



March 9th, 2021

Erick Serrano
Senior Planner City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

Subject: Density Bonus Waiver Request: 1655 S. De Anza Boulevard and 7357 Prospect Road

Dear Erick:

This letter outlines the request for Density Bonus Waivers for the project located at 1655 S. De Anza Boulevard. (aka "the project")

Existing use: The parcel is an "L" shaped lot with frontage on both S. De Anza Boulevard and Prospect Road. There is an occupied building with on-grade parking accessed from S. De Anza Boulevard and Prospect Road. All existing structures and paving are to be removed.

Proposed use: A new mixed-use project to include (34) residential units and approximately 7,600 square feet of commercial/retail area. The commercial/retail space will be combined into a 3-story mixed-use building that will also include (23) residential apartments. The remaining (11) residential units will be within 3-story townhomes located behind the mixed-use building and on the portion of the site that extends to Prospect Road. All vehicular parking will be located at grade, with 31 commercial parking spaces, 37 covered apartment parking spaces, 9 uncovered apartment parking spaces, and 22 townhome parking spaces in private garages.

Density Bonus Waivers

The project is requesting the following waivers, which are necessary to the development of the project. The waivers are:

- Reduced setback along De Anza Boulevard from 50'-0" to 35'-0".
- Increase in building height for the mixed-use building from 30'-0" to 52'-5-1/2" to the top of the elevator tower.
- Density bonus reduction of parking standards
 - Use of tandem parking for 2 apartment units and 7 townhome units.
 - Reduced parking ratio for townhomes from 2.8 spaces per unit to 2 spaces per unit.



The following discussion outlines the reasons the Density Bonus Waivers are necessary to allow for the construction of the project per the established project program:

- The height increase in the mixed-use building allows an increase to the density of the site. This density allows the project to offer a mix of housing choices and affordability that will permit the viability of the development as a whole. The factors that affect this viability are:
 - **Product Mix:** The project provides a supportable and focused product mix that responds to the housing shortage and housing market currently faced by the City of Cupertino. In addition to Market Rate housing, it provides Below Market Rate housing. By adding the height to Building, and increasing building density, the numbers of both market rate and below market rate units are increased.
 - **Construction Efficiency:** By consolidating the mixed-use building into one taller structure, efficiencies in construction are created. Multiple floors comprised of stacking units, with a consolidated parking garage, building support systems, common areas and amenities, utility connections, trash rooms, elevator, and reduced building skin area are elements that denser developments achieve to provide construction savings and impact project viability.
 - **Retail Viability:** Positioning a greater number of residents immediately adjacent to retail will provide the opportunity for more support of the retail frontage the project residents, and reduce the need for reliance on commuters to the site to generate retail sales. There will be clear opportunities to place neighborhood focused retail in the same complex. This will permit the residents in the project to easily walk to retail shops and services. Concentrating retail here provides the best opportunity for it to become financially viable.
 - **A “Walkable” Community:** Creating a greater concentration of residential units at the eastern hub of the site promotes walkable access to the retail stores, nearby amenities, public transportation, and the bike routes. The need to use one’s own vehicle is reduced when there are nearby community resources within close proximity. These social elements create a more desirable location for families.
 - **Density Bonus Alternate Parking Standards:** California’s Density Bonus Law allows for a reduction in parking requirements, which will permit the reduction of the size of the on-grade parking garage. This will have a positive economic and environmental impact to the project.



- Without the height increase and setback waivers for the mixed-use building, the project would be forced to reduce the variety of housing offered, making it more difficult to build and to finance, for the following reasons:
 - A total of 12 units, including 2 Below Market Rate units, would not be able to be constructed. This would be a reduction of approximately 35% of the project's units.
 - Construction efficiencies would be lost as on-grade parking garages, amenity spaces, building support systems, elevator, building envelope area, etc. would need to be changed.
 - Fewer of the units would be immediately adjacent to the project's retail offerings, which could negatively impact the viability and type of retail offered.
 - Any positive effect of the Density Bonus Alternate Parking Standards is reduced when multiple level garages need to be created. The off-haul of soils is also increased.
 - The cost of an affordable townhome unit would be several hundred thousand dollars greater than the mixed-use building. Thus, there are very clear "identifiable and actual" cost savings for the construction of the affordable housing, so the requirement of Section 65915(d) is satisfied.
 - We could not fit any more units on-site with the current program. The removal of the top third floor of the mixed-use building would remove 11 units on the 3rd floor, and then 1 unit on the 2nd floor to re-locate the roof terrace, which would compromise the economic viability of the project and mix of housing offered.



