



**DISCUSSION ITEMS**

**Agenda Item # 6**

**AGENDA REPORT SUMMARY**

**Meeting Date:** May 14, 2019

**Subject:** Resolution No. 2019-07: Two-Lot Subdivision at 831 Arroyo Road

**Prepared by:** Zachary Dahl, Planning Services Manager (for Sean Gallegos)

**Reviewed by:** Jon Biggs, Community Development Director

**Approved by:** Chris Jordan, City Manager

**Attachments:** (Attachments previously provided on April 23, 2019)

1. Resolution No. 2019-07
2. Applicant Cover Letter
3. City Council Meeting Minutes, March 26, 2019
4. City Council Agenda Report, March 26, 2019
5. Public correspondence
6. Updated Tentative Map

**Initiated by:**

Ying-Min Li, Applicant and Property Owner

**Previous Council Consideration:**

March 26, 2019; April 23, 2019

**Fiscal Impact:**

It is estimated that the project will pay \$77,500 to the City's Park in-Lieu fund and \$6,774.20 to the City's Traffic Impact Fee fund.

**Environmental Review:**

This project is categorically exempt from environmental review pursuant to Section 15315 (Minor Land Divisions) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

**Policy Questions for Council Consideration:**

- Does the proposed subdivision result in an orderly and compatible development pattern, within the subdivision and in relation to its surroundings?
- Does the subdivision provide for quality site planning and design?

**Summary:**

- The application includes a tentative map to subdivide the property at 831 Arroyo Road into two conforming parcels – an interior lot and a corner lot

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**Reviewed By:**

City Manager

CJ

City Attorney

CD

Finance Director

SE

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- On February 7, 2019, the Planning Commission reviewed the application and recommended approval to the City Council
- On March 26, 2019, the City Council reviewed the application and voted to continue it to the April 23, 2019 Council meeting with direction to review the covenants that encumbered the property, provide an additional map showing the placement of houses on adjacent properties and review the placement of the corner lot's new driveway

**Recommendation:**

The Planning Commission recommends adoption of Resolution No. 2019-07 to approve subdivision application 18-DL-01 subject to the listed findings and conditions



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### **Purpose**

Review the application and reach a decision on whether to approve the tentative map for a two-lot subdivision.

### **Background**

On March 26, 2019, the City Council held a public meeting to consider the application for a two-lot subdivision at 831 Arroyo Road. The applicant's representative, Rick Hartman, presented the application, and ten members of the public provided comments in opposition to the proposed subdivision. They expressed concerns that the new house would not adhere to the neighborhood's 40-foot setback line, that it would not be compatible with the existing Arroyo Road neighborhood context, that the proposed lot sizes were too small, and that there could be safety issues at the corner of Arroyo Road and Mountain View Avenue. Following the presentation and public comment, the Council discussed the application and voted unanimously to continue the item to the April 23, 2019 Council meeting to allow further staff review of potential covenants that encumbered the land, directed staff to provide an additional map clearly showing the adjacent property with accompanying structures, and directed staff to prepare a finding or condition of approval requiring safe egress of the parcels. The meeting minutes and agenda report from the March 26, 2019 meeting are attached for reference (Attachments 3 and 4).

### **Discussion/Analysis**

#### *Tentative Map Updates*

In response to concerns raised at the Council meeting, the applicant updated the tentative map to include a provision that specifies that the 30-foot visibility triangle at the corner of Mountain View Avenue and Arroyo Road shall be maintained, that the new driveway for the corner lot shall be setback on Mountain View Avenue at least 25 feet from the edge of the 25-foot radius corner at the intersection and that the house on the corner lot shall face Arroyo Road and maintain a minimum setback of 25 feet from this property line (32 feet from the back edge of the curb). Staff has reviewed these provisions and determined that they are consistent with all applicable City requirements and policies, and will enhance sight visibility for vehicles and pedestrians at the corner. In addition, a neighborhood vicinity map that shows all properties and houses in the vicinity of the site has been included in the project plans. This vicinity map shows the building footprint and front yard setback for all surrounding properties on Arroyo Road and Mountain View Avenue. As shown on the map, and previously documented by staff, while a majority of the houses along Arroyo Road have a front yard setback of 40 feet or more, there are multiple properties with houses that have a front yard setback that ranges from 25 to 40 feet. A cover letter from the applicant that includes additional information about the application and how they have responded to the Council direction is included as Attachment 2.



