



CITY OF
**PALO
ALTO**

APPEAL A DECISION OF THE DIRECTOR OF PLANNING & DEVELOPMENT SERVICES*

For appeals of final decisions on Architectural Review Board and Home Improvement Exception applications (rendered after public hearing), this appeal form shall be completed and submitted by appellant within fourteen (14) days from date of the Director's decision. Appeals of final decisions on Individual Review applications (rendered after public hearing) must be submitted within ten (10) days of the Director's decision. This completed form and a letter stating reasons for the appeal must be submitted via email to all three of the following email addresses jodie.gerhardt@cityofpaloalto.org, veronica.dao@cityofpaloalto.org and vinhloc.nguyen@cityofpaloalto.org. Once received, staff will contact you to make payment via the City's online portal.

* Director of Planning includes his designees, Planning Managers or the Chief Planning Official

Appeal Application No. 22PLN-00201 Receipt No.
Name of Appellant San Carlos Court Neighborhood Assoc Phone () 408-573-5700
Address c/o Silicon Valley Law Group, 1 North Market Street, Suite 200, San Jose, CA 95113
Street City ZIP

LOCATION OF PROPERTY SUBJECT TO APPEAL:

Street Address 739 Sutter, Palo Alto, CA
Name of Property Owner (if other than appellant) Grace Li, Sutter 739 Associates, LLC
Property Owner's Address P.O. Box 6563, San Mateo, CA 94403
Street City ZIP

The decision of the Director of Planning & Development Services dated March 18, 2024,
whereby the application 22PLN-00201 by 739 Associates, LLC

(file number)

(original project applicant)

was approved, is hereby appealed for the reasons stated in the attached letter (in duplicate)
(approved/denied)

Date: 3/27/24 Signature of Appellant

Richard Wang

PLANNING COMMISSION RECOMMENDATION TO THE CITY COUNCIL (TO BE FILLED OUT BY STAFF):

Date Approved ☐ Denied ☐

Remarks and/or Conditions:

CITY COUNCIL DECISION (TO BE FILLED OUT BY STAFF):

Date Approved ☐ Denied ☐

Remarks and/or Conditions:

SUBMITTAL REQUIREMENTS SATISFIED:

1. Letter stating reasons for appeal
2. Fee (\$700.00 for FY 2024)

Received by:

Received by:

March 27, 2024

***Via Hand Delivery and Electronic Mail: jodie.gerhardt@cityofpaloalto.org,
veronica.dao@cityofpaloalto.org and vinhloc.nguyen@cityofpaloalto.org.***

Jodie Gerhardt, Manager of Current Planning
City of Palo Alto
Planning and Development Services Department
250 Hamilton Avenue
Palo Alto, CA 94301

RE: 739 Sutter Avenue Residential Project, 22PLN-00201 – Appeal Pursuant to Title 18.77.073 of Palo Alto Municipal Code

Dear Ms. Gerhardt:

Silicon Valley Law Group (SVLG) has been retained by the San Carlos Court Neighborhood Association (SCCNA) to prepare this letter pertaining to the proposal to develop a 12-unit, three-story, over 35-foot-tall, multi-family residential project at 739 Sutter Avenue in Palo Alto (21PLN-00222/22PLN-00201) (the “Project”). SCCNA opposes the development of high-density housing on said parcel (Assessor Parcel Number 125-35-200). This letter is in support of our appeal of your March 18, 2024, approval of the above referenced project.

On behalf of SCCNA, we request that the Project be heard by the City Council. We further request that the City Council not place this matter on the consent calendar, but instead place it on an agenda for a separate hearing.

I. Introduction

SVLG submitted letters dated August 30, 2023, and November 1, 2023, which set forth the reasons why the Project was not adequately reviewed under the California Environmental Quality Act (CEQA) as a project with potentially significant environmental impacts. It is our position, that at a minimum, an Initial Study/Negative Declaration (IS/MND) must be prepared. A Class 32 Categorical Exemption was instead incorrectly prepared against our objections. Our August 30, 2023, letter is attached as Exhibit 1, and our November 1, 2023, letter is attached as Exhibit 2. We reiterate the concerns set forth in these letters and incorporate them herein.

As we stated previously in our previous letters, there can be no question that an increase in multi-story high-density residential units on the Project site, all of which will be 3-bedroom, will result in significant traffic, and construction-related noise and air quality impacts and public safety issues. One of the main criteria for the preparation of a Categorical Exemption (CE) is

that new construction would not result in the development of more than six total dwelling units (Class 3, Section 15303 of the CEQA Guidelines). The proposed Project is clearly in violation of this CEQA requirement. In addition, the other criteria for a CE are not met: the Project is not consistent with the applicable general plan designation and all applicable plan policies as well as with applicable zoning designation and regulations; and approval of the Project will result in significant effects relating to traffic and noise.

Under Palo Alto Municipal Code Title 18.77.073(e), an appeal of the approval must show: (A) the project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition the project be developed at a lower density; and (B) there is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to subsection (d)(2)(B)(i), other than disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

II. Discussion

1. The project will have a specific, adverse impact upon public health or safety.

As set forth in our previous letters, the Project will have an adverse impact on public health and safety. Our letters explain that the plans for the site appear to show potential conflicts between automobile, pedestrian, and bicycle travel pathways. The CE for the project states that emergency access is not required for the site based on access from Sutter Avenue. However, the CE also states that “due to existing overhead lines, aerial ladder access is not included in the proposed fire safety plan for this site.” If fire access is supposed to be provided from trucks on Sutter Avenue, yet overhead lines do not allow aerial ladder access, how are fires supposed to be adequately fought?

As described above, the nearest distance between the 3-story project and the neighboring homes is 12 feet. If a fire is not immediately extinguished, multiple residential homes could be burned to the ground, especially for a project with such reduced setbacks and heights in excess of what is allowed in the Municipal Code. This is a significant CEQA impact due to inadequate emergency access, not adequately studied in the CE. This must be corrected by the preparation of an IS/MND.

In addition, the proposed method of providing emergency fire services to the back of the site, in particular, the use of only ground ladders, is not supported in the 2030 Comprehensive Plan. For example, Policy S-2.13: “Minimize exposure to wildland and urban fire hazards through rapid emergency response, proactive code enforcement, public education programs, use of modern fire prevention measures and adequate emergency management preparation.” The use of ladders only rather than aerial access to 32-foot-tall structures proposed for the back of the site cannot be considered to be rapid or modern fire prevention measures.

