

**FINDINGS OF FACT and FINAL ORDER
TYPE IV LAND USE DECISION**

DATE: March 15, 2021

FILE NO.: 20-028 PD/SUB/FSH/TREE

PROJECT NAME: The Views PD

APPLICANT: Even Better Homes

OWNERS: Brad Picking, John Knapp

LEGAL DESCRIPTION: 25E 19, Tax Lots 200 and 500

DECISION: Denied

The above-referenced proposal was reviewed concurrently as a Type IV planned development, subdivision, zoning map amendment, special variance, Flood and Slope Hazard (FSH) overlay review, and tree removal permit.

FINDINGS OF FACT

Procedural Record

1. These findings are based on the applicant's submittals received on June 26, 2020, July 29, 2020, October 28, 2020, November 22, 2020, and December 9, 2020. Staff deemed the application incomplete on July 24, 2020. The applicant submitted additional materials on July 29, 2020. The application was deemed complete on August 5, 2020 and initially a 120-day deadline of December 3, 2020 was established.
2. Staff created a draft staff report on September 24, 2020 for a Planning Commission hearing scheduled for September 28, 2020. The staff report was not published seven (7) days prior to the first evidentiary hearing due to unforeseen delays related to the September 2020 wildfires in Clackamas County. The applicant reviewed the draft staff report and asked to delay the hearing so that the applicant could make some revisions to their proposal and so that the staff report could be published seven (7) days prior to the first evidentiary hearing. The applicant extended the 120-day deadline by 56 days (the time between September 28 and a rescheduled Planning Commission hearing on November 23, 2020). The 56-day extension created a revised 120-day deadline for this application of January 28, 2021, but as explained in this document the applicant then chose to extend the 120-day clock to March 15, 2021.
3. The subject site is approximately 32.87 acres. The site is located east and west of the eastern end of Vista Loop Drive near the intersection with Highway 26.

4. The parcel has a Comprehensive Plan Map designation of Low Density Residential and a Zoning Map designation of Single Family Residential (SFR).
5. The applicant, Even Better Homes, requested a Type IV combined planned development review to include both conceptual and detailed development plan reviews under Sandy Development Code (SDC) 17.64.10.A. The proposal was divided into two distinct phases: the “Lower Views” on the east side of Vista Loop Drive and the “Upper Views” on the west side of Vista Loop Drive. The proposal included a mix of housing types, recreational property with various amenities owned by a Homeowner’s Association, and several variations from the development code standards. At the Planning Commission hearing on December 16, 2020 the applicant withdrew their request for an increase in density.
6. The proposal included 122 lots with 16 tracts. The development was proposed to include 120 lots for attached and detached single-family homes and two lots to accommodate a total of 39 multi-family dwelling units.
7. Notification of the proposed application was originally mailed to affected agencies on September 8, 2020 and to affected property owners within 500 feet of the subject property on September 8, 2020 for the Planning Commission hearing originally scheduled on September 28, 2020. A legal notice was submitted to the Sandy Post on September 8, 2020 to be published on September 16, 2020 informing residents of the public hearing.
8. On September 24, 2020 staff mailed a notice to affected property owners within 500 of the subject property stating that the public hearing scheduled for September 28, 2020 was postponed to November 23, 2020.
9. On October 21, 2020 staff mailed a notice to affected property owners within 500 of the subject sites reminding people of the November 23, 2020 public hearing. On November 2, 2020 staff submitted a legal notice to the Sandy Post to be published on November 11, 2020 informing residents of the Planning Commission public hearing.
10. This application was reviewed by the Planning Commission on November 23, 2020. At that meeting, the Commission granted a continuance as requested by a resident.
11. On November 28, 2020, the applicant granted an extension of the 120-day application review period (clock) by 32 days. This 120-day clock extension modified the 120-day deadline from January 28, 2021 to March 1, 2021. This clock extension was to accommodate the City Council hearing for this application on February 16, 2021.
12. On December 16, 2020 the Planning Commission reconvened to continue the public hearing for The Views PD. After hearing additional input from staff, the applicant, and the public, the Planning Commission made a motion to recommend that the City Council approve or deny the application after full consideration of the Planning Commission’s issues, concerns, and recommendations. The Planning Commission’s issues, concerns,

and recommendations were described in the City Council staff report published on February 8, 2021.

13. On January 28, 2021, staff mailed a notice to affected property owners within 500 of the subject sites informing them of the February 16, 2021 City Council meeting. On January 27, 2021 staff submitted a legal notice to the Sandy Post to be published on February 3, 2021 informing residents of the City Council meeting.
14. On February 16, 2021, the City Council held a public hearing to review the application. At this time, a Councilor requested a continuance of the hearing. The applicant agreed to extend the 120-day clock to March 15, 2021 to accommodate the continuance.
15. City Council reconvened on March 1, 2021 to continue the hearing. After considering the application and all related materials, Council voted four to three (4:3) to deny the application as explained in the following basis for denial findings.

