

MEMORANDUM

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

Planning Division staff has received additional correspondence from the applicant since, which is attached. In addition, Planning Division staff has separately met with the applicant and Housing Division staff.

The applicant has raised four separate issues in the letter of September 20, 2018 which are each addressed in order below.

1. Affordable Housing

The applicant has requested that the Planning Commission recommend that the six affordable housing units proposed as part of the project fully satisfy the affordable housing requirements under Development Code section 22.22.060 (Waivers). However, this Chapter allows waivers to the normal requirements when one of three alternatives is approved. Those alternatives include providing affordable housing units off-site, dedicating lots for affordable housing units, or paying a fee equal to 125 percent of the normal inclusionary housing fee. Each of these have particular criteria that must be met. However, the waivers section does not apply to the project because the applicant has not requested any of the available options. This is why staff followed a separate line of reasoning, related more directly to those provisions of the code pertaining to residential care facilities, in the recommended resolution.

As indicated in the staff report, while the standard fee requirement is codified, the review of the affordable housing alternative is discretionary. Housing staff has requested the Planning Commission consider the following project modification:

The applicant shall re-design the proposed 3,426 square foot affordable housing apartment building to accommodate four affordable housing units: one studio; two, two-bedroom units; and one, three-bedroom unit. The affordable housing units must comply with the standards of Marin County Development Code Chapter 22.22. Accordingly, the units shall be available to the general public, as per the Affordable Housing requirements of that Chapter. Prior to issuance of building permits for the residential care facility, the applicant shall submit an Affordable Housing Plan for review and approval by the Planning Manager of the Housing and Federal Grants Division. This Affordable Housing Plan shall incorporate provisions providing for the permanent restriction for affordability of the units

through a deed restriction. If four affordable housing units are approved, the applicant may receive a credit against the Jobs/Housing Linkage fee requirements of the residential care facility. The credit shall be equivalent to the total Conditioned Floor Area of the affordable housing units, multiplied by an adjusted, estimated cost to build rental housing as defined in the Marin County 2015 Rental Housing Impact Fee Nexus Analysis authored by Vernazza Wolfe Associates, Inc. The estimated cost to build rental housing is defined in Table B-3 and, for the purposes of this calculation, shall be adjusted each County fiscal year by the annual inflation rate of the Construction Cost Index published by Engineering-News Record in the month of May.

All affordable housing shall comply with the standards in Marin County Code Chapter 22.22, Sections 22.22.080 and 22.22.120. The units must be available to the general public, and marketed in accordance with a Fair Housing Marketing Plan, approved by the Housing and Federal Grants Division, that details how the units will be advertised and managed to comply with all applicable fair housing laws.

2. Project Description

The applicant has indicated that the project description does not accurately reflect the proposal or the information in the EIR Addendum. In particular, they propose to have more flexibility to decide before building permit whether 51 of the apartments will be independent living or assisted living.

The applicant is correct up to a point, except that sheet T2.2 of the project plans indicates that there will be 51 independent living apartments. The flexibility proposed by the applicant has been addressed in the Addendum and Public Works has incorporated condition 30, which relates to the required parking for either of the two options. Whichever option is chosen by the applicant will not change the outward appearance of the residential care facility. Planning Division staff supports granting this flexibility to the applicant.

In order to clarify the record, the conditions describing the project being approved would need to be modified for the corrections to be made to the plans, unless the plans are revised before the Board takes action on the project.

3. Sidewalk and Bike Lane

The applicant has requested that condition 16 be modified. However, condition 16 has simply been copied from the original Master Plan into the Master Plan amendment ordinance as all the outstanding Master Plan conditions have been. This indicates only that the requirement is not being modified by the Master Plan Amendment. While civil engineering details for the sidewalk and bike lane will need to be worked out with Public Works during the building permit review, the concept shown in the plans conforms to the Master Plan condition.

4. Mitigation Measures

The application has indicated that a number of the mitigation measures incorporated into the conditions do not pertain to the residential care facility. The Mitigation Monitoring and Reporting Plan was carefully reviewed to determine which mitigation measures apply to

the residential care facility. However, environmental planning staff will review the applicant's comments and make any additional changes necessary before the Board renders a final decision on the project.

