



City Council Staff Report

From: City Manager

Report Type: ACTION ITEMS

Lead Department: Planning and Development Services

Meeting Date: September 18, 2023

Report #:2307-1763

TITLE

LEGISLATIVE: Adopt an Ordinance Amending Planned Community 2343 zoning for 2901-2905 Middlefield Road and Adopt an Ordinance Establishing a new Planned Community Zoning Designation to Enable the Development of a new Single-Story, Single-Family Residence on 702 Ellsworth Place.

RECOMMENDATION

Staff recommends that City Council:

1. Adopt an ordinance amending ordinance Planned Community 2343 (Attachment A) for 2901-2905 Middlefield Road and adopt a new Planned Community ordinance (Attachment B) to enable the development of a single-family residence at 702 Ellsworth Place.

EXECUTIVE SUMMARY

The recommendation in this report is to approve two ordinances that would modify an existing planned community zoning site into two different planned community zoned sites. This action reflects a change in land ownership for one of the parcels and enables the construction of one net new housing unit. The previously approved planned community zoned apartment site gets slightly modified to reflect a new parking arrangement and other minor changes. The new planned community zoned property, previously used as parking for the apartment building, would be redeveloped as a single-family home.

There was a City Council prescreening study session for the subject application held on March 13, 2023.¹ Area residents raised several initial concerns about the recent selling of one of the planned community zoned properties and were instrumental in identifying a zoning map error that showed one of the parcels as zoned for single family residential use instead of being part of

¹ The March 13, 2023 Council prescreening report, minutes and video are viewable on the City Council's webpages. The project webpage for 2901 Middlefield is viewable at this URL:

<https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Current-Planning/Projects/2901-Middlefield-Road>

a larger planned community project. The subject application seeks to amend prior legislative action to reflect the current status and ownership of the different properties. The Planning and Transportation Commission held several public meetings and makes a recommendation to support an amendment to the existing, and establishment of a new, planned community zoning for 702 Ellsworth Place.

BACKGROUND

In 1967 a planned community zoning ordinance was approved for the subject property to allow a 12-unit apartment building. The development site consists of four parcels adjacent to the northeast side of Middlefield Road and extends from Sutter Avenue to Matadero Canal (Attachment B). The apartment building is located nearest Sutter Avenue. Access to the apartment is provided via an easement across one of the development site's parcels referred to as 702 Ellsworth Place, which also has guest parking spaces for the apartment building. The easement also provides access to Ellsworth Place, a private street with 13 residential properties; these properties are not associated with the PC development.

In 2017, the development site was sold to a new owner who also owns several apartment buildings in the area. In 2022, one of the four parcels that comprise the development site, 702 Ellsworth Place, was sold to another separate entity. This more recent purchase was reportedly based, at least in part, on information provided by the City indicating that 702 Ellsworth Place could be developed with a single family home. This guidance, however, is not consistent with the administrative record and occurred because the zoning map from 1960s was never updated to reflect the approved PC zoning designation. For decades the City's records regarding these parcels appeared to show the incorrect zoning. Similarly, when the City implemented its online property parcel records, the subject property (2901-2905 Middlefield Road and 702 Ellsworth Place) did not include information about the applicable PC zoning designation. Real estate professionals, developers and property owners rely in part on this online information to make decisions about property acquisition and development; staff too consults these records when providing information to the public.

It was not until residents filed a code enforcement complaint concerning new fencing around 702 Ellsworth Place in anticipation of a future development that research began and uncovered this mapping error. Since then, staff has been engaged with area residents and the two owners of the PC development site. In addition to being concerned about redevelopment of 702 Ellsworth Place, area residents have also expressed a desire for the City to take ownership of the private street to improve its condition, address drainage problems and maintain the street. Ellsworth Place is neither owned nor maintained by the City. Similar conditions exist at other locations in the City, dating from development that occurred on formerly-unincorporated land before annexation to the City.

The City Council conducted a study session prescreening for the subject application on March 13, 2023; summary minutes from the meeting are available online.² Shortly following the meeting, an application was submitted for review by the Planning and Transportation Commission.

