

CC 08-18-20

#12

Petition for
Reconsideration

RM-2017-39

Presentation

Petition for Reconsideration

RM-2017-39

August 18, 2020



**CITY OF
CUPERTINO**

A decorative blue geometric pattern consisting of various shapes like triangles and lines, located on the left side of the slide.

Project Description

- Petition for Reconsideration of the City Council decision on April 21, 2020 to deny an appeal and uphold the approval of a Minor Residential Permit (RM-2017-39) to allow a second-story balcony.

Vicinity Map



 Subject Property:
21865 San Fernando Ave.

 Appellants:
21875 & 21861 San Fernando Ave.

Grounds for Reconsideration

Cupertino Municipal Code Section 2.08.096

1. An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.
2. An offer of relevant evidence which was improperly excluded at any prior city hearing.
3. Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.
4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing.
5. Proof of facts which demonstrate that the City Council abused its discretion by:
 - a) Not preceding in a manner required by law; and/or
 - b) Rendering a decision which was not supported by findings of fact; and/or
 - c) Rendering a decision in which the findings of fact were not supported by the evidence.

Basis for Reconsideration # 1

An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.

Petition	Staff Response
Original project proposal was previously excluded from staff report.	Original project proposal does not constitute relevant evidence for the appeal as it was not approved by the City.
Correspondence as evidence provided (see petition and staff report).	No new evidence provided as this correspondence was presented and considered at previous City hearings.
Excerpts from City of Cupertino General Plan provided (see petition and staff report).	No explanation provided for: (1) how this evidence is relevant to project and (2) why this evidence could not have been produced at a previous City hearing.

Basis for Reconsideration #1 - City Finding

- The petitioners have offered no new relevant evidence that could not have been produced at any earlier City hearing.

Basis for Reconsideration # 2

An offer of relevant evidence which was improperly excluded at any prior city hearing.

Petition	Staff Response
Evidence provided, listed in the Petition and staff report, was not addressed.	No relevant evidence provided that was excluded from any public hearing as all evidence was either submitted by staff or petitioners to Planning Commission and City Council. The hearing bodies discussed evidence presented, made modifications to project, and determined that project meets the findings of the R-1 Ordinance.

Basis for Reconsideration #2- City Finding

- The petitioners have offered no relevant evidence that was improperly excluded at any prior City meeting, nor have the petitioners proven that evidence was previously excluded by City Council.

Basis for Reconsideration #3

Proof of facts which demonstrate that the City Council failed to provide a fair hearing.

Petition	Staff Response
Staff made false and misleading comments about project events; and City Council was asked to read staff's draft resolution, which impacted their decisions.	Materials presented to Council provided a factual account of the project. Furthermore, Council heard and considered presentations from all parties before making a decision.
Staff and City Council were not aware of approved balcony width.	Only depth of balcony was included in Council's motion to modify project.

Basis for Reconsideration #3

Continued

Petition	Staff Response
City Council appeal hearing had a court feeling and property owner/applicant were supported by City.	The appeal hearing was conducted in manner required by the Municipal Code.
City did not provide evidence on how the design: (1) fits with the General Plan, (2) is harmonious with the general neighborhood and (3) meets the requirements of the guidelines.	All issues were addressed in staff reports and resolutions presented to City Council and Planning Commission. Approval bodies considered all evidence prior to denying the appeal.

Basis for Reconsideration #3- City Finding

- The petitioners have not provided any proof of facts which demonstrate that the City Council failed to provide a fair hearing.

Basis for Reconsideration #4

Proof of facts which demonstrate that the City Council abused its discretion by:

- a) Not preceding in a manner required by law; and/or
- b) Rendering a decision which was not supported by findings of fact; and/or
- c) Rendering a decision in which the findings of fact were not supported by the evidence

Petition	Staff Response
Majority of the hearing time was spent researching and clarifying City Council's authority to change the plans, which did not leave time for evaluation of the project.	Hearing conducted in manner required by law. City Attorney clarified Council's discretion and Council deliberated on project's potential impacts, made amendments to project, and rendered decision.

Basis for Reconsideration # 4

Continued

Petition	Staff Response
Staff's personal opinions were involved by saying that the residential addition will not become a short-term rental.	Report did not state whether or not the addition would become an STR unit in the future. It clarified that City currently has regulations regarding STR activities and is in the process of adopting an STR Ordinance.
Petitioners were unable to provide further explanation, defend, or clarify information at City Council appeal hearing.	Appellants and applicants were permitted 10 minutes to address the Council, consistent with the City's procedures for public hearings. Mayor also allowed petitioner Cindy Fang an additional 3 minutes to respond and provide clarification.

Basis for Reconsideration #4- City Finding

- The petitioners have not provided any proof of facts that demonstrate the Council abused its discretion by not proceeding in a manner required by law, rendering a decision which was not supported by findings of fact, or rendering a decision in which the findings of fact were not supported by the evidence.

Conclusion

- The Petition for Reconsideration does not meet the requirements of the Cupertino Municipal Code Section 2.08.096

Recommendation

That the City Council:

- Deny the Petition for Reconsideration; and
- Uphold the April 21, 2020 City Council decision



Reconsideration Hearing

RM-2017-39

August 18, 2020



**CITY OF
CUPERTINO**

A decorative vertical bar on the left side of the slide, featuring a dark blue background with a complex, abstract geometric pattern of lighter blue lines and shapes, resembling a stylized sunburst or a modern architectural design.

Project Description

- Reconsideration Hearing of the City Council decision on April 21, 2020 to deny an appeal and uphold the approval of a Minor Residential Permit (RM-2017-39) to allow a second-story balcony.

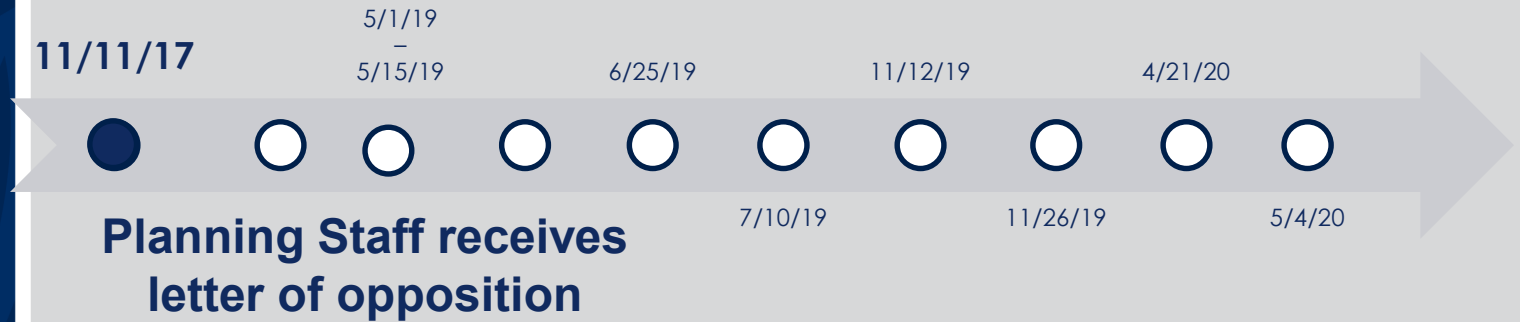
Vicinity Map



 Subject Property:
21865 San Fernando Ave.

 Appellants:
21875 & 21861 San Fernando Ave.