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To further ensure that the subdivision improves safety and visibility at the corner of Mountain View Avenue and Arroyo Road, and maintains an appropriate relationship within the Arroyo Road neighborhood context, the following condition (No. 2) has been included:

**Corner Lot Requirements**

The newly created corner lot (Parcel 2) shall adhere to the following requirements:

- a. The new house shall have a front elevation that faces Arroyo Road.
- b. The new house shall have a setback of at least 25 feet from the exterior side property line adjacent to Arroyo Road.
- c. The driveway for the new house shall have a setback of at least 25 feet from the from the edge of the 25-foot radius corner at the intersection with Arroyo Road.
- d. The 30-foot visibility triangle at the corner of Mountain View Avenue and Arroyo Road shall be maintained free and clear of all landscaping and built objects that exceed three feet in height.

*Declaration of Restrictions*

In response to concerns raised by neighbors that the 40-foot building setback line restriction was binding on all properties along Arroyo Road and needed to be enforced by the City, staff and the City Attorney re-reviewed the declaration of restrictions that contained this provision.

In May of 1927, the subdivision map of Montebello Acres, the original subdivision that created Arroyo Road, among other streets, was recorded with the County of Santa Clara. Subsequently, in June of 1945, Harry Hoefler, the owner of all of the properties along Arroyo Road, Raymundo Avenue and the south side of Rincon Avenue (now Vista Grande Avenue) recorded a declaration of restrictions against them. The restrictions, which were contained in Clause No. 1, are as follows:

- a) No dwelling house with a setback of less than 40 feet from-the street line shall be erected or maintained on the lots above described.
- b) No dwelling house or out-buildings or garages, shall be erected closer than 15 feet to the side lot line.
- c) No dwelling house or garage shall be constructed on any of the lots without first submitting the plans and specifications for said dwelling house or garage to Harry Hoefler, his heirs or assigns, and no dwelling or garage shall be constructed thereon without first obtaining the written consent of the above named persons.

In December of 1952, the City of Los Altos was incorporated, and the Montebello Acres neighborhood was included in that original annexation. Subsequently, in 1969, the City adopted its first comprehensive Zoning Ordinance, which included site standards and design review requirements for all properties in the City. Since its adoption, the City has adhered to the site standards, including setbacks, and design review requirements contained in the Zoning Ordinance, and considered the



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enforcement of covenants, conditions and restrictions (CC&Rs) as a civil matter between property owners and their respective Homeowners Association (HOA).

The City considers prevailing setback patterns in a neighborhood as one element in a project's neighborhood compatibility evaluation and works to ensure that those type of patterns are respected when appropriate, but these are different from a setback requirement, which requires strict adherence.

In addition to the 40-foot setback from the street, the declaration of restrictions also requires properties to provide a 15-foot side yard setback and obtain approval from Harry Hoefler, his heirs or assigns, before building a new structure. Staff has not found any evidence that either of these two restrictions has been enforced or adhered to since the 1969 Zoning Ordinance was adopted. In addition, there are multiple examples of legal structures along Arroyo Road that have setbacks of less than 40 feet.

The City Attorney's office has also opined that the restriction is a private restriction burdening and benefitting the property owners in the Montebello Acres subdivision. Because this is a private restriction, the City has no role in enforcing it as it derives no benefit from the restriction. Instead, the homeowners in the Montebello Acres subdivision that have properties that benefit from the restriction have enforcement authority.

Finally, it should be noted that there is nothing in the law prohibiting a city from establishing setbacks and other land use limitations distinct from the limitations contained in a private property restriction. To put another way, the City's Zoning Ordinance with its distinct land use limitations acts as the government regulatory layer for a property owner to comply or face a government enforcement action. In addition to the government regulatory layer, a property owner must also comply with any valid private restrictions that may burden the property.

