



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION STAFF REPORT

Meeting: May 12, 2020

Subject

Consider approving a development proposal to demolish a 71,250 square foot retail center (The Oaks), remove and replace 74 protected trees, and construct a mixed-use development consisting of 294 housing units (88 Rowhouse/Townhomes, 206 senior apartments, which include 48 senior affordable apartments and 27 memory care units) 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. The applicant is also requesting a density bonus and density bonus waivers for height, building plane, and below market rate housing dispersion. City approvals would be certification of the Final Environmental Impact Report, Development Permit, Architectural and Site Approval Permit, Tree Removal Permit, Use Permit, Heart of the City Exception, and Vesting Tentative Map; (Application No(s): DP-2018-05, ASA-2018-05, TM-2018-03, TR-2018-22, U-2019-03, EXC-2019-03, EA-2018-04; Applicant(s): KT Urban (Mark Tersini); Location: 21267 Stevens Creek Boulevard; APN #326-27-042, -043

Recommended Actions

Staff recommends that the Planning Commission, in accordance with draft resolutions (Attachments 1-7), recommend that the City Council:

1. Adopt Resolution No. 20-XX certifying the Final Environmental Impact Report and adopting the mitigation measures and Mitigation and Monitoring Reporting Program (EA-2018-04);
2. Adopt Resolution No. 20-XX approving the Development Permit (DP-2018-05);
3. Adopt Resolution No. 20-XX approving the Architectural and Site Approval Permit (ASA-2018-05);
4. Adopt Resolution No. 20-XX approving the Use Permit (U-2019-03);
5. Adopt Resolution No. 20-XX approving the Vesting Tentative Map (TM-2018-03);
6. Adopt Resolution No. 20-XX approving the Heart of the City Exception (EXC-2019-03);
7. Adopt Resolution No. 20-XX approving the Tree Removal Permit (TR-2018-03).

Discussion

Project Data:

| | | |
|---|--|-------------------------------|
| General Plan Land Use Designation | Commercial/Residential | |
| Special Planning Area | Heart of the City Specific Plan (West Stevens Creek subarea) | |
| Zoning Designation | P(CG, Res) | |
| Net lot area | 7.9 acres | |
| | Allowed/Required | Proposed |
| Maximum units based on density | 237 | 294 |
| 35% Density Bonus units (State Law) | 83 | |
| Total number of units | 320 | |
| Residential Density | 30 du/acre | 37.22 du/acre |
| Height of Structures | Up to 45 feet | Building 1 – 91.75 feet |
| | | Building 2 – 73.75 feet |
| | | Townhomes – 30 feet |
| | | Rowhouses – 30 feet |
| Setbacks | | |
| Front | 35 feet from the face of curb (min.) | 35 feet from the face of curb |
| Side | Minimum One-half (1/2) the height of the Building (, or ten (10) feet, whichever is greater. (15 feet) | 17.6 feet |
| Parking | | |
| Residential | 254 (Based on Density Bonus standards in Chapter 19.56) | 330 |
| Retail | 82 | 125 |
| Total on-site | 336 | 455 |
| Private Open Space (s.f. per unit) | 60 s.f. per unit | 60-375 s.f. per unit |
| Common Open Space per Heart of the City | | |
| Residential | 44,100 s.f.(150 s.f. per unit) | 44,945 s.f. |
| Commercial (Retail) | 2.5% of gross floor area of buildings ≥ 20,000 sq. ft., or restaurants ≥ 10,000 sq. ft. | 2,621 s.f. |
| Retail Frontage | | |

| | | |
|----------------------------------|---|-----|
| Stevens Creek Boulevard frontage | 75% | 60% |
| Rear of building | 50% | 26% |
| Building Area | 536,684 s.f. | |
| Project Consistency with: | | |
| General Plan: | Yes – upon approval of density bonus waivers | |
| Zoning: | Yes – upon approval of Heart of the City Exception for retail frontage requirements | |

Background:

Application Requests

The applicant, Mark Tersini, KT Urban, is requesting permits to allow construction of a mixed-use development on an 8.1 gross-acre site currently occupied by the Oaks Shopping Center. The primary components of the project are listed below. Refer to Attachment 20 to view the development plans.

- Two residential/commercial buildings:
 - Building 1 is a six-story building with 167 senior residential units, including nine below market rate (BMR) senior units, 27 memory care units, and 17,600 square-feet of ground-floor retail/commercial space.
 - Building 2 is a five-story building with 39 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.
- One-level, below-ground garage with 183 parking spaces.
- 44,945 square feet of Residential Common Open Space
- 2,621 square feet of Commercial Common Open Space
- 386 onsite and offsite tree replacements, for the 73 protected development trees proposed to be removed and/or relocated.
- A vesting tentative map that would divide the property into two separate parcels.



Figure 1 Location of The Oaks Shopping Center and the proposed Westport Cupertino redevelopment.

The applicant is requesting a density bonus and density bonus waivers for height, building plane, and dispersion of below market rate housing. A Heart of the City

Exception for retail frontage along Stevens Creek Boulevard is also required. The following City permits would be required: Development, Architectural and Site Approval, Tree Removal, and Use Permits. A Vesting Tentative Map is proposed to divide the property into two parcels [one 4.7 acre and one 3.1 acre parcel].