Project Timeline

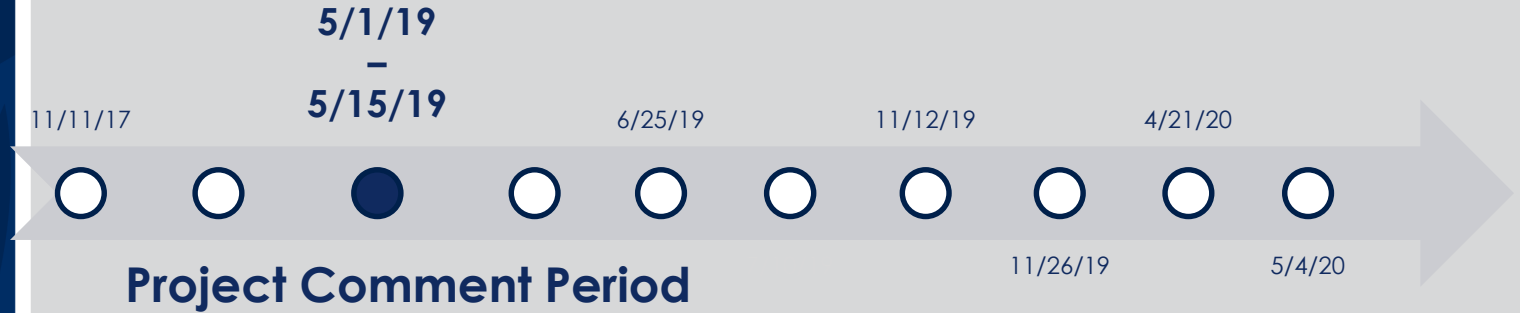


Project Timeline

**Applicant Submits 1st
Major Project Revisions**

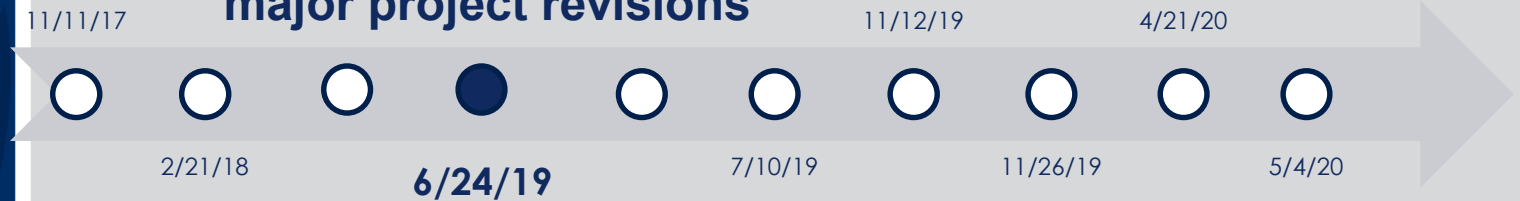


Project Timeline

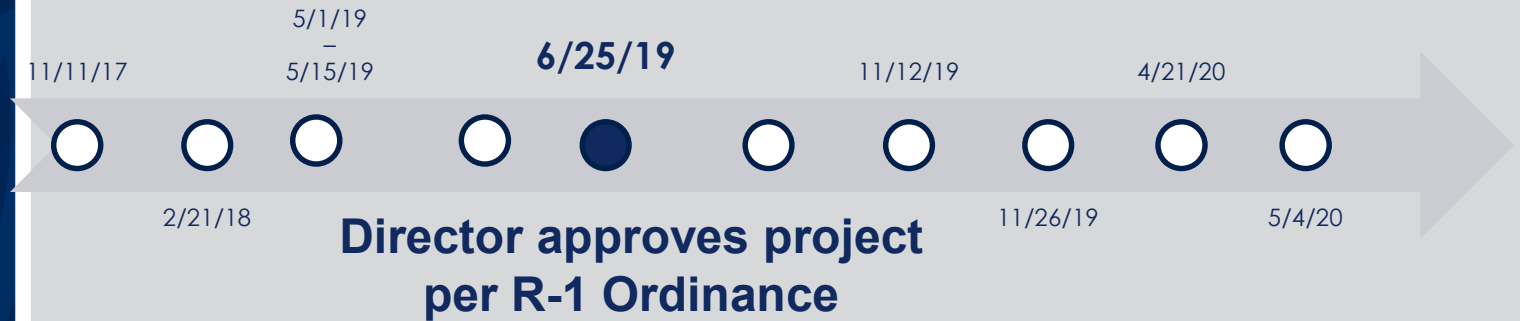


Project Timeline

Applicant submits second major project revisions



Project Timeline

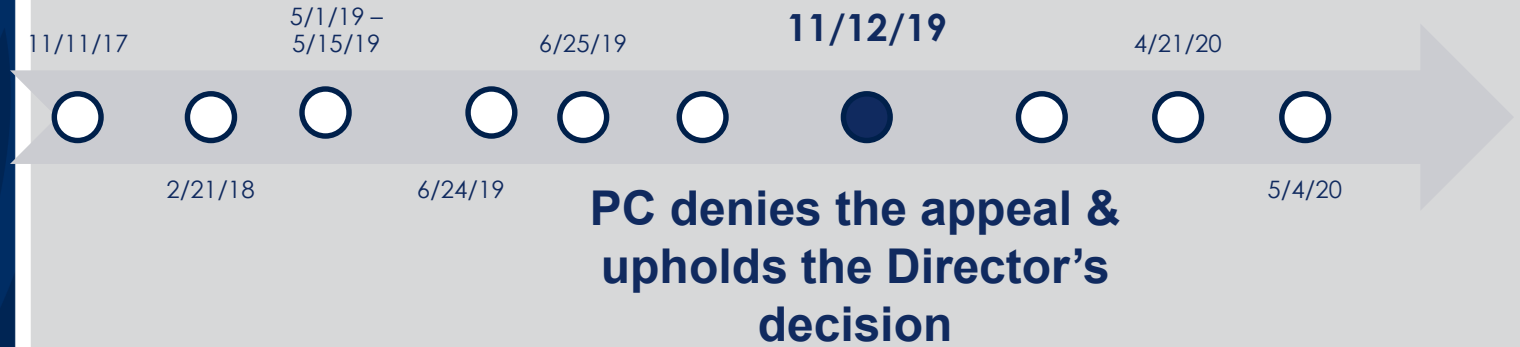


Project Timeline

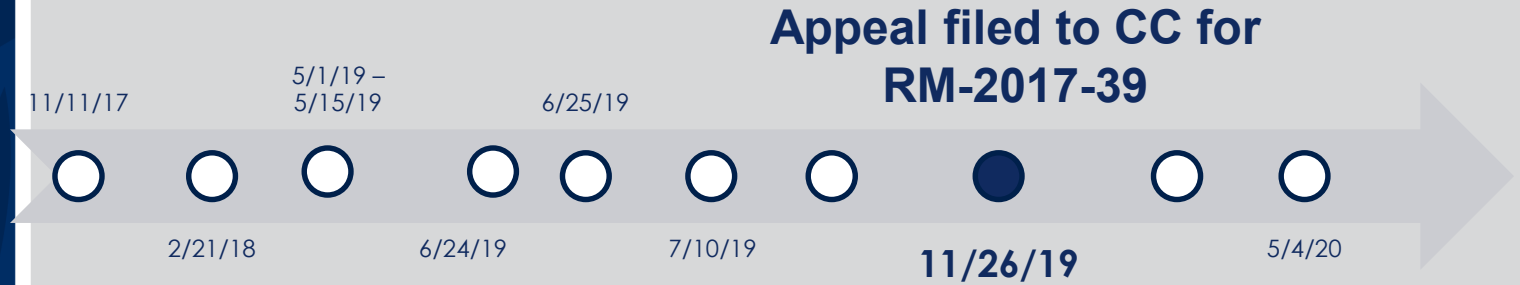
Appeal filed to PC for
R-2017-33 &
RM-2017-39



