CITY OF SIMI VALLEY
MEMORANDUM

November 4, 2019

TO: City Council

FROM: Department of Environmental Services

SUBJECT: A PUBLIC HEARING TO CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY CUP-S-812: JM SQUARED DEVELOPMENT, LLC, IS REQUESTING A CONDITIONAL USE PERMIT (CUP-S-812) TO CONSTRUCT AND OPERATE A RESIDENTIAL CARE FACILITY WITH 68 ASSISTED LIVING UNITS AND 40 MEMORY CARE UNITS LOCATED ON A 1.6-ACRE PORTION OF A 19.2-ACRE SITE ON COCHRAN STREET, 150 FEET EAST OF WELCOME COURT; ADOPT THE PROJECT'S MITIGATED NEGATIVE DECLARATION, AND ADOPTION OF A RESOLUTION

Subsequent to the publication of this staff report, the attached correspondence was submitted to the City Clerk’s Office.

Also included is revised Resolution Number 2019-47 (City Council Staff Report pages 17-18) and Resolution Number SVPC 14-2019 (Exhibit 1) to correct adoption dates.

Ronald K. Fuchiwaki
Interim Environmental Services Director

Prepared by: Donna Rosser, Senior Planner

Attachments
10/24/2019

Simi Valley City Council
2929 Tapo Canyon Rd
Simi Valley, CA 93063

Keith L. Mashburn, Mayor, kmashburn@simivalley.org; Dee Dee Cavanaugh, Mayor Pro Tem, dcavanaugh@simivalley.org; Mike Judge, Council Member, mjudge@simivalley.org; Ruth Luevanos, Council Member, rluevanos@simivalley.org; Elaine P. Litster, Council Member, elitster@simivalley.org; CityClerk@simivalley.org;

Via Email

Re: Cochran St Senior Assisted Living Facility
APN 650-028-002, 650-026-003

Dear Simi Valley City Council,

Yes In My Back Yard submits this letter to inform you that the Simi Valley City Council has an obligation to abide by all relevant state housing laws when evaluating the above captioned proposal, including the Housing Accountability Act (HAA).

California Government Code § 65589.5, the Housing Accountability Act, prohibits localities from denying housing development projects that are compliant with the locality's zoning ordinance or general plan at the time the application was deemed complete, unless the locality can make findings that the proposed housing development would be a threat to public health and safety. The most relevant section is copied below:

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.
(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

The applicant proposes to construct and operate a residential care facility with 68 assisted living units and 40 memory care units.

The above captioned proposal is zoning compliant and general plan compliant, therefore, your local agency must approve the application, or else make findings to the effect that the proposed project would have an adverse impact on public health and safety, as described above. The project requires a Conditional Use Permit and fulfills all objective criteria needed for the permit.

Yes In My Back Yard is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California.

Sincerely,

Sonja Trauss
Secretary
Yes In My Back Yard
Hon. Ruth Luevanos, Council Member  
City of Simi Valley City Council  
2929 Tapo Canyon Road  
Simi Valley, CA 93065

RE: Deny CUP-S-812, Assisted Living / Memory Care Facility on Cochran St. at Welcome Ct.

Council Member Luevanos,

I am a resident of Simi Valley. Since 2008, I have in the Townhomes complex on Cochran Street.

For the following reasons, I urge you to vote to deny the developer’s appeal of the Planning Commission’s recommendation:

1. The proposed location has no precedent in Simi Valley.
2. The use conflicts with current land use in the immediate vicinity.
3. The facility will greatly exacerbate routine and emergency evacuation traffic risks.
4. The Mitigated Negative Declaration is grossly deficient, based on incomplete data, and draws dangerously flawed conclusions.
5. The developer has no experience with building and operating such facilities.

The enclosed pages support the above rationale.

Just as important, ask yourself whether you want to make a decision that would be counter to the wishes of dozens of proven passionate, motivated and organized voters. Consider the following:

Neighborhood Council #4 Meeting - August 20, 2019
- Nearly 50 White Oak owners and neighborhood residents attended.
- The vast majority were sufficiently moved to speak, all spoke in opposition, and the 42 who stayed to the meeting’s end well past 10 pm voted unanimously to oppose.

Planning Commission Meeting - September 4, 2019
- Again, more than 50 residents attended.
- Virtually all attendees spoke, and each of those speakers passionately opposed the project.

In fact, not one resident at either meeting spoke or voted in favor of the proposed facility. The Neighborhood Council #4 and the Planning Commission each voted by wide margins to oppose the development.

After due consideration, I am certain that you will vote to deny the appeal.

Respectfully,

David T. Gering
Conflicts with Current Land Use in Immediate Vicinity

• By definition, a senior assisted living and memory care facility is a commercial operation, not a multi-unit residential property and should be located in an appropriately zoned area (Residential High to Commercial Planned Development).