Site and Location Description

The project site is known as the Oaks Shopping Center and is located in the Heart of the City Specific Plan Special Area within the Oaks Gateway of the West Stevens Creek subarea. The shopping center is on an approximately 8.1 gross-acre site bounded by Stevens Creek Boulevard to the south, Mary Avenue to the east and north, and Highway 85 to the west. The surrounding uses are the Glenbrook Apartments to the north, De Anza College to the south (across Stevens Creek Boulevard), and the Cupertino Senior Center to the east (See Figure 1).

The existing 71,684 square foot leaseable area includes a mix of retail, restaurant, specialty schools, and small office tenants. Currently much of the shopping center is vacant, including the former Bluelight Cinema space. Since 2011, the site has also been home to the West Coast Farmer's Market, held every Sunday morning.

Analysis:

General Plan and Housing Element Compliance

The proposed use is consistent with the General Plan Land Use Designation of Commercial/Residential. The City's General Plan uses a development allocation system when evaluating development projects and allows the City flexibility in developing project and site-specific mitigation measures when reviewing projects. The Housing Element of the City of Cupertino's *General Plan: Community Vision 2015 – 2040* (General Plan) identifies The Oaks Shopping Center as a Priority Housing Site. As a Priority Housing Site, it is allocated 200 units based on a 'Realistic Capacity', which is generally 85% of maximum capacity allowed (which for this site is 30 DU/acre). A Use Permit is required to develop to the maximum density of 30 DU/Acre allowed in the General Plan for this site. The proposed base density (237 units) is consistent with what is allowed in the General Plan.

The General Plan's Community Form Diagram establishes heights and setbacks for development on sites within each of the Special Areas. The proposed development is in The Oaks Gateway within the Heart of the City Specific Plan Special Area, which has a height limit of 45 feet and a 1:1 slope line setback from the curb line. The applicant is asking for density bonus waivers of the height and slope setback standards for Buildings

1 and 2. This will be discussed in further detail in the Density Bonus Section of this Staff Report.

Staff has evaluated the project's consistency with the General Plan and concludes that based on the conformance with the General Plan Land Use designation for the site and the minimal environmental impacts of the project as analyzed in the Environmental Impact Report (further discussed in detail in the Environmental Review section of this Staff Report), the proposed project supports several of the City's other General Plan goals including:

- **Policy LU-1.3: Land Use in All City-wide Mixed-Use Districts** - *Encourage land uses that support the activity and character of mixed-use districts and economic goals.*
- **Policy LU-5.2: Mixed-Use Villages** - *Where housing is allowed along major corridors or neighborhood commercial areas, development should promote mixed-use villages with active ground floor uses and public space. The development should help create an inviting pedestrian environment and activity center that can serve adjoining neighborhoods and businesses.*
- **Policy LU-14.1: Land Use** - *Primary land uses include quasi-public/public facilities, with supporting mixed commercial/ residential uses.*
- **Policy LU-14.3: Gateway Concept** - *Buildings should be high-quality in keeping with the gateway character of the area. Projects should provide or contribute towards gateway signs and landscaping.*
- **Policy LU-14.5: Oaks Gateway Node** - *This is a gateway retail and shopping node. New residential, if allowed, should be designed on the "mixed-use village" concept discussed earlier in this Element.*
- **HE-1.3.4: Flexible Development Standards** - *The City recognizes the need to encourage a range of housing options in the community. The City will continue to:*
 - *Offer flexible residential development standards in planned residential zoning districts, such as smaller lot sizes, lot widths, floor area ratios and setbacks, particularly for higher density and attached housing developments.*
 - *Consider granting reductions in off-street parking on a case-by-case basis for senior housing.*
- **HE-2.3.7: Density Bonus Ordinance** - *The City will encourage use of density bonuses and incentives, as applicable, for housing developments which include one of the following:*
 - *At least 5 percent of the housing units are restricted to very low-income residents.*
 - *At least 10 percent of the housing units are restricted to lower income residents.*
 - *At least 10 percent of the housing units in a for-sale common interest development are restricted to moderate income residents.*
 - *The project donates at least one acre of land to the city or county large enough for 40 very low income units; the land has the appropriate general plan designation, zoning,*

permits, approvals, and access to public facilities needed for such housing; funding has been identified; and other requirements are met. A density bonus of up to 20 percent must be granted to projects that contain one of the following:

- *The project is a senior citizen housing development (no affordable units required).*
- *The project is a mobile home park age restricted to senior citizens (no affordable units required). For projects that contain on-site affordable housing, developers may request one to three regulatory concessions, which must result in identifiable cost reductions and be needed to make the housing affordable.*

Should the proposed project be approved, 237 units would be allocated to this project from the Heart of the City Special Area. The 57 density bonus units would not affect the available Heart of the City allocation. Therefore, 93 residential units would continue to be available in this area.

Density Bonus and Waiver Requests

The project is eligible as a density bonus project consistent with the City of Cupertino Municipal Code Chapter (CMC) 19.56 *Density Bonus* and State Density Bonus Law. Below, in Figure 2, is a breakdown of the housing affordability types and percentage of development:

| | Number of Below Market Rate Units | Percentage of Development Units¹ |
|-----------------|--|--|
| Very Low Income | 60% or 29 units | 12.2% |
| Low Income | 40% or 19 units | 8% |

Figure 2 Below Market Rate units as a percentage of the development.