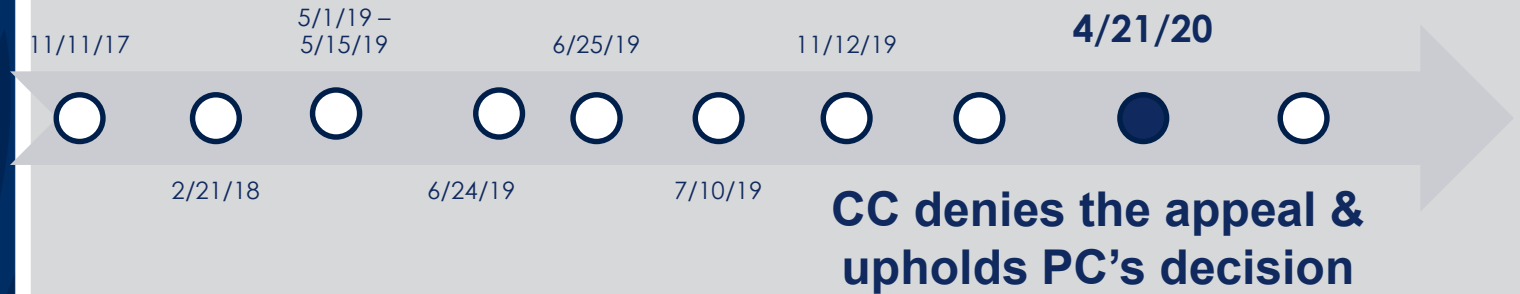
Project Timeline



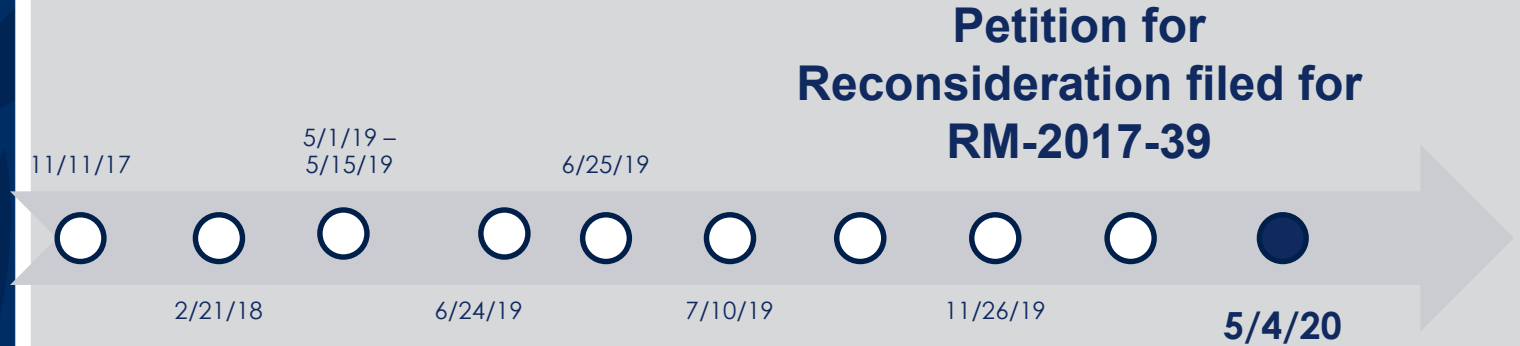
Project Timeline



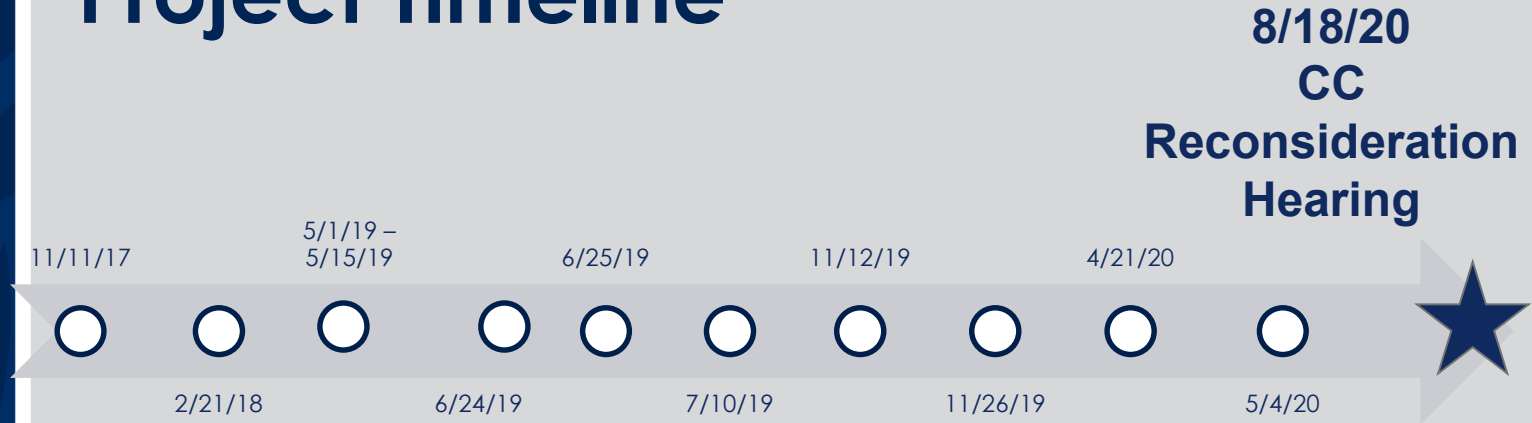
Project Timeline



Project Timeline



Project Timeline



Project Appeal Hearings

Planning Commission – November 12, 2019

- Project met all CMC Section 19.28.140(A) findings
- Additional Conditions:
 - Alternative privacy plantings & 48" balcony railing

City Council – April 21, 2020

- Project met all CMC Section 19.28.140(A) findings
- Additional Condition:
 - Balcony depth reduced to 12'

Recommendation

That the City Council:

- Deny the Petition for Reconsideration; and
- Uphold the April 21, 2020 City Council decision



CC 08-18-20

#13

Westport Development
(The Oaks)

Presentation

Westport Development
21267 Stevens Creek Boulevard
August 18, 2020



CUPERTINO



Subject

Development proposal to demolish a 71,250 square foot retail center (The Oaks), remove and replace 74 protected trees, and construct a mixed-used development consisting of 267 housing units (88 Rowhouse/Townhomes, 179 senior apartments, which include 48 senior affordable apartments), 27 memory care licensed assisted living residences, and 20,000 square feet of commercial space. The applicant is requesting a Heart of the City Exception for retail frontage along Stevens Creek Boulevard.

