

Attachment 'E'

Resolution No. 2024- _____

A RESOLUTION OF THE CITY OF Kerman Planning Commission Contingently Approving Development Plan Permit 2023-02 to Allow for the Development of Multi-Family Residential Buildings and Related Site Amenities and Variance 2023-01 to Allow a Maximum Building Height of 45 Feet and 3 Stories for the Proposed Multi-Family Residential Buildings, Located on the East Side of South Modoc Avenue between West California Avenue (Proposed) and the West California Avenue Alignment/San Joaquin Valley Railroad (APN 020-160-36S)

WHEREAS, the Planning Commission considered a request for a development plan permit (DPL) 2023-02 filed by Whispering Falls, LLC. ("Applicant"/ "Property Owner") requesting approval of a development plan permit to allow for the development of multi-family residential buildings and related site amenities located on the east side of South Modoc Avenue between West California Avenue (Proposed) and the West California Avenue Alignment/San Joaquin Valley Railroad (APN 020-160-36S) ("project site"); and

WHEREAS, the Applicant submitted Variance 2023-01, requesting a deviation from Kerman Municipal Code to allow an additional 10 feet and 1 story in height, for a total maximum height of 45 feet or 3 stories for the proposed multi-family residential buildings on the project site; and

WHEREAS, Variance 2023-01 is necessary to build additional units to meet the density of the Medium Density Residential and High Density Residential land use designations and the SD-R-2.5 zone district; and

WHEREAS, a public notice was circulated to adjacent properties within a 750-foot radius of the project site and published in the local newspaper at least 10 days prior to the meeting as required by law; and

WHEREAS, a written report was prepared by staff which included a recommendation for approval for Development Plan Permit 2023-02 and Variance 2023-01 and was made available for public review at least 72 hours prior to the public hearing; and

WHEREAS, development of the project will be consistent with the development standards of the SD-R-2.5, including those conditions prescribed by the Planning Commission, and as allowed by approval of Variance 2023-01 based on the evidence contained in the staff report and testimony presented at the public hearing; and

WHEREAS, approval of the project would also require approval of Annexation 2023-01, General Plan Amendment 2023-01, Rezone 2023-01, Tentative Subdivision Map 2023-01, and Conditional Use Permit 2023-02; and

WHEREAS, the City of Kerman, acting as the Lead Agency, prepared an Initial Study, Mitigated Negative Declaration 2023-01 and Mitigation Monitoring and Reporting Program dated June 2024 (SCH #2024040147) for the project, and this related development plan permit and variance, and the project is in compliance with the California Environmental Quality Act (CEQA); and

WHEREAS, the Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring and Reporting Program, and the related development plan permit, variance, and related entitlements were distributed for public review and comment to various local agencies and groups, and public notice of this public hearing was given by mailed and published notice, in accordance with the applicable State and Municipal Codes and standard practices; and

WHEREAS, the Planning Commission has completed its review of the Staff Report and documents submitted for the proposed project, evaluated the information contained in the mitigated negative declaration, and considered testimony received as a part of the public hearing process; and

WHEREAS, the Planning Commission concurrently considered Annexation (ANX) 2023-01, Rezone (REZ) 2023-01, General Plan Amendment (GPA) 2023-01, Conditional Use Permit (CUP) 2023-02, Tentative Subdivision Map (TSM) 2023-01, Development Plans (DPL) 2023-01 and 02, and Variance (VAR) 2023-01

WHEREAS, the Planning Commission held a duly noticed public hearing on July 15, 2024 and considered all of the project and environmental information presented by staff, public testimony, and all of the background information; and

WHEREAS, after deliberation and consideration of all relevant items, the Planning Commission now desires to contingently approve Development Plan Permit 23-02 and Variance 2023-01 such that no decision of approval of Development Plan Permit 23-02 or Variance 2023-01 becomes final and effective until immediately after the City Council adopts Mitigated Negative Declaration 2023-01 and Mitigation Monitoring and Reporting Program, ANX 2023-01, REZ 2023-01, GPA 2023-01, and TSM 2023-01; and if no such approval occurs within 180 days of the adoption of this Resolution, then the Planning Commission intends that Development Plan Permit 23-02 and Variance 2023-01 be set for further consideration and a final decision by the Planning Commission

NOW THEREFORE, the Planning Commission of the City of Kerman resolves as follows:

