



## Fremont City Council

3300 Capitol Avenue  
Fremont, CA 94538

**SCHEDULED**

Meeting: 01/15/19 07:00 PM

Div/Dept: Planning

Category: Appeals

### STAFF REPORT (ID # 3628)

Sponsors:

DOC ID: 3628

**PALMIA AT MISSION FALLS CONDOMINIUM MAP APPEAL – 47201 Mission Falls Court – PLN2018-00222 - Public Hearing (Published Notice) to Consider an Appeal of the Planning Commission's Denial of an Amendment to Planned District P-2017-297 and a Tentative Parcel Map for Condominium Purposes (Map No. 10810) to Allow a Previously-Approved 171-Unit Rental Apartment Project (Palmia at Mission Falls) for Seniors to be Changed to a For-Sale Condominium Project for Seniors at 47201 Mission Falls Court in the Warm Springs Community Plan Area, and to Consider a Finding that the Proposed Project is Exempt from the Requirements of the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Section 15061(b)(4), which Exempts Projects that Will Be Rejected or Disapproved. (CONTINUED FROM THE DECEMBER 18, 2018 CITY COUNCIL MEETING)**

#### Contact Persons:

Name:	James Willis	Kristie Wheeler
Title:	Associate Planner	Planning Manager
Div/Dept:	Planning	Planning
Phone:	510-494-4449	510-494-4454
E-Mail:	jwillis@fremont.gov	kwheeler@fremont.gov

**Executive Summary:** The applicant proposes an amendment to Planned District P-2017-297 and a Tentative Parcel Map for Condominium Purposes to convert a previously approved 171-unit senior rental apartment project to a for-sale condominium project for seniors at 47201 Mission Falls Court. A rezoning would be necessary to construct senior condominiums because the approved Precise Planned District for the subject property specified that the project would be senior rental apartments.

On October 25, 2018 the Planning Commission held a public hearing and voted unanimously to approve staff's recommendation to deny the application. In denying the application, several Commissioners commented they were in favor of the original project because it was to provide a unique housing opportunity, i.e., market rate rental housing for seniors, 55 and older. The October 25<sup>th</sup> Planning Commission staff report and draft minutes are included in the attachments as Informational 2 and 3, respectively.

Within the 10-day appeal period, the applicant filed an appeal of the Planning Commission decision (refer to Informational 1). The grounds for the appeal and staff's analysis is provided below under Discussion/Analysis.

#### Background:

##### **Parc 55 Background**

On March 1, 2016, the City Council approved: a General Plan Amendment to change the land use designation for a 23.5-acre site comprised of five contiguous parcels from Tech Industrial to Urban Residential (30-70 units per net acre) to Medium Density Residential (14.6-29.9 units per net acre) and Public Facility; a Rezoning of the same site from I-R

(Restricted Industrial) to a Preliminary Planned District (P-2014-45) and R-3-50 (Multifamily Residential); and a Development Agreement to allow the development of an age-restricted master-planned community containing up to 497 units for seniors aged 55 years and older, and including an approximately 15,000-square-foot public senior community center. Of the 497 housing units, 90 were proposed to be affordable rental units; 171 were proposed to be market-rate rental units; and 236 were proposed to be ownership units.

As part of the Development Agreement, the developer, East Warren Park, LLC, agreed to donate 2.25 acres of the overall 23.5-acre project site to Eden Housing for an affordable housing project exclusively for lower income senior households. Four out of the five parcels (including the subject parcel) were rezoned to Preliminary Planned District P-2014-45, while the 2.25-acre site was rezoned to R-3-50 (Multifamily Residential).

### ***Palma Background***

The project site consists of a single 4.4-acre parcel, which was formerly part of a larger 6.77-acre parcel located at 47201 Mission Falls Court. On November 9, 2016, the Planning Manager approved a Lot Line Adjustment (PLN2017-00072), which created the 4.4-acre project site from the original, larger parcel, along with a 1.5-acre site for the future public senior community center between the project site and the Eden Housing site. The project site was rezoned to Precise Planned District P-2017-297 on November 21, 2017, in order to enable it to move forward as a separate component from the remainder of the Parc 55 Preliminary PD, including the public senior community center that was not yet ready to be rezoned to a Precise PD. The title and recitals contained in the ordinance creating Precise Planned District P-2017-297 (Informational 4) identified the site as being intended for apartment housing. The plans, development provisions, and findings and conditions of approval incorporated into the ordinance by reference also required that the site be used for senior, market-rate rental apartment housing, as did the staff report for the ordinance, which indicated that the project conformed to the General Plan and fostered the public interest in part because it would "offer a rare rental opportunity specifically for seniors."