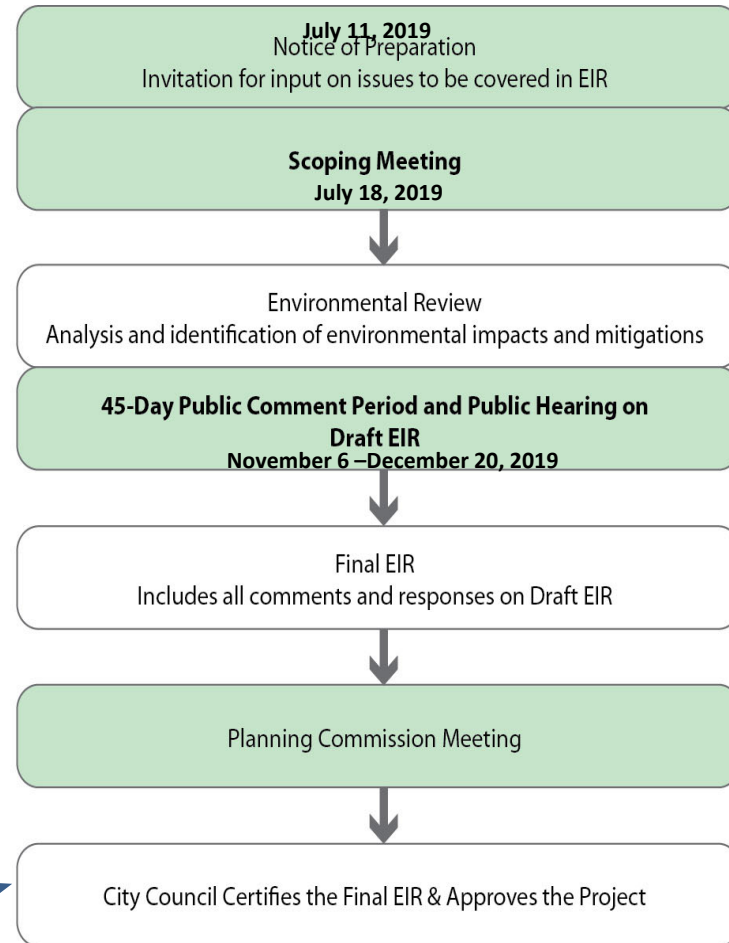
Applications

- Certifying the Final Environmental Impact Report (FEIR) (EA-2018-04);
- Development Permit (DP-2018-05);
- Architectural and Site Approval Permit (ASA-2018-05);
- Use Permit (U-2019-03);
- Vesting Tentative Map (TM-2018-03);
- Heart of the City Exception (EXC-2019-03); and
- Tree Removal Permit (TR-2018-03).

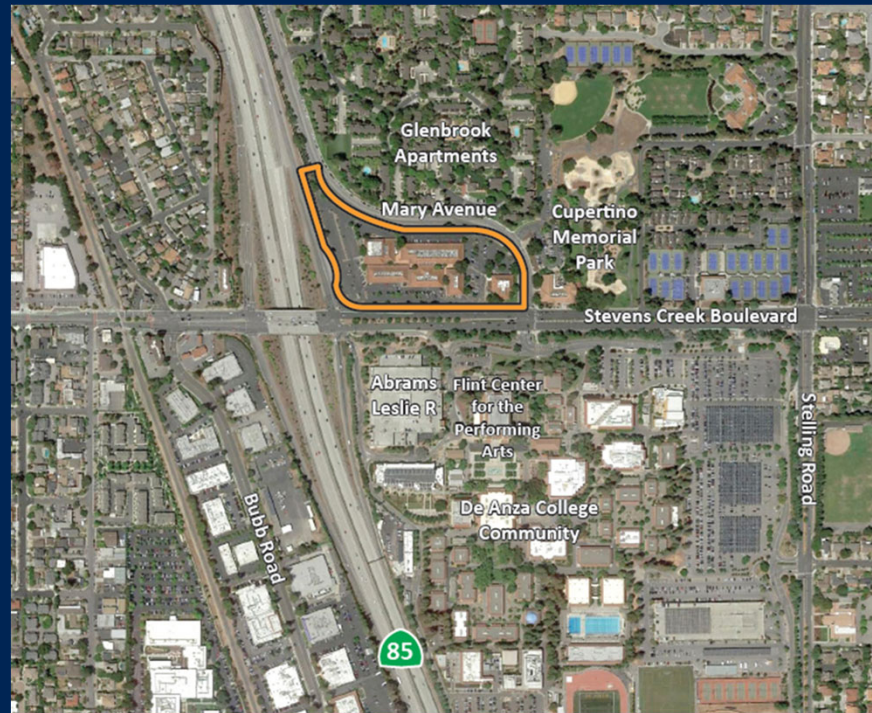
THE EIR PROCESS

This chart shows the opportunities for public input during the EIR process.

-  = Current phase
-  = Opportunities for public input



Project Location



- Mix of uses
- Heart of the City Specific Plan Special Area
- Oaks Gateway

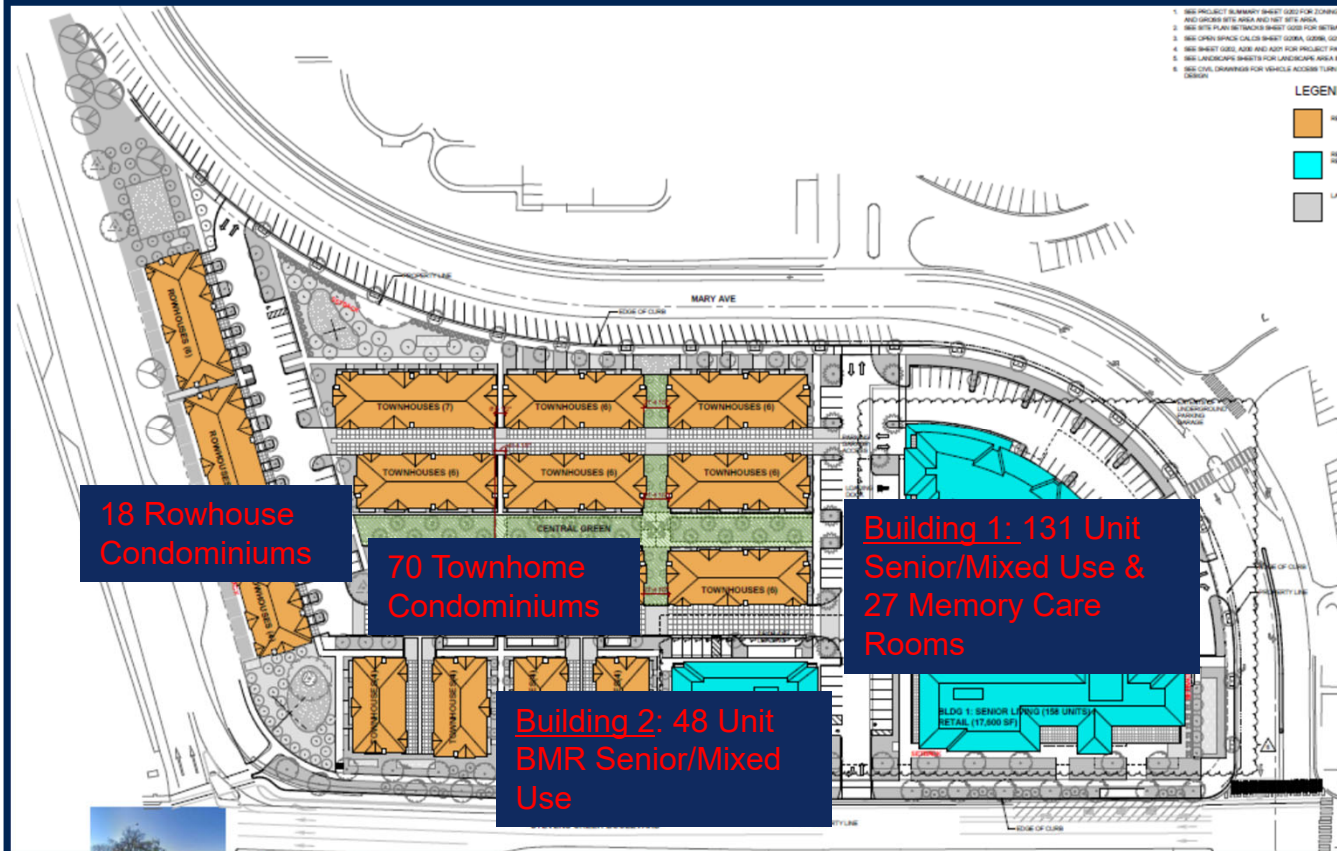
Priority Housing Site

- Priority Housing Site in General Plan/Housing Element
 - Allocated 200 units based on 'Realistic Capacity', 85% of maximum capacity (which for this site is 30 DU/acre).
- Proposed base density (237 units) is consistent with what is allowed in General Plan.



