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December 19, 2024

VIA ELECTRONIC DELIVERY

Gian Martire, Senior Planner
Community Development Department
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Email: gianm@cupertino.gov

**Re: Submittal of Formal Application for 57-Unit Housing Development
Project, 20111 and 20085 Stevens Creek Boulevard, Cupertino
(APNs 316-23-025 and 316-23-026)**

Dear Sir/Madam:

Our client, Dividend Homes, Inc. ("Dividend"), submitted a Preliminary Application pursuant to the provisions of Senate Bill 330 on June 26, 2024 for the above-referenced project. The project is a "housing development project" as defined and protected by the Housing Accountability Act (Gov. Code § 65589.5; "HAA"). As required by Senate Bill 330, we hereby timely file a Formal Application for the project pursuant to Government Code section 65941.1(d), the provisions of the Planning and Zoning Laws generally, and in particular Government Code sections 65940, 65941, and 65941.5. This Formal Application is also an application for a development permit under Government Code section 65943.

BRIEF PROJECT DESCRIPTION

As more fully described in the plan set, the project consists of 57 three-story for-sale townhomes in 10 buildings, 110 covered garage parking spaces and 14 outside guest parking spaces, and associated improvements ("Project") on approximately 2.7 acres at 20111 and 20085 Stevens Creek Boulevard in the City (APNs 316-23-025 and 316-23-026) ("Project Site").

To the east and west of the Project Site are other commercial buildings, while single-family residential homes are located to the north. The Project Site fronts Stevens Creek Boulevard. Based on the timing of the Preliminary Application, the applicable land use designation and zoning are as follows:

- General Plan Land Use: Commercial/Office/Residential

- Zoning: P (CG, Res) within the Heart of the City Specific Plan

These regulations allow residential development at a maximum 25 units per acre and a maximum of 45 feet in height. As designed, the Project has a density of 21.1 dwelling units per acre, which is consistent with the applicable, objective land use designation and zoning. In addition, the Project is designed to comply the R-3 zoning standards.

To create a unique neighborhood that integrates with its surroundings, the 10 buildings consist of three configurations:

- Three six-unit buildings parallel to Stevens Creek Boulevard
- Three five-unit buildings parallel to Stevens Creek Boulevard
- Four six-unit buildings at the rear of the site

Each building offers a mix of unit types, ranging from 3- to 4-bedroom homes. All homes have two-car garages, available in either standard or tandem configurations, with additional parking provided onsite. The entry to the Project is from Stevens Creek Boulevard, in close proximity to commercial areas and regional transportation infrastructure, and sidewalks along the vehicular street provide pedestrian access to the community.

The Project design includes a central spine access road with stub alleys to minimize conflicts between vehicular and pedestrian movements. The vehicular infrastructure is designed to accommodate resident and visitor traffic as well as trash and emergency vehicles.

The architectural design draws inspiration from the surrounding context, featuring flat roofs and a contemporary aesthetic. Contemporary forms and clean details allow the Project to blend seamlessly with the more commercial character of the area. Materials and colors accentuate changes in planes, creating visual interest through form-oriented architecture without relying on excessive ornamentation. All units will have roof decks for private open space, and some units will also include side yards.

In compliance with the City's Below Market Rate (BMR) requirements, 20% of the units will be designated as BMR units (20% of 57 units = 11.4 units). Eleven BMR units will be provided on the Project Site, and the remaining 0.4 unit will be addressed through an in-lieu fee. A detailed preliminary Affordable Housing Plan is submitted with this application, outlining how the project meets the requirements of the City's Residential Housing Mitigation Program.

DENSITY BONUS LAW

Under the Density Bonus Law (Gov. Code §§ 65915-65918; "DBL") and the City's Density Bonus Ordinance (Cupertino Municipal Code, Chapter 19.56), the Project is entitled to two incentives or concessions concession and unlimited waivers or

reductions of development standards. A detailed list of the proposed incentives/concessions and waivers/reductions is included below. The applicant reserves the right to request additional incentives/concessions and waivers/reductions as the Project undergoes review and refinement based on feedback from the City and other approving agencies.