Planning and Transportation Commission (PTC) Review

The PTC reviewed the project over three public hearings on June 28, July 12, and August 9, 2023. Links to the minutes and videos of all three PTC hearings are available online;³ draft meeting minutes from August 9 are included as Attachment D.

The PTC in its review considered a variety of concerns expressed by area residents related to the project. The linked reports and minutes provide greater detail but in summary, the residents were concerned with the private street (Ellsworth Place), ingress and egress from Middlefield Road, viewing angles when exiting the private street, access to parking spaces for apartment dwellers at 2901 Middlefield Road, temporary parking for package delivery trucks, the removal of protected trees and other property maintenance matters. The Commission further considered the applicant's request to remove the 702 Ellsworth Place property from the previously entitled planned community zoning site and rezone the property to R1 zoning to permit a new single family home on the site. In its review, the Commission considered the legislative history and previously highlighted error on the City's zoning map that contributed to the current situation.

The PTC's recommended actions to approve the applicant's request is reflected in the two attached ordinances, except for one component related to area resident's request for a wider easement accessing a portion of Ellsworth Place, which is expanded upon below.

Analysis

The PTC's deliberation and recommended actions largely address the many of the outstanding issues related to this application. There are a couple of points highlighted below for Council's awareness and consideration.

² March 13, 2023 City Council Summary Minutes:

<https://cityofpaloalto.primegov.com/Public/CompiledDocument?meetingTemplateId=1096&compileOutputType=1>.

³ Links to staff reports, minutes and videos of PTC hearings:

June 28 report: www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-6.28-2901-middlefield.pdf

June 28 minutes: www.cityofpaloalto.org/files/assets/public/v/2/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-6.28.2023-summary-minutes_revised.pdf

June 28 video: <https://midpenmedia.org/planning-transportation-commission-63-6282023/>

July 12 (report was unchanged from June 28) minutes: www.cityofpaloalto.org/files/assets/public/v/2/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-7.12.2023-summary2.pdf

July 12 video: <https://midpenmedia.org/planning-transportation-commission-63-7122023/>

August 9 report: www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-8.09-2901-middlefield-702-ellsworth.pdf

August 9 video: <https://midpenmedia.org/category/government/city-of-palo-alto/boards-and-commissions/planning-and-transportation-commission/>

Planned Community Zoning versus R1 Zoning

The application reviewed by the PTC included a request to remove 702 Ellsworth Place from a planned community zoning and to convert it to R1 zoning. This application would have applied all the relevant R1 standards to 702 Ellsworth Place allowing for potentially less setbacks and greater fence heights in the front yard adjacent to Middlefield Road as well as ministerial (by-right) approval of the proposed one-story single family home. However, in its deliberation, the PTC sought to impose additional restrictions on the future single family development to address contextual issues related to the property's orientation relative to other properties on Ellsworth Place and to address area resident's concerns related to line of sight visibility to and from Middlefield Road and the width of the Ellsworth Place easement that provides access to other properties further distant from Middlefield Road. Regulating 702 Ellsworth Place with a new planned community zoning allows the City to address certain concerns while still enabling the applicant to build a new one-story single family home through the City's ministerial building permit process.

2901 Middlefield Road's planned community zoning is simply amended to reflect the ownership boundaries, expands easement access to widen a portion of Ellsworth Place and accounts for a new on-site parking arrangement that serves the apartment units.

Ellsworth Place Private Street Easement

Ellsworth Place is a private street. Access to the private street is provided from Middlefield Road. An easement was previously conveyed by the developer of the 1960s era apartment building that grants access across portions of 2901 Middlefield Road, and the now proposed to be separated 702 Ellsworth Place property. This 20-foot wide easement provides access to 13 residential properties.