Enclosure: Applicant comments, submitted September 21, 2018



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September 20, 2018

VIA E-MAIL

Chair Margot Biehle and Members of
the Marin Planning Commission
3501 Civic Center Drive, #308
San Rafael, CA 94903-4157

Re: The Oaks Master Plan Amendment, Design Review and Tree Removal Permits

Dear Chair Biehle and Members of the Planning Commission:

This office represents Robert Eves and Venture Senior Living, the applicants for The Oaks Senior Living project, which proposes to develop 126 assisted living and independent living residential units plus 6 workforce housing units on the property located at the end of Marinwood Avenue in Marinwood.

The purpose of this letter is to address a few issues raised by the staff report and to request that the Planning Commission recommend to the Board of Supervisors that they approve the EIR Addendum, and the Master Plan Amendment, Design Review and Tree Removal Permits, as requested in the application materials.

1. The Planning Commission Should Approve the Applicants' Proposal to Build Workforce Housing – Something the County Desperately Needs – Rather than Pay Fees

Rather than pay the affordable housing fee required by the code (Section 22.22.100 and Table 3-4b), Venture Senior Living came up with a very creative proposal to build workforce housing at the property. Specifically, the proposal was to construct six workforce housing units (three units for very low income persons and three units for low income persons). This was deemed to be a substantial benefit to the County and the community as a whole since, to our knowledge, no workforce housing has ever been constructed in the County, and many of the employees of a residential care facility are on the lower end of the income scale and cannot afford to live near where they work.

The applicant did not have to come up with this proposal and could simply pay the affordable housing fee mandated by County code. As noted by Leelee Thomas in her memo of

July 5, 2017 (see Exhibit "A"), the affordable housing fee for this project would be approximately \$1,830,910.89. As further noticed by Ms. Thomas, the cost to construct the six workforce housing units proposed by Venture Senior Living would be \$1,755,962.04. This is approximately \$74,948 less than the amount of the fee that Ms. Thomas says would be owed by Venture Senior Living – an inconsequential amount given the benefits from actually having housing constructed.

Based on the above, the applicants made a proposal under Marin County Code Section 22.22.060 which provides in part:

"The review authority may grant a waiver to the requirements of this chapter if an alternative affordable housing proposal demonstrates a better means of serving the County in achieving its affordable housing goals ..."

Venture Senior Living feels that the alternative proposal to construct workforce housing at the property and deed restrict it to persons of very low and low incomes would clearly provide "a better means of serving the County in achieving its affordable housing goals" than the payment of fees that are not likely to produce any such housing. It is our understanding that the County has a difficult time using fees to actually build housing at a reasonable cost and that the construction of housing can be better accomplished by a private developer.

The staff has suggested in the body of the staff report (page 6) and in Condition 18 (page 17) that as an alternative to paying the affordable housing fee of approximately \$1.8 million, the applicants could provide the number of new affordable units required by Table 3-4c. This section, while not particularly clear, seems to require that the applicants provide housing for 25% of the "income qualifying employee households associated with the new non-residential development." We believe this 25% requirement will likely require more than six units of housing, so the applicant would be better served to pay the fees than to build the six units of workforce housing or any other amount of housing. We are asking that The Oaks affordable housing requirements be fully satisfied by the construction of the proposed 6 new workforce housing units with no additional fees or requirements.

While Venture Senior Living has not done a detailed study, using the County's estimates as contained in the "Commercial Linkage Fee Nexus Study" prepared by Vernazza Wolfe Associates, there may be as many as 48 "qualifying employee households" associated with this type of development. See Exhibit "B." Twenty-five percent of 48 is 12 units. It goes without saying that no applicant would select this alternative since it would potentially cost them double the amount of just paying the \$1.8 million fee.

Accordingly, it is requested that the Planning Commission amend Condition 18 to allow the applicants to either pay the required affordable housing fee (estimated at \$1.8 million) or alternatively, construct the proposed six workforce housing units and deed restrict them so that they are affordable to persons of very low income and low income. Such a condition is a much better means of serving the County in achieving its affordable housing goals than suggested in the staff report.

2. Condition of Approval 1 Does Not Accurately Describe the Mix of Assisted Living Versus Independent Living Units

The original application submitted to the County and the EIR Addendum recognized that the exact mix of assisted living versus independent living units was in flux and that a certain amount of flexibility was needed in order to allow the applicants to adjust the project to market conditions when it is ultimately constructed. Accordingly, the application included a proposal that of the 126 apartments, 75 would be assisted living and the remainder 51 apartments would be either independent living or assisted living. For some reason, this did not get carried through in the staff report or Condition of Approval 1 (page 9). 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."

