



M E M O R A N D U M

TO: Planning Commission
FROM: Jeremy Tejirian
DATE: November 21, 2018
RE: The Oaks Master Plan Amendment, Design Review, Tree Removal Permit

Planning Division staff has received additional communications from the applicant (attachments 1 and 2) since the previous memorandum regarding the project was distributed on November 15th. This communication has pointed out typographical errors in the report and requested changes to the mitigation conditions, as further discussed below.

The floor area proposed for the main building is 75,937 square feet, not 775,937 square feet as written in the Resolutions. This typographical error can be corrected before the project is carried forward to the Board with your Commission's recommendation.

The correct date for the most recent set of plans is October 18, 2018, not June 12, 2017 as written in the Resolution. This typographical error can be corrected before the project is carried forward to the Board with your Commission's recommendation.

The applicant has requested that Public Works conditions 22 and 26 be revised. These conditions reflect mitigation measures identified in the EIR, so Public Works staff cannot simply modify them unilaterally. However, Environmental Planning staff has reviewed these issues with Public Works staff and Doug Herring, the consultant who prepared the EIR addendum.

With respect to condition 22, the Environmental Planning Manager has not authorized modifications to this mitigation measure. Doug Herring's comments on this issue are enclosed (attachment 3).

With respect to condition 26, Public Works staff stated:

"MM 5.2-10 and 5.2-11: PROVIDED PLANNING OR THE CONSULTANT UPDATES THE MM TABLE, we are fine removing the third sentence from the 4th bullet point which reads "The current development plan includes one grass-lined (i.e. vegetated) swale each toward the lower end of Sub-watersheds 2 and 3, although the one proposed for Sub-watershed 2 would not provide significant water quality benefits".

Therefore, Environmental Planning staff has authorized the modification to condition 26 requested by the applicant. This modification can be made before the project is carried forward to the Board with your Commission's recommendation.

Although not directly referred to in the applicant's most recent email, it should be noted that the Real Estate Division of the Department of Public Works will need to process a right of way abandonment for a narrow strip across Marinview Avenue to clear title for legal access to the property. The applicant will need to submit a separate application to DPW Real Estate, which has not yet occurred, and that application will need to be reviewed with due process provided for the abandonment.

Attached:

1. Sorensen comments, dated 11-19-18
2. Sorensen comments, with attached memo, dated 11-2-18
3. Doug Herring response, dated 11-20-18
4. Blanton comments, dated 11-20-18

Tejirian, Jeremy

From: Neil Sorensen <neil@sorensenlaw.com>
Sent: Monday, November 19, 2018 8:54 AM
To: Tejirian, Jeremy
Cc: Eves@venturecorporation.com
Subject: The Oaks
Attachments: The Oaks

Jeremy,

I reviewed the staff report and found the following issues, which need to be addressed in a supplemental memo to the Planning Commission.

1. There is a typo in the project description. The size of the project is incorrect – it is not 775937 square feet. This is in the project description in both Resolutions (page 1) and in condition 1.
2. In condition 2, of the Resolution approving the project, the date of the plans listed is incorrect. You listed a date of 6-12-17 (the old plans). I believe the new plans are dated 10-16-18.
3. There is still the issue with two conditions of approval that were highlighted in my email to you of November 2nd (copy attached). Specifically, conditions 22 and 26 (DPW conditions) still have references to the residential portion of the project. As I noted in my November 2nd email, it would be fairly easy to modify these conditions as follows:

In condition 22, on line 3, there is a reference to a "potential for seepage from Area D to the adjacent residential development." Area D is completely within the residential parcel and has nothing to do with this project. It might be easiest to rephrase the beginning of Condition 3 by saying: "Prior to the issuance of any building, grading or other construction permits, the applicants drainage plans shall be designed by a licensed engineer and shall show implementation of the following measures:" And then continue with the bullet points.

In condition 26, in the fourth bullet point, 3rd sentence, there is a reference to "Sub-watersheds 2 and 3." Both of these sub-watersheds are completely within the residential portion and there is no drainage from this project into either the residential portion or sub-watersheds 2 and 3. The third sentence of this bullet point should be deleted.

I am happy to discuss these but am only in the office today and then out until November 29th. We really need to have these corrected so that future owners, planners, or members of the public are not confused when they try to implement the approval.

Thanks.

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Tejirian, Jeremy

From: Neil Sorensen <neil@sorensenlaw.com>
Sent: Friday, November 02, 2018 11:30 AM
To: Tejirian, Jeremy
Cc: Eves@venturecorporation.com; ilschwartz@ilscels.com
Subject: The Oaks
Attachments: FW: The Oaks; Items for Discussion on September 21st.doc; Certificate of Acceptance Marinwood Avenue.pdf

Hi Jeremy,

Rob sent my your email with Cara Zichelli's memo of October 31st and I wanted to remind you that a couple of her suggested conditions of approval still contain references to the old residential project and need to be tweaked when you copy them over to your suggested conditions of approval.