Incentive/Concession

Commercial uses – Incentive/concession to not provide commercial uses on the Project Site. Providing commercial uses would negatively impact the financial viability of the Project. Based on the current commercial real estate market, commercial is not an economically-viable alternative. Furthermore, the introduction of commercial uses and its associated parking would reduce the amount of land left for the development of the residential portion of the Project Site.

Waivers/Reductions

1. Front setback of 35' from back of curb – The Project is proposing an approximately a 26' setback. Maintaining the setback at 35' would not allow the Project to be built at the proposed and allowed density. Diagram 1 shows how the requirements would impact the Project.
2. Side setback of 10' or 0.5 times the height of the building – The Project is proposing a min. 10' setback. Maintaining the setback at 0.5 the height of the building (+/- 22'5") as the setback would not allow the Project to be built at the proposed density. Diagram 1 shows how the requirements would impact the Project.
3. Rear setback of 20' or 1.5 times the height of the building – The Project is proposing a min. 10' setback. Maintaining a setback at 1.5 times the height of the building (+/- 64') as the setback would not allow the Project to be built at the proposed density. Diagram 1 shows how the requirements would impact the Project.
4. Required Parking – The Project is required to provide 160 vehicular parking spaces at the rate of 2.8 per unit for each unit. The Project is proposing 124 spaces. Under the DBL parking ratios, the Project is required to provide a min. of 103 spaces (@ 1.5 spaces for up to 3-bedroom units and 2.5 spaces for 4-bedroom units). The Project meets and exceeds those standards. The Project is also requesting that the on-street spaces be allowed to be provided at 9'x18' per space, or as a uniform parking space, instead of 10' x 20'.
5. Parkland Dedication – The Project is required to .55 acres of parkland (57 x 1.8 x .0054 = 0.55). The Project is requesting a waiver from this development standard as it would negatively impact the density of the

Project. Diagram 2 shows how the requirements would impact the proposed Project.

6. Common Open Space -- The Project is required to provide 150 sf of common open space per unit (8,550 total). This area is to be outside of all required setbacks. Providing this requirement would requirement would negatively affect the density of the Project.

BUILDER’S REMEDY AND THE HOUSING ACCOUNTABILITY ACT

As discussed in the Preliminary Application, the Project is protected by the “Builder’s Remedy” provisions of the HAA. (Gov. Code § 65589.5(d)(5)). These provisions prohibit a city that does not have an adopted housing element that is substantially compliant with the Housing Element Law (Gov. Code § 65580 *et seq.*) at the time a preliminary application is filed from disapproving or conditioning in a manner that renders infeasible a housing development project “for very low, low-, or moderate-income households,” even where the project is inconsistent with both the city’s zoning ordinance and general plan land use designation. (Gov. Code § 65589.5(d)(5)). Projects for very low, low-, or moderate-income households are defined to include projects that provide 20 percent of the units for lower income households as defined in the HAA. (Gov. Code § 65589.5(h)(3)).

Because the City did not adopt a substantially compliant 6th Regional Housing Needs Assessment (“RHNA”) Cycle Housing Element before the Preliminary Application was filed and the Project is a housing development project that will provide 20 percent of its units for lower income households, the Project is protected by the Builder’s Remedy. Although the City cannot deny or condition approval of the Project in a manner that would render it infeasible, notwithstanding any inconsistency of the Project with the zoning ordinance or General Plan land use designation of the Project Site, at this time we do not believe the Project needs to be processed in reliance in the Builder’s Remedy. Instead, we believe the Project can simply be processed under the HAA and DBL.

Conclusion

Dividend is excited to work in cooperation with the City in providing much needed housing to the community pursuant to critical state laws that are designed to facilitate housing production. We would be happy to discuss the Project or this Formal Application with you at any time.

Gian Martire, Senior Planner
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Sincerely,

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cc: Josh Vrotsos, Vice President