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June 8, 2023

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

**Re: 2901-2905 Middlefield (APN 127-35-194) and 702 Ellsworth Place (APN 127-35-152) Palo Alto, CA**

Dear Honorable Chair, Planning Commissioners and Staff:

The purpose of this application is (1) to rectify a recently discovered zoning map error, (2) to consolidate required resident parking onto a single site at 2901-2905 Middlefield Road and (3) to rezone an under-utilized asphalt and dirt parking lot at 702 Ellsworth from Planned Community (PC) Zoning to R-1 zoning consistent with the other lots on Ellsworth Place. 2901-2905 Middlefield Road and 702 Ellsworth Place are now owned by separate owners, both of whom have consented to this application. The net result of this application will be to reconfigure the parking for the existing apartment building in conformance with existing parking standards (which no longer require guest spaces) and to permit the construction of a modest one-story house at 702 Ellsworth. The public benefits of this application, suggested by City staff, will clean up a recently discovered zoning error on the City's published Zoning map, increase pedestrian and bicycle safety at Ellsworth and Middlefield and allow for better delivery truck circulation on the existing private street.

**EXISTING DESCRIPTION**

The two properties comprise 26,386 SF: the Middlefield property is 19,893 SF and owned by RLD Land LLC whose principal is Richard Dewey, Jr. ("Dewey Parcel") and the Ellsworth property is 6,493 SF, including a private road easement bisecting the property, and owned by RRP Homes LLC whose principal is Nitin Handa ("Handa Parcel"). The private road easement provides access from Middlefield Road to the single-family homes along the cul-de-sac, Ellsworth Place. Without this private road easement, these

properties on the cul-de-sac would be landlocked.

The development plan for PC 2343 was approved in 1967 and included twelve multi-family apartments: 4 studio units, 4 one-bedroom units and 4 two-bedroom units. Twenty parking spaces, including twelve covered spaces, one per unit, were provided for residents and guests. The apartment building and twelve covered parking spaces reside entirely on the 2901-2905 property. Bicycle parking is also provided inside each unit and is used frequently by the tenants since conveniences are in the neighborhood including Safeway, CVS, miscellaneous shops, restaurants and professional services just steps away. There is a high frequency VTA Bus line on Middlefield, with a bus stop less than 100' from the apartment building.

On the vacant 702 Ellsworth property, across the private road easement, is the balance of eight uncovered parking spaces. Currently 702 Ellsworth consists of unsightly asphalt and wheel stops on the otherwise parcel of dirt and weeds. This parking, which has been designated as guest parking for the apartment complex, is rarely used by guests of 2901 Middlefield, as there is ample and more convenient street parking on Sutter. Currently, though not authorized, other Ellsworth Place residents, their guests and delivery trucks occasionally use the Handa Parcel for parking.

The existing multi-family apartment building is substantially the same as when it was approved in 1967 and has been well maintained. The current owner purchased the properties in 2017. The owner recently conveyed 702 Ellsworth to RRP Homes LLC, but intends to hold and continue to operate 2901-2905 Middlefield.

