regarding alternative standards and multiple concessions, the project remains inconsistent with use provisions, subdivision ordinance requirements, and applicable parking design and improvement requirements. Consequently the finding required by Government Code Section 65589.5(j)(1) does not need to be made.
- b. On the date that the application for the housing development project was deemed complete (August 15, 2023), the City had adopted a 6th cycle housing element approved by the Department of Housing and Community Development, and the project is inconsistent with both the zoning ordinance and general plan land use designation as specified in any element of the general plan, in that the density of 98 units per acre exceeds the density of 29 units per acre allowed in the zoning ordinance and General Plan Land Use Element and the density of 49 units per acre allowed in the Housing Element. Although the site is a candidate site for rezoning that is identified a suitable or available for very low, low-, or moderate-income households in the Housing Element, the project exceeds the density in the Housing Element (98 units per acre proposed v. 49 units per acre allowed), and is not eligible for a density bonus, as described above. (Finding required by

Government Code Section 65589.5(d)(5).)