A density bonus may be selected from only one category listed above. Because the proposed project is providing 29 very low-income senior units, or 12% of the development, the applicant is entitled to the maximum Density Bonus (35%) allowed by State Law, or 83 units in addition to the base density of 237 units. Density bonus applicants may elect to build a lesser percentage of their allowable density increase, and KT Urban has requested a 24% bonus, or 57 units above the base density of 237, for a total of 294 units. Please refer to Attachment 9 for a full description of the Below Market Rate programming of the Westport Cupertino development. A condition of approval requires that, prior to issuance of any building permit, the applicant record a regulatory

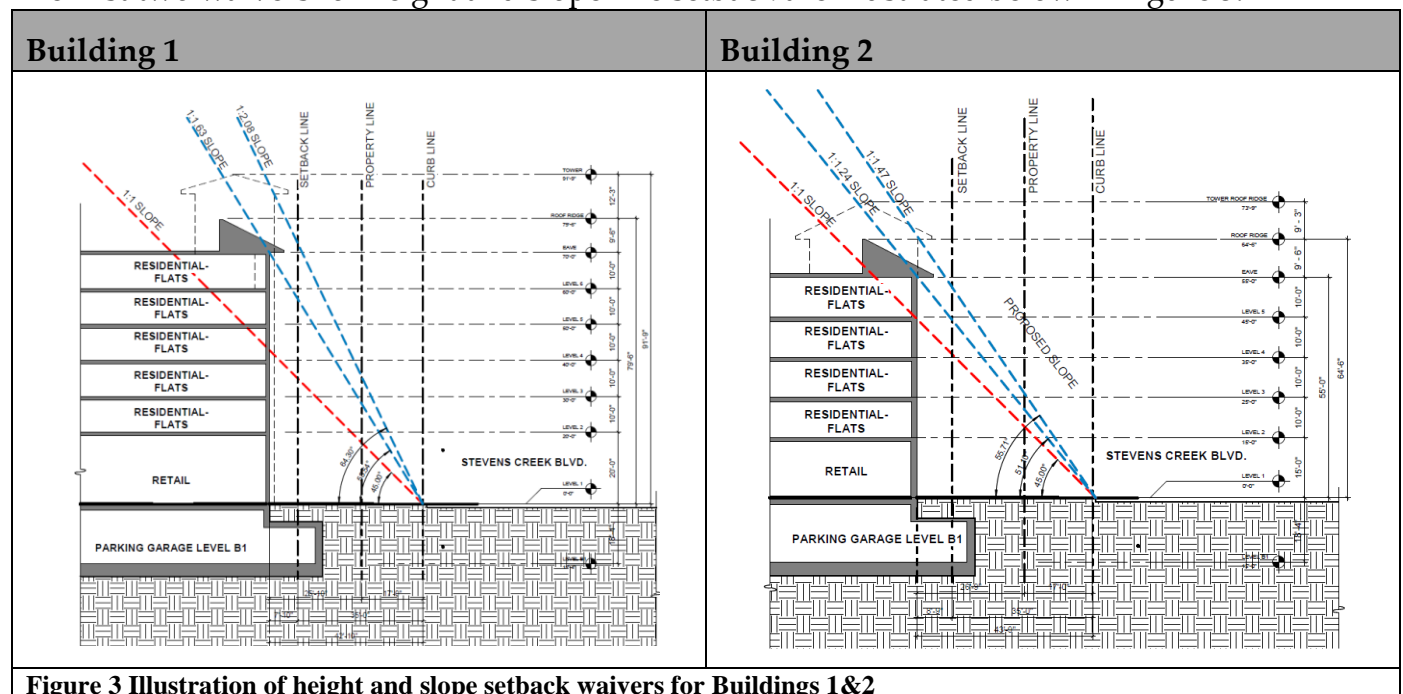
¹ Percentages are based on the base density of 30 DU/acre or 237 units, as required by the Density Bonus Law and are consistent with the 15% requirement in the City's BMR Manual.

agreement with the City ensuring that 48 units will be rented to low and very low-income households for a 99-year period.

As a density bonus project, the applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a density bonus development. The applicant has requested three (3) waivers for the proposed development:

- Height waivers of the 45 ft. height limit in the General Plan's Community Form Diagram Building 1 and Building 2 to allow the following heights:
 - Building 1 would be 70' 0" to the eave line, 79' 6" to the roof ridge, and 91' 9" to the top of the non-occupied tower.
 - Building 2 would be 55' to the eave line, 64' 6" to the roof ridge, and 73' 9" to the top of the non-occupied tower.
- Slope setback waivers of the 1:1 slope setback from the curb line in the General Plan's Community Form Diagram to a slope setback of 1:2.08 for Building 1 and a slope setback of 1:1.47 for Building 2.
- Waiver from the requirement in Section 19.56.050.G.1 that the affordable units be dispersed throughout the project to allow the affordable units to be located only within the senior housing buildings (Buildings 1 and 2).

The first two waivers for height and slope line setback are illustrated below in Figure 3.