The February 2023 fire in Palo Alto that damaged AJ's Cleaners, Philz Coffee, Bill's Cafe and Palo Alto Fine Wine & Spirits highlights the real fire danger posed in a densely populated area. We are concerned that the fact that there is only 12 feet from 7 unit, 3 story Building 2 project to the San Carlos Court homes creates an unacceptable increased fire risk.

We believe it is critical that the City evaluate these risks, in addition to the other public health issues we have raised in our previous letters, in an IS/MND.

2. There is no feasible method to satisfactorily mitigate or avoid the adverse impact other than disapproval of the Project.

The Project as approved does not mitigate the numerous issues we have raised and should not be approved.

3. The Project does not consider the impact on the members of the SCCNA.

The current plan shows no reference to the four neighboring R1 homes on San Carlos Court being on substandard lots of sizes less than 5,000 square feet, which caps their buildable height to only one story. The proposed third floor balconies and choice of trees for screening along the back fence do not take the nature of the substandard lot homes into proper consideration and create a situation for invasion of privacy as they are currently designed. Essentially, the homeowners on San Carlos Court will lose all their privacy given the third-floor balconies. This is not only a privacy issue, it is also a public safety issue.

A. Appropriate trees should be planted for privacy.

The trees depicted in the Project plans do not accurately reflect the actual trees that will be proposed - there will be no such trees in between the buildings.

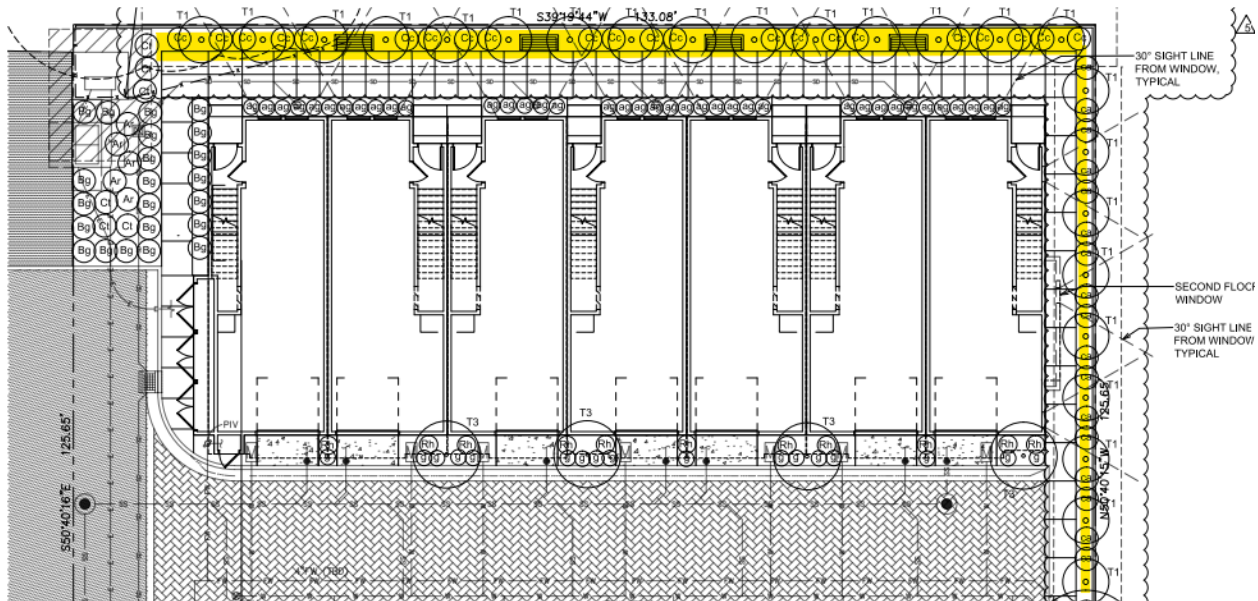
The planting list (page 46 of Cycle 6) suggested twenty-four 24"-box sized Podocarpus in total (See screenshot below). These trees are not tall enough to serve as rear screening between the R20 zone development and the R1 zone residential.

Considering the height of Building 2 is 32 feet, and the distance between the San Carlos Court substandard homes and the three stories is 12-32 feet from the nearest to the furthest, we strongly request the developer consider a better solution on the rear screening by updating the plants to 48"-box sized Laurus Nobilis Saratoga trees as recommended by Vavuris Landscaping (a licensed landscaper) in the letter attached as Exhibit C.

It is suggested that the hedges would need to be grown to 12-15 feet high to preserve privacy for both the existing homes and the new residences. Current plant does not meet the requirement. (Recommendation letter attached for further reference.)

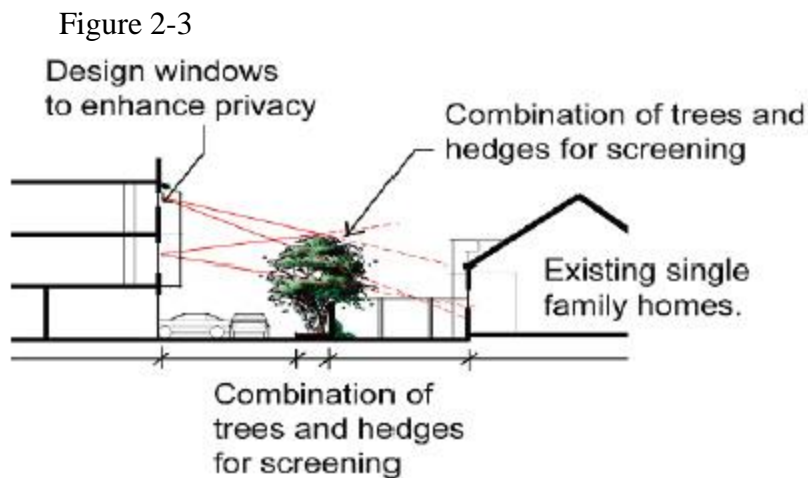
PLANTING LIST

SYMBOL	BOTANICAL NAME - COMMON NAME	QTY	SIZE	WUCOLS	NOTES	Mature Size (HxW)	SPACING	NATIVE
TREES								
T1	Podocarpus gracilior - Fern Pine (5-replacement tree)	24	24" box	M	column	40' X 25'	24'	
T2	Ginkgo b. 'Fairmount' - Maidenhair Tree (replacement tree)	4	24" box	M	standard	45' X 15'	<30'	
T3	Acer palmatum 'Bloodgood' - Red Maple	9	24" box	M	natural	20' X 15'	-	
T4	Tristanopsis laurina 'Elegant' - Elegant Water Gum	3	24" box	L	standard	20' X 15'	16'	



Any design should be consistent with 18.16.060 Multiple Family Context-Based Design Criteria and Objective Design Standards which states:

- C. Respecting privacy of neighboring structures, with windows and upper floor balconies positioned so they minimize views into neighboring properties ([Figure 2-3](#));
- D. Minimizing sight lines into and from neighboring properties ([Figure 2-3](#));



The developer should plant trees that will create a proper screening wall of foliage that will provide privacy. In addition, the plan shows benches being added along the fence between rear Building 2 and the San Carlos Court single-story residential homes. We consider this inappropriate and creates more privacy concerns. We request the benches along the rear fence be removed. Instead of benches, we urge the developer to add more trees that are tall enough for rear screening.