To improve ingress and egress access and sight line access for motorists, pedestrians and cyclists, area residents sought to increase the easement to 26-feet wide. The applicant proposed a 24-foot wide easement and submitted a safety study prepared by a traffic engineer to support their position that a wider easement was not necessary. Moreover, the applicant expressed concerns about the feasibility of increasing the easement width further and constraints imposed by existing utility infrastructure. The July 12th minutes and August 9th excerpt minutes captured these concerns and the PTC's struggles to pass a recommendation regarding street width.

The PTC recommendation is to increase the proposed expansion of Ellsworth Place by two feet beyond the 24' the applicant had offered. A City-imposed condition expanding the width of Ellsworth Place to 26-feet would be considered an "exaction" of property from the applicants. The City has the authority to make such exactions only when there is an "essential nexus" between the property being exacted and the public impacts of the application, as well as "rough proportionality" between the amount of the exaction and the amount of impact. Staff are unable to make this nexus and the attached ordinances reflect a 24-foot wide easement. Notably, this finding of essential nexus and rough proportionality do not apply to voluntary

offers of property made by the applicant and the City Council is its deliberation can explore this topic further with the applicant.

Additionally, some public commenters have asserted that the prior PC (PC 1810) for the subject property required the widening of Ellsworth Place. This is not accurate; the PC 1810 condition was not to 'widen' a private street, but rather to 'modify' the 'driveway to Middlefield Road,' as stated in Section 2 of that ordinance.

Ellsworth Place Ownership

Some area residents have expressed concern about the ongoing maintenance and drainage related concerns of the private street and assert that the City is, or ought to be, the owner. County assessor parcels maps and other information about property taxes related to the private street are offered as arguments that the street is publicly owned. Staff has conducted an extensive review of the record and finds no evidence to support this conclusion. Moreover, the request that the City take ownership and related maintenance responsibilities for the street is not a matter relevant to the subject application. The only connection the subject property has with Ellsworth Place is the access easement across the applicant's private property to provide a connection between the private roadway and Middlefield Road. If the City Council were interested in exploring the possibility of taking over ownership of Ellsworth Place that would need to be agendaized as a separate discussion. In contemplating such direction, the City Council may also want to be aware that there are many private streets in the City and may want to give consideration to the establishment of criteria for selecting and prioritizing which streets the City might have an interest in being publicly owned; the potential rebuilding and maintenance costs associated with street ownership; the needs of public safety services to access streets; as well as potentially complex legal considerations when such streets are held in common ownership such as may be the case with a homeowners association.

FISCAL/RESOURCE IMPACT

There are no resource impacts associated with this action.

STAKEHOLDER ENGAGEMENT

The June 28 PTC report noted prior community engagement. Additional engagement at the project site occurred on July 3, 2023, and during the PTC hearings of July 12 and August 9, 2023. The installation of markers to show the sight distance triangles on each side of Ellsworth Place, and three-foot temporary fence was per the PTC's July 12 direction and to engage the neighbors in reviewing the proposal. The PTC packets and webpage include links to the correspondence. Additional correspondence received after the August 9th PTC hearing is provided as Attachment C to this report. Photographs taken by the applicant and staff, shared with the PTC in presentations, are provided as Attachments E and F.

ENVIRONMENTAL REVIEW

The two attached draft Planned Community ordinances refer to several CEQA exemptions for the project(s) and the PTC report of August 9 included analysis of these exemptions. The PC for 2901-2905 Middlefield Road (Attachment A) cites the existing facilities exemption (15301) and

the common-sense exemption (15061(b)(3)). The PC for 702 Ellsworth Place (Attachment B) cites the common-sense exemption as well as the new small structure exemption (15303).

ATTACHMENTS

Attachment A: PC Ordinance for 2901-2905 Middlefield Road & Exhibit A (Development Plan)

Attachment B: PC Ordinance for 702 Ellsworth Place & Exhibit B (Development Plan)

Attachment C: Correspondence received from neighbors after August 9th

Attachment D: August 9th excerpt verbatim PTC minutes

Attachment E: Geotechnical memo from applicant received after August 9

Attachment F: Correspondence and photographs received from applicant after August 9

Attachment G: Photographs taken by staff shared with the PTC

APPROVED BY:

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