

**CITY OF MERCED  
Planning Commission**

**Resolution #4123**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of October 4, 2023, held a public hearing and considered **Density Bonus #23-02**, initiated by The Richman Group on behalf of Devonwood 64, LP, property owner. This application involves a request to consider Density Bonus #23-02 which allows concessions to certain development standards and a reduction in parking requirements to allow the construction of a 156-unit apartment complex with 155 affordable housing units on an approximately 6-acre parcel, generally located on the south side of Devonwood Drive, between Loughborough Drive and Austin Avenue; also known as Assessor Parcel: 058-220-048; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings/Considerations A through G of Attachment A of Planning Commission Staff Report #23-824 (Exhibit A); and,

**NOW THEREFORE**, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #23-30, and recommend approval of Density Bonus #23-02, subject to the Findings set forth in Exhibit A, attached hereto and incorporated herein by the reference.

Upon motion by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_ and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4123

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October 4, 2023

Adopted this 4th day of October 2023.

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Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

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Secretary

Exhibits:

Exhibit A – Findings/Considerations

**Findings and Considerations  
 Planning Commission Resolution #4123  
 Density Bonus #23-01**

**FINDINGS/CONSIDERATIONS:**

**State Density Bonus Law**

A) State Density Bonus Law (SDBL) states that a development which meets the requirements of the SDBL is entitled to receive a density bonus to increase the density of a project by right. This means that no discretionary review is required to allow an increase in the density of a project.

In addition to an increase in density, the City is required to grant concessions or incentives proposed by the developer unless it finds one of the following:

- That the proposed concession or incentive does not result in identifiable and actual cost reductions: or,
- Would cause a public health or safety project: or,
- Would cause an environmental problem; or,
- Would harm historical property; or,
- Would be contrary to law.

The City has the burden of proof in the event it declines to grant a requested incentive or concession. Financial incentives, fee waivers, and reductions in dedication requirements may be, but are not required to be, granted by the City.

The number of required incentives or concessions is based on the percentage of affordable units in the project as shown in the table below:

<b>No. of Incentives / Concessions</b>	<b>Very Low-Income Percentage</b>	<b>Low-Income Percentage</b>	<b>Moderate Income Percentage</b>
1	5%	10%	10%
2	10%	17%	20%
3	15%	24%	30%
4	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)

A concession or incentive is defined as:

1. A reduction in site development standards or a modification of zoning requirements or architectural design requirements that exceed the minimum State building standards, such as reductions in setback, square footage, or vehicular and bicycle parking space requirements. The requested concession or incentive must result in an identifiable and actual cost reduction to provide for affordable housing costs or rents.
2. Approval of mixed-use zoning for housing projects if associated commercial, office, industrial, or other land uses will reduce the cost of the housing project, and existing or planned development in the immediate area.
3. Other regulatory incentives or concessions that result in identifiable and actual cost reductions to provide for affordable housing costs, which may include the provision of direct financial incentives or land for the housing development by the City.

Concessions and incentives are differentiated from waivers and reductions in the SDBL. Projects that are eligible for a density bonus, and that are approved for concessions or incentives, cannot be subjected to any development standard that will have the effect of physically precluding the construction of the project. If a local development standard is found to have this effect, applicants have the option of requesting a waiver or reduction of any development standard that may preclude completion of the project; there is no limit on the number of waivers that may be requested. Waivers or reductions do not take the place of concessions or incentives that the project is qualified to receive.

Additional information about Density Bonus Law is provided in the Guide to the California Density Bonus Law (revised January 2023) by Jon Goetz and Tom Sakai of Meyers-Nave Law Firm (Attachment B of Planning Commission Staff Report #23-471).

### **Parking Requirements**

- B) State Density Bonus Law (SDBL) also provides relief from parking requirements. If a project provides 100% affordable housing units to lower income residents (excluding a manager's unit) the City cannot require on-site parking spaces in excess of the requirements shown in the table below:

Studio	1 space
1 Bedroom	1 space
2 Bedroom	1.5 spaces
3 Bedroom	1.5 spaces
4 Bedroom	2.5 spaces

The proposed project consists of 156 units. Based on the current requirements of the Zoning Ordinance, the project as proposed would be required to provide 248 parking spaces. Based on the maximum parking requirements allowed under the Density Bonus Law, the project maximum number of parking spaces the City would be able to require is 200 spaces. The project is proposing 200 parking spaces. Therefore, the project complies with the SDBL and the City shall not require additional parking spaces.

