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Honorable Chair, Planning Commissioners and Staff  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94303

**Re: 2901-05 Middlefield Road and 702 Ellsworth Place: Request for Rezoning to Amend  
Planned Community 2343 (PC 2343) and to apply the R-1 Zoning to 702 Ellsworth  
Place to Enable the Development of a Single-Story, Single-Family Residence**

Dear Honorable Chair, Planning Commissioners and Staff:

After learning from City staff yesterday afternoon that the public hearing tonight would be reopened, we are submitting this letter that responds to many of the comments and concerns raised at the June 28, 2023 Planning Commission hearing regarding the above referenced matter and in written correspondence submitted following the hearing.

By way of background, after discovering that their properties were zoned PC contrary to the City's Zoning Map designating 702 Ellsworth Place as R-1 and designating 2901-05 Middlefield as RM-20, at Planning staff's recommendation, applicants Nitin Handa (owner of 702 Ellsworth Place) and our client RLD Land LLC (owner of 2901-05 Middlefield) jointly filed the subject application.

This application, if approved as proposed, will accomplish the following objectives and community benefits:

- 1) Resolve a decades old zoning map error by the City that was relied upon by both applicants in purchasing their respective properties;
- 2) Allow for an additional single-family home to be added to the City's housing stock by removing a parking lot designated exclusively for apartment residents' guest parking at 702 Ellsworth (and no longer required by Code) from the Planned Community (PC) development plan and rezoning it to R-1 zoning consistent with the other residential lots on Ellsworth Place;

- 3) Retain 2901-05 Middlefield Road within the PC, thereby locking in and capping the density of this site at the existing twelve (12) units;
- 4) Accommodate all current required parking for the existing 12-unit apartment building on site at 2901-05 Middlefield Road;
- 5) Grant the owners of the parcels fronting Ellsworth Place an access easement over the 100 ft long 20 foot wide portion of Ellsworth Place that falls within the 702 Ellsworth parcel (currently these parcels have no written or recorded easement over this portion of Ellsworth Place);
- 6) Improve the vehicular, bicycle and pedestrian safety of the intersection of Middlefield and Ellsworth Place and on Ellsworth Place by:
  - a) Increasing the paved width of Ellsworth Place by 4 feet accomplished by restricting a 2'-6" wide by approximately 35 foot strip of land parallel to Ellsworth Place on the 2901-05 Middlefield parcel and a 1'-6" wide by approximately 40 foot strip of land parallel to Ellsworth Place on the 702 Ellsworth Place parcel to hardscape matching the surface the Ellsworth Place;
  - b) Widening the curb cut approach at Ellsworth/Middlefield by 4 feet to a total of 28 feet at the street flare;
  - c) Creating an enhanced 35-foot sight triangle at Ellsworth/Middlefield by pushing the 702 Ellsworth fence along Middlefield four (4) feet in from the back edge of the sidewalk (thus further into the 702 property), restricting the fence height to 3 feet and requiring all vegetation be limited and cleared to one foot height or less between the fence and the street curb;
  - d) Providing a temporary delivery and loading space onsite at 2901-05 Middlefield Road which is not otherwise required by Code; and
  - e) Reducing vehicle trips on Ellsworth by reducing the number of parking spaces using Ellsworth Place and accommodating all current required parking for the 12-unit apartment complex onsite and moving the trash pickup to the Sutter entrance.

#### **A. Ellsworth Street Status**

1. Not a Public Street. Contrary to some of the commenters contentions, Ellsworth Place is not a public street. The City does not have any easement, right of way, fee title or other ownership interest in Ellsworth Place. State law provides that a public street can be created only by one of the two following ways: (1) a city either explicitly or impliedly accepts an offer to dedicate a street as public; (2) a city acquires an easement, right of way or fee title from the owners of the street by purchase or condemnation. Streets

& Highways Code Section 1806; *Hanshaw v. Long Valley Rd. Ass'n* (2004) 116 CA4th 471. The City Attorney has concluded that none of these conditions have occurred and therefore Ellsworth is not a public street.

2. No Existing Easement Over 702 Ellsworth Frontage. The first 100 feet of Ellsworth Place is contained entirely within the 702 Ellsworth parcel and therefore fee title to this portion of Ellsworth Place is owned by Nitin Handa. According to the preliminary title report for the property there is no written or recorded easement over this Ellsworth Place portion benefitting all of the other parcels fronting Ellsworth Place.
3. Proposed Grant of Easement. Mr. Handa has generously offered to grant and record a non-exclusive easement for ingress/egress over the portion of Ellsworth that is on his property for the benefit of the owners of the other parcels fronting Ellsworth Place. This will resolve any ambiguity over the legal right of these parcels' residents to cross over this portion of Ellsworth Place on the Handa property.

