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San Francisco Bay Area Renters Federation,
6 California Renters Legal Advocacy and
Education Fund, Victoria Fierce, and John Moon

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN MATEO – UNLIMITED JURISDICTION

10 SAN FRANCISCO BAY AREA RENTERS
FEDERATION, CALIFORNIA RENTERS
11 LEGAL ADVOCACY AND EDUCATION
FUND, VICTORIA FIERCE, and JOHN MOON,

12 Petitioners,

13
14 vs.

15 CITY OF SAN MATEO, SAN MATEO CITY
COUNCIL, and CITY OF SAN MATEO
16 PLANNING COMMISSION,

17 Respondents,

18 TONY MEHMET GUNDOGDU and AYNUR V.
19 GUNDOGDU,

20 Real Parties in Interest.

CASE NO.

PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE

(CCP § 1094.5; Govt. Code § 65589.5)

1 Petitioners San Francisco Bay Area Renters Federation, California Renters Legal
2 Advocacy and Education Fund, Victoria Fierce, and John Moon (“Petitioners”) allege as
3 follows:

4 1. Petitioner San Francisco Bay Area Renters Federation (the “Federation”) is an
5 unincorporated association of renters whose mission includes advocating for the
6 construction of housing to meet the needs of California residents, including in San Mateo,
7 through California’s Housing Accountability Act, Government Code § 65589.5 et seq.
8 (“HAA”). Its members are residents of the State of California and cut across socioeconomic
9 lines, including members with very low, low, moderate, middle, and higher incomes. The
10 Federation has a direct and substantial interest in ensuring that San Mateo complies with
11 state laws requiring that it participates in addressing the housing needs of California
12 residents. The Federation actively supports housing development projects and opposes
13 efforts to disapprove or reduce the density of housing development projects. It acts on
14 behalf of its members, though its actions benefit all similarly-situated residents and intended
15 residents. Members of the Federation were, are, will be, and would be eligible to apply for
16 residency in the housing development project at issue in this petition (the “Project”). As
17 potential residents of the Project, members of the Federation are affected by San Mateo’s
18 actions challenged herein. The San Francisco Bay Area Renters Federation has a
19 substantial interest in ensuring that San Mateo’s decisions are in conformity with the
20 requirements of law, and in having those requirements properly executed and its public
21 duties enforced. Its members, as well as the general public, will be adversely affected by
22 impacts resulting from the acts described herein and are aggrieved by the acts, decisions,
23 and omissions of San Mateo as alleged in this petition. The San Francisco Bay Area Renters
24 Federation is suing on its own behalf, on behalf of its members, and on behalf of others
25 affected by San Mateo’s acts pertaining to the project at issue defined below, as well as all
26 potential applicants and residents of the Project.

27 2. Petitioner California Renters Legal Advocacy and Education Fund (“CaRLA”)
28 is a California nonprofit corporation founded, in part, to advocate for, and to ensure

1 compliance with the HAA and to educate interested persons, including local governments
2 and developers, about the HAA. Participating in, and supporting, litigation of wrongful
3 denials of housing development projects is an important aspect of CaRLA's mission and is
4 necessary to increase compliance with the HAA.

5 3. Petitioner Victoria Fierce is a natural person and a resident of the State of
6 California. Fierce was, is, and will be "a person who would be eligible to apply for
7 residency in the development", i.e., the Project. As a potential resident of the Project,
8 Fierce is affected by San Mateo's actions challenged herein. Fierce has a substantial
9 interest in ensuring that San Mateo's decisions are in conformity with the requirements of
10 law, that those requirements are properly executed, and that the public duties of San Mateo
11 are enforced.

12 4. Petitioner John Moon is a natural person and a resident of the City of San
13 Mateo, State of California. Moon was, is, will be, and "a person who would be eligible to
14 apply for residency in the development", i.e., the Project. As a potential resident of the
15 Project, Moon is affected by San Mateo's actions challenged herein. Moon has a substantial
16 interest in ensuring that San Mateo's decisions are in conformity with the requirements of
17 law, that those requirements are properly executed, and that the public duties of San Mateo
18 are enforced.

19 5. Respondent City of San Mateo ("San Mateo") is a California municipal
20 corporation located within the County of San Mateo. Through its governing body, the San
21 Mateo City Council, San Mateo wrongfully denied Real Parties' appeal of its Planning
22 Commission's denial of the Project application, described below.

23 6. Respondent City of San Mateo Planning Commission ("Planning
24 Commission") is a municipal agency of San Mateo and is the agency which denied the
25 Project permit referenced herein.

26 7. Real Parties in Interest Tony Mehmet Gundogdu, the Project applicant, and
27 Aynur V. Gundogdu, are natural persons comprising a married couple and are the owners of
28

1 the subject property. The last name "Gundogdu" is misspelled in some related documents
2 as "Gondogdu".