B. The third-floor balconies should be removed.

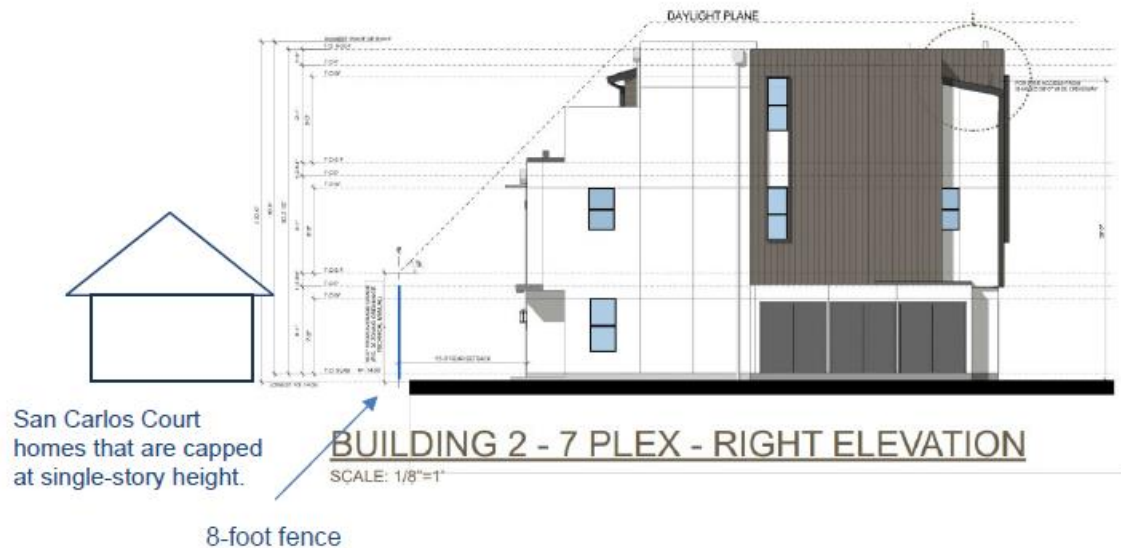
The rendering shown in the application package shows the problems with the Project. **We strongly request the developer to remove the balcony on the third floor.** The Project plans highlight our concerns: *page 4 of the application depicts a person actually standing on the far left balcony and looking into our yard, and even taking pictures!*
https://www.cityofpaloalto.org/files/assets/public/v/1/planning-amp-development-services/new-development-projects/739-sutter/c6_739-sutter-ave_plans.pdf

The lack of privacy presents a threat to the safety of the homeowners. The occupants of the Project will look directly into the SCCNA members' homes. As stated below, additional measures must be implemented.

The 3rd floor balconies of the Building 2 put all San Carlos Court homes under the full views from the project. We request the developer to remove the balconies from the Building 2.

Below is an image of the relationship between the homes and the 3 stories. There would be no privacy for San Carlos Court neighbors.

In addition, the developer seems to encourage people to take photos from the balconies which shows no respect to the surrounding neighbors. (Page 4 of Cycle 6. See a screenshot below)



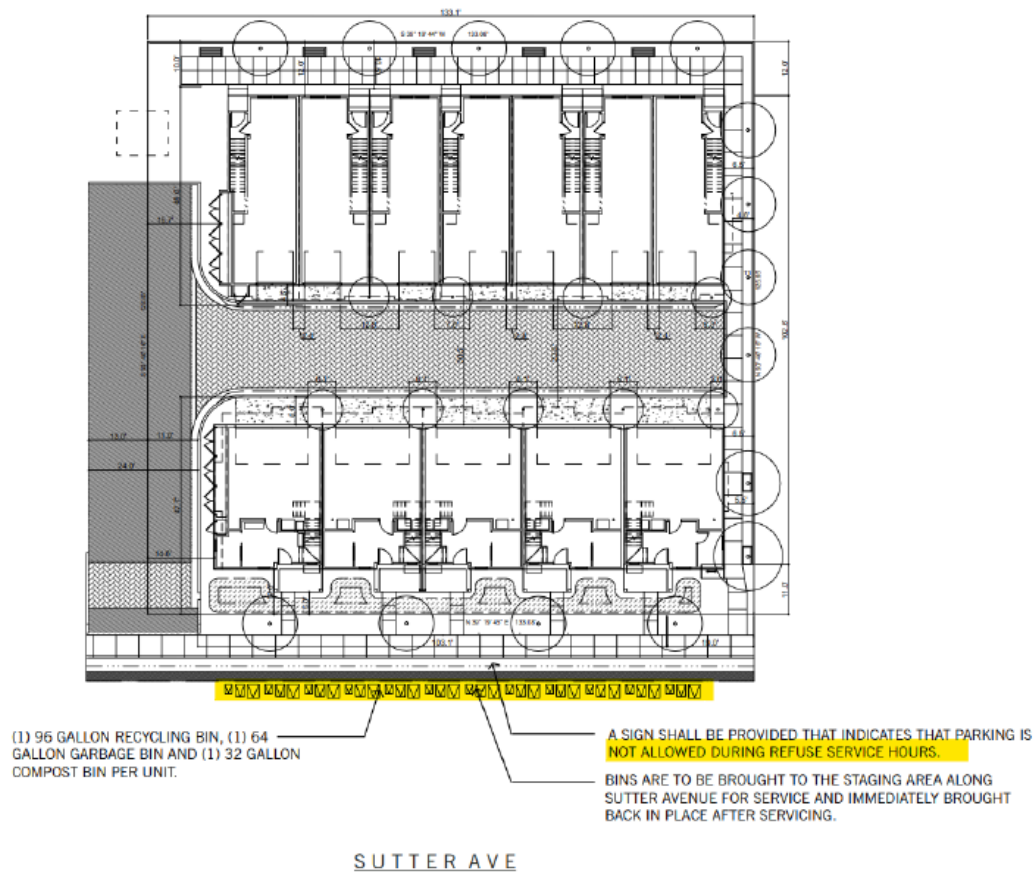


Page 4 rendering shows a man standing on the 3rd floor of the Building 2, taking photos of the backyard of San Carlos Court neighbors.