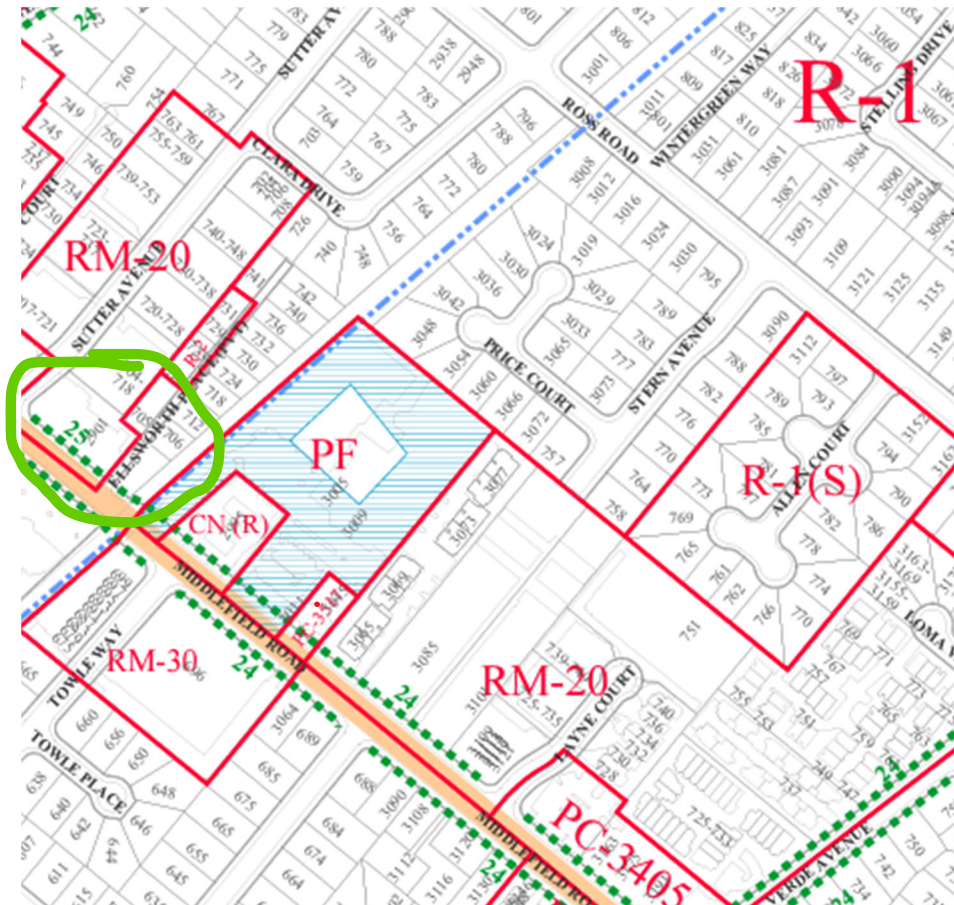
At one time there was a single-family home on 702 Ellsworth Place, but the structure has since been demolished. The new owner is currently seeking to build a one-story home at the entrance to Ellsworth Place.

## **APPLICANT'S REQUEST**

The current version of the [Zoning Map](#) designates 2901-2905 Middlefield Road as RM-20 and 702 Ellsworth as R-1. In 2017, when RLD Land LLC acquired both lots, the Zoning Map and GIS Parcel Report showed the zoning as RM-15 (which the City subsequently upzoned to RM-20 on April 1, 2019) and R-1, respectively. In late 2022, when RLD Land LLC sold 702 Ellsworth to RRP Homes LLC, the Zoning Map and Palo Alto GIS Parcel Report showed 702 Ellsworth as R-1. Further, in 2021-2022, when architect Ken Hayes was developing concept plans for the sale of the Handa Parcel, City staff repeatedly confirmed the R-1 zone as depicted in the Parcel Report and the ability to add a single-family home to the Handa Parcel. It was not until RRP Homes LLC went to file a building permit application, that he was informed that 702 Ellsworth was purportedly zoned PC. The parties were subsequently told by the City that the adjoining property at 2901-2905 was also zoned PC, rather than RM-20. Unbeknownst to both the City and the owners of 2901 Middlefield and 702 Ellsworth, it appears an *uncodified* and *unrecorded* PC ordinance was adopted in **1967** without a concurrent zoning map amendment. Thus, the

City's internal records describe the lots as governed by PC-2343 while the published zoning map shows the parcels as RM-20 and R-1.

Shortly after discovering this inconsistency, City staff updated the GIS Parcel Report for the properties to reflect the PC designation. However, the Zoning Map (excerpt below) continues to show 2901-2905 Middlefield as RM 20 and 702 Ellsworth as R-1:



Planned community districts are separate zoning districts which are required to be codified in the Zoning Map itself. See Section 18.38.050 ("All PC districts shall be identified on the zoning map with the letter coding "PC" followed by a specific reference number identifying each separate district.") The Zoning Ordinance also requires any specific use regulations or development plans be identified by reference to the corresponding designation of each specific PC district *on the zoning map*. Had the City followed these two requirements when adopting the subject PC, the parties would not be in this predicament. To compound matters, every time the City re-published the Zoning Map, it re-adopted the Zoning error.