3 8. "The Legislature's intent in enacting [the HAA] in 1982 and in expanding its
4 provisions since then was to significantly increase the approval and construction of new
5 housing for all economic segments of California's communities by meaningfully and
6 effectively curbing the capability of local governments to deny, reduce the density for, or
7 render infeasible housing development projects and emergency shelters. That intent has not
8 been fulfilled." (Gov't Code § 65589.5(a)(2)(K))

9 9. The HAA requires, inter alia:

10 When a proposed housing development project complies with
11 applicable, objective general plan and zoning standards and
12 criteria, including design review standards, in effect at the time
13 that the housing development project's application is determined
14 to be complete, but the local agency proposes to disapprove the
15 project or to approve it upon the condition that the project be
16 developed at a lower density, the local agency shall base its
17 decision regarding the proposed housing development project
18 upon written findings supported by substantial evidence on the
19 record that both of the following conditions exist:

20 (1) The housing development project would have a specific,
21 adverse impact upon the public health or safety unless the project
22 is disapproved or approved upon the condition that the project be
23 developed at a lower density. As used in this paragraph, a
24 "specific, adverse impact" means a significant, quantifiable,
25 direct,

26 and unavoidable impact, based on objective, identified written
27 public health or safety standards, policies, or conditions as they
28 existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid
the adverse impact identified pursuant to paragraph (1), other
than the disapproval of the housing development project or the
approval of the project upon the condition that it be developed at
a lower density.

(Gov. Code § 65589.5(j))

1 10. The HAA provides that a housing development project shall be:

2 deemed consistent, compliant, and in conformity with an
3 applicable plan, program, policy, ordinance, standard,
4 requirement, or other similar provision if there is substantial
5 evidence that would allow a reasonable person to conclude that
6 the housing development project . . . is consistent, compliant, or
7 in conformity.

8 (Gov't Code § 65889.5(f)(4))

9 11. Further, the HAA must be construed broadly and "consistent with, and in
10 promot1on of, the statewide goal of a sufficient supply of decent housing to meet the needs
11 of all Californians." (Gov't Code § 65589(d))

12 12. In order to deny a housing development project, San Mateo has the burden of
13 either proving that the "proposed project in some manner fails to comply with 'applicable,
14 objective general plan and zoning standards and criteria, including design review standards.
15 . . '", or making the findings required by the HAA. (Honchariw v. County of Stanislaus
16 (2011) 200 Cal.App.4th 1066, 1081)

17 13. The Project referred to herein is the application (#PA15-104) to construct a
18 new, 15,322 square foot 10-unit residential condominium project on a site in the City of San
19 Mateo that borders North El Camino Real, a state highway, to the east, West Santa Inez
20 Avenue to the south, Engle Road to the north, and two existing single-family residences to
21 the west. (4 West Santa Inez and 1 Engle Road) This Project constitutes a "housing
22 development project" under the Housing Accountability Act (Gov't Code § 65589.5).

23 14. The Project complies with all applicable objective general plan and zoning
24 standards and criteria, including design review standards.

25 15. During the public hearings for this project on August 8, 2017, September 26,
26 2017, and October 10, 2017, the Planning Commission contrived subjective concerns
27 regarding the mass and bulk of the Project, and its scale and character when compared to the
28 existing neighborhood, even though there are no objective standards that mandate denial on
29 these grounds.

1 16. On October 10, 2017, the Planning Commission denied the Project.

2 17. The Planning Commission wrongfully denied the Project based on subjective
3 criteria such as neighborhood character, which is prohibited by the HAA. For example, the
4 Planning Commission's findings asserted that the Project was "not harmonious with the
5 character of the neighborhood" and objected to the size of the building. This is not a
6 permissible basis for denial under the HAA.

7 18. San Mateo's only purported justification for denying the Project was an alleged
8 inconsistency with San Mateo's Multi Family Design Guidelines. ("MFD Guidelines")
9 There is an important distinction between *guidelines*, such as the MFD Guidelines, and
10 objective *standards*. A project *must* comply with standards, which are fixed and objective,
11 whereas the guidelines are discretionary. In this context, the MFD Guidelines are distinct
12 from the City's standards for R4-zoned multi-family dwellings (San Mateo Municipal Code,
13 Chapter 27.24). The City's Urban Design Policy simply recommends that projects
14 "substantially conform" to the MFD Guidelines; they are not mandatory "standards" that
15 can be invoked to avoid the HAA.