C. Current trash staging plan defies existing city policy and raises serious enforcement questions.

As stated in the “Trash Staging Area Exhibit”, (Page 6 of Cycle 6, see a copy below), the notion that the City will allow the plan to block the public from parking on the street during “refuse service hours” appears to defy existing city policy.

The refuse plan is also incorrect because it does not show the required 2-foot separation between trash containers. When that is included, the entire frontage of the plan is insufficient in size. Currently, cars park on the street there. Where would those cars go?



Any design should be consistent with 18.16.060 Multiple Family Context-Based Design Criteria and Objective Design Standards which states:

4. Density Bonus Law

The Project is not adding five or more units as required un the City's Density Bonus Law (Palo Alto Municipal Code. 18.15.020(j)). How is this not a violation of the City's Code?

5. The Project Requires a Full CEQA Evaluation and does not qualify for a Class 32 Categorical Exemption (CE)

CEQA requires an analysis of the potential for the Project to cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for

the purpose of avoiding an environmental effect. This includes the Zoning Ordinance and General Plan, Comprehensive Plan, and Housing Element policies. As stated in the recently approved 2023-2031 Housing Element, "The single-family neighborhood site development regulations are intended to ensure that much of what Palo Alto cherishes in its residential areas, such as open space areas, attractive streetscapes with mature landscaping, and variety in architectural styles, are preserved and protected." The Project is not consistent with any of the policies that promote the protection of existing single-family residential neighborhoods, thus is inconsistent with the CEQA Guidelines. At a minimum, this must be discussed in an IS/MND.

In conclusion, we continue to believe there is substantial evidence to show that the project is not consistent with a Class 32 Categorical Exemption as defined by Section 15332 of the CEQA Guidelines. For all the above reasons, we request that the 739 Sutter Avenue project be denied until an adequate CEQA document is prepared. Accordingly, we request that the Project be brought before the City Council so it has the opportunity to fully evaluate the impacts of the Project.

Respectfully Submitted,

SILICON VALLEY LAW GROUP



Laurie Berger

cc: Claire Raybould, Senior Planner, City of Palo Alto
San Carlos Court Neighborhood Association
Ed Kraus, Silicon Valley Law Group
Mayor Lydia Kou
Vice Mayor Greer Stone
Council Member Patrick Burt
Council Member Ed Lauing
Council Member Julie Lythcott-Haims
Council Member Greg Tanaka
Council Member Vicki Veenker

EXHIBIT A

August 30, 2023

Via Federal Express & Electronic Mail: claire.raybould@cityofpaloalto.org

Claire Raybould
Senior Planner
City of Palo Alto
Planning and Development Services Department
250 Hamilton Ave, Palo Alto, CA 94301

RE: 739 Sutter Avenue Residential Project, 21PLN-00222

Dear Ms. Raybould:

Silicon Valley Law Group (SVLG) has been retained by the San Carlos Court Neighborhood Association (SCCNA) to prepare this letter pertaining to a proposal to develop a 12-unit, three-story, over 35-foot-tall, multi-family residential project at 739 Sutter Avenue in Palo Alto (21PLN-00222) (the “Project”). SCCNA opposes the development of high-density housing on said parcel (Assessor Parcel Number 125-35-200) and requests that the City deny the application.

SCCNA also requests that the Project be reviewed under the California Environmental Quality Act (CEQA) as a project with potentially significant environmental impacts. A Class 32 Categorical Exemption, as you currently propose in your communications to SVLG and SCCNA, is not the appropriate CEQA document for a project that would result in potentially significant traffic, air quality, noise, water quality, historic, safety, and aesthetic impacts to the adjacent single-family residential uses on San Carlos Court.

1. The Project is Inconsistent with the Palo Alto Zoning Ordinance, General and Comprehensive Plans, Housing Element and the Sustainability and Climate Action Plan.

We believe the design of the Project is inconsistent with the Palo Alto Zoning Ordinance, General and Comprehensive Plans, and 2023-2031 Housing Element, further disallowing the use of a Class 32 Categorical Exemption for the project. The Project includes inadequate driveway widths for adequate fire and emergency personnel access to the site, putting the project and all surrounding development in jeopardy should a fire occur. The lack of landscaping on the northwestern side of the project adjacent to the existing residential development on San Carlos Court is inconsistent with the Zoning Ordinance. The location of private open space areas on the top floors of the proposed structures appear very dangerous and unsafe, as well as intrusive to the

existing neighborhood. This Project creates significant privacy concerns given that the windows, sliding glass doors and decks of the Project face the San Carlos Court properties. In addition, the removal of existing trees creates privacy concerns. We would like additional information regarding the size of the new trees that will be planted.

Further, the plan set shows no meaningful elevations of the back of the project to show exactly how intrusive the proposed 35-foot, 4.5-inch-tall residential buildings will be to the existing one- and two-story residences on San Carlos Court. There is no “stepping back” of the structure to respect the existing single-family neighborhood and backyards. Private open space areas are not shown in sufficient detail to give the public and decision-makers any indication of the severity of the intrusion to the neighborhood. There is no shade and shadow, daylight plane, or lighting analyses included in the application as required by the Zoning Ordinance. The plans do not appear to specify a distance to confirm the line of sight. It is also unclear how far back the developer is committed to recessing the decks and whether the rear building will have rooftop open space.

We believe the health, safety, and welfare of the existing residents will be adversely affected by the Project as proposed. Therefore, an adequate evaluation of potentially significant impacts has not been completed – all of which constitute a violation of CEQA. We must also point out that developments of this density and height do not currently exist in this area of the City and the Project is out of character for the neighborhood.

2. The Project Requires a Full CEQA Evaluation and does not qualify for a Class 32 Categorical Exemption

There can be no question that an increase in multi-story high-density residential units on the Project site, all of which will be 3-bedroom, will result in additional traffic accessing the site and creating impacts on neighboring streets – especially since the project is not transit- oriented, that is, located in an area of readily available transit or a Caltrain Station. This is especially true if the Project includes an inadequate amount of parking. Further, the plans for the site appear to show potential conflicts between automobile, pedestrian, and bicycle travel pathways. Bicycle parking is not shown on the site plan. Therefore, the Project has the potential to result in significant traffic, access, and safety impacts and mitigation is not provided. This is a violation of CEQA.