The applicant reasonably relied on the publicly available Zoning Map and property profile when performing its due diligence when purchasing the lots in 2017. Because the City

never updated its Zoning Map nor recorded the PC permit, the applicant simply had no actual or constructive notice of the PC. This reliance was clearly reasonable as even the planning staff who reviewed early concept plans submitted by Ken Hayes, believed the parcel was zoned R-1.

Despite the fact that neither applicant had any involvement in this zoning map error made over 50 years ago, at the suggestion of City staff, the two property owners agreed to file this request for a zoning code amendment to correct the City's records with respect to both parcels.

### **CITY COUNCIL PRE-SCREENING**

On March 13, 2023, the City Council conducted a pre-screening. Most of the public comments focused on neighborhood safety issues relating to bicycle and pedestrian crossing at Ellsworth Place and Middlefield Road. In addition, commenters requested the City to take over the ownership of the private street and expressed concerns about delivery trucks, private streets, parking, tree removal, density, and the precedential impact of removing a lot from a PC zone. Council comments recognized the importance of addressing safety issues but also acknowledged there should be a way to solve the neighborhood concerns.

### **NEIGHBORHOOD ISSUES**

Following the City Council meeting, Rich Dewey met with the key neighborhood stakeholders to further flesh out their concerns. The residents' primary concerns related to pedestrian/bicycle safety. To address these concerns the applicant retained a transportation consultant<sup>1</sup> to analyze the specific intersection and make recommendations for safety improvements. The consultant's findings as well as the other issues raised at the Council pre-screening are discussed in more detail below.

#### **Bicycle/Pedestrian Safety**

The residents expressed several safety concerns, including site access, the narrowness of Ellsworth Place, the sight distance at Middlefield, the reduced parking at Ellsworth and the lack of loading vehicle access. It should be noted that most of these safety concerns presently exist, irrespective of the proposed rezoning<sup>2</sup>, and that many of the problems

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<sup>1</sup> Residents were concerned that the consultant would be biased since he was retained by the applicants. Accordingly, the applicants retained Hexagon Transportation Consultants, Inc. who works for public entities and has prepared most of the city's transportation analysis. Further, the transportation study was peer reviewed by the City's transportation team. In addition, the applicants reached out to residents several times to discuss the report's findings and to collaborate on safety solutions. Since release of the report, the residents have declined to meet. (See Attachment A, summary of meeting requests.)

<sup>2</sup> Publicly available information about traffic collisions may be found at <https://data.cityofpaloalto.org/>. According to this data set (only available from 2016--2021), only

arise from the non-authorized use of the existing Ellsworth parking lot by delivery trucks and others. Also, the City decided a number of years ago not to install a bicycle lane on Middlefield Road and thus some bicyclists illegally use the sidewalks. Nevertheless, the transportation study examined whether the project would negatively or positively impact these issues and whether there was anything that could be done to improve the overall safety of the area.

Ellsworth Place is a 530 feet long private street with no turnaround area. The private street is 20 feet wide<sup>3</sup> and thus does not meet public street standards. This width is sufficient, however, to accommodate two-way traffic as well as emergency access. Ellsworth is accessed by a 20' dustpan style driveway. There is an existing stop sign on Ellsworth Place existing onto Middlefield Road. Residents have requested a wider access driveway onto Ellsworth Place. First the study noted that a 20' driveway width complies with the City's Code. The study also concluded that there are tradeoffs with a wider driveway design in that wider driveways are easier to turn in and out of but that means turning speeds are higher. A narrow entrance thus has the benefit of forcing cars to slow down when accessing Ellsworth Place. Further, wider driveways are less safe for pedestrians to cross.

Taking these considerations into account the study recommended creating a 35 feet sight distance triangle on both the Dewey Parcel and the Handa Parcel to assist exiting vehicles. Trees and fences within the sight triangle should be reduced to three feet.