In short, the City has no authority or role in enforcing a private restriction. A city can also establish limitations and standards in its zoning ordinance that may deviate from those set forth in a private property restriction.

#### *Public Correspondence*

Following the publication of the March 26, 2019 City Council meeting agenda, staff received numerous emails and comment letters from neighbors and residents, primarily in opposition to the proposed two-lot subdivision. All public correspondence received after March 18, 2019 are contained in Attachment 5.

#### **Options**

- 1) Adopt Resolution No. 2019-07 to approve the tentative map for a two-lot subdivision at 831 Arroyo Road



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**Advantages:** The subdivision would create two new parcels that meet all applicable site standards for the R1-10 District and maintain an orderly and compatible development pattern on Mountain View Avenue and Arroyo Road

**Disadvantages:** None identified

2) Direct staff to bring back a resolution denying the application based on specific negative findings

**Advantages:** The existing parcel would remain unchanged.

**Disadvantages:** The City would lose the potential to subdivide into two conforming lots and create two new single-family dwelling units.

**Recommendation**

The Planning Commission recommends Option 1.

**RESOLUTION NO. 2019-07**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS  
APPROVING A TENTATIVE MAP FOR A TWO-LOT SUBDIVISION AT 831  
ARROYO ROAD**

**WHEREAS**, the City of Los Altos received a subdivision application that includes a tentative map from Ying-Min Li for a two-lot subdivision, application 18-DL-01, referred herein as the “Project”; and

**WHEREAS**, the Project is categorically exempt from environmental review as a minor land division that involves the creation of four or fewer new parcels in accordance with Section 15315 of the California Environmental Quality Act of 1970 as amended (“CEQA”); and

**WHEREAS**, the Project was processed in accordance with the applicable provisions of the California Government Code and the Los Altos Municipal Code; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on the Project on February 7, 2019 and the City Council held a duly noticed public meetings on the Project on March 26, 2019 and April 23, 2019; and

**WHEREAS**, the City Council has reviewed all written evidence and oral testimony presented to date on this matter; and

**WHEREAS**, the location and custodian of the documents or other materials which constitute the record of proceedings upon the City Council’s decision was made are located in the Office of the City Clerk.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Los Altos hereby approves the Project subject to the findings and conditions of approval attached hereto as Exhibit “A” and incorporated by this reference.

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 14<sup>th</sup> day of May 2019 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Lynette Lee Eng, MAYOR

Attest:

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Jon Maginot, CMC, CITY CLERK

## **EXHIBIT A**

### **FINDINGS**

With regard to division of land application 18-DL-01, the City Council finds the following in accordance with Chapter 4, Article 1, Section 66474 of the Subdivision Map Act of the State of California:

- A. The proposed subdivision is in conformance with the Los Altos General Plan, including specifically applicable policies contained in the Housing Element Policy 1.5 and Infrastructure and Waste Disposal Element Policies 1.3 and 2.2 by creating two single-family lots, which fall within the allowed density range. The project conforms with all applicable goals, policies and programs in the Los Altos General Plan by maintaining a similar layout to two previously approved subdivisions along Mountain View Avenue to the north and maintaining a compatible and orderly development to the Montebello Acres subdivision. The new lots meet the R1-10 District's minimum lot size requirements of 10,000 square feet for an interior lot and 11,000 square feet for a corner lot. The new lots also meet all applicable site standards for the R1-10 District, including width, depth and frontage.
- B. The site is physically suitable for this type and density of development because it is in conformance with the Single-Family, Medium Lot and Other Open Space land use designations of the General Plan, has a density that does not exceed four dwelling units per acre and complies with all applicable R1-10 District site development standards;
- C. The design of the subdivision and the proposed improvements will not cause substantial environmental damage, or substantially injure fish or wildlife because the site is located within a developed suburban context and is not in or adjacent to any sensitive habitat areas;
- D. The design of the subdivision will not cause serious public health problems because the site is located within a suburban context and has access to urban services including sewer and water; and
- E. The design of the subdivision will not conflict with access easements because there are no access easements associated with or encumbering this property.