Long-term noise impacts will be significant, especially with private open space areas and air conditioning/heating units ostensibly located on the back side of the northernmost building adjacent to existing single-family homes. Where and how will storm drainage and storage and waste collection facilities be located on such a densely developed site? Construction-related traffic, noise, and air quality impacts must also be evaluated in the CEQA document and feasible mitigation measures included in the project to protect the surrounding residents, especially children, from detrimental impacts. Toxic air contaminants and greenhouse gas emissions produced during construction could be significant and must be evaluated. The City has identified a need for a historic evaluation of the existing buildings on the project site

because they were built over 45 years ago. No such evaluation has been completed and impacts and mitigation measures must be included in a CEQA document.

CEQA requires an analysis of the potential for the Project to cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding an environmental effect. This includes the Zoning Ordinance and General Plan, Comprehensive Plan, and Housing Element policies. As stated in the recently approved 2023-2031 Housing Element, “The single-family neighborhood site development regulations are intended to ensure that much of what Palo Alto cherishes in its residential areas, such as open space areas, attractive streetscapes with mature landscaping, and variety in architectural styles, are preserved and protected.” The Project is not consistent with any of the policies that promote the protection of existing single-family residential neighborhoods, thus is inconsistent with the CEQA Guidelines.

3. The Project includes too many variances, waivers, and concessions.

According to the most recent plans submitted by the applicant on July 21, 2023, the project requires no fewer than 14 waivers or concessions. This is excessive for a project that is proposed to be consistent with “Density Bonus Law.” We believe that the project is allowing more variances, waivers, and concessions than allowed by City Ordinance and State Law. The drawings in the revised plan set that demonstrate all the proposed waivers are disturbing. It appears that the City is brushing aside many of the significant issues, including driveway widths, inadequate landscaping and open space, significant reduction in setbacks, light intrusion, density, parking, and building heights.

For example, to reduce setbacks by more than half in the front and side yards makes the project not only significantly inconsistent with the existing neighborhood, but also creates a significant aesthetic impact to the existing single-family neighborhood. Coupled with the proposed increase in building heights, impacts to the surrounding neighborhood will be significant and property values of the homes on San Carlos Court will be detrimentally affected. Further, it does not make sense that constructing a shorter building will cost less than a taller structure, as stated in the revised plan set.

The revised plan set does not include adequate justification for the proposed waivers. We cannot find an Exhibit B in the plan set that is supposed to be a “waiver/concession justification letter.” The plan set sheets do not provide such justification. We would like to receive that document as well as the historical analysis prior to any approval actions for the project.

In conclusion, we caution the City against allowing so many waivers for a project that will significantly affect the existing single-family neighborhoods. This practice is ill-advised because it ignores the regulations of the Zoning Ordinance, as well as many of the virtues of living in Palo Alto.

We believe there is substantial evidence to show that the project is not consistent with a Class 32 Categorical Exemption as defined by Section 15332 of the CEQA Guidelines. For all

Letter to Claire Raybould
August 30, 2023
Page 4

the above reasons, we request that the 739 Sutter Avenue project be placed on hold until an adequate CEQA document is prepared.

Respectfully Submitted,

SILICON VALLEY LAW GROUP



Laurie Berger

cc: San Carlos Court Neighborhood Association
Ed Kraus, Silicon Valley Law Group
Mayor Lydia Kou
Vice Mayor Greer Stone
Council Member Patrick Burt
Council Member Ed Lauing
Council Member Julie Lythcott-Haims
Council Member Greg Tanaka
Council Member Vicki Veenker

EXHIBIT B

November 1, 2023

Via Hand Delivery and Electronic Mail: arb@CityofPaloAlto.org

Architectural Review Board
City of Palo Alto
Planning and Development Services Department
250 Hamilton Ave
Palo Alto, CA 94301

RE: 739 Sutter Avenue Residential Project, 21PLN-00222/22PLN-00201

Dear Members of the Architectural Review Board:

Silicon Valley Law Group (SVLG) has been retained by the San Carlos Court Neighborhood Association (SCCNA) to prepare this letter pertaining to a proposal to develop a 12-unit, three-story, over 35-foot-tall, multi-family residential project at 739 Sutter Avenue in Palo Alto (21PLN-00222/22PLN-00201) (the “Project”). SCCNA opposes the development of high-density housing on said parcel (Assessor Parcel Number 125-35-200) and requests that the Architectural Review Board (ARB) deny the application.

This is our second letter related to the Project. Our first was addressed to Claire Raybould, Senior Planner and sent on August 30, 2023. Unfortunately, planning staff has neither provided a detailed response to our letter nor revised the plan set sufficiently to address our concerns. In addition, and most alarming, we find that the project was not adequately reviewed under the California Environmental Quality Act (CEQA) as a project with potentially significant environmental impacts. Therefore, at least an Initial Study/Negative Declaration (IS/MND) must be prepared. A Class 32 Categorical Exemption was instead incorrectly prepared against our objections. Our August 30, 2023, letter is attached as Attachment 1, and we reiterate the concerns set forth in that letter and incorporate them herein.

1. The Project Requires a Full CEQA Evaluation and does not qualify for a Class 32 Categorical Exemption (CE)

As we stated previously in our August letter, there can be no question that an increase in multi-story high-density residential units on the Project site, all of which will be 3-bedroom, will result in significant traffic, and construction-related noise and air quality impacts. One of the main criteria for the preparation of a CE is that new construction would not result in the development of more than six total dwelling units (Class 3, Section 15303 of the CEQA Guidelines). The proposed Project is clearly in violation of this CEQA requirement.

A. Consistency with Plans and Policies

The CE also states that the project is consistent with all applicable General Plan and Zoning policies and recommendations. Yet, the staff report for the project states that the only way it meets these requirements is through the granting of fourteen waivers and concessions by the City. This is not how an analysis of consistency per CEQA should be completed. It should be stated for the edification of the public and decision-makers, that the project is **inconsistent** with these important policies.