After reviewing the study and hearing the Council and neighborhood comments, the applicants have elected to make the following modifications to their application. These modifications, which do not have a nexus to project impacts, can be viewed as public benefits:

#### **702 Ellsworth/Handa Parcel**

- Agreed to a 35 feet sight triangle on corner of lot at Ellsworth/Middlefield.
- Agreed to decrease the front lawn between the driveway and walkway and instead install 4 feet of pavers. This will give the lot more space for parking/turnaround.
- Agreed to widen driveway.
- Agreed to cut the bushes facing Middlefield. *This has been completed.*

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one reported traffic collision occurred at the intersection of Ellsworth & Middlefield: in that data set. That accident occurred on June 8, 2016 at 1:02 PM and involved no injuries:

Reported Date	Occur Date	Occur Time	#Inj	#Killed	Hit/Run	Location	At/Or	#	Feet/ Miles	Cross Street
06/08/2016	06/08/2016	13:02			Y	700BLK ELLSWORTH PL	OR	390	FEET	MIDDLEFIELD RD

<sup>3</sup> Under Palo Alto Municipal Code comparable private streets created after 2009 must be 32'.

- Agreed not to construct a basement.
- Agreed to a 3 foot tall fence on Middlefield and Ellsworth to avoid any line of sight issues.
- Agreed to install 1'6" width of pavers on Ellsworth side of property to increase the effective width of the Ellsworth driveway. Use same pavers as 2901 Middlefield to add to visual width.
- Agreed to give City the right to the 20 foot easement on Ellsworth to settle any debate on who has right to access that part of the street.
- Removed temporary construction fencing and dirt while application pending. *This has been completed.*

#### **2901 Middlefield/Dewey Parcel**

- Agreed to a 35 feet sight triangle on corner of lot at Ellsworth/Middlefield.
- Move trash pickup from Ellsworth to Sutter to relieve pressure on Ellsworth. *This has been completed.*
- Agreed to install 2'6" width of pavers on Ellsworth side of property to increase the effective width of the Ellsworth driveway. Use same pavers as Handa development to add to visual width.
- Agreed to create temporary loading zone for delivery trucks at 2901 Middlefield.
- Create parking plan that would facilitate less use of Ellsworth
- Relocate GreenWaste garbage enclosure and pick up area off of Ellsworth. *This has been completed.*

#### Delivery Trucks

Accommodating delivery trucks in single family neighborhoods which do not have designated delivery/loading zones is a problem throughout the city. Most delivery trucks simply double park in the street, which is neither safe nor permitted. While Ellsworth Place has the ability to accommodate double parking (which admittedly is not ideal), the lack of turnaround space at the end of the street makes this option impractical. Delivery trucks serving the Dewey Parcel are able to park on Sutter. Other Ellsworth residents have indicated that delivery trucks are using the private property at 702 Ellsworth to park and/or turn around their vehicles. Regardless of how the Planning Commission acts on this application, use of 702 Ellsworth as a loading/delivery zone is not currently authorized and thus not a viable long term solution.

In an effort to solve the delivery truck problem, the owners of 2901 Middlefield and 702 Ellsworth have worked with city staff to locate a temporary loading space on 2901 Middlefield that could be used for deliveries on Ellsworth and to create an additional paved area on 702 Ellsworth that would permit these trucks to turnaround to exit Ellsworth. In addition, at the request of residents, 2901 Middlefield has been working with GreenWaste to relocate its trash pickup from Ellsworth to Sutter Avenue. This has eased some of the pressure on Ellsworth. Further, as mentioned above, the project now includes a larger

effective driveway opening on Ellsworth by paving an additional 4 feet of space combined on either side of Ellsworth. (See updated Plans p. A2.0.)

### Private Street

Palo Alto has a series of narrow, sub-standard streets throughout different neighborhoods which are not publicly owned. Some of these streets were designed as private streets (so that they did not need to conform to the stricter public street requirements). Others were offered for dedication by the original developer, but never accepted by the County (and/or City) due to their substandard specifications. The residents have long wanted the City to take over ownership of Ellsworth Place, though it is unlikely the City will do so. Again, there are many substandard streets throughout the city and if anything this project creates many circulation improvements.