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

As an aside, other conditions in the staff report recognize this flexibility. Condition 33, developed in conjunction with Public Works, allows 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 potentially the 51 independent living apartments could be used as either independent or assisted living units as long as a final determination is made at the time the building permit is submitted.

3. Condition 16 Should be Amended to Recognize that the Project Includes a Sidewalk Along Side the Roadway and that the Bicycle Path is Integral to and Part of the Roadway

In condition 16 (page 16), it is unclear whether the condition requires the construction of a bicycle path, separate and apart from the entrance roadway. 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 facility. 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. 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. This condition should be modified to state that before final inspection of the residential care facility, the applicants shall construct the sidewalk shown on the plans and provide for the bike pathway as shown on sheets C-9 and C-10. Since the bicycle traffic would end at The Oaks buildings, it is likely to get very little use.

4. Some of the Conditions of Approval Still Refer to the Residential Portion of the Original Oak View Master Plan

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 there is no drainage from The Oaks project to that area. 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.

5. Conclusion

Venture Senior Living has spent the last three years and \$2 million retaining consultants, preparing plans and going through a long and detailed application process for final approval of its residential care facility. This included a detailed and exhaustive EIR Addendum prepared at the cost of \$136,000.

Rather than simply pay the affordable housing fee required by the code, which they are legally allowed to do, Venture Senior Living felt that the County's present housing goals and the community as a whole would be much better served if they actually built some low income housing. Venture Senior Living is requesting that the Planning Commission recognize this effort and approve the alternative proposal to construct the six affordable units while waiving the approximately \$74,000 in remaining fees that would be due and payable. It should be pointed out that this development is using only 9.6 acres of its original 108 acres. It has donated 70 acres to the Marinwood Community Services District as open space and 9.4 acres to CalTrans for a freeway interchange. The remaining 18.9 acres is being used for a 28 lots residential subdivision that The Oaks applicant is not involved in. No other development can match this community contribution.

It is also requested that the Planning Commission make the other suggested changes in the Conditions of Approval listed above.

Respectfully submitted,

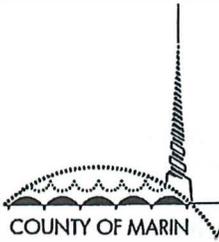


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NS/mjs

cc: Venture Senior Living

Exhibit "A"



COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

TO: Jocelyn Drake, Senior Planner

FROM: Leelee Thomas, Planning Manager
Debbi La Rue, Planner

DATE: July 5, 2017

RE: The Oaks (Daphne Krestine Trust) Master Plan Amendment, Precise
Development Plan, Design Review
Marinwood Avenue, San Rafael
Assessor's Parcel 164-270-05
Project ID P1547

APPLICANT: Robert Eves/Venture Senior Living
25 Miller Avenue, #232, Mill Valley
415-464-1920
eves@venturecorporation.com

COMMENTS

The applicant proposes to develop a 98,067 square foot Residential Care Facility on a 9.6 acre parcel in unincorporated San Rafael. As established in Marin County Code Chapter 22.22, the County's affordable housing regulations require the applicant to pay a land-use specific Jobs/Housing Linkage Fee to mitigate the impact of the new development on the affordable housing market. The Jobs/Housing Linkage Fee for Residential Care Facilities for fiscal year 2017-2018 is \$18.67 per square foot. Accordingly, if a Building Permit has been applied for and accepted as complete by the Building and Safety Division within this fiscal year, the applicant may anticipate paying approximately \$1,830,910.89.

In-lieu of paying this Jobs/Housing Linkage Fee, the applicant requests that the County approve a proposal to fulfill its affordable housing requirements through the development of six, 571 square foot one-bedroom townhomes (total 3,426 square feet) affordable to very-low- and low-income households. The applicant proposes to limit the units to employees of the proposed Residential Care Facility for tenancy in the affordable housing units.