The justification of the waivers was provided by the applicant in three letters, two submitted by Andrew Faber, Esq. of Berliner Cohen, LLP dated November 30, 2018

(Attachment 10) and April 22, 2020 (Attachment 11) and the other by Steven Ohlhaber, AIA of C2K Architecture on April 23, 2020 (Attachment 12).² These letters state the reasons for the necessity of the waivers, including but not limited to the following:

- Taller structures with higher density housing and retail are concentrated on the eastern end of the site, allowing a greater product mix of housing which includes townhouse/rowhouse options as well as both senior market rate and BMR apartments that vary from studio to two-bedroom units.
- Having the lower density townhomes/rowhouses spread across the western, northern and southern ends of the development act to better transition to the single family and lower-elevated apartments along Mary Avenue. This pushes the need for the higher density senior housing buildings to be taller to accommodate the added density units.
- Consolidation of the senior housing components adheres to certain design requirements and code regulations that are particular to the senior population. Further, placing these units closer to the Cupertino Senior Center, retail, and bus systems benefits this population.
- A strict enforcement of the height and slope line setback standards would require the units to be further relocated to parts around the site, potentially losing required open space. Limiting the height of Building 1 to 45 feet would directly eliminate 64 senior units from the Project, plus eliminate another 4 units in order to relocate the amenity terrace to a lower floor. Limiting the height of Building 2 to 45 feet would directly eliminate nine BMR senior units from the project.
- Dispersion of the Senior Housing within a mixed housing development is precluded by State Law. Housing that is developed as senior housing is subject to specific design features such as doors and hallways accessible by wheelchairs, grab bars and railings for those who have difficulty walking, additional lighting in common areas, and access provided without the use of stairs, and must be designed to encourage social contact by providing at least one common room and common open space. (Civil Code Section 51.2(d)). All senior housing must have rules and restrictions clearly restricting occupancy consistent with federal and state occupancy requirements and must verify occupancy by reliable surveys and affidavits. (42 U.S.C. Section 3607(b)(2); Civil Code Section 51.3(c).) The policies, procedures and

² Waiver justification letters had been submitted previously as part of the original application when the unit count was 242 units for the entire development. These letters are essentially an updated version of those prior communications to reflect the modified unit count as part of the applicant's proposed Senior Enhanced option.

marketing must demonstrate that the senior development as a whole is intended for seniors. (54 Fed. Reg. 3255 (Jan. 23, 1989)).

The City worked with a third-party architectural firm to review the requested height and slope line waivers. The results of this review are attached to the staff report as Attachment 13. The architectural review makes clear that requiring the project to comply with the development standards would physically preclude the project as proposed because although the development could meet the height and setback requirements, the applicant would require a waiver for the common space requirement as well as a reduction in the size of the units.

Section 19.56.070 *Findings* of the City's Density Bonus Ordinance requires that, before approving an application which includes a request for a density bonus, waiver or reduction in parking standards, the decision-making body must determine that the proposal is consistent with State Density Bonus Law by making the following findings, as applicable (*staff's analysis included in italics below each finding*):

1. That the housing development is eligible for the density bonus requested and any incentives or concessions, waivers or reductions in parking standards requested.
The application is for a density bonus project that provides for approximately 20% of its base density as Below Market Rate Housing for seniors. Because 12% of the units on-site will be limited to Very-Low Income seniors, they are eligible for a 35% density bonus.
2. That the development standard(s) for which the waiver(s) are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted, if a waiver is requested.
The development standards for the slope line setback, height, and BMR dispersion would physically preclude the development. Age restricted senior housing has special needs and is governed by specific health codes that would require it to be consolidated in the same building(s). Height and slope setback limitations could affect the development by reducing the required amount of common open space as well as reducing the size of the units. Because the tower elements on Buildings 1 and 2 are not habitable and provide no other function other than design elements, their removal and/or modification will not impact the construction of the development at the density allowed under Density Bonus Law.

Since the applicable findings, above, can be made, the decision-making body may deny an application for a waiver only if one of the following written findings as applicable to each type of application, supported by substantial evidence, can be made (*staff's analysis included in italics below each finding*):

1. That the incentive or concession, or waiver would have an adverse impact on real property listed in the California Register of Historic Resources; or

There are no affected Historic Resources in the vicinity.

2. That the incentive or concession, or waiver 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. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential project was deemed complete; or

As evidenced by the findings and conclusions of the Environmental Impact Report, the requested waivers would not have significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential Project was deemed complete.

3. That the incentive or concession, or waiver is contrary to state or federal law.

The requested waivers are not contrary to state or federal law.

Staff supports granting the waivers requested by the applicant. Without the waivers, the density bonus project cannot be constructed at the densities allowed under the Density Bonus Law. Moreover, substantial evidence does not support making any of the required findings for denying the waivers.

Use Permit

The project proposal requires a Use Permit to (1) allow the development of residential units on a mixed-use Housing Element site that proposes units above the realistic capacity in the Housing Element, and (2) to allow a residential care facility, with seven or greater residents in a residential zone.

The Housing Element of the City of Cupertino's *General Plan: Community Vision 2015 – 2040* identifies The Oaks Shopping Center as a Priority Housing Site. As a Priority Housing Site, it is allocated 200 units based on a 'Realistic Capacity', which is generally 85% of the maximum capacity allowed (30 DU/acre) for the site. The General Plan, *Heart of the City Specific Plan*, and CMC Chapter 19.80: *Planned Development (P) Zones* provide that a residential development on a Priority Housing Site that exceeds the number of

units designated for that Priority Housing Site shall be a conditional use. The applicant proposes to build the project at the maximum allowable density, which is 30 units per acre or 237 units (not counting density bonus units); therefore, the applicant has submitted a Use Permit application. The applicant has submitted this application under protest because the maximum density for the site as shown in the General Plan is 30 units per acre.