## **B. Community Benefits and Concessions**

### **1. Sufficiency of Proposed Community Benefits**

This proposal is to amend an already existing PC development plan that was approved in 1967 by accommodating all required parking at 2901 Middlefield and removing 702 Ellsworth from the PC because it is no longer needed for parking. The Council has acknowledged that providing new housing on its own is a community benefit. The proposed PC amendment allows for the addition of a moderately priced single-family home and the continuation of 12 longtime, well maintained apartment units. In addition, this project improves the safety at a currently sub-standard street with a series of existing safety and circulation concerns as described below.

### **2. 702 Ellsworth Benefits and Concessions.**

- Agreed to grant an access easement over the 100 ft long by 20 ft wide portion of Ellsworth on the 702 Ellsworth parcel to all parcel owners fronting Ellsworth to settle any debate over who has right to access that part of the street.
- Agreed to increase the effective width of Ellsworth by maintaining an additional strip of land 1'-6" wide by approximately 40 feet in length parallel to Ellsworth Place in the same material as Ellsworth Place.
- Agreed to an enhanced 35 feet sight triangle on the corner at Ellsworth/Middlefield. by pushing back the fence on Middlefield 4 feet from the back of the sidewalk and limit the height to 3 feet tall as measured from the sidewalk level.
- Agreed to decrease the front landscaping between Ellsworth Place and the home and instead install 4 feet of hardscape immediately adjacent to and parallel with Ellsworth Place. This will provide 25% more space (width) for vehicle maneuvering and turnaround.

- Agreed to widen the curb cut approach at Ellsworth/ Middlefield by two feet on the 702 Ellsworth side of the approach, which, when combined with the widening on the 2901 Middlefield side would result in a total width of 28 feet at the mouth.
- Agreed to widen the residential driveway to allow for better vehicle maneuvering.
- Agreed to cut the bushes facing Middlefield to improve sight line.
- Agreed not to construct a basement and keep the home at a single-story.
- Removed temporary construction fencing and dirt while application pending.

3. 2901-05 Middlefield Benefits and Concessions.

- Agreed to create and provide a temporary loading zone for delivery trucks at 2901 Middlefield.
- Provides an additional 4 parking spaces onsite to accommodate all current required parking for the apartment building and its guests and tenants onsite, thereby facilitating less use of Ellsworth.
- Agreed to increase the effective width of Ellsworth by maintaining an additional strip of land 2'-6" wide by approximately 35 feet in length parallel to Ellsworth Place in the same material as Ellsworth Place.
- Agreed to maintaining a 35 feet sight triangle on corner of lot at Ellsworth/Middlefield.
- Moved trash pickup from Ellsworth to Sutter to relieve pressure on Ellsworth.
- Agreed to widen the curb cut approach at Ellsworth/ Middlefield by two feet on the 2901 Middlefield side of the approach, which, when combined with the widening on the 702 Ellsworth side would result in a total width of 28 feet at the mouth. This widening also requires the relocation of a utility monument box.

4. PC Development Plan Documents and Enforces 2901-5 Middlefield Benefits and Concessions.

All community benefits and applicant concessions located on 2901 Middlefield will be documented and enforceable through the amended PC Development Plan.

5. Grant of Easement; Deed Restriction and Building Permit Documents and Enforces 702 Ellsworth Parcel Benefits and Concessions.

The community benefits and applicant concessions located on 702 Ellsworth (that will be removed from the PC Development Plan and rezoned R-1) will be documented and enforced through the following separate legal mechanisms:

(a) A recorded perpetual access easement (over the 100 ft long 20-foot wide portion of Ellsworth Place that falls within the 702 Ellsworth parcel) to the owners of the parcels fronting Ellsworth Place (currently these parcels have no written or recorded easement over this portion of Ellsworth Place); and

(b) A deed restriction recorded against the property in perpetuity for the benefit of the City that will require (1) the additional 1'-6" of hardscape along Ellsworth be maintained; (2) the 35- foot sight triangle on the 702 Ellsworth side be maintained; (2) the additional 4 feet of hardscape between Ellsworth and the walkway be maintained; and

- (c) A building permit that requires the additional driveway width and that the home be one story with no basement.

**C. Why Rezone 702 Ellsworth to R-1 Instead of Amending the PC to Allow Single Family Residential?**

1. Rezoning to R-1 is More Compatible and Consistent with Surrounding Zoning.

The adjacent and surrounding residential parcels are primarily zoned R-1. Rezoning 702 Ellsworth to R-1 would require the parcel to abide by the same development standards as all other R-1 lots as opposed to a PC which would allow the lot to have site specific development standards.

2. Retaining 702 Ellsworth is Inconsistent with the Purposes of the PC.

We are not aware of any PC in the City that provides for one single lot to be developed with a single-family home. Section 18.38.010 specifically states that the purpose of the PC zoning is for projects “requiring flexibility under controlled conditions not otherwise attainable under other districts.” Here, the proposed single-family home on 702 Ellsworth is perfectly attainable within the R-1 regulations and development standards and a PC is not necessary.

3. Proposed Legal Mechanisms to Enforce Community Benefits and Concessions are Superior to Incorporating them into a PC Development Plan.