Marin County Code § 22.22.060 authorizes the Director of the Community Development Agency (CDA) to grant a waiver of standard affordable housing requirements if an alternative affordable housing proposal demonstrates a superior means of serving the county in achieving its affordable housing goals. Key findings relevant to the deliberation of this question are as follows:

1. The Jobs/Housing Linkage Fee for Residential Care Facilities was determined by a February 2016 nexus analysis, *Commercial Linkage Fee Nexus Study: Retirement Care and Skilled Nursing Facilities*, which approximated the cost to develop modest housing to be \$478 per square foot in fiscal year 2015-2016. Accelerated by the same rates used to adjust the rate schedule for the Jobs/Housing Linkage Fee for Residential Care Facilities, the cost of development in fiscal year 2017-2018 may be estimated at \$512.54 per square foot. Applied to the 3,426 square feet of proposed affordable residential floor area, the cost of developing

PG. 2 OF 2 the proposed six units is approximated to be \$1,755,962.04--\$74,948.85 less than the current Jobs/Housing Linkage Fee.

2. While the County supports the development of a variety of affordable housing options, it has a particular need for the development of such options that are appropriate for families with children that are located outside of impacted areas. To comply with HUD guidance and to affirmatively further fair housing, the County is encouraging housing for families outside areas of minority concentration. Providing on-site affordable rental family housing would help overcome barriers to fair housing choice and promote equal housing opportunity.

Accordingly, the County encourages the applicant to modify its proposal to include two- and three-bedroom units. For example, the applicant might propose to develop two one-bedroom units, two two-bedroom units, and two three-bedroom units or a similar mix.

Furthermore, Marin County Code § 22.22.040 and § 22.22.120(C)1 requires that all affordable units must be made available and advertised to the general public; in accordance with fair housing laws, the units may not be restricted based on the source of income of a tenant or applicant. The county supports construction of on-site workforce housing, and encourages the applicant to include this type of housing in addition to the inclusionary units open to the general public.

If the CDA Director elects to waive the Jobs/Housing Linkage Fee for Residential Care Facilities in exchange for the satisfactory provision of affordable housing on-site, the applicant must comply with Marin County Code § 22.22.080 (General Affordable Housing Standards) and § 22.22.120 (Affordable Housing Post-Approval).

The applicant must submit a complete and acceptable Affordable Housing Plan before the application may be deemed complete. The Affordable Housing Plan should provide all information required to make the necessary findings in compliance with Marin County Code § 22.22.110, including:

1. Description of affordable units including number, affordability level (ex. low income, extremely-low income), unit type, tenure (rental or ownership), number of bedrooms (by affordability level), location, size, design description;
2. Construction schedule and phasing of units in relation to the overall project construction schedule;
3. Provisions for income certification and screening of potential purchasers of units including resale control mechanisms and ongoing monitoring and management;
4. Any incentive requested pursuant to Chapter 22.24 (Affordable Housing Incentives), including the additional information specified in that Chapter;
5. Such additional information as may be required by the Director to ensure conformance of the project with the County's affordable housing requirements, the Countywide Plan, and any applicable community plan; and
6. A Fair Housing Marketing Plan that details how the units will be managed to comply with all applicable fair housing laws.

Enclosures:

1. Fiscal Year 2017-2018 Affordable Housing Fees Update

Exhibit "B"

**COMMERCIAL LINKAGE FEE
NEXUS STUDY**

**RETIREMENT CARE AND
SKILLED NURSING FACILITIES**

Submitted To

County of Marin

February 2016

Prepared by

VERNAZZA WOLFE ASSOCIATES, INC.

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Tel: (510) 548-8229

Table 8: New Workers (All Income Groups), Worker-Households (Moderate-Income and Below), Aggregate Affordability Gap and Maximum Fee per SF for Residential Care Facilities ⁽¹⁾

| Residential Care Facility | Total Space (SF) | Total Workers | Number of Worker Households | No. of Households That Are Moderate-Income and Below | Aggregate Affordability Gap | Maximum Fee per SF |
|---------------------------|------------------|---------------|-----------------------------|--|-----------------------------|--------------------|
| Office | 5,600 | 17.0 | 11.3 | 4.0 | \$1,609,408 | \$287 |
| Dining | 8,000 | 12.0 | 8.0 | 7.8 | \$3,120,601 | \$390 |
| Residential | 48,000 | 48.0 | 31.9 | 30.5 | \$12,183,169 | \$254 |
| Health Care | 6,400 | 12.8 | 8.5 | 5.9 | \$2,354,925 | \$368 |
| Combined | 68,000 | 89.8 | 59.7 | 48.2 | \$19,268,102 | \$283 |

(1) All fee levels are rounded to the nearest dollar.

