



February 27, 2019

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City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

SUBJECT: Application Incomplete Letter (3) dated December 21, 2018:
21265 Stevens Creek Blvd, (APN#326-27-043, 042) Development Permit, File# DP-2018-05 Architectural and Site Approval, File# ADA-2018-05 Tentative Map, File# TM-2018-03 Tree Removal, File# TR-2018-22 Environmental Assessment, File# EA-2018-04

Dear Gian:

This letter has been prepared in response to the City of Cupertino's request on January 7, 2019 for a better understanding of the request for Density Bonus Waivers for 21265 Stevens Creek Blvd. (aka "the project"). In addition, pursuant to our conference call on January 7, we have provided responses to each of the comments in your December 21, 2018 letter, as well as responses to comments provided by Public Works on the Vesting Tentative Map.

Community Development Department-Planning Division Comments

Density Bonus Waivers

We understand that as a result of the meeting held with the Developer and City Staff on January 22, 2019, that Staff is only now requesting follow-up information regarding our request for waivers a. and b. as identified in your letter of Dec. 21, 2018. Below is a highlight summary of why and how the project meets the Density Bonus Application Requirements as well as the rationale for requesting Height and Slope Setback Waivers for Buildings 1 and 2. Also, to this end, please refer to Attachment A, letter from Andy Faber, Berliner Cohen, LLP dated 2/26/19.

- The project provides 242 units, inclusive of 39 affordable senior housing units. (30.6 DUA)
- Increase in number of BMR Senior Living Housing from 30 units from the previous application to 39 units (16% of units).
- Mix of housing provided provides diverse mixture of housing not limited to "flats". (50% multi-family: 1,2,3 Bedroom units; 34% Townhomes; 16% BMR senior living).
- Program of housing/ size of units creates a financially viable project
- Higher density housing concentrated on western corner of site ONLY. This does the following:
 - Creates walkable access to retail and ability to readily support retail that can service that on-site population;
 - Creates walkable access for BMR Senior Living Housing to Cupertino Senior Center;

- Creates walkable access to on-site Central Green as well as adjacent Cupertino Memorial Park;
- Places a high concentration of housing at main point of site access – encouraging use of walking or cycling to get to neighboring sites;
- Puts underground parking in one location and reduces soil off-haul by having one garage for multiple buildings;
- Allows for transitioning to smaller scale residential on remaining portion of the site;
- Uses height as a locating feature to demark the starting point of Heart of the City at the first major intersection that provides for pedestrian and vehicle access to site (Mary Avenue and Stevens Creek Boulevard).

The density and height of the project is a result of the project programming. The project program is the mix of housing and retail, determined by code, site, and market factors, that creates a viable project for development. As noted, it represents a housing program that responds to market demands for affordable and market rate units and presents a variety of living options, ranging from studios to townhouse units. It is in the planning of the site and the variety of units, so that they physically work together, meet code criteria, and are designed in a meaningful way, that enhances the project and ultimately the community.

Use Permit Application

We continue to believe that no use permit is necessary for this project, and that any requirement for a use permit would violate the Density Bonus Law. Please refer to Attachment A, prepared by Andy Faber, Berliner Cohen, LLP, dated 2/26/19,

Heart of the City-Non-Retail

We maintain our position that our interpretation of HOC standard 1.01.020 regarding commercial frontage is accurate. As noted in our November 30, 2018 letter, the amount of active commercial frontage required to fulfill the HOC percentages, as interpreted by staff, is unsustainable for this site. Per our retail consultant, Sean O'Carroll of Newmark Cornish & Carey, viable retail for the site is 10,000-15,000 SF. Pursuant to our conference call on January 7, 2019, we have provided the ***Westport Cupertino Retail Analysis*** prepared by Newmark Cornish & Carey, dated April 12, 2018, (Attachment B).

As you know, we have increased the retail square footage to 20,000 SF, 5,000 square feet above what our retail consultant has identified as viable, and we have done so at the owner's risk. In discussions with the City and Rick Williams, the logical location for creating viable retail is the Corner of Mary Avenue and Stevens Creek Boulevard due to site exposure and access.

The amount of retail, as interpreted by staff, would need to be roughly doubled to provide it along the entire built Stevens Creek Boulevard frontage – putting it in the non-viable range and at a place on site with reduced access / visibility. Thus, based on what we believe to be an accurate interpretation of HOC standard 1.01.020 and the retail viability analysis prepared by Newmark, Cornish & Carey, we have not made any new modifications to the plans. Finally, please also refer to the discussion above under "Use Permit Application" regarding the 2017 revisions to the Housing Accountability Act as it relates to the City's interpretation of its own general plan, codes, and regulations.

Tree Removal Comments

We have prepared a Tree Removal Permit Application. As you will note in your records, it was submitted to the Planning Division for review on January 16, 2019.

Comments from other departments/agencies

The responses identified below (Public Works Departments Comments) respond to the “comments from other departments/agencies” identified in your letter of December 21, 2018.