Out of the 167 senior residential units in Building 1, 27 units on the second floor are dedicated to memory care. CMC Section 19.20.020 requires a use permit to develop residential care facilities in any residential zone. The memory care portion of the development meets the definition of the "Residential care facility" in CMC Section 19.08 Definitions:

"Residential care facility" means a building or portion designed or used for the purpose of providing twenty-four-hour-a-day nonmedical residential living accommodations pursuant to the Uniform Building, Housing and Fire Codes, in exchange for payment of money or other consideration, where the duration of tenancy is determined, in whole or in part, by the individual resident's participation in group or individual activities such as counseling, recovery planning, medical or therapeutic assistance. Residential care facility includes, but is not limited to, health facilities as defined in California Health and Safety Code (H&SC Section 1250 et seq.), community care facilities (H&SC Section 1500 et seq.), residential care facilities for the elderly (H&SC Section 1569 et seq.) or facilities for the mentally disordered or otherwise handicapped (W&I Code Section 5000 et seq.), alcoholism or drug abuse recovery or treatment facilities (H&SC Section 11384.11), and other similar care facilities.

The memory care facility, also referred to as 'Life Guidance' units on the plan sheets, 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, residential care facilities must be a minimum distance of 500 feet from the property boundary of another residential care facility and, if required, must obtain any license issued by appropriate State and/or County agencies and/or departments. The proposed facility is more than 500 feet from the property boundary of another residential care facility (Sunnyview Retirement Home being the closest at 1 mile). The project is conditioned to obtain any license, if required, issued by appropriate State and/or County agencies and/or departments.

Development Regulations

The project site has a zoning designation of P(CG, Res) which defers to the development standards in the General Plan and the Heart of the City Specific Plan. Figure 4 below details the project's adherence to the objective standards.

| | Required | Building 1 | Building 2 | Townhomes/Rowhouses |
|--|---|--|-------------------------------------|---|
| Front Setback along Stevens Creek Boulevard | 35 feet from curb line | 42.83 feet | 43 feet | 35 feet |
| Side Setback along Mary Avenue | Minimum 1/2 the height of the Building, or 10 feet, whichever is greater. | 68 feet (Required 40 feet) | - | 17.6 feet (Required 15 feet) |
| Side Setback along Highway 85 | Minimum 1/2 the height of the Building, or 10 feet, whichever is greater. | - | - | 17.6 feet (Required 15 feet) |
| Private Open Space | 60 square feet per unit | 60 - 132 square feet per unit (balconies) ³ | 60 square feet per unit (balconies) | Town Houses: 104 to 125 square feet per unit (Patios) Row Houses: 295 to 375 square feet per unit (Patios) |
| Height | 45 feet | Tower Element - 91.75 feet | Tower Element - 73.75 feet | 30 feet |
| | | Roof Ridge - 79.5 feet | Roof Ridge - 64.5 feet | |
| Slope Line form the curb line along Stevens Creek Boulevard | 1:1 Slope Line Setback | Tower Element - 1:2.08 | Tower Element - 1:1.47 | 1:1 |
| | | Roof Ridge - 1:1.63 | Roof Ridge - 1:1.24 | |

³ The Memory Care units will not have individual balconies, but a secure 1,650 square feet terrace dedicated to these residents and located on their building floor, for supervised activity.

As described previously, the developer is requesting waivers of the required 1:1 slope line from the curb along Stevens Creek Boulevard and of the maximum height for Buildings 1 and 2. The development standards for the rest of the physical development of the buildings have either been met or fall within what is required in the General Plan and Heart of the City Specific Plan. As discussed below in Site Planning and Architectural Design, staff recommends including as a condition of approval the requirement that the applicant revise the tower elements.

The Common Open Space Requirement in Development Standard 1.01.040.C.2 of the Heart of the City Specific Plan is 150 square feet per unit or 41,100 square feet. The project is providing 44,945 square feet of common open space, which is designed with 34,150 square feet of common landscaping space and 9,798 square feet of common hardscape in the form of pathways and roof decks on both Buildings 1 and 2. The development is also providing 2,621 square feet of common retail outdoor space where only 500 square feet is required.

Heart of the City Exception

Residential development is a permitted use on mixed-use zoning designation sites if the site is identified as a Priority Housing site in the Housing Element, as is this site. However, the 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 60% of the frontage along Stevens Creek and approximately 25% of the rear of the buildings as direct retail. Because the proposed project does not provide the requisite percentage of retail along Stevens Creek Boulevard, as required by the Heart of the City Specific Plan, an Exception is required. The applicant disputes that an exception is required because it interprets the 25% requirement to apply only to retail commercial frontage, not to residential frontage, but has agreed to apply for the exception under protest.

The proposed development provides 20,000 square feet of retail clustered at the corner of Stevens Creek Boulevard and Mary Avenue. The applicant submitted both a retail analysis provided by a commercial broker and an alternate site plan showing a conforming retail frontage, which are attached as Attachments 14 and 15, respectively. In summary, the study and alternative site plan state and illustrate the following conclusions:

- That retail spaces fronting Stevens Creek Boulevard, facing the busy boulevard would be challenging, if not impossible to lease. Stevens Creek Boulevard with its 6 lanes of traffic does not present an enticing walkable, or safe, retail boulevard.