Although the project complies with the minimum parking requirements allowed by SDBL, the letter at Attachment F provides more details as to why the reduction in parking is needed and the cost savings attributed to the reduction.

**Zoning Ordinance Findings**

E) Merced Municipal Code Section 20.56.080 (C) establishes specific findings that must be made to approve a Density Bonus. These findings are as following:

1. *The findings included in Section 20.56.030 (land Donation) if the density bonus is based all or in part on donation of land.*

This finding does not apply as the project does not include land donation.

2. *The findings included in Section 20.56.040 (Child Care Facilities) if the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility.*

This finding does not apply as the project does not include a Child Care Facility.

3. *The findings included in Section 20.56.070 (Modifying Development Standards) if the incentive or concession includes mixed use development.*

This finding does not apply as the project does not include a mixed-use development.

4. *If a waiver or modification is requested, the developer has to prove by submitting substantial evidence that the waiver or modification is necessary to make the housing units economically feasible.*

A 2021 appellate court case, *Schreiber v. City of Los Angeles*, held that a local government may not require an applicant to submit a pro forma or other documentation to prove that a requested incentive or concession is required in order to make the housing development economically feasible. However, local agencies can require applicants to show that requested incentives and concessions will result in cost reductions for the project to provide for affordable housing costs or rents. The local jurisdiction has the burden of proof in the event it declines to grant a requested incentive or concession.

The requested concessions are outlined below along with the applicant's justification as to how the concession would result in cost reductions to provide affordable housing costs or rents.

### **Concessions and Waivers**

#### F) Private Outdoor Space (Concession)

Merced Municipal Code (MMC) Section 20.46.040 establishes design standards for any multi-family dwelling with 5 or more units (or 3 or more units on corner lots). Section 20.46.040 (I) - Private Outdoor Space, subsection (1) states: “**Ground Floor Units.** Every dwelling unit which is on the ground floor should have a private outdoor usable space, if feasible, of a minimum size of 5 feet by 8 feet.” Subsection (2) of this section states: “**Units Above Ground Floor.** Every dwelling unit which is above the ground floor should, if feasible, have a useable outdoor balcony space of a minimum size of 5 feet by 8 feet.

#### *Justification:*

The applicant has requested this concession primarily due to the increased costs involved with providing private outdoor space. The cost of including patios/balconies would have a significant impact on structural design, material cost, waterproofing, and long-term maintenance. Please refer to the letter at Attachment G for additional details.

Additionally, the noise pollution related to the nearby train tracks would expose the private outdoor spaces to above-average noise pollution levels. An acoustic study concluded that the exterior noise level is 75 DNL, which is an above-average level.

#### Roof-mounted Mechanical Equipment (Concession)

The applicant is requesting a relief from Zoning Ordinance Section 20.46.040 (A)(5a) which prohibits roof-mounted mechanical equipment.

#### *Justification:*

Allowing roof-mounted mechanical equipment screened from public view, allows more space on the ground for this small parcel. Placing mechanical equipment on the ground takes up space that could be otherwise used for open space or general outdoor area. Additionally, the cost of a roof-mounted HVAC unit is typically less because the entire unit is on the roof. Ground-mounted units require a portion of the unit to be inside the living area. This not only takes up space, but adds cost to the apartment unit.

As described above, the applicant is requesting three concessions. Based on the affordability, the project is eligible for four concessions. Without the requested concessions, the project would not be feasible to build. The requested concessions would not result in any of the conditions listed in Finding A of this resolution that would result in the denial of the requested concession. Therefore, the concessions comply with State Density Bonus Law.

### **Environmental Clearance**

- G) Planning staff has conducted an environmental review (Environmental Review #23-30) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and recommends a Categorical Exemption based on the previous environmental review (Initial Study #20-32 for GPA #20-01) remains sufficient and no further documentation is required (CEQA Section 15162 Findings) (Attachment H of Planning Commission Staff Report #23-824).