### Parking Requirements

Since the 1967 development plan was approved, the City has reduced the parking requirements for multi-family projects to encourage more use of public transit and bicycles and to facilitate multi-family housing projects. The current parking requirements for the twelve apartments is sixteen spaces: 2 spaces for each two-bedroom unit and one space for each of the one bedroom and studio units.<sup>4</sup> Guest parking is no longer required.

Given there are twelve covered spaces at 2901-2905 Middlefield, we propose creating 4 additional uncovered parking spaces on site for a total of 16 required parking spaces for the apartments on the 2901-2905 Middlefield property. The new parking spaces are in existing paved areas, in both the side yard and rear yard of the property. Please reference drawing **A2.0** for the location of these new spaces on the site plan.

2901 Middlefield has always had ample parking for its tenants. In addition, there is ample street parking on Sutter which serves as the side entrance to the apartment building. We recognize that the narrow width of Ellsworth Place reduces the parking opportunities for the Ellsworth residents and are committed to accommodating all required parking on site.

Consolidating the parking on-site has several additional benefits. First, it reduces the number of backing maneuvers from 8 to 2 on the Handa Parcel. (Hexagon report, p. 1.). Also, it increases pedestrian safety by eliminating the need for residents and guests to walk across Ellsworth to access the apartment building.

### Easement over 702 Ellsworth

Ellsworth Place serves approximately 7 properties on each side and does not have sidewalks. While the residents fronting on Ellsworth have traditionally used a portion of 702 Ellsworth to access Middlefield Road, questions have been raised as to whether all properties enjoy a recorded right of way easement against 702 Ellsworth. This application will clear up this longstanding ambiguity by recording a public ingress/egress easement for the entire neighborhood and at the City's request 702 Ellsworth will also designate the

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<sup>4</sup> Palo Alto Municipal Code 18.52.040, Table 1.



City as an additional benefitted party to the easement.

#### Tree removal

At the City Council pre-screening some residents complained about tree removals which occurred nearly 5 years ago. In 2018, some palm trees and two oak trees were removed. The City records show that several neighbors called in complaints during the tree removal process. According to the property manager at 2901 Middlefield, the City arborist came down to the site that day and confirmed neither oak tree was covered by the heritage tree ordinance. The fact that there are no citations in the City file tends to confirm this account. In any event, the trees were clearly blocking sight lines and it is somewhat disingenuous to raise a five year old complaint about tree removal, on the one hand, while also asserting that the sight triangle should be structure-free.

In any event, the owner has replaced the removed canopy with six *Cercis Occidentalis* trees elsewhere on the Dewey Parcel. The replacement trees are drought tolerant and more in keeping with the city's current landscaping requirements.

#### Density

The 702 Ellsworth Place property will be developed with a new single-family, one-story home with onsite parking in accordance with the R1 zoning site development regulations. This one-story home is compatible with R-1 and R-2 development on Ellsworth. Per request of the neighbors, the plans do not include a basement. The applicant has also been working with the neighbors to address other site planning issues.

Once the Ellsworth parcel is removed from the PC, the density of the apartment building will be slightly more than the density permitted by RM-20. However, as the proposed Housing Element contemplates upzoning many RM-20 units to RM-30, the resulting density will be in line with the new RM-30 zoning.

Further the bulk and massing of the apartment is not changing. The existing building has been in place since 1969 and its mid-century low profile is compatible with the eclectic mix of medium density buildings on Middlefield Road and barely visible from Ellsworth.

\* \* \*

RLD Land LLC respectfully requests the Planning Commission support amending the development plan of the governing PC ordinance to right size the parking requirements and allow for the addition of a modest single-family home on the currently vacant lot. This



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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 apartment building.

