

RESOLUTION NO. 2020-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CHULA VISTA APPROVING A VARIANCE, ZAV18-0001 TO
DEVIATE THE FRONT SETBACK FROM 15 TO 10 FEET TO
ALLOW AN EXISTING DOUBLE-BARRELED CULVERT TO
REMAIN IN ITS CURRENT LOCATION ON A 6.94-ACRE SITE
LOCATED AT 676 MOSS STREET

WHEREAS, on December 7, 2018, a duly verified application for a Variance was filed with the City of Chula Vista Development Services Department by Shopoff Realty Investments, LLC (Applicant); and

WHEREAS, the application requests approval of a Variance to deviate the front setback from 15 to 10 feet along Moss Street to allow a double-barreled 10'x12' culvert within the Telegraph Canyon Channel easement to remain in its current location associated with the construction of 141-unit townhomes with 2-car garages, and associated open space on approximately 6.94 acres (Project); and

WHEREAS, the area of land which is the subject of this Resolution is an existing 6.94-acre parcel located at 676 Moss Street (Project Site); and

WHEREAS, the Development Services Director has reviewed the proposed project for compliance with the California Environmental Quality Act (CEQA) and has conducted an Initial Study, IS18-0004. Based upon the results of the Initial Study, the Development Services Director has determined that the Project could result in significant effects on the environment. However, revisions to the Project made or agreed to by the Applicant would avoid the effects, or mitigate the effects to a point where clearly no significant effects would occur; therefore, the Development Services Director has cause the preparation of a Mitigated Negative Declaration, IS18-0004 and associated Mitigation Monitoring and Reporting Program; and

WHEREAS, pursuant to California Government Code section 65090, the Planning Commission held a duly noticed public hearing on the Project and recommended that the City Council adopt the Resolution approving the Variance; and

WHEREAS, upon considering the information presented on the Project, the Planning Commission unanimously voted to approve the project; and

WHEREAS, the proceedings and all evidence introduced before the Planning Commission at the public hearing on this Project, and the minutes and resolution resulting therefrom, are hereby incorporated into the record of these proceedings; and

WHEREAS, the City Clerk set the time and place for a hearing on the Project, and notice of said hearing, together with its purpose, was given by its publication in a newspaper of general

circulation in the City and its mailing to property owners within 500 feet of the exterior boundaries of the property, at least 10 days prior to the hearing; and

WHEREAS, a duly noticed public hearing was held before the City Council of the City of Chula Vista to approve the Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista that it hereby makes the following findings:

1. That a hardship peculiar to the property and not created by any act of the owner exists.

Pursuant to Chula Vista Municipal Code Section 19.14.190, an existing Telegraph Canyon Channel easement with a double-barreled box culvert creates a special circumstance resulting in a hardship for the property owner, denying development rights enjoyed by surrounding properties. The site is bifurcated from the east side of the parcel to the west side by a channel easement with a double-barreled box culvert requiring a 45-foot easement creating substantial site planning constraints. Surrounding properties are developed and do not have a similar constraint. The box culvert cannot be feasibly relocated as the Telegraph Canyon Channel easement runs throughout the City. Due to the 45-foot easement, site planning requires this area to be clear of buildings immediately adjacent to the culvert requiring a Variance to ensure that development potential is not lost. The intent of the front yard setback requirement will remain due to the buildings location as they will continue to be set back at least 15 feet from the sidewalk on Moss Street.

2. That such a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning districts and in the same vicinity, and that a variance, if granted would not constitute a special privilege of the recipient not enjoyed by his neighbors.

The Variance will allow the Property Owner to build the townhome project, and associated amenities, such as recreation facilities similar to other property owners in the vicinity of the Project. Other parcels surrounding the area are not burdened by the constraint of a culvert bisecting the properties.

3. That the authorizing of such variance will not be of substantial detriment to the adjacent property and will not materially impair the purposes of this chapter or public interest.