Project Data

- One-level, below-ground garage with 187 parking spaces.
- 44,945 square feet of Residential Common Open Space
- 2,915 square feet of Commercial Common Open Space
- 386 onsite and offsite tree replacements, for 73 protected development trees proposed to be removed and/or relocated.
- A vesting tentative map that would divide the property into two separate parcels.



Project Data

- Two residential/commercial buildings:
 - **Building 1**: six-story building with 167 senior residential units, 27 memory care licensed assisted living residences, and 17,600 square-feet of ground-floor retail/commercial space.
 - **Building 2**: six-story building with 48 below market rate (BMR) senior residential units and 2,400 square feet of ground-floor retail/commercial.
- 70 single-family residential townhouses and 18 single-family residential rowhouse condominiums.

Density Bonus and Waiver Requests (CMC 19.56)

	Number of Below Market Rate Units	Percentage of Development Units
Very Low Income	60% or 29 units	12.2%
Low Income	40% or 19 units	8%

- Density bonus for very-low income units selected.
- Applicant entitled to maximum Density Bonus (35%) allowed by State Law (83 units) in addition to the base density of 237 units.
- Requested 24% bonus, or 30 units above the base density of 237, for 267 units.

Density Bonus and Waiver Requests (CMC 19.56)

Applicant may request waivers or reduction of development standards that will have effect of physically precluding construction of a density bonus development.

- Height waivers of 45 ft. height limit in the General Plan:
 - Building 1 would be 70' 0" to the eave line, and 79' 6" to the roof ridge.
 - Building 2 would be 65' to the eave line, and 74' 6" to the roof ridge.
- Slope setback waivers of 1:1 slope setback from curb line in General Plan to slope setback of 1:1.70 for Building 1 and a slope setback of 1:1.48 for Building 2.
- Waiver from requirement in Section 19.56.050.G.1 that affordable units be dispersed throughout the project.

Density Bonus Incentive Concession Request (CMC 19.56)

- Including 12% Very Low-Income Units allows developer Two (2) Concessions/Incentives
- Requesting One (1) Concession to consolidate all BMR units one senior building (Building 2).
- Request made July 31, 2020



Planning Commission Hearing on May 12, 2020

Planning Commission recommended (5-0) to certify the Final Environmental Impact Report, and adopt resolutions approving the project.

Project Revisions

June 4, 2020, the applicant submitted an amended project:

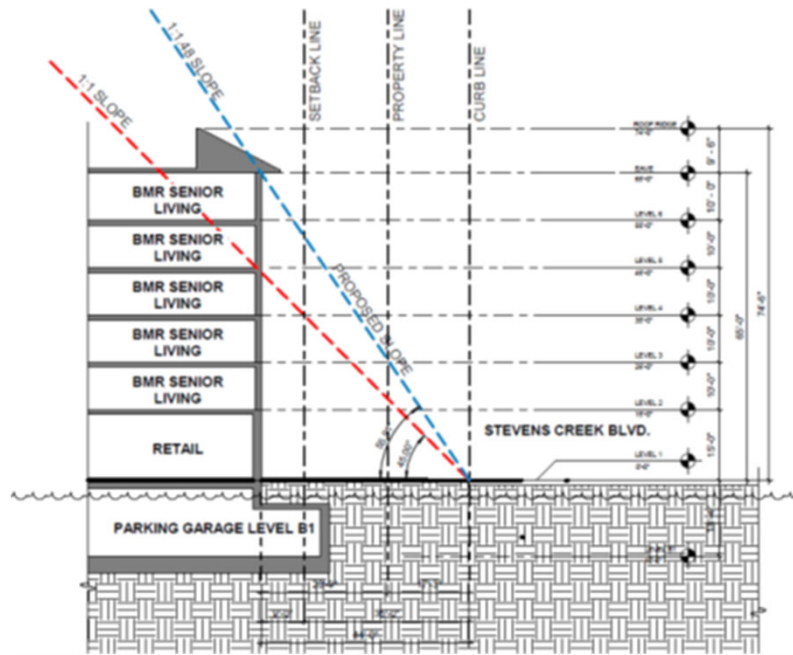
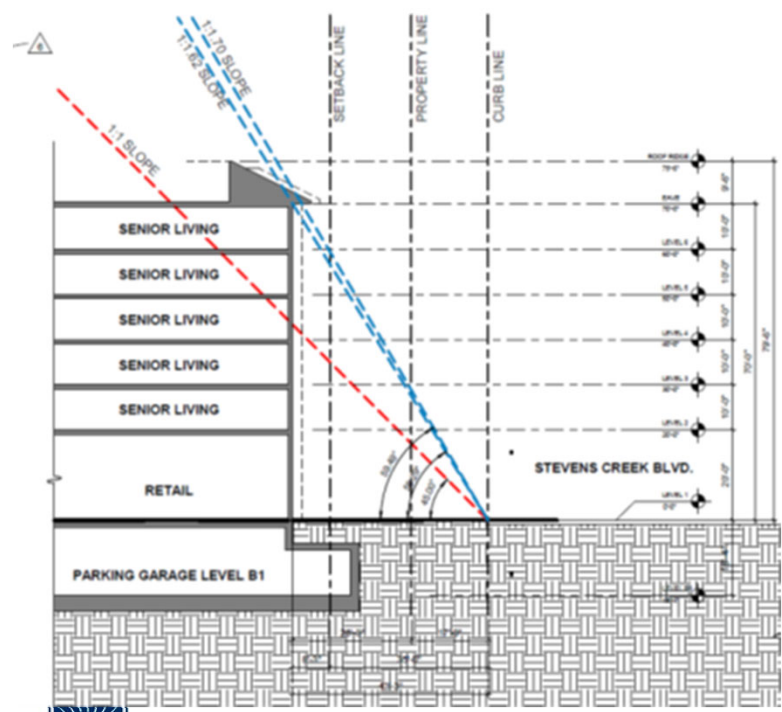
- **Relocation of BMR units to Building 2 / Additional story added:** Consolidation of BMR units by moving nine BMR units formerly in Building 1 into Building 2 on an additional top floor of Building 2. Building 2 will now be six stories and will increase in height 0.75 feet from 73.75 ft. to 74.5 feet.
- **Unit mix:** Altered unit mix to provide additional space for terraces on top floor of Buildings 1 and 2. In Building 2, unit mix is adjusted to include two-bedroom units in addition to studios and one-bedroom units.

Planning Commission Hearing on July 14, 2020

- Recommended Denial(3-2, Fung and Takahashi voting no)
- Found inconsistent with BMR Housing Mitigation Program Procedural Manual Section 2.3.4(D)
 - Request for BMR units in one senior building rather than being dispersed between the two senior buildings “not physically precluded.”
 - Evidence of financial impact may support a request for a “concession” under State Density Bonus Law.