**DISCUSSION/ANALYSIS:** The project before the City Council is an appeal of the Planning Commission's denial of a proposed amendment to Planned District P-2017-297 and a Tentative Parcel Map for Condominium Purposes for the Palma at Mission Falls project. As documented in the October 25, 2018 Planning Commission staff report, Planned District P-2017-297 was found to be in conformance with the General Plan in part because it would integrate a senior rental housing project into a larger senior community, providing a rare opportunity for seniors who do not wish to own homes or cannot afford home ownership but who prefer to live in rental housing in proximity to other seniors. The proposed elimination of the market-rate senior rental housing would reduce the variety of housing types in the Parc 55 master-planned community, in conflict with policies in the Community Character and Housing Elements of the General Plan. Furthermore, the intent of the Planned District approval was clearly to authorize a market-rate rental development as part of a larger master-planned senior housing project. Because the Planned District zoning specifically allows only a senior rental housing project, and because the proposed project would not conform to the General Plan goals and policies, staff did not recommend approval of the Planned District Amendment and Tentative Parcel Map to the Planning Commission.

### ***Grounds of the Appeal***

The appellant has listed three grounds for their appeal. The grounds of the appeal and brief response are as follows:

**Ground #1: "We disagree with the staff recommendation as well as the Planning Commission vote. We believe that the need for housing within the Bay Area as a whole and the City of Fremont in particular, outweighs staff's desire to add to the market rate rental stock."**

**Ground #2: "We believe staff's analysis with regard to their findings are incorrect and faulty. Our project, whether as rental or for sale, provides much needed housing into the City, particularly for the age restricted community. Staff's belief that we are taking away rental stock from the City, assumes that the rental stock is already present, or is guaranteed to be built if their recommendation for denial is followed. That is not the case. It is economically infeasible for us to move forward with an age restricted market rate rental community. Even if the project was not age restricted, given the costs of construction and amount of fees, we do not believe that market rate apartments are economically feasible."**

**Ground #3: "We wish to pose this question to the City Council... Do they wish to add a great project for the age restricted (55+ years or older) community within the City of Fremont, or leave the site in mothballs until rental rates have risen dramatically or construction costs have fallen drastically?"**

Analysis: The proposed amendment to P-2017-297 would eliminate the only market-rate rental senior units in the Parc 55 development. The rental project would provide a greater community benefit by providing a greater range of housing product types, consistent with the goals of the General Plan. The intention that the subject site would be developed for rental housing was part of the overall master plan for the Parc 55 community. Moreover, the fact that the subject site would provide a rare market-rate rental opportunity specifically for seniors was a substantial factor in the City's willingness to approve a Precise Plan for the site that included exemptions and modifications from standard ordinance requirements for multi-family zoning districts. Additionally, although a for-sale residential project would pay a higher affordable housing fee than a rental housing project, the reason the fee is lower for unmapped rental projects is because the City Council made a conscious policy choice to try to incentivize production of market-rate rental units. If the City truly were indifferent regarding rental versus ownership, the fees for new rental projects would have been set at the maximum allowable level, as was done for market-rate ownership housing. Instead, they were set significantly lower.

### ***Options for City Council***

According to Fremont Municipal Code Section 18.300.050, the City Council may take any of the following actions in ruling on an appeal: "[To] affirm, reverse, or modify the decision appealed and [] take any action which might have been taken in the first instance by the body from whose action is being appealed. If new or different evidence is presented on appeal, the review body may also refer the matter for reconsideration to the body whose action is being appealed."

Staff recommends the City Council deny the appeal and uphold the Planning Commission's decision to deny project approval based on the findings below. Approval of the proposed Planned District Amendment and Tentative Parcel Map for Condominium Purposes would create a project that contains predominantly ownership units rather than one that includes a mix of ownership and rental housing. Approval of the project would be inconsistent with

various City policies promoting a range of housing types. Additionally, creation of rental housing is a strategy for minimizing rent increases Citywide by better matching supply with demand.

### ***Findings for Denial***

#### Precise Planned District Rezoning Findings

Pursuant to FMC Section 18.225.050, in order to approve the Precise Planned District Rezoning, the City Council, would have to make the following two findings, which cannot be made as described below:

**1. The proposed Precise PD rezoning is consistent with the General Plan.**

Analysis: The proposed Planned District rezoning would not be consistent with General Plan policies identified in the Planning Commission staff report. Specifically, the elimination of the market-rate senior rental housing from the Parc 55 project would reduce the variety of housing stock intended by the Planning Commission and City Council as part of the initial approvals of the project.

**2. The proposed Precise PD rezoning furthers the public interest, convenience and general welfare of the city.**

Analysis: The proposed Planned District rezoning would not further the public interest, convenience, and general welfare of the City because the originally approved market-rate senior rental housing would provide more community benefits to the City, and the public at-large, than a for-sale senior housing project.