CEQA requires an analysis of the potential for the Project to cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding an environmental effect. This includes the Zoning Ordinance and General Plan, Comprehensive Plan, and Housing Element policies. As stated in the recently approved 2023-2031 Housing Element, “The single-family neighborhood site development regulations are intended to ensure that much of what Palo Alto cherishes in its residential areas, such as open space areas, attractive streetscapes with mature landscaping, and variety in architectural styles, are preserved and protected.” The Project is not consistent with any of the policies that promote the protection of existing single-family residential neighborhoods, thus is inconsistent with the CEQA Guidelines. At a minimum, this must be discussed in an IS/MND.

Further, the only goals and policies of the 2030 Comprehensive Plan that are discussed are Goals L-2 and L-3. The Project is not consistent with Policy L-1.3 which states:

Infill development in the urban service area should be compatible with its surroundings and the overall scale and character of the city to ensure a compact, efficient development pattern.

In addition, the project is not consistent with Policy L-1.11 which states:

Hold new development to the highest development standards in order to maintain Palo Alto’s livability and achieve the highest quality development with the least impacts.

Neither of these policies, or others in the Comprehensive Plan that the Project is inconsistent with, are discussed in the CE.

In the staff report, staff recommends that the ARB study “whether minor adjustments to the application would result in closer adherence to the objective design standards contained in Chapter 18.24, Objective Standards, consistent with the streamlined review pursuant to 18.77.073 for housing development projects.” Again, this analysis should have been included in the preparation of at least an IS/MND. The CE does not discuss this inconsistency with Palo Alto Goals and Policies. This is a violation of CEQA.

B. Traffic Impacts

As stated in the CE prepared for the Project, the single-family residential neighborhood immediately adjacent to the northwest boundary of the site (sidewalks are within three feet of the fence-line) will be significantly affected by a project that would be better located in a transit-oriented area. There will be an increase in the number of residents adding to existing traffic concerns. There is no discussion of how far away employment opportunities are located. The number of trips at nearby intersections is immaterial to the determination of traffic-related air and noise impacts and must be revised in at least an Initial Study/Mitigated Negative Declaration (IS/MND) for the project.

C. Construction-related Noise Impacts and Aesthetics

Construction-related noise is inadequately addressed and studied in the CE. According to the website for the Occupational Safety and Health Administration (OSHA), only 8 hours of exposure to 90 dBA is allowed and only two hours of exposure to 100 dBA sound levels is allowed for workers.

To subject the adjacent residential uses to construction noise levels as high as 97 dBA for a 15-month construction period can cause long-term hearing loss, especially in children. Many residents are now working from home and this level of noise all day long will interrupt their ability to effectively work and support their families. This important information would not have been taken into account when the City determined what threshold to use for noise impacts during construction. This is not discussed or evaluated in the CE and an IS/MND must be prepared to fully understand this impact and identify sufficient feasible mitigation measures to mitigate this impact. Sufficient mitigation could include a reduction in construction hours, installation of noise barriers, use of more noise-abating equipment rather than heavy construction equipment, etc.

In addition, we were under the impression that all roof decks were being removed from the units on the northwest side of the proposed building. This is stated on the Final Waiver plans for the site. Yet, the CE evaluates the noise generated by the roof decks in this location. This leaves residents confused as to what the future condition will be related to noise intrusion from the Project.

Further, according to the staff report, the applicant declined to have a standard shade and shadow analysis completed for the Project. This must be completed to determine obvious impacts to the single-family residences on San Carlos Court. Is the applicant trying to hide these impacts? As shown in the rendering below, the Project will have a significant aesthetic impact on the San Carlos Court homes. This rendering shows how the Project will be viewed from San Carlos Court – in addition to the other impacts described above, the current homeowners will lose their privacy and face security concerns given that the residents of the Project will look right into the existing homes and yards.



D. Construction-related Air Quality and Hazardous Materials Impacts

Air quality impacts must also be evaluated in the CEQA document and feasible mitigation measures included in the project to protect the surrounding residents, especially children, from detrimental impacts. The analysis completed for the CE does not include a discussion of the use of Tier 3 and 4 heavy equipment or greater to reduce air quality impacts during demolition and construction. This must be required of the Project just as it is in similar development projects in the Bay area by the Bay Area Air Management District (BAAQMD).

There is no discussion in the CE of the potential for lead, asbestos, or PCBs to be in the demolition materials. Given the age of the existing structures, this should have been analyzed by qualified hazardous materials experts in a Phase I and Phase II Environmental Site Assessment. Exposure of adjacent residents to these harmful contaminants is yet another impact not disclosed in the inadequate CE. Impacts could especially affect children, the elderly, and those with respiratory conditions. The transport of such materials off-site is also an impact in addition to the potential for such materials to be in the soils. This analysis must occur as part of the preparation of at least an IS/MND in accordance with CEQA.

The analysis of the impacts of toxic air contaminants during construction also do not include an analysis of impacts during demolition. Further, it cannot be assumed that an 8-unit multi-family building can be demolished and all site preparation and grading activities in three days – no matter what the applicant claims! Trenching for underground utilities alone cannot be completed in that short of a timeframe. To assume such a short emission period for PM₁₀ and

PM_{2.5} emissions renders the analysis inadequate to say the least. The public and decisionmakers must have better information to make an informed decision about how the health of the adjacent residents will be affected. No such evaluation has been completed and impacts and mitigation measures must be included in a CEQA document.

2. Inadequate Emergency Access

As we stated in our previous letter, the plans for the site appear to show potential conflicts between automobile, pedestrian, and bicycle travel pathways. Bicycle parking is not shown on the site plan. The CE for the project states that “emergency access is not required for the site” based on access from Sutter Avenue. However, the CE also states that “due to existing overhead lines, aerial ladder access is not included in the proposed fire safety plan for this site.” If fire access is supposed to be provided from trucks on Sutter Avenue, yet overhead lines do not allow aerial ladder access, how are fires supposed to be adequately fought?

If a fire is not immediately extinguished, multiple residential buildings in the area could be burned to the ground, especially for a Project with such reduced setbacks and heights in excess of what is allowed in the Municipal Code. This is a significant CEQA impact due to inadequate emergency access, not adequately studied in the CE. This must be corrected by the preparation of an IS/MND.

In addition, the proposed method of providing emergency fire services to the back of the site, in particular, the use of only ground ladders, is not supported in the 2030 Comprehensive Plan. For example, Policy S-2.13: “Minimize exposure to wildland and urban fire hazards through rapid emergency response, proactive code enforcement, public education programs, use of modern fire prevention measures and adequate emergency management preparation.” The use of ladders only rather than aerial access to 32-foot-tall structures proposed for the back of the site cannot be considered to be rapid or modern fire prevention measures.