Public Works Department Comments

1. Vesting Tentative Map dated 11/30/18:
 - a. Per Cupertino Municipal Code, Section 1 8.28.040 B., a planned development permit must be approved and in force prior to filing of a vesting tentative map for property in a planned development zone. Please confirm with Planning Dept to determine the timing of when the Vesting Tentative Map can be filed.
Response: Understood.
 - b. Prior to tentative map approval, provide letters from PG&E and AT&T to state their concurrence with the proposed easement relocation.
Response: PG&E and AT&T have verbally agreed to provide will serve letters. We are still waiting on written concurrence from AT&T.
 - c. VTM-1, please label the proposed lot #1 and lot#2.
Response: Proposed lots have been labeled. Refer to Sheet VTM-1 (revised).
 - d. VTM-1, the proposed bus stop on Stevens Creek Blvd., west of Mary Ave. will need to be coordinated with VTA. If City and VTA both concur, please reflect a bus shelter and concrete bus pad as part of the installation.
12/20/18 Review Comment: Please take the lead to initiate the discussion with VTA for the proposed project.
Response: Kimley-Horn have reached out to VTA staff. VTA staff are still reviewing to decide if a bus stop is needed/warranted.
 - e. VTM-1, if City and VTA decide to keep the bus stop at existing location, show the proposed 2' precast concrete buffer for bike lane between the driveway and Mary Ave.
Response: This will be added if VTA determines the bus stop necessary.
 - f. VTM-4 still reflects SDE instead of PSDE.
Kimley-Horn response: SDE has been changed to PSDE. Refer to VTM-4 (revised)
 - g. VTM-6, the proposed Class IV bikeway did not reflect the conceptual design per plans previously provided. Provide design consistent with the bikeway design for both the north side and the south side of Stevens Creek Blvd. and improvements at the intersections of Hwy85 & Stevens Creek and Mary Ave & Stevens Creek. 12/20/18 Review Comment: The meeting on Oct. 22nd did not indicate the only missing item is signal modifications. The City would still like to see a detailed design reflecting the above comments. Specifically, the improvements at the intersections of Hwy85 & Stevens Creek and Mary Ave & Stevens Creek. Note: An encroachment permit from Caltrans will be required.
Response: Kimley-Horn have reached out to Caltrans to coordinate this bikeway

design and coordination of this item is on-going.

2. Traffic Impact Analysis is under review. If traffic mitigation measures are required, provide plans to reflect the required mitigations.

Response: Noted.

3. Sight Distance & Project Access:

- a. Based on City's field evaluation, the sight distance analysis for the eastern driveway on Mary Ave should be based on 35mph not 25mph. Please revise the analysis and driveway design accordingly. The line of sight should be outside of the future parking area.

Response: Site triangles were revised using stopping sight distance and a design speed of 35 MPH per Winnie Pagan's comments received February 13th. These changes were made to sheet C4 (revised) and sent to Winnie Pagan on February 14th 2019 for final review.

- b. If driveway cannot meet the 35mph sight distance, City will allow for one-way in only driveway. The front retail parking area will need to provide adequate signage for one-way direction and parking stalls will need to be angled to discourage motorists from driving in the wrong direction.

Response: Revised sight triangles show that the driveway meets 35MPH design requirements and one-way in only is not required. Refer to sheet C4(revised).

4. Stormwater Treatment Measure:

- a. Provide a 3rd party preliminary certification letter to ensure design will meet State's C3 requirements.

Response: Engeo has reviewed and is expected to provide a preliminary certification letter stating the design will meet the State's C3 requirements by February 26th, 2019.

5. General comments for civil plans:

- a. Show additional parking spaces on Mary Ave where the existing driveways near the northern edge of the property to be closed.

Response: Additional parking spaces have been added on Mary Avenue where the existing driveway will be closed. Refer to sheet VTM-1(revised).

6. Refer project to Caltrans and VTA and incorporate any comments.

12/20/18 Review Comment: Applicant to coordinate with the Caltrans and VTA.

Response: Coordination with both agencies has been initiated and the project team will to continue to reach out to both agencies for their input.

Please let us know if you need any additional information or have any further questions on this topic.

Best regards,



Steven Ohlhaber AIA
C2K Architecture

Attachment A: Letter from Andy Faber, Berliner Cohen, LLP dated 2/26/19.

Attachment B: **Westport Cupertino Retail Analysis** prepared by Newmark Cornish & Carey,
dated April 12, 2018

Attachment C: Letter from ENGEO dated February 26, 2019

Additional files under separate cover:

Revised drawings:

- G202 PROJECT SUMMARY
- A001 SITE PLAN
- A200 LVL B1 PLAN
- A201 LVL 1 PLAN
- C0 EXSTG CONDITIONS
- C1 GRADING PLAN
- C2 SWMP
- C3 STORMWATER DTL
- C4 TRUCK TURN EXHBT
- VTM1 COVER SHEET
- VTM2 EXISTG CONDITIONS
- VTM3 GRADING AND DRAINAGE
- VTM4 UTILITY PLAN
- VTM5 SECTIONS
- VTM6 CLASS IV BIKEWY