Proposed location has no precedent in Simi Valley

• Regardless of varying zoning districts, proposed location is unprecedented for a facility of similar size in Simi Valley, the only one surrounded on three sides by single-family residences and not on a high-traffic main artery—
  - The Foothills at Simi Valley
    5300 E. Los Angeles Ave., between Stearns and Emory, adjacent to Simi Valley Care Center
  - Sunrise at Wood Ranch
    190 Tierra Rejada Rd., across from Strathearn Historical Park
  - Simi Hills
    950 Sunset Garden Lane, north side of Madera Rd between Country Club Dr and N. Wood Ranch Pkwy, adjacent to Harmony Terrace Senior Apartment Homes
  - New Vistas Retirement Home
    321 Royal Ave., between Sinaloa and Madera
  - Dependable Home Care Services
    5924 E. Los Angeles Ave., between Yosemite and Rory Lane, adjacent to Yosemite Pet Hospital

• On January 28, 2019, Simi Valley City Council voted unanimously to not let a proposed 72-bed memory care facility to even undergo pre-screening as a first step in the approval process.
  - The proposed location is adjacent to homes in Wood Ranch, 400 feet away from Madera Rd., 400 feet from Fresh Meadows Rd. and 400 feet from Country Club Dr.

Traffic Study Ignored Key Data

Exhibit 3 - Traffic Report omitted examination of highly pertinent data.

• Entire report focuses on Yosemite/Cochran intersection and 118 Freeway onramps and offramps—
  - Average Daily Trips (ADTs)
  - Future mitigations

• However, regarding vehicles moving on Cochran between the 118 Freeway overpass and Yosemite, the report is silent about the following—
  - Actual traffic speeds
  - Actual daily trips
  - Future mitigations to Cochran at or near proposed facility location
  - Increased risk to public safety during area emergency evacuations

• During wildfires and other regional events, significant traffic created by vans and buses required to evacuate facility residents and staff would delay neighborhood resident evacuations.

David T. Gering,
Increased Emergency Responder Traffic and Noise

- Communities with assisted living facilities (versus long-term care facilities and typical residential populations), experience higher per capita EMS calls for treatment and transport because –
  - Residents typically present with complex medical conditions
  - Assisted living facilities typically lack onsite physicians, NPs, PAs, LVNs, etc.
- Many EMS calls are to evaluate and lift residents who fall and the majority of those calls –
  - Are required because facility staff don’t want liability exposure
  - Are after-hours and on weekends
  - Don’t require transport

Increased Non-Emergency Vehicle Trips

- In addition to first responders, assisted living facilities draw additional ancillary vehicle traffic –
  - Non-emergency medical transport vehicles
  - Vendor delivery semi rigs and panel vans
  - Vanpools serving residents
  - Facility staff
  - Privately contracted caregivers
  - Visitors

Traffic risks and issues

- Vehicles routinely travel at 40 MPH around curve on Cochran St. and adding speed bumps and/or signage would not sufficiently mitigate the risk of collisions.
- Cochran St. is 40’ wide curb-to-curb at the proposed driveway, which is insufficient for semi-trucks making 90° turns to exit driveway –
  - Semi-trucks are 69’ long from front bumper-to-tail with a 62’ wheelbase and require 51.5’ for 90° turns. Given these conditions, exiting semi rigs would need to partially turn, back up and complete the turn.
  - City would need to eliminate parking across from the driveway.
  - Even with no parking across from the driveway trucks would impede traffic and greatly increase the risk of collisions.

Negative Impacts of Construction

- Increased wildfire risk associated with construction activity
- Traffic control / delays
- Restricted daytime street parking to accommodate construction traffic and parked vehicles
- Limited overnight street parking while construction vehicles are parked
- Construction period extensions required by paleontology and Tribal Cultural Resource monitoring
- Construction activity on Saturdays and/or Sundays

David T. Gering,
Key Mitigations Omitted in Mitigated Negative Declaration

Omitted but Described by architect during 8/20/19 Neighborhood Council #4 meeting

- Requirement for a construction completion bond
- Drought-tolerant / fire-resistant landscaping
- Required setback per 9-30.080 – Setback and Separation Requirements and Exceptions of Simi Valley Municipal Code
- Photometric plan to comply with 9-30.040 – Exterior Light and Glare of Simi Valley Municipal Code

Omitted and not discussed during 8/20/19 Neighborhood Council #4 meeting

- Enforceable requirement for minimum duration of occupancy
- Emergency evacuation plan
- Fire protection water storage tank(s)
- Estimated time required for construction from ground-breaking to certification for occupancy