When we met on September 21st and discussed the attached "Items for Discussion" we noted that (see item 6 on attached) there are still a few conditions of approval that refer (in part) to the residential portion of the original project approval. These are still in Cara's October 31st memo. Specifically, her suggested conditions of approval 3 and 7 have phrases that refer to the residential area and issues to be addressed therein.

In Cara's condition 3, on line 3, there is a reference to a "potential for seepage from Area D to the adjacent residential development." Area D is completely within the residential parcel and has nothing to do with this project. It might be easiest to rephrase the beginning of Condition 3 by saying: "Prior to the issuance of any building, grading or other construction permits, the applicants drainage plans shall be designed by a licensed engineer and shall show implementation of the following measures:" And then continue with the bullet points.

In Cara's condition 7, in the fourth bullet point, 3rd sentence, there is a reference to "Sub-watersheds 2 and 3." Both of these sub-watersheds are completely within the residential portion and there is no drainage from this project into either the residential portion or sub-watersheds 2 and 3. The third sentence of this bullet point should be deleted.

Finally, with respect to your question of whether we have applied for vacation of the 1 foot non access strip, we understood that we did not have to make a formal application because as Cara states in her "Note to Planning" on page 1 of her memo, "DPW Real Estate recommends two actions be brought to the BOS for their approval: (a) vacation of the 1 foot non-access strip across Marinwood Avenue. (b) Acceptance of an additional section of Marinwood Ave into the County Maintained Road List." Since they are already recommending this, we don't see a need to make an application.

I know that Irv Schwartz has had discussions with Eric Steger in Real Estate about this issue and it was determined that the County accepted the Offer of Dedication in 1970 (see attached) but never recorded the documents to finalize it.

Please confirm that we do not have to make a formal application to DPW to abandon the 1 non access strip.

Thanks.

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**THE OAKS
PLANNING COMMISSION STAFF REPORT SEPTEMBER 24, 2018**

1. Condition of Approval 1 (page 9) does not accurately describe the mix of assisted living versus independent living units in the project. Specifically, the second paragraph of condition 1 states that there will be 51 independent living apartments in the project. This is incorrect. As noted in the Addendum to the EIR on page 8, the project would consist of 126 assisted living and independent living residential units:

"The 126 apartments would include 75 assisted living and 51 apartments that could be used either for independent living or assisted living tenants, as the need arises."

The 51 apartments could be used for either independent or assisted living, as determined at the time a building permit is submitted. Since independent living apartments have small kitchens and assisted living apartments do not, the building permit construction drawings will show the chosen mix.

As an aside, condition 33 was developed in conjunction with Public Works to allow for the parking ratios to be determined at the time construction drawings are submitted based on the number of assisted living units versus the number of independent living units – with the understanding that the 51 independent living apartments could be used as either independent or assisted living units as determined at the building permit stage.

2. In condition 1 (page 10) at the bottom of the page, the condition states that Master Plan Amendment approval is granted for three modifications to the Oak View Master Plan. However, more than three modifications were requested in the application and the other requests are not specifically addressed. For example, we requested an increase in the impervious surface area, a change in the number of parking spaces, an increase in the number of trees to be removed and a change in the building height. These were not addressed at the bottom of page 10. They may be addressed elsewhere, but it is difficult to determine this.

3. In condition 16 (page 16), it is unclear whether the condition requires the construction of a bicycle path, separate and apart from the entrance driveway. The proposal shown on the plans submitted with the application (see pages C-9 and C-10) shows that there is a four foot sidewalk bordering the roadway from Marinwood Avenue to the project buildings. The plans also show that the proposed bicycle pathway is integral with and part of the roadway and not a separate path. It is doubtful that a separate path could be constructed due to site constraints. There is no room on the western side of the entrance driveway and the limited amount of room on the eastern side of the driveway would prohibit the construction of a pathway in most areas. In other areas, potentially large retaining walls would be required. It should also be pointed out that the road from the new bridge to the building site is private and ends at the senior living center. There is likely to be extremely little bicycle traffic there. The current plans have been reviewed and approved by DPW.

4. Condition 18 (page 17) is unclear and does not address our proposed alternative method of providing affordable housing. Condition 18 refers to Marin County Code Section 22.22.100 B.1 and meeting a 25% threshold. We had submitted our proposal under Section 22.22.060 that allows the review authority to approve an alternative housing proposal that "demonstrates a better means of serving the County in achieving its affordable housing goals and the requirements of Chapter 22.22."

Specifically, rather than pay affordable housing fees as required under Chapter 22.22, which the County has repeatedly stated are difficult to use to produce any actual housing, the applicant developed an alternative proposal to construct six workforce housing units on the property. These units would be deed restricted to persons with very low and low incomes (three units to very low income persons and three units for low income persons). County staff has estimated that the cost to build the six units would be approximately \$1,755,962. This is only \$74,984 less than the affordable housing fees that the applicant would have to pay to the County under Chapter 22.22 (\$1,830,910 in fees owed - \$1,755,962 in costs = \$74,984 difference). The applicant feels that this alternative proposal clearly "demonstrates a better means of serving the County in achieving its affordable housing goals" than the payment of fees.