<i>Allowed/Required</i>		Revised Senior Enhanced Project
Height of Structures	Up to 45 feet	Building 1 – 79.5 feet
		Building 2 – 74.5 feet
		Townhomes – 30 feet
		Rowhouses – 30 feet
Slope Line Setback	1:1	1:1.70
		1:1.48


DENSITY BONUS AND WAIVER REQUESTS (CMC 19.56)



Density Bonus and Waiver Requests (CMC 19.56)

Waiver Justification - Applicant

- Taller structures with higher density housing and retail are concentrated on eastern end of site, allowing a greater product mix of housing
- Better transition to single family and lower-elevated apartments along Mary Avenue.
- Strict enforcement standards would:
 - Require units to be further relocated to parts around site.
 - Lose required open space.
 - Limiting height of Building 1 to 45 feet would directly eliminate 102 senior units, plus eliminate another 15 units in order to relocate amenity terrace to a lower floor.
 - Limiting height of Building 2 to 45 feet would directly eliminate 18 BMR senior units from the project.



Density Bonus and Waiver Requests (CMC 19.56)

- Consolidation of senior housing components adheres to certain design requirements and code regulations that are particular to senior population.
- Dispersion of Senior Housing within a mixed housing development is precluded by State Law.

Density Bonus and Waiver Requests (CMC 19.56)

The City's third-party architectural firm found that applying the height and slope line requirements would:

- Decrease the amount of open space and landscaped areas
- Reduce average size of senior units
- Reduce the retail support space including areas identified for trash, loading, and lobby space.
- Reduce commercial ceiling heights
- Decrease above ground parking and increase underground parking

Density Bonus & Concession Request (CMC 19.56)

Consolidation of Senior BMR Units in Building 2

- Building 1 Requires Type I construction whereas Building 2 can be built as Type III, saving \$215,000 a unit.
- Regulated Senior Assisted Living facility, the service offering, operating costs and logistics, additional facility requirements and financing aspects create physical and financial obstacles.
- Low Income Housing Tax Credit program can be used to subsidize all of the affordable units if BMR Units consolidated.

Density Bonus and Concession Request (CMC 19.56)

The City's third-party peer-reviewer found:

- Hard construction costs for Building 1 are at least 20% greater on a per square foot basis than they are for Building 2.
- If BMR units were included in Building 1, on-going operating costs would exceed the BMR housing allowance for rent and utilities and add to subsidy of units.
- Developer could not apply for tax credits if BMR units located in Building 1.



Findings Required for Denial of a Waiver or an Incentive/Concession

- That the waiver or incentive/concession would have an adverse impact on real property listed in the California Register of Historic Resources; or
- That the waiver or incentive/concession would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the residential project unaffordable to low- and moderate-income households; or
- That the waiver or incentive/concession is contrary to state or federal law.

Unit Comparability

Building 1 (131 Units)	Studio	One Bedroom	Two Bedroom
Average Unit Size	537.7 s.f.	691.3 s.f.	1,087 s.f.
Unit Count	26	74	31
Mix Percentage	20%	56%	24%
Building 2 (48 Units)	Studio	One Bedroom	Two Bedroom
Average Unit Size	518.6 s.f.	615.7 s.f.	843 s.f.
Unit Count	9	28	11
Mix Percentage	19%	58%	23%

Unit Comparability

Townhouses (70 Units)	Studio	One Bedroom	Two Bedroom	Three Bedroom
Average Unit Size	-	-	-	2,595
Unit Count	-	-	-	70
Mix Percentage	0%	0%	0%	100%
Row Houses (18 Units)	Studio	One Bedroom	Two Bedroom	Three Bedroom
Average Unit Size	-	-	-	2,380
Unit Count	-	-	-	18
Mix Percentage	0%	0%	0%	100%

Use Permit

- Required for development of residential units on a mixed-use Housing Element site that proposes units above the realistic capacity in the Housing Element.
 - This site (the Oaks) is allocated 200 units based on a 'Realistic Capacity', which is generally 85% of the maximum capacity allowed (30 DU/acre) for the site.
 - Proposes project at maximum allowable density, which is 30 units per acre or 237 units.
- The applicant has submitted this application under protest because maximum density for site as shown in the General Plan is 30 units per acre.

Use Permit

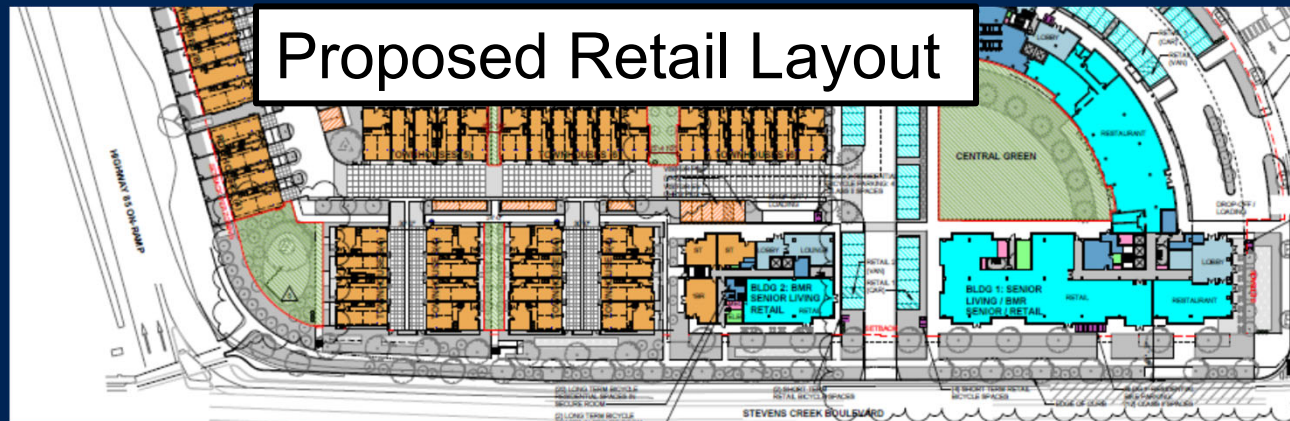
- Allow a residential care facility, with seven or greater residents in a residential zone.
 - Memory care facility, will also include a separate kitchen, activity room/library, and terrace. The residents will be supervised 24 hours a day, although they will live independently within their one-bedroom units.
 - Pursuant to CMC Section 19.20.020, 500 feet from the property boundary of another residential care facility.
 - If required, must obtain any license issued by appropriate State and/or County agencies and/or departments.