Basis for Denial

16. The application seeks consolidated review and approval for a planned development subdivision, a zone map amendment, two special variances, a Flood and Slope Hazard (“FSH”) review, and tree removal. If approved, the zoning map would have been amended to place a planned development (“PD”) overlay on the property.
17. As described above, the property is zoned single-family residential (“SFR”). The lot size and development standards for development in the SFR zone are set forth in the Sandy Municipal Code (“SMC”), Chapter 17.34. The standards and criteria for a planned development are set forth in SMC Chapter 17.64. The standards and criteria for development in the FSH overlay zone are described in SMC Chapter 17.60. Finally, the standards and criteria for a special variance are set forth in SMC Chapter 17.66. Compliance with all of these standards and criteria is required to approve the consolidated application.
18. Under SMC 17.64.100.A, the City may approve a planned development only when the City determines that the application will:
 - A. Assure consistency with the Intent of this chapter;
 - B. Assure compliance with the General Provisions, Development Standards and Application provisions of this chapter; and
 - C. When located in a Village, assure consistency with the appropriate Comprehensive Plan policies for Village designations.
19. The site is not located in a Village, therefore the Comprehensive Plan policies for a designated Village do not apply.
20. SMC 17.64.030.A states that the development standards of the base zone apply unless superseded by the standards in the planned development chapter: “The development standards of the base zone, overlay zone or planned development overlay apply unless

they are superseded by the standards of this chapter[.]” SMC Chapter 17.64 is the planned development chapter.

21. SMC Chapter 17.64 provides the following development standards:

- a. SMC 17.64.030.B requires a planned development to be located on a single lot or parcel, or contiguous lots or parcels. This application proposes to develop two contiguous parcels.
- b. SMC 17.64.040.A provides for an alternative density calculation based on gross site area. However, the application in this case is proposing 159 dwelling units, which is the maximum allowed density in the SFR zone, therefore the alternative density standard under SMC 17.64.040.A is not required.
- c. SMC 17.64.50.A requires a planned development located in a residential zone to set aside a minimum of 25 percent of the total site area as open space. This section also requires the application to dedicate park space or pay a fee-in-lieu calculated under SMC Chapter 17.86. In this case, the applicant proposes to preserve 36 percent of the total site area as open space, including the FSH area. Additionally, the applicant chose to pay the fee-in-lieu rather than dedicate parkland.

22. SMC Chapter 17.64 does not provide any other development standards. Therefore, except for the standards described above, the standards of the SFR zone apply. The development standards in the SFR zone are set forth in SMC 17.34.30. These standards include:

- a. Minimum lot area for a detached single-family dwelling: 7,500 sq. ft.
- b. Minimum average lot width for lots containing a single-family dwelling: 60 feet.
- c. Interior side-yard setbacks: 7.5 feet
- d. Rear yard setbacks: 20 feet.

23. In addition, SMC 17.34.50 requires lots in the SFR zone that have street frontage less than 40 feet to provide access from a rear alley or shared driveway.

24. As noted above, the application proposed to create 122 new subdivision lots; 120 of the lots would have contained attached and detached single-family homes, and the other two lots would have contained 39 multi-family dwellings. Of the lots identified for detached single-family dwellings, the application proposed 50 lots between 3,400 and 4,999 square feet; 13 lots between 5,000 and 5,999 square feet; and 12 lots between 6,000 and 7,499 square feet. The 32 lots for the attached single-family homes ranged in size from 2,160 to 2,695 square feet. Only 13 of the single-family lots were proposed to be 7,500 square feet or larger.

25. In addition, the application proposed reducing the side-yard setback from 7.5 feet to five feet, and the rear yard setback from 20 feet to 10 feet for lots 47-56 and a rear yard setback of 15 feet for lots 84-86 and 88-102.

26. The City Council finds that, under SMC 17.64.030.A, the development standards in the planned development chapter (SMC 17.64) do not supersede the standards in the SFR zone. Therefore, the development standards in the SFR zone apply to this application.

27. Because only 13 of the proposed lots were proposed at 7,500 square feet or larger, the application does not comply with SMC 17.34.030.A (minimum lot size) and 17.34.030.C (minimum setbacks).
28. As noted above, SMC 17.64.100.A requires an application for a planned development to comply with the development standards of SMC Chapter 17.64. Those standards are described in SMC 17.64.030.A, which provides that the development standards of the underlying base zone apply unless superseded by the standards in SMC Chapter 17.65. The City Council finds that the standards in SMC Chapter 17.64 do not supersede the dimensional standards for the SFR zone described in SMC 17.34.030. Therefore, because the application does not comply with the SFR standards, it does not comply with SMC 17.64.030 and 17.64.100.
29. Finally, in addition to the planned development subdivision, the application also requests review and approval for two special variances, FSH review, and tree removal. However, because the City Council determines that the application does not comply with SMC 17.64.030 and 17.64.100, it is not necessary to review the application for compliance with the standards and criteria for those portions of the application and the City Council makes no findings with respect to the applicable standards for a special variance, FSH review or tree removal or the remaining subdivision standards.

DECISION

The Views PD proposal was reviewed as a combined application for a Type IV planned development, subdivision, variance, and FSH overlay with tree removal. For the reasons discussed in this order, the application is **DENIED**.



Stan Pulliam
Mayor

RIGHT OF APPEAL

Any person who appeared before the City Council, either orally or in writing, may appeal this decision to the Land Use Board of Appeals. An appeal to the Land Use Board of Appeals must be made within 21 days of this order's date and must comply with ORS 197.830 and LUBA's rules at OAR Chapter 661, division 10. A notice filed thereafter will not be timely filed and LUBA will dismiss the appeal.