The granting of this Variance will not be of substantial detriment to adjacent properties. Surrounding parcels are developed with single-family, multi-family, or industrial developments, and will not be adversely affected by the Project. The Project will develop the site frontage with landscaping, which will include tree plantings between the sidewalk and the buildings.

4. That the granting of this variance will not adversely affect the General Plan of the City or the adopted plan of any government agency.

The granting of this Variance will not adversely affect the General Plan of the City. The General Plan has been amended to accommodate the Project. The Project is, therefore, consistent with the General Plan, as well as all aspects of the Chula Vista Municipal Code.

BE IT FURTHER RESOLVED THAT THE CITY COUNCIL, BASED ON THE FINDINGS ABOVE, hereby approves the Variance subject to the following conditions:

- I. The following shall be accomplished to the satisfaction of the Director of Development Service, or designee, prior to issuance of Building Permits, unless otherwise specified:

Planning Division

1. Prior to, or in conjunction with the issuance of the first Building Permit, the Applicant shall pay all applicable fees, including any unpaid balances of permit processing fees for deposit account DDA-0367.
- II. The following on-going conditions shall apply to the Project Site as long as it relies on this approval:
 1. Approval of the Variance shall not waive compliance with any Sections of Title 19 of the CVMC, nor any other applicable laws and regulations in effect at the time of building permit issuance.
 2. The Property Owner and Applicant shall and do agree to indemnify, protect, defend and hold harmless the City, its City Council members, officers, employees and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees (collectively, liabilities) incurred by the City arising, directly or indirectly, from (a) City's approval of this Variance; (b) City's actions on any environmental document concerning this Variance and (c) City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the use contemplated on the Project Site. The Property Owner and Applicant shall acknowledge their agreement to this provision by executing a copy of this Resolution where indicated below. The Property Owner's and Applicant's compliance with this provision shall be binding on any and all of the Property Owner's and Applicant's successors and assigns.
 3. This Variance shall become void and ineffective if not utilized within three years from the effective date thereof, in accordance with Section 19.14.260 of the CVMC. Failure to comply with any conditions of approval shall cause this permit to be reviewed by the City for additional conditions or revocation.

III. EXECUTION OF RESOLUTION OF APPROVAL

The Property Owner and Applicant shall execute this document signing on the lines provided below, indicating that the Property Owner and Applicant have each read,

understood and agreed to the conditions contained herein, and will implement same. Upon execution, this document shall be signed and returned to the City’s Development Services Department.

Signature of Property Owner

Date

Signature of Applicant

Date

IV. GOVERNMENT CODE SECTION 66020(d)(1), NOTICE

Pursuant to Government Code Section 66020(d)(1), NOTICE IS HEREBY GIVEN that the 90 day period to protest the imposition of any impact fee, dedication, reservation, or other exaction described in this resolution begins on the effective date of this resolution and any such protest must be in a manner that complies with Government Code Section 66020(a) and failure to follow timely this procedure will bar any subsequent legal action to attack, review, set aside, void or annul imposition. The right to protest the fees, dedications, reservations, or other exactions does not apply to planning, zoning, grading, or other similar application processing fees or service fees in connection with this Project; and it does not apply to any fees, dedication, reservations, or other exactions which have been given notice similar to this, nor does it revive challenges to any fees for which the statute of limitations has previously expired.

V. CONSEQUENCE OF FAILURE OF CONDITIONS

If any of the foregoing conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted, deny, or further condition issuance of all future building permits, deny, revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted, institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. Failure to satisfy the conditions of this permit may also result in the imposition of civil or criminal penalties.

VI. INVALIDITY; AUTOMATIC REVOCATION

It is the intention of the City Council that its adoption of this Resolution is dependent upon the enforceability of each and every term, provision and condition herein stated; and that in the event that any one or more terms, provisions or conditions are determined by a Court of competent jurisdiction to be invalid, illegal or unenforceable, this resolution and the permit shall be deemed to be automatically revoked and of no further force and effect.

Presented by:

Approved as to form by:

Tiffany Allen
Director of Development Services

Glen R. Googins
City Attorney