- The closer to the Highway 85 on-ramp along Stevens Creek Boulevard, the less inviting it is for foot traffic.
- Virtually the same square footage of retail that is provided (20,000 square feet) is what would have been needed to meet the Heart of the City retail standard (20,330).
- Because of the higher concentration of residential density and better visibility by pedestrians and motorists, retail space clustered on the corner of Mary Avenue and Stevens Creek Boulevard would be more successful.

The Heart of the City Specific Plan allows for design flexibility in situations when small lot size, unusually shaped parcels, or unique surrounding land uses make it difficult to adhere to the development standards and where all efforts to meet the standards have been exhausted. The Heart of the City Exception for development standards can be approved if the final approval authority for a project makes all the following findings supported by substantial evidence (*staff's analysis included in italics below each finding*):

1. The proposed development is otherwise consistent with the City's General Plan and with the goals of this specific plan and meets one or more of the criteria for an exception for reasons to provide design flexibility in situations when small lot size, unusually shaped parcels, or unique surrounding land uses make it difficult to adhere to the development standards and where all efforts to meet the standards have been exhausted.

The project site is located along Stevens Creek Boulevard (identified Priority Development Area), surrounded by a mix of uses, proximity to services, and access to public transportation makes it conducive to a residential development. However, the location the project site is constrained by the fact that the Stevens Creek Boulevard frontage is adjacent to the on-ramp for Highway 85. This would discourage pedestrian traffic and reduce the visibility of future retail tenants, significantly limiting the viability for commercial use.

2. The proposed development will not be injurious to property or improvements in the area nor be detrimental to the public health and safety.

The project site is designated as a Priority Housing Site in the City's Housing Element. The location is surrounded by similar urban uses and the project is consistent with the General Plan for density, landscaping, private outdoor space, access, streetscape, setbacks, and design. The existing shopping center will be developed with a mix of residential housing stock including affordable, age-restricted apartment complexes and market rate townhome/rowhouse condominiums built to the current building and fire safety codes. Therefore, the project will not be detrimental or injurious to properties or

improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

3. The proposed exception will not result in a hazardous condition for pedestrian and vehicular traffic.

The exception requested for the proposed project does not relate to the creation of a hazardous condition for pedestrian and vehicular traffic.

4. The proposed development has legal access to public streets and public services are available to serve the development.

The proposed project proposes the installation of a two-way driveway to allow access to Stevens Creek Boulevard and Mary Avenue, which are public streets that the property has frontages along. Additionally, all services necessary for development are available to serve the development. The proposed project will provide the appropriate hook-ups for access.

5. The proposed development requires an exception, which involves the least modification of, or deviation from, the development regulations prescribed in this chapter necessary to accomplish a reasonable use of the parcel.

The proposed development has met all other development standards for height, parking, landscaping, density, and building placement as mandated by the General Plan, Heart of the City Specific Plan, and Zoning Ordinance, except those for which the applicant has requested density bonus waivers. The only development regulation it does not meet is the provision of at least 75% of the building frontage along Stevens Creek Boulevard and 50% of the rear of the building be occupied by uses that allow direct retailing of goods. The development is providing retail frontage along Mary Avenue, where it is not required by the Heart of the City Specific Plan, in an equivalent size and scope that would have been needed to meet the retail frontage requirement along Stevens Creek Boulevard.

Considering the difficulties of situating retail along this portion of Stevens Creek Boulevard, and the fact that an amount of retail that is equal to what is required would be provided on the site but would be located along Mary Avenue and the portion of Stevens Creek Boulevard near the intersection of Mary Avenue, it is recommended that this Heart of the City Exception be approved.

Site Planning and Architectural Design

The proposed development sits between Stevens Creek Boulevard, Mary Avenue, and Highway 85. It has frontages on both Mary Avenue and Stevens Creek Boulevard, with three (3) driveways leading onto Mary Avenue and one on Stevens Creek Boulevard.

Surface parking is mostly hidden from Stevens Creek Boulevard. Surface parking in front of Building 1 along Mary Avenue sets the building back from the right-of-way. Pedestrian access is allowed along various points throughout the development, with the project conditioned to provide an easement allowing pedestrian and bicycle traffic to utilize the site as a cut through from Mary Avenue to Stevens Creek Boulevard.

The common open space areas have been designed in order to foster gathering at various points in the development while landscape pathways crisscross the development to allow pedestrians ample circulation without having to walk on the internal street network. Active uses are on the bottom floor along major streets. The shorter Townhome/Rowhouse buildings are buffering the Mary Avenue neighbors from the taller Buildings 1 and 2 along Stevens Creek Boulevard.

The proposed design quality of the buildings contains features consistent with a Spanish Revival style. The quality of materials as demonstrated in the project application is superior, and the City's architectural consultant has concurred on this point (Attachment 16. Two design modifications have been added as Conditions of Approval for the Architectural and Site Approval:

- Revise the primary building entrances for both Building 1 and Building 2 to provide greater visual interest and orientation at the pedestrian level on-site. Possible design solutions could include a projecting tower massing element at a lower height, attached roof form at a lower height, awning/overhang at the first floor, and/or change in color/material application, among other possible design interventions.
- Pursue revisions to tower location to better highlight the primary entrance for the residential portion of Building 1 and/or highlight building corners.

The result of these revisions will have the effect of lowering the heights of Buildings 1 and 2. The design of the buildings and the layout of the site meet the intent of the 'Mixed-Use Urban Village' as defined in the General Plan.