Sincerely,

JORGENSON, SIEGEL, McCLURE & FLEGEL, LLP

By:   
\_\_\_\_\_  
Cara E. Silver

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

## **Attachment A**

### **Summary of RLD Land LLC's (Rich Dewey) Efforts to Meet with Neighbors regarding 2901 Middlefield and 702 Ellsworth\***

**Feb 22:** Amy French of the City of PA organized a development call w/ various departments at City of PA to discuss the proposed new home for Nitin Handa. Rich Dewey and Kevin Guibara, property manager for 2901 apartments, attended the zoom meeting call. City communicated some of the neighborhood concerns and requested project modifications. Plans modified.

**Feb 24:** Kevin Guibara, property manager for 2901 apartments, attended an on-site meeting with Amy French, Nitin Handa and 2 neighbors to discuss the proposed new home by Nitin Handa. Plans further modified to address resident comments.

**March 13:** City Council study session. Rich Dewey and Kevin Guibara, property manager for 2901 apartments, Ken Hayes of Hayes Group Architects, and Cara Silver, attorney, attended. Plans further modified to address resident and Council comments.

**March 20:** Rich emailed Kristen Van Fleet to request a meeting to discuss the situation. She replied on March 22, and we found a date: SAT March 25 to meet.

**March 25:** meeting with neighbors at Susan Light's home (705 Ellsworth). Attending were Kristen Van Fleet, Bhangra Iyer; Susan Light and Annette Glanckopf and Rich Dewey. Meeting was to discuss how we got here (City document errors and direction), and solutions. Rich Dewey informed residents he was conducting safety study and would share with them when complete. Meeting went for approx. 2 hrs., and then Rich and Kristen spent another 45 mins or so after the meeting walking the Ellsworth Place dead end street and discussing ideas. Residents and Dewey discussed the benefit of meeting again once study completed. Plans further modified to address comments.

**April 3:** Email from Kristen thanking for me the time and meetings. She is advising that a second meeting is too hard to organize and to send all information to her.

**April 18:** Rich sent a note to Kristen to ask her to meet to discuss the traffic and safety study that was discussed at the March 25 meeting at Susan Light's home. The City only allows for public library room bookings a week in advance, so Rich suggested April 25 Tues at 6pm at Mitchell Library to be most convenient for all. Rich advised Kristen that he would have Gary Black, president of Hexagon Transportation Consultants, and

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\* RRP Homes LLC (Nitin Handa) also had several meetings with Kristen Van Fleet. These additional meetings, though not included here, also resulted in many design modifications.

Ken Hayes, president of Hayes Group Architects, along w/ homeowner Nitin Handa. Rich asked her to invite the neighbors (per Kristen's representation she speaks for the neighbors). No response.

**April 24:** Rich Dewey emailed Kristen again to remind her of the meeting for safety and traffic on April 25 at 6pm at Mitchell Library. No response.

**April 24:** Rich Dewey asked Kevin Guibara, property manager for 2901 apartments, to hand deliver a letter to each of the neighbors on Ellsworth to invite them to the meeting to discuss the issues of traffic and safety on April 25 at 6pm at Mitchell Library. He did so personally, and spoke w those residents who answered their doors (and left the letter for those who did not answer).

**April 25:** (afternoon of April 25) Kristen replied to Rich's April 24 email saying she wanted the traffic and safety study sent to her. Rich replied that he wanted to have the consultants present the report and then do a question / answer, and then discuss next steps.

**April 25:** Had the meeting at Mitchell Library at 6pm. In attendance were Ken Hayes, president of the Hayes Architectural Group; Gary Black, president of Hexagon Transportation Consultants, Nitin Handa (homeowner) and me. Consultants stayed until 7pm. No one else attended the meeting.

**May 2:** Rich sent Kristen a note to confirm we had the meeting on April 25 at the Mitchell Library, and that the consultants were all there. Rich also sent her the Hexagon Transportation study in the May 2 email.

**May 2:** Kristen replied to acknowledge the report was received and that she would forward it to the Ellsworth Place neighbors.

**May 4:** Rich asked Kristen if she had time to get together to discuss the report, and suggested May 5 in the afternoon. No response as of today (June 8).