1. Recitals. The Planning Commission hereby finds that all of the facts set forth in the recitals above are true, correct, and incorporated herein.
2. CEQA. Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, the City, as the Lead Agency, has analyzed the proposed project and has prepared an Initial Study and Mitigated Negative Declaration 2023-01 and Mitigated Monitoring and Reporting Program dated June 2024 (SCH #2024040147) to evaluate the environmental effects of the project, including the proposed development plan permit and variance. The Planning Commission finds that Development Plan Permit 23-01 is consistent with, and has been fully assessed by, the MND, and that Development Plan Permit 23-01 is an entitlement specifically anticipated for the proposed Project in the MND, and is consistent with the purposes and intent of the MND The
3. Development Plan Permit Findings. The Planning Commission has determined to approve Development Plan Permit 2023-02 as permissible under Kerman Municipal Code Section 17.58.060 and determined that the requirements for Development Plan Permit 2023-02 can be made, including those required by the City of Kerman Municipal Code Section 17.58.060 (A) through (I).

4. Contingent Approval of Development Plan Permit 2023-02. Given that all the findings can be made, the Planning Commission approves Development Plan Permit 2023-02 subject to conditions of approval included herein as Exhibit 'E-1' and contingent upon the following:
 - a. The approval of Development Plan Permit 2023-02 shall become final and effective immediately only after the City Council of Kerman i) adopts Mitigated Negative Declaration 2023-01 and the associated Mitigation Monitoring and Reporting Program; ii) approves Annexation 2023-01; iii) approves General Plan Amendment 2023-01; iv) approves Rezone 2023-01 and said ordinance adopting the same then becomes effective; and v) approves Tentative Subdivision Map 2023-01 (collectively "Council Approvals"). If all of the Council Approvals are not made within 180 days of the adoption of this Resolution, then Development Plan Permit 2023-01 shall be returned to the Planning Commission for further consideration and a final decision. If Council Approvals are made within 180 days of the adoption of this Resolution, but any change is made by the Council to any of the Council Approvals in a manner that could reasonably affect the findings of the Planning Commission needed to approve Development Plan Permit 2023-02, or require a modification or addition of a condition of approval to be consistent with a Council Approval, then Development Plan Permit 2023-02 shall be returned to the Planning Commission for further consideration and a final decision.
 - b. The approval of Development Plan Permit 2023-02 is also contingent and shall only become final upon approval of Conditional Use Permit (CUP) 2023-02, which is also concurrently considered and was contingently approved by the Planning Commission subject to Council Approvals. If CUP 2023-02 is not finally approved within 180 days of the adoption of this Resolution, or any change is subsequently made by the Council in response to the same on appeal or by modification to a Council Approval such that it could reasonably affect the findings of the Planning Commission needed to approve Development Plan Permit 2023-02, or require a modification or addition of a condition of approval to be consistent with a CUP 2023-02, then Development Plan Permit 2023-02 shall be returned to the Planning Commission for further consideration and a final decision.
5. Variance Findings. The Planning Commission has determined to approve Variance 2023-01 as permissible under Kerman Municipal Code Section 17.16.030, including that all of the following findings can be made:
 - a. That any variance permit granted shall be subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is situated.

Granting of the variance will be conditioned as to not exceed the maximum height proposed, in compliance with DPL 2023-02. Granting of the variance is necessary to make the development of the site compliant and feasible with all applicable standards.
 - b. That because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning

law is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

The special circumstance in this case is the size of the parcel and the density requirements for the underlying land use designations. Upon approval of Annexation 2023-01, Rezone 2023-01, and General Plan Amendment 2023-01, the site will be annexed and pre-zoned to the smart development zone district, which is consistent with the Medium Density Residential and High-Density Residential land use designations. There is no set minimum density for the MDR land use designation; GPA 2023-01 would set the minimum to five (5) dwelling units per acre. The minimum density allowed for the HDR land use designation is 20 dwelling units per acre. The smart development zone district allows blended densities/averaging densities across land uses as long as the overall minimum density is met and the maximum density is not exceeded. The project proposes 174 dwelling units on an approximately 20-acre site, which would result in a density of 8.7 dwelling units per acre. In order to be consistent with the General Plan, at least 166 units would need to be developed across the site. Without allowance of a third story, or 10 additional feet, for the multi-family units, the project would not be able to meet the density requirements, in addition to meeting all other minimum development standards, parking requirements, and open space requirements, etc. Therefore, the variance is necessary due to these special circumstances.

- c. That the granting of the variance permit will not be contrary to the intent of this title or to the public safety, health and welfare or injurious to other properties in the vicinity.