Tree Removal and Replacement

The development proposes to remove and replace 74 protected development trees. Both the applicant's and the City's consultant arborists evaluated the existing 83 trees on the site. Out of the 83 trees surveyed, 74 trees were identified that would be directly impacted by development and would require removal. Of those impacted, 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). Of those trees, 35 will be 36" Box Coast Live Oaks. Eighteen of these oaks will

be planted in the right-of-way consistent with the Heart of City Specific Plan's vision of the West Stevens Creek Boulevard subarea, between Stelling and Highway 85, becoming an 'Oak Grove'.

Traffic, Circulation and Parking Analysis

As part of the analysis of the project's potentially significant environmental effects in the Environmental Impact Report, traffic impacts were evaluated. These impacts were found to be less than significant, because the trip generation from the proposed Mixed-Use development compared to the existing Oaks Shopping Center would decrease from an existing daily trip count of 2,209 to 1,462. Peak morning trips would also decrease (57 to 39), as would peak evening trips (152 to 112).

The City's Density Bonus Ordinance, in compliance with State Law, allows density bonus projects the option to use alternate parking standards for all residential units (market-rate and affordable) based on bedroom count (0.5 per bedroom). The following standards must be met:

- At least 11% very-low income or 20% low income units; and
- Within one-half mile of a Major Transit Stop; and
- Unobstructed Access to the Major Transit Stop.

The project meets the standard above because 12.2% of the development will be dedicated to very-low income residents. Further, the project is within one-half mile of the intersection of VTA bus routes 23 and Rapid 523, both of which run at headways of approximately 15 minutes. These bus stops are located at the intersection of N. Stelling Road and Stevens Creek Boulevard, approximately 0.46 miles from the furthest corner of the project. Residents will be able to access the major transit stop without encountering natural or constructed impediments by traveling down Stevens Creek Boulevard. See Figure 4 for a breakdown of the parking within the development.

Figure 4 Parking

| Building | Building Use | Parking Rate | Required Spaces | Provided Spaces |
|-------------------|--------------------------------|-----------------|-----------------|---|
| Building 1 | Retail (17,600 SF) | 1/250 SF | 71 | 114 Spaces (54 at grade, 60 in the garage) |
| | Residential (167 Senior Units) | 0.5 per bedroom | 101 | 101 total covered single spaces in garage. (Spaces are assigned to units) |

| Building | Building Use | Parking Rate | Required Spaces | Provided Spaces |
|------------------------------|-------------------------------------|-----------------|---------------------|--|
| Building 2 | Retail (2,400 SF) | 1/250 SF | 11 | 11 Total (10 at grade, 1 in garage) |
| | Residential (39 units Senior Units) | 0.5 per bedroom | 21 | 21 total covered single spaces in garage. (Spaces are assigned to units) |
| Townhouses/ Rowhouses | Residential (88 units) | 0.5 per bedroom | 132 | 176 (2 per unit/in unit garages) |
| | Visitor Parking | - | - | 32 (at grade) |
| Total | | | 336 Required | 455 Provided |

Because the project site meets the criteria established by the Density Bonus Law, the project is required to provide only 336 spaces. However, the applicant proposes 455 parking spaces, which adequately meets the parking requirements of the proposed project.

Signage

Signage details are not included in this permit application. Staff will review the signage proposal with the property owner at the time the applicant applies for a sign permit through the Building Division.

Prior Version

On May 17, 2018 the applicant submitted an application that was deemed complete on July 23, 2019 and evaluated in the Draft Environmental Impact Report (DEIR). In February of 2020, the applicant submitted a Senior Enhanced Alternative that was evaluated as a feasible alternative in the Final Environmental Impact Report (Final EIR) (the Increased Senior Housing Alternative). On April 22, 2020, the applicant requested that the Senior Enhanced Alternative Plan be considered as the proposed project. Although the massing of the buildings, square footage, and overall exterior appearance are virtually identical to the previous proposed project, the unit count has been increased. Refer to Figure 5 below.

Figure 5 Project Comparison

| Project Comparison | | |
|---|---|---|
| | Originally Proposed Project | Senior Enhanced Alternative Proposed Project |
| Total Unit Count | 242 | 294 |
| Town Houses/ Row Houses | 88 | 88 (No Change) |
| Units in Building 1 | 115 Market Rate Condominiums | 167 Senior Apartments, including 27 memory care units and 9 Below Market Rate Units |
| Units in Building 2 | 39 Below Market Rate Units | 39 Below Market Rate Units (No Change) |
| Total Below Market Rate Units - Project Wide | 39 | 48 (9 dispersed throughout Building 1) |
| Waivers Requested | Height waivers for Buildings 1 & 2 | No Change |
| | Slope Setback waivers for Buildings 1 & 2 | |
| | Affordable Unit Dispersion | |

Other Department/Agency Review

The City's Building Division, Public Works Department, Environmental Services Division, Sheriff's Department, Cupertino Sanitary District and the Santa Clara County Fire Department have reviewed and conditioned the project.