The February 2023 fire in Palo Alto that damaged AJ's Cleaners, Philz Coffee, Bill's Cafe and Palo Alto Fine Wine & Spirits highlights the real fire danger posed in a densely populated area. We are concerned that the fact that there is only 10 feet from the second floor of the proposed Project to the San Carlos Court homes creates an unacceptable increased fire risk. Based on the above, it is critical that the City evaluate these risks in an IS/MND.

3. Too Many Waivers and Concessions

According to the most recent plans submitted by the applicant and the staff report, the project requires no fewer than 14 waivers and at least one concession. **This is excessive for a project that is proposed to be consistent with “Density Bonus Law” and Palo Alto General and Comprehensive Plans goals and policies.** The sheer fact that so many waivers from Municipal Code requirements are required for the Project shows how out of character it is with the existing neighborhood. Yet, these conflicts, are inadequately analyzed in the CE. Again, this

type of development should be in a transit-oriented area of the City where higher densities are expected and supported.

The drawings in the revised plan set that demonstrate in red all the proposed waivers are disturbing. It appears that the City is brushing aside many of the significant issues, including driveway widths, inadequate landscaping and open space, significant reduction in setbacks, light intrusion, density, parking, fire safety, and building heights. This is being done at the risk of significantly affecting an existing residential neighborhood – **and all for just four additional residential units in the City!**

To reduce setbacks by more than half in the front and side yards makes the project not only significantly inconsistent with the existing neighborhood, but also creates a significant aesthetic and fire impact to the existing single-family neighborhood. Coupled with the proposed increase in building heights, impacts to the surrounding neighborhood will be significant and property values of the homes on San Carlos Court will be detrimentally affected. Only a few trees can even be seen on the northwest side of the site to attempt to screen the development from the existing homes. This is inadequate and just another example of how the granting of extreme waivers does not respect long-standing existing neighborhoods.

The revised plan set does not include adequate justification for the proposed waivers. We find the waiver/concession justification letter to be inadequate for a project that is so out of character with the neighborhood. There are no other projects of this density and height in this area of the City. In fact, the Project site is not even listed as a housing site in the 2030 Comprehensive Plan. We assume that was intentional due to the potential impacts to residents right over the fence.

4. Project is Subject to the Current Code Requirement

As stated on Page 9 of the staff report, the applicant has not met the letter of the law in terms of submitting application materials in a timely manner consistent with SB 330. The staff report states, “Therefore, the project is not subject to streamline in accordance with SB 330 and is subject to the current code requirements, including the objective design standards set forth in Palo Alto Municipal Code (PAMC) Section 18.24.”

Why is the applicant “also eligible to utilize the process set forth in the code for housing development projects under the Streamlined Housing Development Review?” This makes no sense. The developer must be held to the same standards as all other residential developers in every part of the City. We do not understand why this applicant is getting special treatment and the ability to use so many waivers and concessions inconsistent with the Municipal Code at the expense of existing residents.

In conclusion, we continue to believe there is substantial evidence to show that the project is not consistent with a Class 32 Categorical Exemption as defined by Section 15332 of

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November 1, 2023
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the CEQA Guidelines. For all the above reasons, we request that the 739 Sutter Avenue project be denied until an adequate CEQA document is prepared.

Respectfully Submitted,

SILICON VALLEY LAW GROUP



Laurie Berger

cc: Claire Raybould, Senior Planner, City of Palo Alto
San Carlos Court Neighborhood Association
Ed Kraus, Silicon Valley Law Group
Mayor Lydia Kou
Vice Mayor Greer Stone
Council Member Patrick Burt
Council Member Ed Lauing
Council Member Julie Lythcott-Haims
Council Member Greg Tanaka
Council Member Vicki Veenker

ATTACHMENT 1



August 30, 2023

Via Federal Express & Electronic Mail: claire.raybould@cityofpaloalto.org

Claire Raybould
Senior Planner
City of Palo Alto
Planning and Development Services Department
250 Hamilton Ave, Palo Alto, CA 94301

RE: 739 Sutter Avenue Residential Project, 21PLN-00222

Dear Ms. Raybould:

Silicon Valley Law Group (SVLG) has been retained by the San Carlos Court Neighborhood Association (SCCNA) to prepare this letter pertaining to a proposal to develop a 12-unit, three-story, over 35-foot-tall, multi-family residential project at 739 Sutter Avenue in Palo Alto (21PLN-00222) (the "Project"). SCCNA opposes the development of high-density housing on said parcel (Assessor Parcel Number 125-35-200) and requests that the City deny the application.

SCCNA also requests that the Project be reviewed under the California Environmental Quality Act (CEQA) as a project with potentially significant environmental impacts. A Class 32 Categorical Exemption, as you currently propose in your communications to SVLG and SCCNA, is not the appropriate CEQA document for a project that would result in potentially significant traffic, air quality, noise, water quality, historic, safety, and aesthetic impacts to the adjacent single-family residential uses on San Carlos Court.

1. The Project is Inconsistent with the Palo Alto Zoning Ordinance, General and Comprehensive Plans, Housing Element and the Sustainability and Climate Action Plan.

We believe the design of the Project is inconsistent with the Palo Alto Zoning Ordinance, General and Comprehensive Plans, and 2023-2031 Housing Element, further disallowing the use of a Class 32 Categorical Exemption for the project. The Project includes inadequate driveway widths for adequate fire and emergency personnel access to the site, putting the project and all surrounding development in jeopardy should a fire occur. The lack of landscaping on the northwestern side of the project adjacent to the existing residential development on San Carlos Court is inconsistent with the Zoning Ordinance. The location of private open space areas on the top floors of the proposed structures appear very dangerous and unsafe, as well as intrusive to the

existing neighborhood. This Project creates significant privacy concerns given that the windows, sliding glass doors and decks of the Project face the San Carlos Court properties. In addition, the removal of existing trees creates privacy concerns. We would like additional information regarding the size of the new trees that will be planted.

Further, the plan set shows no meaningful elevations of the back of the project to show exactly how intrusive the proposed 35-foot, 4.5-inch-tall residential buildings will be to the existing one- and two-story residences on San Carlos Court. There is no “stepping back” of the structure to respect the existing single-family neighborhood and backyards. Private open space areas are not shown in sufficient detail to give the public and decision-makers any indication of the severity of the intrusion to the neighborhood. There is no shade and shadow, daylight plane, or lighting analyses included in the application as required by the Zoning Ordinance. The plans do not appear to specify a distance to confirm the line of sight. It is also unclear how far back the developer is committed to recessing the decks and whether the rear building will have rooftop open space.

