



City of San Bernardino
Request for Council Action

Date: August 21, 2024

To: Honorable Mayor and City Council Members

From: Rochelle Clayton, Acting City Manager
Gabriel Elliott, Director of Community Development and Housing

Department: Community Development & Housing

Subject: **Appeal 24-02 of Appeal 24-01 for Development Permit Type-D 21-18, 19, 20, and 21 (Ward 3)**

Recommendation:

It is recommended that the Mayor and City Council of the City of San Bernardino, California adopt Resolution No. 2024-145 denying Appeal 24-02, thereby upholding the Planning Commission's denial of Appeal 24-01 for Development Permit Type-D 21-18, 19, 20, and 21, which upholds the Development and Environmental Review Committee's (DERC) adoption of the Mitigated Negative Declaration in conjunction with the approval of Development Permit Type-D 21-18, 19, 20, and 21, allowing the development and establishment of five (5) service commercial buildings totaling approximately 67,451 square feet on several APNs for a combined 4.81 acres within the Commercial Regional (CR-3) zone.

Executive Summary

Adopting the Resolution and Mitigated Negative Declaration will deny the appeal and ultimately allow for the development and establishment of five (5) service commercial buildings. The commercial buildings total 67,451 square feet on 4.81 acres of land across several APNs located between Hardt Street and E. Brier Drive, which is within the Commercial Regional (CR-3) zone. The DERC approved the project at its regular meeting on February 14, 2024, where the approval was appealed to the Planning Commission by the Supporters Alliance for Environmental Responsibility (SAFER). The Planning Commission denied SAFER's appeal (Appeal 24-01) and upheld the DERC's approval of the project on April 9, 2024. SAFER is now appealing the Planning Commission's decision to the Mayor and City Council (Appeal 24-02). Staff recommends denying SAFER's appeal and upholding the actions of the Planning Commission and DERC.

Background

On March 16, 2023, Development Permit Type-D 21-08, 19, 20, and 21 was submitted and received by staff for a request to allow the development and establishment of five (5) service commercial buildings totaling approximately 67,451 square feet on several APNs for a combined 4.81 acres (the project).

On February 14, 2024, pursuant to the requirements of Section 19.52.040 (Hearings and Appeals - Hearing Procedures) of the City of San Bernardino Development Code, the City of San Bernardino's DERC held a duly noticed public hearing for Development Permit Type-D 21-18, 19, 20, and 21 for the project in conjunction with the adoption of an Initial Study/Mitigated Negative Declaration (IS/MND) per the State CEQA guidelines.

During the duly noticed public hearing, staff presented the proposals for Development Permit Type-D 21-18, 19, 20, and 21 to D/ERC, and read into the record the letter received in opposition to the project as submitted by Supporters Alliance for Environmental Responsibility (SAFER), opposing the Mitigated Negative Declaration prepared for the project. Additionally, letters of opposition to the project were also submitted by Melvin E. Norman of the Inland Empire Biking Alliance and Shawn Smallwood, Biologist with SAFER.

After public testimony, the DERC voted to approve the project based on the Finding of Facts, recommended Conditions of Approval, and CEQA determination. The motion to approve was made by Mina Bishara and seconded by Ryan Castillo. The motion carried the following vote:

Ayes: Bishara, Jabsheh, Sepulveda, Lindberg, Castro, Markloff
Nays: None
Abstain: None
Absent: None

On February 27, 2024, the appellant SAFER filed the application of Appeal 24-01 for Development Permit Type-D 21-18, 19, 20, and 21.

On April 9, 2024, the Planning Commission considered the request for Appeal of the project including the adoption of the IS/MND per the State CEQA Guidelines. After public testimony, the Planning Commission voted to adopt Resolution 2024-014 denying Appeal 24-01 and approving the project based on the Finding of Facts and recommended Conditions of Approval and upheld the DERC's approval of Development Permit Type-D 21-18, 19, 20, and 21 and the MND.

The Motion to approve was made by Orlando Garcia and seconded by Ivan Garcia. The motion carried by the following vote:

Ayes: Lopez, I. Garcia, Sherrick, O. Garcia
Nays: Armstead, Flores
Abstain: None
Absent: Quiel, Lewis III

On April 22, 2024 the appellant SAFER filed Appeal 24-02 appealing the Planning Commission's denial of Appeal 24-01. Appeal of Planning Commission's decisions go to the City Council.

On July 3, 2024, pursuant to the requirements of Section 19.52.040 (Hearings and Appeals - Hearing Procedures) of the City of San Bernardino Development Code, the City of San Bernardino's Mayor and City Council held a duly noticed public hearing for Appeal 24-02 of Appeal 24-01 for Development Permit Type-D 21-18, 19, 20, and 21 in conjunction with the adoption of the Initial Study/Mitigated Negative Declaration (IS/MND) per the State CEQA guidelines. At the meeting staff requested a continuance of Appeal 24-02 on behalf the of the applicant, and consent of the appellant to the Mayor and City Council meeting of August 21, 2024, and the request was granted. The Motion to approve a continuance was made by Mayor Helen Tran and seconded by Council Member Fred Shorret. The motion carried by the following vote:

Ayes: Sanchez, Ibarra, Figueroa, Shorett, Tran, Reynoso, Calvin, Alexander
Nays: None
Abstain: None
Absent: None

Discussion

Appeal Grounds:

The appeal is based on a perceived fair argument that the project may have adverse environmental impacts that have not been analyzed and mitigated. Appellant's Letter dated December 13, 2023, is attached (Attachment E: Via hyperlink). The Appellant requests that the City of San Bernardino withdraw the IS/MND and project approvals and instead prepare an Environmental Impact Report for the project pursuant to the California Environmental Quality Act (CEQA).