Environmental Review

An Initial Study and Final EIR have been prepared for the project (see Attachment 17). The Final EIR identifies mitigation measures to reduce the potentially significant environmental impacts of the project to less than significant levels. The mitigation measures would be adopted and made conditions of approval for this project. The areas in which mitigation measures have been identified are:

- *Air Quality:* Construction shall comply with BAAQMD's best management practices for reducing construction emissions of fugitive dust and shall ensure construction emissions are reduced.
- *Biological Resources:* The project shall protect nests of raptors and other birds when they are in active use. Tree removal, replacement, and protection should adhere to the standards as required in the City's Municipal Code.

- *Cultural and Tribal Resources:* The project shall implement identified measures in the event any cultural or archaeological resources are found on the site. This includes consulting with appropriate tribes as well as an archeologist.
- *Geology and Soils:* The project shall follow the identified measures if paleontological artifacts, such as fossils, are found on the site, which include consulting with a paleontologist.
- *Noise:* Construction activities shall comply with the City's Noise Ordinance and best management practices for noise mitigation.
- *Utilities:* Demonstrate to the City of Cupertino and Cupertino Sanitary District that the development would not exceed peak wet weather flow capacity of the Santa Clara sanitary sewer system prior to issuance of building permits.

The Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Westport Mixed-use Project was published on July 11, 2019. In addition, the NOP was mailed to neighbors and interested parties. A scoping session was held at City Hall on July 19, 2019. Written comments were invited between July 11, 2019 and August 9, 2019. Fifteen comments were received during the 30-day NOP Public Review Period. The Notice of Availability (NOA) of the Draft EIR was published on November 6, 2019. A public meeting was held at the Senior Center on December 11, 2019 to determine the adequacy of the Draft EIR (DEIR). Nine comments were received during the 45-day review period ending on December 20, 2019.

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 (see Attachment 18).

Public Outreach and Noticing

The following table is a brief summary of the noticing done for this project:

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

Public Comment

The City has received comments regarding the project throughout the application period of almost two years. The comments vary, covering topics from traffic impacts to concerns about the request for density bonus waivers of height and slope line setback standards. Attachment 19 includes those comments that have not been responded to directly in the *Response to Comments Section* of the Final EIR because they do not raise environmental issues.

As stated earlier, the Final EIR found that the traffic impacts from the project are not significant. In fact, traffic levels are anticipated to decrease with the addition of housing and the reduction of retail, as compared to the site's current use. The findings for density bonus waivers as allowed in CMC Chapter 19.56 *Density Bonus* can be made for the requested height, slope line setback, and BMR unit dispersion waivers. The site is a Priority Housing Site as identified in the General Plan, and the vision for this area is for a vibrant, higher density mixed-use gateway development, like what has been proposed.

There has also been some concern about how the City's Density Bonus review process compares with other cities such as San Francisco. The City has reviewed this project and the Density Bonus Law carefully. Our City Attorney's Office has spoken to two planners in San Francisco who work on density bonus projects in that city and is aware that San Francisco's ordinance states that waivers must be necessary to achieve the additional density, or the concessions or incentives permitted by the law. The two San Francisco planners shared various ways that this standard has been applied and noted that it had not been applied in San Francisco on a larger site with a mix of unit types as is proposed in the Westport project. The City's third-party architect, as described previously, assisted in Staff's decision and support of the requested waivers.

Housing Accountability Act

The Housing Accountability Act (HAA) (Gov. Code § 65589.5) limits the ability of a city to deny or impose certain conditions on a housing development project when the project complies with applicable, objective general plan, zoning, and subdivision standards and criteria. This project is a "housing development project" under the HAA because it is a mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use. As discussed in detail above, the project is either consistent with the City's objective standards or has applied for waivers under the Density Bonus Law.

When a project complies with objective standards, the HAA allows a city to disapprove the project or to impose a condition that the project be developed at a lower density only

if the city finds *both* of the following, supported by a preponderance of the evidence in the record (*staff's analysis of each finding included in italics*):

1. 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
The City cannot make this finding. As evidenced by the findings and conclusions of the Environmental Impact Report, the Project would have no significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential Project was deemed complete.
2. No feasible method to satisfactorily mitigate or avoid the adverse impact exists.
Because no adverse impacts exist, the City cannot make this finding.

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 Steps

The Planning Commission's recommendation will be forwarded to the City Council for its decision on the project. 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.

Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved by: Albert Salvador, Acting Director of Community Development

ATTACHMENTS:

- 1 – Draft Resolution for EA-2018-04
- 2 – Draft Resolution for DP-2018-05
- 3 – Draft Resolution for ASA-2018-05
- 4 – Draft Resolution for U-2019-03

- 5 – Draft Resolution for TM-2018-03
- 6 – Draft Resolution for EXC-2019-03
- 7 – Draft Resolution for TR-2018-03
- 8 - Project Description
- 9 - Below Market Rate Project Description
- 10 - Letter from Andy Faber to Eric S. Phillips dated November 30, 2018
- 11 – Letter from Andy Faber to the Planning Commission dated April 22, 2020
- 12 - Density Bonus Waiver Request: Enhanced Senior and Family Living Project
- 13 –Memo from RRM Design Group, Westport Density Bonus Waiver Review – Enhanced Senior and Family Living Project, dated May 6, 2020.
- 14 - Westport Cupertino Retail Layout Analysis
- 15 - Alternate Retail Plan
- 16 - Memo from RRM Design Group, Westport Design Review – Tower Element, dated May 1, 2020.
- 17 – Final EIR
- 18– ERC Recommendation dated April 16, 2020
- 19 – Public Comments
- 20 – Project Plans