We believe the health, safety, and welfare of the existing residents will be adversely affected by the Project as proposed. Therefore, an adequate evaluation of potentially significant impacts has not been completed – all of which constitute a violation of CEQA. We must also point out that developments of this density and height do not currently exist in this area of the City and the Project is out of character for the neighborhood.

2. The Project Requires a Full CEQA Evaluation and does not qualify for a Class 32 Categorical Exemption

There can be no question that an increase in multi-story high-density residential units on the Project site, all of which will be 3-bedroom, will result in additional traffic accessing the site and creating impacts on neighboring streets – especially since the project is not transit- oriented, that is, located in an area of readily available transit or a Caltrain Station. This is especially true if the Project includes an inadequate amount of parking. Further, the plans for the site appear to show potential conflicts between automobile, pedestrian, and bicycle travel pathways. Bicycle parking is not shown on the site plan. Therefore, the Project has the potential to result in significant traffic, access, and safety impacts and mitigation is not provided. This is a violation of CEQA.

Long-term noise impacts will be significant, especially with private open space areas and air conditioning/heating units ostensibly located on the back side of the northernmost building adjacent to existing single-family homes. Where and how will storm drainage and storage and waste collection facilities be located on such a densely developed site? Construction-related traffic, noise, and air quality impacts must also be evaluated in the CEQA document and feasible mitigation measures included in the project to protect the surrounding residents, especially children, from detrimental impacts. Toxic air contaminants and greenhouse gas emissions produced during construction could be significant and must be evaluated. The City has identified a need for a historic evaluation of the existing buildings on the project site

because they were built over 45 years ago. No such evaluation has been completed and impacts and mitigation measures must be included in a CEQA document.

CEQA requires an analysis of the potential for the Project to cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding an environmental effect. This includes the Zoning Ordinance and General Plan, Comprehensive Plan, and Housing Element policies. As stated in the recently approved 2023-2031 Housing Element, “The single-family neighborhood site development regulations are intended to ensure that much of what Palo Alto cherishes in its residential areas, such as open space areas, attractive streetscapes with mature landscaping, and variety in architectural styles, are preserved and protected.” The Project is not consistent with any of the policies that promote the protection of existing single-family residential neighborhoods, thus is inconsistent with the CEQA Guidelines.

3. The Project includes too many variances, waivers, and concessions.

According to the most recent plans submitted by the applicant on July 21, 2023, the project requires no fewer than 14 waivers or concessions. This is excessive for a project that is proposed to be consistent with “Density Bonus Law.” We believe that the project is allowing more variances, waivers, and concessions than allowed by City Ordinance and State Law. The drawings in the revised plan set that demonstrate all the proposed waivers are disturbing. It appears that the City is brushing aside many of the significant issues, including driveway widths, inadequate landscaping and open space, significant reduction in setbacks, light intrusion, density, parking, and building heights.

For example, to reduce setbacks by more than half in the front and side yards makes the project not only significantly inconsistent with the existing neighborhood, but also creates a significant aesthetic impact to the existing single-family neighborhood. Coupled with the proposed increase in building heights, impacts to the surrounding neighborhood will be significant and property values of the homes on San Carlos Court will be detrimentally affected. Further, it does not make sense that constructing a shorter building will cost less than a taller structure, as stated in the revised plan set.

The revised plan set does not include adequate justification for the proposed waivers. We cannot find an Exhibit B in the plan set that is supposed to be a “waiver/concession justification letter.” The plan set sheets do not provide such justification. We would like to receive that document as well as the historical analysis prior to any approval actions for the project.

In conclusion, we caution the City against allowing so many waivers for a project that will significantly affect the existing single-family neighborhoods. This practice is ill-advised because it ignores the regulations of the Zoning Ordinance, as well as many of the virtues of living in Palo Alto.

We believe there is substantial evidence to show that the project is not consistent with a Class 32 Categorical Exemption as defined by Section 15332 of the CEQA Guidelines. For all

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August 30, 2023
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the above reasons, we request that the 739 Sutter Avenue project be placed on hold until an adequate CEQA document is prepared.

Respectfully Submitted,

SILICON VALLEY LAW GROUP



Laurie Berger

cc: San Carlos Court Neighborhood Association
Ed Kraus, Silicon Valley Law Group
Mayor Lydia Kou
Vice Mayor Greer Stone
Council Member Patrick Burt
Council Member Ed Lauing
Council Member Julie Lythcott-Haims
Council Member Greg Tanaka
Council Member Vicki Veenker

EXHIBIT C

Vavuris Landscaping
Contractor's License Number 393-599
570 Matadero Ave
Palo Alto, CA 94306
(650) 208-0724
VavurisLandscaping@yahoo.com

March 27, 2024

To Whom It May Concern:

I have been a licensed landscape contractor for over 40 years. I was asked for a consultation regarding the new development and the effect it will have on the backyards for the 3 homes residing on 734, 746 and 750 San Carlos Ct in Palo Alto.

I was informed that the new building will be approximately 30 feet high +/- and 10 feet back from respective property lines. With this design it will significantly impact the backyards of these 3 addresses by creating an entirely new microclimate by blocking the morning sun. This could require the homeowners to change the planting and existing landscape to be more suitable to the new micro-climate. To fully understand the impact of this you will need to have a sun-angle study completed.

For a suitable screening option, the new plants would need to be placed 3 feet from fence line and 8 feet on center running along all 3 addresses and maintained in the future with a semi formal hedge. These hedges would need to be grown to the proper height of 12-15 feet in order to preserve privacy for both the existing residences and new building. This potentially may need to be written into the deeds as a requirement so they cannot be cut down

My suggestion for the screening would be to plant Laurus Nobiles Saratoga standards in 48" boxes to start. Plants would need to be inspected prior to purchase by a qualified buyer to ensure the plants are not rootbound. This is critical for success of the plants and their future long-term growth in order to adequately provide the screening needed.

The developer's suggestion of Podocarpus (the largest one being Gracilior species) will not be advisable as long-term will grow too tall and is too costly to maintain with the pruning requirements of this species. All other species of the Podocarpus are too small for screening that is needed.

Please feel free to call me directly at (650) 208-0724 Should you have any questions or would like to discuss in more detail.

Kind Regards,
Joe Vavuris
Owner
Vavuris Landscaping