The problem with condition 18 is that it requires the applicant either pay the \$1.8 million in fees, or provide a sufficient number of units to meet the 25% threshold allegedly required by Section 22.22.100 B.1. Since the 25% requirement will require more than six units of housing, the applicant would be better off paying the fees than building sufficient units to meet the 25% threshold.¹ No applicant will build the housing. They will simply pay the fees which we have been led to believe are not as useful to the County as actually having low income housing units built.

5. The staff report does not address one of the issues raised by Public Works staff in their Memorandum of August 21, 2018. Specifically, in the first paragraph of that Memorandum on page 1, Public Works staff notes the following:

"DPW real estate recommends two actions be brought to the Board of Supervisors for their approval in addition to recommendation to the Board for this application: (1) Vacation of the one foot wide non-access strip across Marinwood Avenue, and (2) Acceptance of an additional section in Marinwood Avenue into the County maintained road list."

These issues were not addressed in the staff report and may have bearing on some of the conditions of approval including condition 32 C which talks about construction over the property line relating to the bridge development. A portion of the bridge development will be on private property; however, this private property is subject to an offer of dedication to the public which would be accepted as recommended by Public Works staff. In fact, our research indicates that the County Board of Supervisors directed County staff to file the paperwork

¹ According to estimates in the Vernazza Wolfe Study commissioned by the County to justify the fee for Residential Care Facilities, a facility with 80,000 sq. ft. would require about 48 employees that could be below moderate income levels.

necessary to accept this offer of dedication in the early 1970's. Due to a clerical error, the offer of dedication paperwork was never filed.

6. There are still a few conditions of approval that refer (in part) to the residential portion of the original project approval. Specifically, conditions 22 and 26 have phrases that refer to the residential area and issues to be addressed therein. For example, in condition 22 on line 3 there is a reference to a "potential for seepage from Area D to the adjacent residential development." Area D is completely within the residential parcel and has nothing to do with this project. In condition 26 in the forth bullet point there is a reference to "Sub-watersheds 2 and 3." Both of these sub-watersheds are completely within the residential portion and there is no drainage from this project into either the residential portion or sub-watersheds 2 and 3. There should be something in the record that indicates that these do not apply to this project.

Tejirian, Jeremy

To: Planning Commissioners
Subject: FW: outstanding questions

Importance: High

From: Doug Herring <doug@douglasherring.us>
Sent: Tuesday, November 20, 2018 5:49 PM
To: Taylor, Tammy <TTaylor@marincounty.org>
Subject: Re: outstanding questions

Tammy,

It's true that Subarea D is not located on the project site. However, the August 2016 geotechnical investigation report by Herzog for the current project states on page 3 that "Portions of the lower slopes also contain hydrophilic vegetation indicative of shallow seepage." On page 4 it states that water typically migrates downslope in the form of seepage. Finally, on page 7 the Herzog report states: "Proposed excavations may encounter seepage . . ." These statements seemed to indicate that even though Subarea D is not on the site, seepage is an issue on the site.

Furthermore, page 9 of the 2016 Herzog report states: "It is important that surface and subsurface water be controlled to reduce future moisture variations in the weak on-site soils. Water will need to be intercepted upslope of the building, and fail safe surface drainage systems should be provided to prevent water from collecting behind the structure . . . perimeter foundation drains and slab underdrains should be provided, and retaining walls should be provided with adequate backdrainage to prevent hydrostatic buildup."

To me, the subdrain system called for in Mitigation Measure 5.1-4(a) seems consistent with these recommendations, and it could just be clarified by removing the reference to Subarea D. However, I'm not a geotechnical engineer, and my analysis in Section 7 was based primarily on the previous EIR and the 2016 Herzog report. If there is further question about whether the mitigation adequately reflects Herzog's recommendations, I would suggest a conversation with Herzog about this, because I don't have the technical expertise to provide any further guidance.

I hope this is helpful, and I hope you have a great Thanksgiving.

Cheers,
Doug

Tejirian, Jeremy

From: Marian <marianblanton155@comcast.net>
Sent: Tuesday, November 20, 2018 5:17 PM
To: Tejirian, Jeremy
Subject: Oaks Project

It's been a long time since our community was faced with a commercial project of this size. We are still waiting to see the Marinwood Mall redeveloped—14 years now and counting. I urge all involved to consider also commercial services a redeveloped Marinwood Mall could provide for residents of the Marinwood Area. Both projects should be pursued, simultaneously. Marinwood has supported Marinwood Mkt. for many years—even in the ugly old Mall.

Please share my email with Supervisor Connolly.

Thanks,

Marian Blanton
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