Waiver for Mixed-Use Building Height Limit

- Per Cupertino standards, natural grade is determined from the existing sidewalk elevation. Along the length of the mixed-use building, finished grade elevation rises 56.5", and for required site drainage, the lowest point of the building finished floor is 5.5" above natural grade. This means at the far side of the building, the garage floor level is already 62" above natural grade, effectively lowering the allowed height of the building to 24'-10" over the floor of the parking garage, if the 30'-0" height limit is maintained. The minimum floor to floor height needed in the parking garage is 11'-0", which would only leave 13'-10" of building height for the residential apartment units and roof structure above the garage. This building height would limit the building to two stories in height and require the removal of 11 apartments on the 3rd floor and an additional apartment on the 2nd floor in order to relocate the roof terrace for the required apartment common open space.
- The building heights we are proposing are the minimum building heights needed to provide the unit density on site.
 - A 15'-6" floor to floor height is required for the commercial use to allow for a dropped ceiling for mechanical, plumbing and electrical routing. Additionally, floor elevation rises 40.75" across the commercial space of the building, which already is creating limited ceiling heights in the commercial space to west.
 - 9'-0" minimum plate heights are required on the 2nd and 3rd levels for the apartment dwelling units, in order to route utilities through dropped ceilings in the corridors, and to conceal mechanical equipment and duct work in the apartment units. Combined with floor and roof framing, this requires a minimum building height of 37'-11" from the existing curb height at the sidewalk along De Anza Boulevard, measured to the ridge of the roof framing.
 - Additionally, the roof terrace above the 3rd level is needed to comply with the common open space requirements for the apartment dwelling units. This requires an elevated paver system above the finished roofing, and full stair and elevator access to the roof level. The minimum required building height to the top of the roof over the elevator shaft is 52'-5 1/2" from the existing curb height at the sidewalk along De Anza Boulevard.



Waiver for 35'-0" Building Setback at De Anza Boulevard

- The proposed mixed-use building cannot fit on-site with a 50'-0" landscape setback at De Anza Boulevard. The townhomes and their rear yard setback, the 22' wide drive aisle, the parking garage, apartment resident lobby, and 7,595 sq.ft. of commercial space can only fit if the alternate 35'-0" setback from the South Saratoga / Sunnyvale Planning Area (South De Anza) Conceptual Zoning Plan is used.
 - In order to fit all of the required parking for the apartment dwelling units, the parking garage needs to fit 37 parking spaces, a 22' wide drive aisle, a trash room, electrical room and an exit stair in 140'-4".
 - After the apartment resident lobby and all utility rooms are accounted for, there is only 7,595 sq.ft. of commercial space that can fit within the 35'-0" setback. The 50'-0" setback would reduce available commercial area further by roughly 1,200 sq.ft. to 6,395 sq.ft.
 - The 50'-0" setback would also reduce rent-able apartment area by roughly 1,200 sq.ft. per floor, or 2,400 sq.ft. total.

Reduced Parking Standards per Cupertino Density Bonus Zoning Standards, Sec. 19.56.040.C.

- If a housing development is eligible for density bonus as provided in Section 19.56.020, upon request of the applicant, the maximum off-street parking standards that can be applied to the housing portion of the development, inclusive of handicapped and guest parking are indicated in Table 19.56.040B. These may include tandem and uncovered parking spaces but not on-street parking spaces.
- In order to provide the required density of housing, the parking standards need to be reduced by the following:
 - Townhome parking ratio for 3-bedroom homes will be 2 parking spaces for each unit, per Table 19.56.040B.
 - Seven (7) townhome units require tandem parking spaces in their private garages.
 - Two (2) apartment units require tandem parking spaces in the mixed-use building parking garage. All apartment parking spaces will be assigned.



Waivers

The waiver provision states:

“In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) [affordability percentage] at the densities or with the concessions or incentives permitted by this section.” (Sec. 65915(e)(1)).

Since the Density Bonus Law amendments make it clear that the density “permitted by this section” can include the base density, even with zero bonus units, it is obvious that an applicant need not show that waivers are needed for the density bonus units themselves, but rather for the Project as a whole as designed by the applicant’s architect.

Furthermore, the case law establishes unambiguously that the applicant does not have to establish that the project could not be built in some other way that would lessen the need for waivers. There is no authority that allows the City to look at alternate designs. This law was clearly established in the leading case of *Wollmer v. City of Berkeley* (2011), 193 Cal. App. 4th 1329, 1347, in which project opponents challenged the grant of waivers, arguing that the project could have been redesigned to avoid the need for them. The Court rejected this challenge, holding that waivers must be granted for a development that meets the criteria of the Density Bonus Law, with the design and amenities chosen by the applicant, and that the design is not subject to second-guessing by opponents.

The city is required to grant the concession unless it “makes a written finding, based upon substantial evidence, of any of the following”:

- (A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).
- (B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public and health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.
- (C) The concession or incentive would be contrary to state or federal law. (Sec. 65915 (d)).

These findings cannot be made for the Project, so the requested waivers must be granted.



- **Conclusion**

In summary, this is an exemplary project that will revitalize an inefficient, aging shopping center, and transform it into a variety of needed housing types for the City, including market rate and affordable units, along with ancillary retail uses.

It deserves support and approval on its merits.

Very truly yours,

Propriis,

A handwritten signature in blue ink, appearing to read 'Brandon Arioli'.

Brandon Arioli

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