Sources: Tables 3, 4, 5 and 7.

Table 9: New Workers (All Income Groups), Worker-Households (Moderate-Income and Below), Aggregate Affordability Gap and Maximum Fee per SF for Skilled Nursing Facilities ⁽¹⁾

| Residential Care Facility | Total Space (SF) | Total Workers | Number of Worker Households | No. of Households That Are Moderate-Income and Below | Aggregate Affordability Gap | Maximum Fee per SF |
|---------------------------|------------------|---------------|-----------------------------|--|-----------------------------|--------------------|
| Office | 5,600 | 17.0 | 11.3 | 4.0 | \$1,609,408 | \$287 |
| Dining | 8,000 | 12.0 | 8.0 | 7.8 | \$3,120,601 | \$390 |
| Residential | 20,000 | 20.0 | 13.3 | 12.7 | \$5,076,320 | \$254 |
| Health Care | 40,000 | 80.0 | 53.2 | 36.8 | \$14,718,282 | \$368 |
| Combined | 73,600 | 129.0 | 85.7 | 61.3 | \$24,524,611 | \$333 |

(1) All fee levels are rounded to the nearest dollar.

Sources: Tables 3, 4, 5 and 7.

Exhibit "C"

At the time of the 2002 Final EIR, the Marin County Zoning Code required new residential development of ten or more units to provide 15 percent of the units as affordable housing units or pay an in-lieu fee. The applicants proposed making the in-lieu payment to satisfy the affordable housing requirements.

2.3 Description of Revised Previous Project

The Final EIR Second Amendment published in November 2004 evaluated a revised project that was identified as a Mitigation Alternative. It was developed by the project applicant in response to comments received from members of the public during the public review period for the Final EIR. The revised project eliminated the direct connection to Lucas Valley Road of the previously proposed street providing access to 20 of the 28 housing units. Instead, all 28 housing units would be accessed by an extension of Erin Drive, off of Las Gallinas Avenue.

The revised project also eliminated the prior two office buildings totaling 94,400 square feet and replaced them with a single 94,400-square-foot building on the same site to provide an assisted living facility for seniors. A total of 150 residential apartments were proposed, including apartments with full kitchens and apartments without full kitchens. The revised project included a reduction in parking, from 378 spaces for the office development to 81 spaces for the senior living facility.

Other project changes included an increase in the landscaped berm area between the assisted living facility and Highway 101; a realignment of the access drive and bridge across Miller Creek in order to reduce the amount of grading required; and a dedication for public roadway purposes of approximately 9.4 acres in the southeast corner of the 106-acre property.

The revised project incorporated new noise mitigation measures, which are described in Section 3.4.11. Other aspects of the project remained the same as described in the Final EIR, including subdivision of the site into two parcels of 51.9 acres (Parcel 1) and 54.4 acres (Parcel 2).

Chapter 3: Description of the Proposed 2017 Project

3.1 Project Overview

Venture Senior Living, LLC, the Applicant, is proposing to develop a 126-apartment senior living community and six workforce housing apartments on a 9.6-acre vacant parcel located on the west side of U.S. Highway 101 between Lucas Valley Road and Marinwood Avenue, in unincorporated Marin County. Although the site is within the planning boundary of the City of San Rafael, it is outside and just north of the City limits. The proposed project would be developed in accordance with the *Oakview Master Plan* approved by the County in January 2005. Table 1 provides a comparison of current project to the project evaluated in the 2002 Final EIR as well as the project defined in the approved Master Plan following amendments to the original project.

The proposed senior community would consist of 126 assisted living and independent living residential rental apartments in two attached buildings. The 126 apartments would include 75 assisted living apartments and 51 apartments that could be used for either Independent Living or Assisted Living tenants, as the need arises. The 71,124-square-foot, two-story main building would provide 86 apartments that could be occupied by both assisted and independent living tenants. A basement area would provide an additional 4,813 square feet of floor area. An adjacent one-story, 22,130-square-foot memory care building would provide 40 assisted living apartments. The portion of the main building that is above grade, combined with the adjacent building, is slightly smaller than the building that was originally approved in the Master Plan. Depending on market demand, the mix of assisted living and independent living apartments may vary from time to time. The main building would provide a variety of