It is important to note that unlike a PC development plan which can be amended or rescinded by the public process outlined in the PC Ordinance, an easement can only be modified by written agreement from all grantees of the easement, which in this case would be all owners of the parcels fronting Ellsworth, and the deed restriction benefitting the City could only be modified by the City Council. Accordingly, the legal mechanisms to document and enforce the community benefits and concessions provided on 702 Ellsworth would likely prove much more difficult to modify or rescind than had they been incorporated into a PC development plan

4. It Does Not Create Precedent.

Allowing 702 Ellsworth to be removed from this PC does not create a precedent for other PC zoned properties. Amendments to any PC are discretionary and reviewed on a case-by-case basis through the required public process. Here, the requested amendment increases the number of parking spaces at 2901 Middlefield to accommodate all of the required parking onsite at 2901 Middlefield. Accordingly, the parking lot at 702 Ellsworth is no longer needed for the PC development plan. Moreover, this request is unique in that it seeks to rectify a City error. As explained in more detail in our letter dated June 6, 2023, the 1967 PC was never reflected in the

City's records. Instead, the City's records still show 2901 Middlefield as RM20, and the vacant lot at 702 Ellsworth as R-1. Even the 2014 city wide update on all PC zoned lots, dating back to the 1950's, did not include 2901 Middlefield or 702 Ellsworth on the list of PC zoned lots. Accordingly, the amendment seeks to amend the PC to approximately reflect what the current owners reasonably relied upon when they purchased the properties in 2017 and 2022 respectively.

#### **D. Density**

Removing the 702 Ellsworth Place property from the PC development plan and rezoning it R-1 will add one single family housing site to the City's housing inventory. Contrary to one public comment, it will not increase the density of 2901-05 Middlefield property. There is no proposed change to the existing number of units. While the applicants could have applied for a zone change to RM-30 to potentially allow redevelopment of the site to a higher density, instead they are retaining the existing PC zoning which caps the number of units on the site to the existing twelve (12) apartment units pursuant to the approved development plan. This two story 12-unit apartment building has existed for over 56 years, blends in with the neighborhood and has never been criticized as too dense for the area.

#### **E. Use of Parking Lot at 702 Ellsworth**

1. Existing Parking Lot is for Apartment Tenant Guests Only.

The parking lot at 702 Ellsworth is and always has been private property. Under the existing PC development plan it provides 8 parking spaces that are specifically designated for guest parking for the tenants of apartment building.

2. Other Uses Not Permitted Without Owner's Consent.

Any use of the parking lot other than for tenants' guests (including the tenants themselves) is not permitted or legal without the owner's consent. Furthermore, any such use is contrary to the existing PC which dedicates these parking spaces for guests of the apartment building tenants. According to the property manager who has managed the parking lot for more than 6 years, he has never seen anyone use this parking lot for circulation, passing, community events, or other uses as one public comment contends. Indeed, there are several no parking signs in the parking lot that have existed long before his tenure which state "Parking Restricted. Unauthorized Vehicles to be Towed at Owner's Expense" citing California Vehicle Code Section 22658A and other signs which state "No Trespassing – Private Property – Violators will be Prosecuted."

3. Parking Lot is Not Required to Meet Current Parking Requirements.

All required parking for the apartment building is proposed to be accommodated onsite at 2901-05 Middlefield by adding four (4) additional parking spaces. Therefore, the parking lot at 702 Ellsworth is no longer needed to meet the current required parking for the 2901 Middlefield apartment building. These additional 4 onsite spaces may be used by tenants or their guests and will be closer to the apartment residences. Under the existing PC development plan, the parking lot may not be used by tenants; it may only be used by guests of tenants.

4. Proposal to Provide Temporary Delivery and Loading Space Onsite.

Although not required by Code, the 2901 Middlefield applicant is proposing to provide a temporary loading/ delivery space onsite. See enclosed letter from Hexagon dated July 12, 2023 detailing proposed revisions to the location of this temporary loading/delivery space.

**F. Bicycle/Pedestrian Safety**

See enclosed letter from Hexagon dated July 12, 2023

In conclusion, the applicants respectfully request that the Planning Commission recommend approval of the PC Amendment that will: (1) accommodate all required parking for the existing 12-unit apartment building onsite at 2901-05 Middlefield and; (2) remove 702 Ellsworth from the PC development plan and rezone it R-1 to allow for the addition of a modest single-family home on the currently vacant lot. This action will not only add one additional housing unit to the City's housing stock, but also preserve the continued viability of the existing, well-maintained 12-unit apartment building, grant an access easement over the portion of Ellsworth on 702 Ellsworth for the benefit of the other Ellsworth parcels, and improve the conditions of the private street by paving additional width, maintaining a 35 foot line of sight triangle, widening the curb cut at Middlefield and Ellsworth to 28 feet, and providing a temporary delivery and loading space at 2901-05 Middlefield. Thank you for your consideration.

Respectfully submitted,

JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP

By: 

Camas Steinmetz

Cc: Amy French, Chief Planning Official  
Albert Yang, Assistant City Attorney  
Client