



# MEMORANDUM

## TOWN OF PORTOLA VALLEY

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**TO:** Planning Commission and ASCC Commissioners

**CC:** Mayor and Town Council Members

**FROM:** Cara Silver, Town Attorney

**DATE:** October 18, 2021

**RE:** 4388 Alpine Road Willow Commons Apartments: Planning Application filed under New State Law

### **Introduction**

The purpose of this memo is to inform you of a recent planning application filed under AB 2162, which authorizes the streamlined approval of supportive housing projects. Since this is the first project received by the Town under this new state legislation, this memo provides some background on this new statute which became effective on January 1, 2019.

The proposed Project would be the first supportive housing project in Portola Valley, the first deed restricted low-income housing in the Town, as well as the first density bonus project.

### **Willow Commons Proposal**

On October 5, 2021, the Town received an application from Jim and Patty White for a supportive housing project located at 4388 Alpine Road (“Project”). The Project will include thirteen total units, with eleven independent living units for intellectually and/or developmentally disabled (“IDD”) adults, and two accessory dwelling units (“ADUs”) for program managers. The Project will consist of six “base” units and five density bonus units, with all of those units affordable to low-and/or very-low income households. The two ADUs will not have affordability or income restrictions. The Project will include extensive services and service coordination to enable the tenants to live independently, support social engagement, build healthy life skills, coordinate outside services such as medical, dental, transportation and job training, and provide job and employer support at the training center coffee counter.

The Project seeks to qualify under three state housing laws which streamline and permit the “by right” approval of certain types of housing developments. As it is considered a multi-family project (i.e. 11 units), it qualifies for two detached ADUs under the new ADU state law. As a supportive housing project, it also qualifies for a streamlined approval under AB 2162 described in more detail below.

The Project is also designed to take advantage of the state density bonus law which allows for additional units, provision of concessions/incentives, waiver of certain development standards

that physically preclude the proposed project and parking reductions. Because the project contains 100% affordable units it qualifies for 5 additional density bonus units<sup>1</sup> and four incentives or concessions<sup>2</sup> under the density bonus law. While entitled to four concessions, it is currently seeking only three incentives/concessions: (1) modification of setbacks; (2) waiver or modification of any conflicting open space requirements of the Nathhorst Triangle Area Plan; and (3) Town financial assistance in the form of fee waivers and a grant from the Town's Affordable Housing Fund. The applicant is requesting a waiver of floor area to accommodate the proposed programming to the extent needed. Finally, the applicant is seeking to eliminate any parking requirements for the 11 supportive housing units and will instead provide paratransit services for the residents.

Depending on when the applicant pulls final building permits for the Project, it is possible that the 11 low and very low units would be counted towards the Town's 6<sup>th</sup> Housing Element Cycle.

### **AB 2162**

AB 2162, which became effective January 1, 2019, expanded an earlier state law relating to by right approval of supportive housing projects. Whereas earlier law required cities to specify particular zones where up to 6 supportive housing units could be a permitted use, AB 2162 increases the number of permitted units and requires supportive housing to be considered a use "by right" in certain zoning districts. "Supportive housing" projects are defined as housing for persons with disabilities and homeless persons. To qualify as "supportive housing" the project must be linked to onsite or offsite services and must not have a limit on length of stay.<sup>3</sup>

Under AB 2162, "supportive housing" shall be a "by right" use in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses, if the proposed housing development satisfies a series of requirements, including:

(1) Units within the development are subject to a recorded affordability restriction for 55 years.

(2) One hundred percent of the units, excluding managers' units, within the development are dedicated to lower income households and are receiving public funding to ensure affordability of the housing to lower income persons (i.e. very low and extremely low).

(3) At least 25 percent of the units in the development or 12 units, whichever is greater, are restricted to residents in supportive housing who meet criteria of the target population. If the development consists of fewer than 12 units, then 100 percent of the units, excluding managers' units, in the development shall be restricted to residents in supportive housing.

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<sup>1</sup> The number of allowed density bonus units are based on the number of base units. Under the Town's Zoning Code, up to six supportive housing units are permitted in the AP zone. State Density Bonus Law provides that a housing project with 100% of the base units affordable at the low- and very low-income levels (excluding manager's units) is entitled to an 80% density bonus (Govt. Code §65915(f)(3)(D)). Density bonus units are rounded to the next higher whole number (Govt. Code §65915(f)(5)). With six base units, therefore, the Project is entitled to five density bonus units ( $6 \times 80\% = 4.8$ , rounded up to 5).

<sup>2</sup> Government Code §65915(d)(2)(D).

<sup>3</sup> Government Code 65650 (a); Health & Safety Code Section 50675.14. Note the Portola Valley Zoning Code defines supportive housing to include persons with disabilities, but has not yet been updated to reflect AB 2162's expansion to homeless persons as well. To the extent our Code definition is inconsistent with State law, State law controls here.

(4) For a development with 20 or fewer total units, at least 90 square feet of nonresidential development shall be provided for onsite supportive services. For a development with more than 20 units, at least 3 percent of the total nonresidential floor area shall be provided for onsite supportive services that are limited to tenant use.

(5) The developer replaces any dwelling units on the site of the supportive housing development.

(6) Units within the development, excluding managers' units, include at least one bathroom and a kitchen or other cooking facilities, including, at minimum, a stovetop, a sink, and a refrigerator.

Because a supportive housing proposal is a "by right" use under state law, there are several key implications for the town. First, the town is not permitted to apply any discretionary process to the project (i.e. conditional use permit). This means the Planning Commission would not typically review supportive housing projects because a CUP is not needed. Likewise, the town is not permitted to apply subjective design criteria, such as traditional design review by the ASCC. The law does however permit the town to apply objective, written development standards and policies, provided those standards apply to other multifamily development within the same zone.<sup>4</sup> Staff has reviewed the town's design criteria and determined that some of the criteria are objective, though the majority of the criteria are discretionary. Further, since a "by right" project is by definition ministerial in nature, the project is not subject to the California Environmental Quality Act (CEQA).<sup>5</sup>

In terms of permit processing, AB 2162 provides a short time frame. Within 30 days of receipt of the application, the town must notify the applicant whether its application is complete. Within 60 days of receiving a complete application, the town must take action on the project.

#### **Permit Processing and Decision-Making Body**

Applications falling under AB 2162 must be reviewed by staff for completeness within 30 days of application receipt. Once an application is considered complete, the Town has an additional 60 days to act on the application.

As mentioned above, as an AB 2162 supportive housing project, the Planning Commission will not be acting on the Project. Instead, the following review process shall apply:

1. The applicant files a development application for a supportive housing project pursuant to AB 2162, the State Density Bonus law and the Town's ADU ordinance.
2. Under State law the project is considered ministerial and would not be subject to CEQA review.
3. The ASCC would be the final decisionmaker, but its role would be limited to the authority it has under State law. Thus, the ASCC would review the project for its consistency with objective, written design findings and would determine whether the project is entitled to the requested concessions and development standards waivers. The applicant has indicated they are willing to receive and consider additional recommendations from the

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<sup>4</sup> Government Code §65651(b).

<sup>5</sup> Public Resources Code §21080(b)(1).

ASCC on items typically within their purview with the understanding that they will not be required to implement those recommendations.

4. Because the project is ministerial there would be no appeal of the ASCC decision. However, one of the requested concessions is waiver of application fees and a loan/grant from the Town's affordable housing fund, which would come before the Town Council as a separate action.

If you would like to talk further about AB 2162 or the Willow Commons proposal, feel free to contact me.