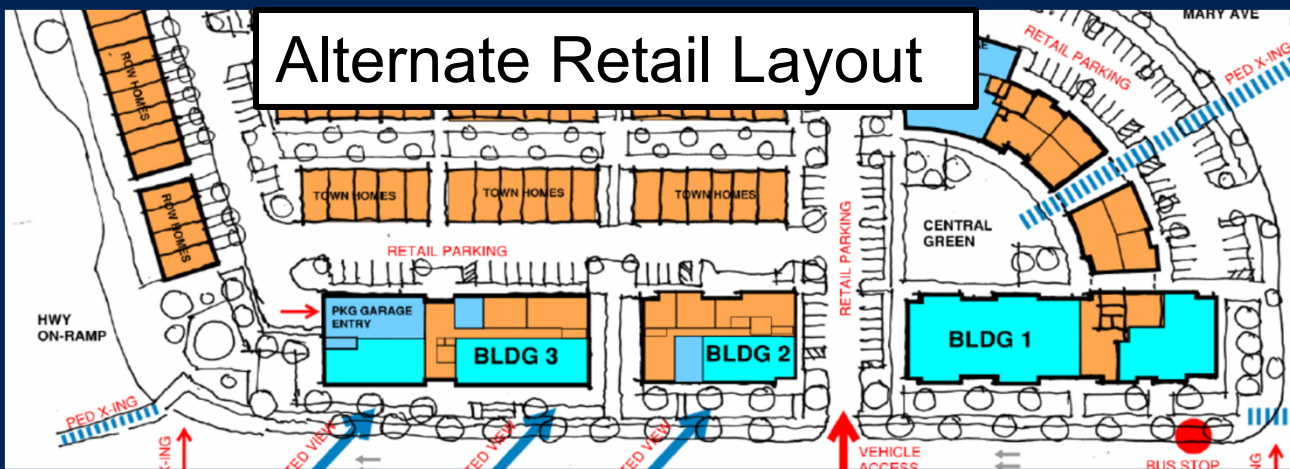
Heart of the City Exception

- Heart of the City Specific Plan limits uses that do not involve the direct retailing of goods or services to the general public to no more than 25% of a building frontage along Stevens Creek Boulevard, and no more than 50% of the rear of a building. The project provides approximately 40% of the frontage along Stevens Creek and approximately 75% of the rear of the buildings along Stevens Creek as non-direct retail

Proposed Retail Layout



Alternate Retail Layout



Architectural Design



Architectural Design

View from Mary Avenue

Building 1

Building 2

Townhomes

Rowhouses



View from Stevens Creek Boulevard

Rowhouses

Townhomes

Building 2

Building 1



Tree Removal and Replacement

- The development proposes to remove and replace 74 protected development trees.
 - 14 are Coast Live Oaks with trunk diameters ranging between 11-51 inches. Of the 14 Coast Live Oaks, four (4) will be relocated on-site.
- The applicant is proposing to replace the removed trees with 386 trees (314 on-site and 74 off site).

Tree Removal and Replacement

Protected Trees Removed	Sizes	Required Replacements			Replacements	
			24-inch box	36-inch box	24-inch box	36-inch box
36	Up to 12 inches*	One 24" box tree	36			
11	Over 12 inches and up to 18 inches	Two 24" box trees or One 36" box tree	68			
23	Over 18 inches and up to 36 inches					
3	Over 36 inches	One 36" box tree		3		
Totals			104	3	287	17

Traffic, Circulation and Parking Analysis

Type	Existing Conditions	Senior Enhanced	Difference
Trips			
Total Daily Trips	2,209	1,462	-747
Total AM Peak Trips	57	39	-18
Total PM Peak Trips	152	112	-40



Traffic, Circulation and Parking Analysis

- The City's Density Bonus Ordinance, in compliance with State Law, allows density bonus projects option to use alternate parking standards for all residential units (market-rate and affordable) based on bedroom count (0.5 per bedroom).
 - Required to provide only 383 spaces.
 - Proposes 463 parking spaces.

Vesting Tentative Map

- A Vesting Tentative Map is proposed to divide property into two parcels [one 4.7 acre and one 3.1-acre parcel].
- Bike route (like Class III) on west side and access to cross development route from Mary to Stevens Creek Boulevard.
- Stevens Creek Boulevard upgrades to include detached Class IV bike lanes and other improvements.

Project History

- On May 17, 2018 the applicant submitted an application that was deemed complete on July 23, 2019 and evaluated in Draft Environmental Impact Report (DEIR).
- In February of 2020, the applicant submitted a Senior Enhanced Alternative that was evaluated as a feasible alternative in Final Environmental Impact Report (Final EIR) (Increased Senior Housing Alternative).
- On April 22, 2020, applicant requested that Senior Enhanced Alternative Plan be considered as proposed project.
 - Although massing of buildings, square footage, and overall exterior appearance are virtually identical to previous proposed project, unit count has been increased.



Environmental Review/EIR

- Air Quality (construction)
- Biological Resources (nesting birds, tree removal)
- Cultural & Tribal Cultural Resources (unknown resources)
- Geology and Soils (unknown paleontological resources)
- Noise (construction)
- Tribal Cultural Resources (unknown resources)
- Utilities and Service Systems (wastewater)



Environmental Review/EIR

- At its April 16, 2020 meeting, the Environmental Review Committee (ERC) determined on a 5-0 vote that the project may have significant impacts to the environment requiring the preparation of an EIR for the City Council to consider certifying



Housing Accountability Act

- Limits ability of a city to deny or impose certain conditions on a housing development project when project complies with applicable, objective general plan, zoning, and subdivision standards and criteria.
- This project is a “housing development project” under HAA because it is a mixed-use development consisting of residential and nonresidential uses with at least two-thirds of square footage designated for residential use.
- Project is either consistent with City’s objective standards or has applied for waivers and/or incentives/concessions under Density Bonus Law.



Housing Accountability Act

May disprove project if:

- The project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density; and
- No feasible method to satisfactorily mitigate or avoid the adverse impact exists.

Added Condition of Approval – Development Permit

Phasing Condition of Approval in Development Permit Resolution

- Requires the senior BMR units to be completed or achieved the "Affordable Senior Housing Milestone" before the City will issue a certificate of occupancy for the 66th rowhouse/townhouse.
- Requires that at least 10 of the rowhouses/townhouses are constructed before the City will issue a final certificate of occupancy for Building 2.
- The City Manager may approve a modified construction schedule if timing requirement creates unreasonable delays in the issuance of certificates of occupancy or receipt of final inspections for the Rowhouse/Townhouse Units.
 - Developer provides satisfactory assurance that the senior BMR units will be completed prior to completion of seventy-five percent (75%) of the Rowhouse/Townhouse Units.

Outreach

Notice of Public Hearing and Intent, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none">▪ Site Signage (10 days prior to the hearing)▪ Citywide postcard mailed to each resident (10 days prior to the hearing)▪ Legal ad placed in newspaper (at least 10 days prior to the hearing)▪ Public hearing notices were mailed to property owners in the vicinity of the project (10 days prior to the hearing)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (one week prior to the hearing)▪ Posted on the City of Cupertino's website (one week prior to the hearing)

Public Comment

	Support	Concerns/Against	General Comment
Need for Senior Housing/Housing	6		3
Comparability		1	
Dispersal of BMR Units		2	
Traffic/Safety		10	1
Height/Setback Waivers		7	1
Density/Housing		3	1
Project Completion			2
Retail		1	
Bike/Ped Amenities	1		4
Tree Removal		2	



Conclusion

Staff recommends approval of the project because the project and conditions of approval address concerns related to the proposed development and all of the findings for approval of the proposed project, consistent with Chapters 14.18, 18.28, 19.56, 19.156, and 19.168 of the Cupertino Municipal Code, may be made. To the extent that concerns remain about the development's height and slope line, the State Density Bonus Law and Housing Accountability Act constrain the City's ability to address these concerns, and the project meets the standards that qualify it for protection under these laws.



Next Step

- The City Council's decision will be final unless reconsidered within 10 days of the decision. The applicant may apply for building permits at that time.



CC 08-18-20

#14

Short Term Rental
Ordinance

Presentation

Item #14 August 18, 2020

Short-Term Rental Ordinance

August 18, 2020



**CITY OF
CUPERTINO**

Background

- City Council heard item on 7/7/2020
- Changes proposed:
 - Operative date of certain sections
 - Additional text changes

Changes

- Application (*Govt. issued ID reqd.*)
- Multiple STRs (*All adults listed as hosts*)
- Registration (*violation clarified*)
- Revocation (*violation clarified*)
- Home Occupation Standards
(*effective until 1/1/2021*)

A decorative blue abstract geometric pattern on the left side of the slide, featuring various shapes and lines in different shades of blue.