The Applicants Response to Appellants comments:

The Hardt and Brier Business Park Project underwent an environmental review process as per the California Environmental Quality Act (CEQA), resulting in a Mitigated Negative Declaration (MND) due to findings of less than significant environmental impacts. Substantial evidence, as defined by CEQA, did not support significant environmental effects from the project, negating the need for an Environmental Impact Report (EIR). Hernandez Environmental Services (HES) responded to SAFER's comments, noting that the species listed in their study lacked specific location data, rendering the evidence unreliable for the project site's habitat assessment. Furthermore, the avian species observed, including the California gull, Red-tailed hawk, and California horned lark, do not hold official state or federal endangered statuses, and the proposed mitigation measures were deemed sufficient to reduce potential impacts to a less than significant level.

Project Analysis:

The Hardt and Brier Business Park Project proposes four buildings (A, B, C, D1-D2) on a combined 4.81 acres of land. All buildings are single-story service commercial buildings with varying footprints and total areas:

- **Building A:** Located in the northwest, it has a total area of 17,783 SF (including 1,269 SF mezzanine space) on 1.25 acres. It has a floor area ratio (FAR) of 0.33 and a maximum height of 40 feet.
- **Building B:** Located in the northeast, it has a total area of 17,586 SF (including 1,286 SF mezzanine space) on 1.30 acres. It has a FAR of 0.31 and a maximum height of 38 feet 4 inches.
- **Building C:** Located centrally, south of Hardt Street, it has a total area of 18,323 SF (including 1,275 SF of mezzanine space) on 1.24 acres. It has a FAR of 0.32 and a maximum height of 40 feet.
- **Building D1 and D2:** Located in the southeast, it has a total area of 13,759 SF on 1.02 acres. It has a FAR of 0.31 and a maximum height of 31 feet 8 inches.

The buildings are designed with an open campus concept to avoid an institutional presence. The proposed Project would establish a quality architectural poise through emphasis on building finish materials and consistent material usage and color scheme. The proposed concrete tilt-up buildings would be beige and white with dark gray accents. Cutouts and decorative window facades would be installed to create variety in scale and texture. Each building is set back from the street and property lines, with frontages oriented towards Hardt Street or East Brier Drive. The project is designed to accommodate commercial service uses.

Buildings A, B, C, D1, and D2 in the Hardt and Brier Business Park Project will have dedicated access drives and parking spaces, including ADA, clean air vehicle spaces, and bicycle parking. Buildings A and B will share an access drive off Hardt Street, while Buildings C, D1, and D2 will have their own access drives. The project will utilize Assembly Bill 2097 to reduce parking requirements due to its proximity to public transit.

A traffic study indicates that the project will not significantly impact key intersections or vehicle miles traveled. Landscaping will cover approximately 24% of the site, exceeding the 15% requirement, and will include various trees, shrubs, and groundcover. Opaque screens and 6-foot-tall screen walls will be installed for privacy and spatial separation. The project is designed to be in compliance with the City of San Bernardino Development Code.

Although Development Permit Type-D 21-18, 19, 20, and 21 were approved separately, their abutting location raised concerns about cumulative impact. The combined parcels triggered the need for an Initial Study under the California Environmental Quality Act, and staff required this study due to the project's substantial size and potential impacts on the surrounding area.

The CEQA Document was prepared by a licensed professional consultant E.P.D. Solutions and resulted in proper mitigation for the project. Being that the Mitigated Negative Declaration was adopted for all four (4) of the projects, in the case the Mitigated Negative Declaration is invalidated, then all four of the projects would also be invalidated and the appeal upheld.

2021-2025 Strategic Targets and Goals

The proposed project aligns with the Mayor and City Council 2021-2025 Key Strategic Targets and Goals as follows:

Economic Growth and Development

The proposed development will create an economic benefit to the surrounding businesses by developing an underutilized parcel that has been designed to achieve visual interest and clean landscaping which will result in an attractive project that compliments the surrounding commercial developments.

Fiscal Impact

There is no fiscal impact to the General Fund associated with this report.

Conclusion

It is recommended that the Mayor and City Council of the City of San Bernardino, California adopt Resolution No. 2024-145 denying Appeal 24-02, thereby upholding the Planning Commission's denial of Appeal 24-01 for Development Permit Type-D 21-18, 19, 20, and 21, which upholds the Development and Environmental Review Committee's (DERC) adoption of the Mitigated Negative Declaration in conjunction with the approval of Development Permit Type-D 21-18, 19, 20, and 21, allowing the development and establishment of five (5) service commercial buildings totaling approximately 67,451 square feet on several APNs for a combined 4.81 acres within the Commercial Regional (CR-3) zone.

Attachments

Attachment 1	Resolution No. 2024-145 (Updated Denial of AP 24-02)
Attachment 2	Resolution No. 2024-145 (Exhibit "A" Project Plans)
Attachment 3	Resolution No.2024-145 (Exhibit "B" Mitigation Monitoring Reporting Program)
Attachment 4	Executed Planning Commission Resolution No. 2024-014 (Denial of Appeal 24-01)
Attachment 5	Executed Development and Environmental Review Committee Resolution No. 2023-044 through 47 (Approval of Development Permit Type-D 21-18, 19, 20, and 21.
Attachment 6	Presentation
Attachment 7	Newspaper Publication
Attachment 8	Resolution 2024-145_ Appellant comments-applicants response to comments

Ward:

Third Ward

Synopsis of Previous Council Actions:

At the duly noticed public hearing of the Mayor and City Council on July 3, 2024, Appeal 24-02 of Appeal 24-01 for Development Permit Type-D 21-18, 19, 20, and 21 was continued to the Mayor and City Council meeting of August 21, 2024 for consideration.