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# APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF THE VISTA DEL MAR PROJECT

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# The Vista Del Mar Project

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- In the C-1 Neighborhood Transition Combining District
  - Maximum FAR = 1.0
- Project's FAR = 2.0
- Planning Commission awarded
  - Maximum possible credit for three amenities
  - A development exception from the FAR

# Purpose of the Neighborhood Transition Combining District Regulations

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- **“To ensure that the character of zones within the Specific Plan Area will be compatible with and will complement surrounding residential areas”**
- Serve to implement one of the 10 “Key Principles” of the UCSP
  - **“Transition new development to minimize impacts on existing residential neighborhoods.”**

# Development Exception Awarded Despite Project's Failure to Comply with All Other UCSP Regulations

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- Approval of a Development Exception requires four findings to be made
- One finding is that “The proposed development will comply with all other regulations of the Specific Plan.”
- **Planning Commission erred in finding that the Vista Del Mar Project complied with all other regulations of the UCSP**
  - NTCD Regulations include:
    - “Building design shall be cognizant of adjacent low density uses (*i.e.*, avoid balconies overlooking rear yards.)”

***Staff asserts that the intent of the provision directing that balconies be avoided if they overlook rear yards “is not to do away with balconies but rather to address their potential effects on privacy.”***

- No legislative history to support this
- Staff points to policies and guidelines in the UCSP and General Plan which “encourage the use of balconies” and states that those guidelines must be read “in harmony” with the requirement in the NTCD regulations to avoid balconies if they overlook rear yards of single-family homes
- Staff’s position violates a fundamental provision of statutory construction: that the “specific controls the general”
  - This means, when faced with a general statute or regulation and a specific statute or regulation on the same subject, the more specific one should be applied
  - Application of this principle means that while balconies are generally to be encouraged as a design feature, balconies must be avoided in a C-1 NTCD if they would overlook the yards of single-family homes
  - Stated differently, a **SPECIFIC REGULATORY REQUIREMENT** to **AVOID BALCONIES** in special circumstances trumps a more general guideline or policy encouraging balconies

# Project Fails to Address Privacy Impacts

- Even if staff were correct – that the intent of the NTCD requirement to avoid balconies if they would overlook the homes and yards of single-family homes is merely to “address their potential impacts on privacy” – the Vista del Mar Project fails to address those privacy concerns in a satisfactory way
- Staff touts that the Project meets the minimum step-down requirements of the C-1 NTCD and that the structure has been distanced “as much as possible” from the single family residences
- But the distancing is minimal, as stated in the staff report to the Planning Commission:
  - “The second floor terrace is approximately **13 feet** from the property line”
  - “The balconies along the east building elevation are approximately **47 feet** from the property line....”







## Project Fails to Address Privacy Impacts (con'd)

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- In the previous photos, the horizontal distance from the second floor balcony to the rear property line is more than **83 feet**
- So a second floor terrace in the Vista Del Mar Project that is only **13 feet** from the property line would intrude onto the privacy of those abutting single-family homes
- And the same with 21 balconies 47 feet from the property line

## Project Fails to Address Privacy Impacts (con'd)

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*Staff claims that planting of trees and shrubs in containers along the perimeter of the second floor terrace will protect the privacy of the residents in the adjacent single-family homes*

- Wrong, because those plantings will not create a continuous wall of greenery that will prevent the residents of the 71 units and their guests from looking between the shrubs and trees into the yards of their single-family neighbors
- Those plantings will simply shield the residents of the 71 units from the views of those in the homes and yards down below

## Project Fails to Address Privacy Impacts (con'd)

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*Staff also claims that planting of “dense and tall landscape materials ... along the east and north perimeter” will “screen the homes from direct view of the [21] balconies on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floors”*

- Wrong: the wall shown on the photo of the Vista Del Mar property and the single-family home to the east is 6 feet tall



# Project Fails to Address Privacy Impacts (con'd)

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- The Planning Commission added a condition to its approval of the Vista Del Mar Project:
  - “Applicant shall meet and confer with staff to develop and implement feasible and effective measures with respect to the balconies on the third, fourth and fifth floors of the Project with sight-lines onto adjacent residential yards to further address potential adverse effects on the privacy of occupants of adjacent residential properties to the satisfaction of the Development Services Director.”
  - This is an admission that there are presently unmitigated impacts of the Project on the privacy of the adjacent single-family residences, and the condition is nothing more than illegal deferral of mitigation required under CEQA

# Planning Commission's Award of Bonus FAR Fails to Comply with UCSP

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- Award of bonus FAR for inclusion of amenities is discretionary, not automatic
- UCSP requires Planning Commission to determine “just how much additional FAR ... should be granted” taking “into account the value added by the amenity or design, and a reasonable share of additional FAR ... that will proportionally compensate the developer for the additional amenities or design provisions.”
- Staff's analysis, the Planning Commission's deliberations and Resolution ignore this requirement
- Planning Commission awarded the maximum available FAR for the amenities included, as if it were automatic

# Planning Commission's Award of Bonus FAR Fails to Comply with UCSP (con'd)

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- UCSP also requires that “the amount of bonus award Chula Vista will make available should take into account the projected build-out that would occur if all the bonus provisions allowed under the program were actually awarded. This total should not exceed the capacity of the land....”
- The reference to “projected build-out” is to buildout under the UCSP, *i.e.*, the net increase of 7,100 dwelling units and net increase of one million square feet of commercial space, etc.
- This requirement amounts to a cumulative impacts analysis in connection with the award of bonus FAR
- Neither the staff report nor the Planning Commission's Resolution addresses this requirement

# Problems Caused by the Project's Sole Vehicular Access – Entrance to the Parking Garage on K Street – Were Not Addressed by the Planning Commission

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- Because applicant is seeking to cram as much building mass as the City will allow, there is no service alley or other surface level access
- Trash dumpsters will have to be rolled onto the sidewalk and into the street from the subsurface parking garage two or three times a week for pickup on K Street









## Problems Caused by the Project's Sole Vehicular Access – Entrance to the Parking Garage on K Street – Were Not Addressed by the Planning Commission (con'd)

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- Moving vans and other large trucks could not park along K Street or Third Avenue to service the project without blocking moving lanes of traffic
- Moving vans, at 14 feet in height, with extremely large turning radius – *e.g.*, 50 feet for a 45-foot trailer per Caltrans' Highway Design Manual – may be unable to enter parking structure (either at all or without blocking *all* moving lanes of traffic on K Street

# Planning Commission Erred in Waiving Requirement for Public Facilities Financing Plan

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- Planning Commission's Resolution waived the requirement for a Public Facilities Financing Plan by claiming that "adequate facilities exist or will be provided concurrent with development of the Project site"
- But most recent (2015) annual report of the Growth Management Oversight Commission identifies the need to renovate the Civic Center Library
  - No funding has been provided by the City
- Finding that "adequate facilities exist" is not correct

# The Project Would Change the Character of this Part of Third Avenue from Office to Residential, in Conflict with General Plan and UCSP policies

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- General Plan's Land Use and Transportation Element for the Mid-Third Avenue District includes:
  - Objective LUT 60: “Reinforce the existing land use pattern of predominantly office uses on the east side of Third Avenue between J Street and L Street”
  - Objective LUT 60.1: “Establish a professional office district along the east side of Third Avenue between J and L Streets, consistent with the predominance of existing office uses.”