## CONDITIONS

### **GENERAL**

1. **Approved Plans**

Project approval is based upon the tentative map dated April 8, 2019, except as may be modified by these conditions.

2. **Corner Lot Requirements**

The newly created corner lot (Parcel 2) shall adhere to the following requirements:

- a. The new house shall have a front elevation that faces Arroyo Road.
- b. The new house shall have a setback of at least 25 feet from the exterior side property line adjacent to Arroyo Road.
- c. The driveway for the new house, if placed along Mountain View Avenue, shall have a setback of at least 25 feet from the from the edge of the 25-foot radius corner at the intersection with Arroyo Road.
- d. The 30-foot visibility triangle at the corner of Mountain View Avenue and Arroyo Road shall be maintained free and clear of all landscaping and built objects that exceed three feet in height.

3. **Public Utilities**

The developer shall contact electric, gas, communication and water utility companies regarding the installation of new utility services to the site.

4. **Protected Trees**

All existing trees on the site are protected as shown on the submitted plans and shall not be removed unless approved by the City during any subsequent development review or tree removal permit application.

5. **Encroachment Permit**

An encroachment permit, and/or an excavation permit shall be obtained prior to any work done within the public right-of-way and it shall be in accordance with plans to be approved by the City Engineer.

6. **Stormwater Management Plan**

The project shall comply with the City of Los Altos Municipal Regional Stormwater (MRP) NPDES Permit No. CA S612008, Order No. R2-2015-0049 dated November 19, 2015. The improvement plan shall include the “Blueprint for a Clean Bay” plan sheet as page 2 in all plan submittals.

7. **Sewer Lateral**

Any proposed sewer lateral connection shall be approved by the City Engineer.

8. **Indemnity and Hold Harmless**

The applicant/owner agrees to indemnify, defend, protect, and hold the City harmless from all costs and expenses, including attorney’s fees, incurred by the City or held to be the liability of the City in connection with the City’s defense of its actions in any proceedings brought in any State or Federal Court, challenging any of the City’s action with respect to the applicant’s project.

## **PRIOR TO MAP RECORDATION**

### **9. Demolition**

The applicant shall obtain and final a demolition permit from the Building Division to remove all existing structures on the property.

### **10. Payment of Fees**

The applicant shall pay all applicable fees, including but not limited to sanitary sewer impact fees, parkland dedication in-lieu fees, traffic impact fees and map check fee plus deposit as required by the City of Los Altos Municipal Code.

### **11. Easement Dedication**

The applicant shall dedicate public utility easements as required by the utility companies to serve both parcels.

### **12. Right-of-Way Dedication**

The applicant shall dedicate an area of land having a 25-foot radius adjacent to the intersection at Arroyo Road and Mountain View Avenue to the public right-of-way.

## **PRIOR TO ISSUANCE OF A BUILDING PERMIT**

### **13. Map Recordation**

The applicant shall record the tentative map.

### **14. Construction Management Plan**

Detailed plans for any construction activities affecting the public right-of-way include but are not limited to excavations, pedestrian protection, material storage, earth retention, and construction vehicle parking, and shall be provided to the City Engineer for review and approval. The applicant shall also submit on-site, and off-site grading and drainage plans that include drain swales, drain inlets, rough pad elevations, building envelopes, and grading elevations for approval by City staff.

### **15. Routing and Staging Plan**

A truck routing and staging plan for the proposed excavation of the site shall be submitted for review and approval by the City Engineer. A Transportation Permit, per the requirements in California Vehicle Code Division 15, is required before any large equipment, materials or soil is transported or hauled to or from the site.

### **16. Utility Plan**

The applicant shall submit a utility plan which includes the location of the sanitary sewer laterals for each lot.

### **17. Stormwater Pollution Prevention**

The project shall comply with the Stormwater Pollution Prevention Measures per Chapter 10.16 of the Los Altos Municipal Code.

## **PRIOR TO OCCUPANCY**

### **18. Curb and Gutter Replacement**

The applicant shall remove and replace the concrete curb/gutter along the entire frontage per the City Engineer's instructions

### **19. Underground Utilities**

The applicant shall be responsible for the removal/undergrounding of the existing overhead utilities.