Approval of the variance is not in conflict with the intent of the title; however, an exemption must be made in order to comply with other applicable development standards including reduced setbacks and an additional 10 feet and one (1) story in height. Approval of the variance will require conditions of approval for the development to ensure that the project does not have adverse effects on the public safety, health, and welfare or injurious to other properties in the vicinity.

- d. A variance has not been granted for a use or activity which is not authorized by the zone regulations governing the parcel of property.

Granting of the variance will not be for a use or activity that is not authorized by the zone regulations governing the subject parcel. The variance is requested for the height of the proposed structure, of a permitted use. Approval would not authorize the use of land prohibited by the zone regulations.

- e. A variance shall not be granted on economic grounds.

Approval of the variance is not based on economic grounds because approval would result in an equal or greater number of developed units, than otherwise would be if the variance is not approved.

6. Contingent Approval of Variance 2023-01. Given that all the findings can be made, the Planning Commission approves Variance 2023-01 subject to conditions of approval included herein as Exhibit 'E-1' and contingent upon the following:
 - a. The approval of Variance 2023-01 shall become final and effective immediately only after the City Council of Kerman i) adopts Mitigated Negative Declaration 2023-01 and the associated Mitigation Monitoring and Reporting Program; ii) approves Annexation 2023-01; iii) approves General Plan Amendment 2023-01; iv) approves Rezone 2023-01 and said ordinance adopting the same then becomes effective; and v) approves Tentative Subdivision Map 2023-01 (collectively "Council Approvals"). If all of the Council Approvals are not made within 180 days of the adoption of this Resolution, then Variance 2023-01 shall be returned to the Planning Commission for further consideration and a final decision. If Council Approvals are made within 180 days of the adoption of this Resolution, but any change is made by the Council to any of the Council Approvals in a manner that could reasonably affect the findings of the Planning Commission needed to approve Variance 2023-01, or require a modification or addition of a condition of approval to be consistent with a Council Approval, then Variance 2023-01 shall be returned to the Planning Commission for further consideration and a final decision.
 - b. The approval of Variance 2023-01 is also contingent and shall only become final upon approval of Conditional Use Permit (CUP) 2023-02, which is also concurrently considered and was contingently approved by the Planning Commission subject to Council Approvals. If CUP 2023-02 is not finally approved within 180 days of the adoption of this Resolution, or any change is subsequently made by the Council in response to the same on appeal or by modification to a Council Approval such that it could reasonably affect the findings of the Planning Commission needed to approve Variance 2023-01, or require a modification or addition of a condition of approval to be consistent with a CUP 2023-02, then Variance 2023-01 shall be returned to the Planning Commission for further consideration and a final decision.
7. Final Action and Appeals. This action shall become final and effective after, and only upon, the prior approvals including the MND and adoption of the Council Approvals and if a timely appeal of Development Plan Permit 2023-02 or Variance 2023-01 is then not filed with the City Clerk in accordance with the provisions of the City of Kerman Zoning Ordinance.

I HEREBY CERTIFY that the foregoing Resolution was approved at a special meeting of the Planning Commission of the City of Kerman on the 15th day of July 2024, and was fully adopted at said meeting by the following vote:

Ayes:

Noes:

Absent:

Recused:

The foregoing resolution is hereby approved.

Scott Bishop
Chairperson

Attest:

Jesus R. Orozco
Planning Commission Secretary

Exhibit 'E-1': Conditions of Approval

EXHIBIT 'E-1'

CONDITIONS OF APPROVAL DEVELOPMENT PLAN PERMIT 2023-02 Whispering Falls Residential Development (Multi-Family)

Notice To Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to the validity of conditions of approval must occur within ninety (90) calendar days after the date of this decision. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

Important: Please Read Carefully

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through Development Plan Permit review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would, on the whole, enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for DPL 2023-02 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) working days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval for this entitlement, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed (including its identification number) and specific reasons why you believe the decision or action appealed should not be upheld, and the identity of the appellant.

Approval of this Development Plan Permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this Development Plan Permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this use permit, the zoning ordinance, and all City standards and specifications. This use permit and site plan review is granted, and the conditions imposed, are based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this use permit. Unless the conditions of approval specifically require an operation inconsistent with the application, a new or revised use permit is required if the operation of this establishment changes or becomes inconsistent with the

application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the use permit, or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the use permit review process, or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this use permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the use permit as delineated herein and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

These conditions are applicable to any person or entity making use of this use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this use permit.