Enforcement Expectation and Options

- Current STR enforcement
 - Reactive/ Complaint-based
- Enforcement Cases



Enforcement Expectation and Options

- Proactive
- Semi-Reactive
- Reactive

Enforcement Level	Proactive	Semi-Reactive	Reactive
Total Estimated Costs	\$408,689	\$283,889	\$159,089
Estimated Fee (based on 200 STRs)	\$2,287.45	\$1,663.45	\$1,039.45
Estimated Fee (based on 400 STRs)	\$1,265.72	\$953.72	\$641.72

Public Noticing

Notice of Public Hearing & Legal Ad	Agenda
<ul style="list-style-type: none">▪ Legal ad placed in newspaper (at least 10 days prior to hearing)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (four days prior to hearing)▪ Posted on the City of Cupertino's Web site (four days prior to hearing)

Environmental Review

- CEQA Exemptions:
 - 15378
 - 15061 (b) (3)
 - 15304

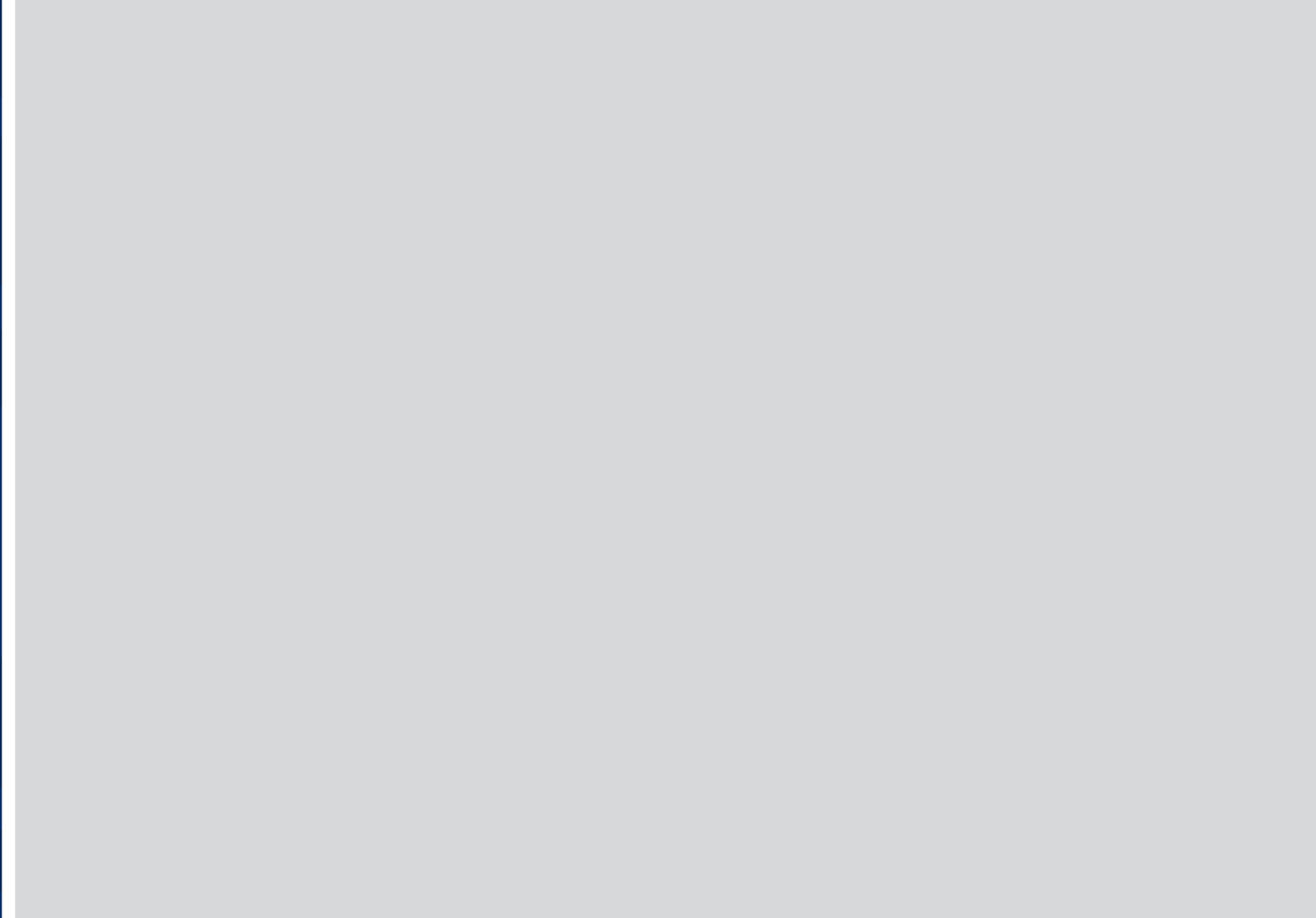


Next Steps

- First reading of the ordinance
- Second reading on 9/15/2020
- Fee schedule amendment

Recommendation

1. Conduct the first reading and adopt the draft Ordinance (Attachment A) to:
 - a) Find the proposed actions exempt from CEQA; and,
 - b) Amend the Municipal Code by adding Chapter 5.08 (Short Term Rental Activity) and amending Chapter 3.12 (Transient Occupancy Tax), Chapter 19.08 (Definitions), Chapter 19.12 (Administration) and Chapter 19.120 (Home Occupations).
2. Approve a budget appropriation (BMN 2021-088) of either \$408,689, \$283,889, or \$159,089 depending on the selected level of enforcement; and
3. Provide direction on the registration fee - full cost recovery or lower?



CC 08-18-20

#17

Lifetime Agreement
Amendment

Presentation

Lifetime Agreement Amendment

Cupertino City Council

August 18, 2020



**CITY OF
CUPERTINO**

Agenda

- Current agreement terms
- Proposed amendment
- Limitations
- Recommended action

Objective

- To consider an amendment to the Lifetime Agreement due to the economic impacts of COVID-19, and Sports Center closure for the seismic retrofit
 - FY 2019-2020
 - FY 2020-2021

Current Agreement

- Lifetime offers programs and activities at the Sports Center
- City provides Lifetime office, retail, and programming space
- Compensation Terms
 - The City receives a portion of Lifetime's revenue in the form of a flat fee or 16% of total annual gross revenue, whichever is greater
 - Compensation is split into 8 payments per fiscal year

Proposed Amendment

FY 19-20 seventh payment

- Waive the flat fee (\$42,500)
 - Sports Center closed
 - March 16 to June 14
 - Programs resumed with restricted operations
 - June 15

Proposed Amendment

FY 20-21

- Remove the flat fee
- Increase the percentage of gross revenue charged to 23% per payment

Limitations: COVID-19

- Class ratio
- Camp participants
- Limited program availability

Limitations: Seismic Retrofit

- Closure: September to December
 - Elimination of the office, retail, and indoor programming space
 - Reduction of outdoor program space

Recommended Action

- Authorize the City Manager to amend the current agreement with Lifetime Tennis Inc., DBA Lifetime Activities Inc. to adjust the compensation accepted by the City from March 13 to May 26 and for Fiscal Year 2020-2021 due to the impacts of COVID-19 and Sports Center retrofit.

Questions

- Dana Gill, Founder & CEO of Lifetime
- Kevin Khuu, Management Analyst Parks & Recreation Department