#### Precise Planned District Findings

Pursuant to FMC Section 18.110.070, in order to approve the Precise Planned District, the City Council would have to make the following findings, some of which cannot be made as described below:

**1. The P district is consistent with the city's general plan and any applicable community or specific plan.**

Analysis: The proposed Planned District Amendment would not be consistent with General Plan policies identified in the Planning Commission staff report. Specifically, the elimination of the market-rate senior rental housing from the Parc 55 project would reduce the variety of housing stock intended by the Planning Commission and City Council as part of the initial approvals of the project.

**2. The precise plan and supplementary documents incorporate and conform to the required standards of Section 18.110.020 and, where applicable, Section 18.110.030.**

Analysis: The precise plan for the project incorporates and conforms to the required standards of FMC Section 18.110.020 in that the standards for area, coverage, density, yard requirements, parking and screening for the proposed P district use are governed by the standards of the R-3-50 (Multifamily Residence) zoning district, which is most similar in nature and function to the proposed P district use of

multifamily senior apartment units, as determined by applicable ordinances and laws of the City.

**3. The uses proposed will not be detrimental to present and potential surrounding uses.**

Analysis: The proposed amendment to Planned District P-2017-297 would reduce the available rental senior housing stock in the area making the market-rate component of the Parc 55 development entirely for-sale units. The elimination of the market-rate senior rental housing from the Parc 55 project would reduce the variety of housing stock intended by the Planning Commission and City Council as part of the initial approvals of the project.

**4. The project provides suitable and adequate connections and capacity for both circulation and infrastructure to surrounding properties;**

Analysis: There are no proposed changes to the approved circulation and infrastructure as part of the proposed amendment to the existing Planned District to allow a condominium map.

**5. Existing or proposed utility services are adequate for the development;**

Analysis: There are no proposed changes to the approved utility services for the development.

**6. Any exception or modification from standard ordinance requirements will encourage a desirable living environment and is warranted by the design and amenities incorporated in the precise plan or provided to the community at large;**

Analysis: The proposed amendment to P-2017-297 would eliminate the only market-rate rental senior units in the Parc 55 development. The rental project would provide a greater community benefit by providing a greater range of housing product types, consistent with the goals of the General Plan. The intention that the subject site would be developed for rental housing was part of the overall master plan for the Parc 55 community. Moreover, the fact that the subject site would provide a rare market-rate rental opportunity specifically for seniors was a substantial factor in the City's willingness to approve a Precise Plan for the site that included exemptions and modifications from standard ordinance requirements for multi-family zoning districts.

**7. The project substantially conforms to any applicable design guidelines.**

Analysis: There are no proposed changes to the approved design of the project.

Tentative Parcel Map Findings

Pursuant to FMC Section 17.20.200, the City Council shall deny approval of a tentative map if it can make any of the following findings:

**1. The map fails to meet or perform one or more requirements or conditions imposed by the Map Act or this title. Any such requirement or condition shall**

**be specified.**

- 2. The proposed subdivision, together with the provisions for its design and improvement, is not consistent with applicable general and specific plans. Any such inconsistency shall be specified.**
- 3. The site is not physically suitable for the type or proposed density of development.**
- 4. The design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.**
- 5. The design of the subdivision or the type of improvements is likely to cause serious public health problems.**
- 6. The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the commission may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the commission to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.**

Analysis: FMC Section 17.05.030(a) requires that maps be in conformity with applicable zoning. Thus, the finding stated in FMC Section 17.20.200(a) that the map meets all of the requirements of the City's Subdivision Ordinance cannot be made because the proposed Tentative Parcel Map for Condominium Purposes does not conform to the established Planned District zoning. The Planned District specifically approved a market-rate senior rental project. The proposed map also does not conform to the General Plan policies and goals for reasons enumerated in the staff report above.

**FISCAL IMPACT:** None.

**ENVIRONMENTAL REVIEW:** The proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(4), which exempts projects that will be rejected or disapproved.

**ATTACHMENTS:**

- Informational 1 - Applicant Appeal Justification
- Informational 2 - PLN2017-00297 Staff Report & Conditions of Approval
- Informational 3 - Draft Planning Commission Minutes
- Informational 4 - Ordinance 19-2017
- Informational 5 - Proposed Tentative Map

- Informational 6 - Project Location

**RECOMMENDATIONS:**

1. Hold public hearing.
2. Find that the project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(4), which exempts projects that will be rejected or disapproved.
3. Deny the appeal.
4. Uphold the Planning Commission's decision to deny the application to amend Precise Planned District P-2017-297, based on findings specified in FMC Sections 18.110.070 and 18.225.050.
5. Uphold the Planning Commission's decision to deny the application for a Tentative Parcel Map for Condominium Purposes based on findings specified in FMC Section 17.20.200.