16 19. Moreover, the height guideline is not "objective." At the City Council hearing,
17 the City Attorney discussed the "step in height" element and asserted that the Project is non-
18 compliant because there is a two-story height differential between the Project and the
19 neighboring house on Engle Road. This analysis is incorrect. The "Height" guideline does
20 not specify how, or the extent to which, the upper levels of a project must be set back or
21 stepped down. It does not require the height differential to be reduced to one story; it merely
22 suggests *a* step down. Further, a step in height is one of two possible ways to satisfy the
23 guideline, which requires a "transition *or* step in height" (emphasis added). No step is
24 needed if there is a transition between neighboring buildings of disparate height.
25 "Transition" is not defined, and there are no criteria set out to determine whether a
26 transition complies with the guideline.

27 20. The sufficiency of a step-down or transition can only involve a discretionary
28 and subjective judgment about the visual effect of a change in building heights. The review

1 by San Mateo's design review consultant, Larry Cannon of Cannon Design Group, dated
2 June 28, 2017 confirms this.

3 21. The City of San Mateo administrative report prepared by the Community
4 Development Department for the February 5, 2018 appeal states:

5 While the Commission denied the project with prejudice (3-1),
6 the staff had originally recommended approval based on the
7 traditional architectural style with substantial articulations, wall
8 plane variations, and step-backs at the top floor. The upper/fourth
9 floor is built into the roof form, which helps to minimize the
10 massing of a multifamily residential structure adjacent to a
11 single-family residence. The variations in the roof form help to
12 create a transition between the multi-family residential along El
Camino Real and the single-family residences west of El Camino
Real. Although the property abuts parcels zoned for single-family
residences, the El Camino Real corridor consists of properties
zoned for medium to high density.

13 22. In the discussion of the MFD Guidelines, the report did *not* identify the height
14 guideline as a problem or suggest any modifications to the building height or setbacks. The
15 height guideline was only raised in the Administrative Report for the October 2017 meeting,
16 after the Planning Commission instructed staff to find reasons to deny the Project. The City
17 Council then wrongfully latched onto this guideline as a basis for denial.

18 23. Even if the height guideline were an "objective standard", the Project complies
19 with the height guideline and all other MFD Guidelines. There is a two-story transition
20 between the Project and the neighboring building, and there will be a ± 50 foot setback
21 between the Project and the existing neighboring house on Engle Road, and a ± 25 foot
22 setback to its detached garage. There is also a very large Redwood tree on the neighboring
23 property on Engle Road. These features satisfy both options specified by the MFD height
24 guideline. There are no San Mateo standards that bar such a transition. To the contrary, the
25 guideline encourages such features.

26 24. Real Parties appealed to the San Mateo City Council. On February 5, 2018,
27 the City Council voted to deny Real Parties' appeal.
28

1 25. At the appeal hearing, the San Mateo City Attorney acknowledged that criteria
2 such as neighborhood “compatibility” or “suitability” are not objective standards that could
3 be invoked to deny the Project. However, the City Council failed to overturn the Planning
4 Commission’s improper findings, repeated the Planning Commission’s errors by also
5 wrongfully relying on a subjective guideline, and erred in finding the Project was non-
6 compliant with that subjective guideline.

7 26. There is substantial evidence that “would allow a reasonable person to
8 conclude that the [Project] . . . is consistent, compliant, or in conformity” with all applicable
9 objective standards. The City Council should have found that the Project is compliant and
10 should have ruled for the Real Parties on their appeal.

11 27. San Mateo must rehear the appeal and reverse the Planning Commission’s
12 denial.

13 WHEREFORE: Petitioners pray for relief as follows:

14 1. For an order overturning the City of San Mateo City Council’s February 5,
15 2018 vote disapproving the appeal of the Planning Commission’s denial of the Project
16 application (PA15-104);

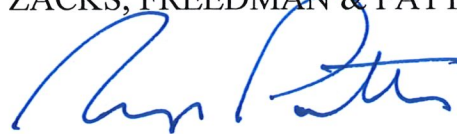
17 2. For an order commanding the City of San Mateo to approve the Project
18 application (PA15-104);

19 3. For costs as allowed by law, including attorney’s fees under CCP § 1021.5 and
20 the HAA; and

21 4. For such other and further relief as the Court deems warranted based on the
22 facts established at trial or other judicial resolution of this petition.

23 Date: April 25, 2018

ZACKS, FREEDMAN & PATTERSON, PC



By: Ryan J. Patterson
Attorneys for petitioners San Francisco Bay
Area Renters Federation, California Renters
Legal Advocacy and Education Fund, Victoria
Fierce, and John Moon

VERIFICATION

I, Victoria Fierce, declare as follows:

1. I am a natural person and a resident of the State of California. I am a Petitioner and am also the co-executive director of the California Renters Legal Advocacy and Education Fund. I am authorized to verify this Petition for Writ of Administrative Mandate on behalf of this entity.

2. I have read the foregoing Petition for Writ of Administrative Mandate and know its contents. The matters stated in the Petition for Writ of Administrative Mandate are true of my own knowledge from having reviewed the administrative history of the Project.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Apr 18, 2018


Victoria Fierce