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant’s signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
2. Development of the project shall comply with all applicable conditions of approval, as approved for DPL 2023-02.
3. The applicant’s failure to utilize DPL 2023-02 within one (1) year following the date of Final Map approval of TSM 2023-01 shall render this Development Plan null and void. Any extensions of time shall be submitted in writing thirty (30) days prior to permit expiration, subject to review and approval by the Planning Commission.
4. Minor modifications to the Development Plan to meet regulatory or engineering constraints may be made with the approval of the Community Development Director.
5. Any proposed future modifications to the site, including but not limited to, the building exterior, parking/loading areas, fences/walls, new buildings, or landscaping shall require an amendment to DPL 2023-02.
6. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or as mandated by statutes.
7. It shall be the responsibility of the property owner and/or developer to ensure that any required permits, inspections, and approval from any regulatory agency are obtained prior to issuance of final occupancy.

Building Division

8. Site development shall be consistent with the approved floor plans and building elevations. The use of all rooms/activity areas shall be identified on plans submitted for a plan check and building permit.

9. Current State of California Building Code and Federal ADA requirements shall apply to the subdivision and all structures thereon. Compliance shall be verified at the permit stage and confirmed at the final inspection.
10. A building permit shall be required for each building and structure.
11. Fire sprinklers are required within all proposed structures used for dwelling purposes.
12. The applicant shall be responsible for contacting the NCFPD by email at Fire.Prevention@NorthCentralFire.org or by phone at (559) 878-4560 to schedule an over-the-counter meeting to receive your specific requirements for your project. Failure to schedule an appointment with the NCFPD will affect your ability to obtain final approval for your project.

Planning Division

13. Except as required herein, all conditions applicable to the approval of TSM 2023-01 shall be completed prior to construction, during construction, or prior to Final Occupancy of the first unit approved under DPL 2023-02.
14. All standards for the location and design of buildings (including accessory structures) and fences, which are not specifically included in DPL 2023-02, shall conform to underlay SD Combining zone district as permitted under KMZ 17.18.030 (C).
15. A Home Owners Association shall be recorded and in effect at the time of Final Occupancy of the first home.

Home Models and Elevations

16. Development Plan Permit 2023-02 and Variance 2023-01 shall allow for four (4) multi-family buildings with a maximum height of 45 feet or three (3) stories, encompassing no less than 56 units, a club house, parking facilities, and other ancillary amenities and structures.
17. The buildings shall match the architectural elevations, colors, and materials consistent with pages A.1.1 through A.23 of Attachment 'H' of the Planning Commission staff report. Any exterior architectural embellishments may be included, but, shall not be less than or equal to the quality or material of the standard elevation.

Parking

18. Two parking stalls shall be provided for each multi-family unit.
19. Guest parking shall be clearly marked and identifiable.

Fences

20. The southern project boundary adjacent to the San Joaquin Valley Railroad rail line shall be secured by a sound wall, of no less than seven (7) feet in height and shall not exceed eight (8) in height.
21. A seven-foot (7') block wall shall secure the western and northern project boundaries.

22. The final design and color of all perimeter fencing shall be approved by the Director as part of the plan review process.

Landscaping and Open Space Areas

23. Landscape and open space areas shall be developed consistent with the conceptual site plan and renderings submitted for consideration by the Planning Commission. Landscape and open space plans shall be submitted for review and approval as part of a building permit. The project shall be subject to KMC 8.12A.120 Model Water Efficient Landscape Ordinance Requirements (MWELo).
24. No less than 3.19-acres of open space of useable active or passive recreation shall be provided. Landscape planting and design shall be consistent with pages L1.0 through L3.1 of the Development Plan submitted before the Planning Commission.

Miscellaneous Conditions

25. Subdivision entry freestanding monumental signs shall be subject to sign review approval and building permit.
26. Accessory features and amenities including but not limited to statues, pergolas, gazebos, swimming pools, and flagpoles subject to the California Building Code shall require a stand-alone building permit.
27. The developer and/or applicant shall be responsible for meeting and conferring with North Central Fire Protection District, Mid Valley Disposal, Sebastian Corp. and any other applicable utility or service provider prior to development of the project.
28. The project shall comply with all applicable mitigation measures required by the Mitigated Monitoring and Reporting Program prepared for Mitigated Negative Declaration 2023-01, dated June 2024 (SCH #2024040147).

End of Conditions