Miscellaneous risks and impacts

- Semi truck vendor traffic will be limited to ground level, not the basement parking area –
  - Per developer’s architect during Neighborhood Council #4 meeting, proposed basement entry will only accommodate panel vans (2019 Ford Transit Van is 100.8” exterior height), which is too low for vendor semi trucks (typically 162” exterior height)
  - Basement will not be large enough for turnarounds for vendor deliveries
- Such a facility would bring into an exclusively residential neighborhood a different population with non-residential issues impacting neighboring residents –
  - National Institute on Aging reports Alzheimer’s patients are prone to hallucinations and paranoia, and combative behavior
  - Alzheimer’s Association estimates 60% of people with dementia, at any stage of the disease, will wander, even from locked ward, and forget their address and be disoriented. Unfortunately, Simi Valley had such a case on June 30, 2017, when a wandering group home resident was struck and killed on 118 Freeway

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David T. Gering
Enclosure
Research in Support of Denying CUP-S-812, Assisted Living / Memory Care Facility


viii Roadway Design Manual, Texas Department of Transportation, Section 7: Minimum Designs for Truck and Bus Turns, Figure 7-4, http://onlinemanuals.txdot.gov/txdotmanuals/rdw/minimum_designs_truck_bus_turns.htm


David T. Gering,
JM SQUARED’S APPEAL TO CITY COUNCIL: HAA APPLIES TO CUP-S-812/CONDITIONAL USE PERMIT PROJECT APPLICATION – City Council Hearing: November 4, 2019

MEMORANDUM OF LAW

I. INTRODUCTION

The City’s May 29, 2019, letter heading on CUP-S-812 Project Application Deemed Complete describes this Senior Residential Housing Development Project: “A Request to Construct and Operate a Senior Assisted Living Facility with Memory Care.” Its 68 Assisted living and 40 Memory care “dwelling units” provide residential housing for seniors who desire and require specialized care, with services such senior residents logically require. Centralized kitchen preparation of three nutritious meals daily, safe cooking and proper storage of food and snacks are at the core of literally nourishing the needs of this population.

The average age for such assisted living is typically late eighties, however, early onset dementia sadly afflicts many at much younger ages. Proper state licensing guides age requirements for residential assisted living with memory care, as Applicant informed Staff when asked about senior citizen age requirement before the Planning Commission hearing September 4, 2019.

Subject Project CUP-S-812 Application Deemed Complete May 29, 2019 certainly does not require, nor is it advisable, to have kitchens or kitchenettes in the dwelling units of specialized Senior Assisted Living Facility with Memory Care to be constructed at the back edge of a residential community located on Cochran Street, 150 Feet East of Welcome Court (APNS: 650-0-260-030; 650-0-280-025).

A. SENIOR HOUSING UNIT DEFINED AS “ANY RESIDENTIAL ACCOMMODATION” APPLICABLE TO SUBJECT HOUSING DEVELOPMENT PROJECT DEEMED COMPLIANT FOR SENIOR ASSISTED LIVING WITH MEMORY CARE CONCLUSIVELY ESTABLISHES THE HAA APPLIES TO THIS HOUSING DEVELOPMENT PROJECT

As set forth in the Appeal, and herein, State Housing Density Bonus law sets forth legal definition for “senior housing units:” with Civil Code § 51.3 definition for Senior Housing Units incorporated into the Density Bonus Law, by therein state statutory Gov. Code directive, § 65915 subdivisions (b)(1)(C) and (f)(3)(A):

Civil Code § 51.3:

(5) “Dwelling unit” or “housing” means any residential accommodation other than a mobilehome.

The State of California certainly acknowledges in controlling law set forth in the Appeal, and necessarily further herein, due to the City’s current refusal to date to even find and apply the law that the City of Simi Valley is obligated and legally bound to apply, the fact that the senior citizen population, whether age 55, 60, 62 and of course, well beyond, requires varying
residential accommodations as the population ages. An independent energetic 76-year-old, for example, may enjoy a senior citizen housing development with kitchens in all individual units. That same individual ten years later at 86, may very well, as my own mother does now at 86, require residential accommodation in a different type of state law recognized senior citizen housing development residential facility that provides assisted living for those who need the accommodations the facility provides. Also, a 55-year-old, who suffers a stroke, for example, if lucky to recover may not fully recover, and would likely need accommodation in an assisted living facility, a specialized senior citizen housing development; such facts are fully acknowledged in California law, see Residential Care Facilities for the Elderly, Health and Safety Code §1569.2 (p) (1): “Persons under 60 years of age with compatible needs may be allowed to be admitted or retained in a residential care facility for the elderly as specified in Section 1569.316 [§ 1569.316 assess “for any history of dangerous propensity”].

B. AS A MATTER OF LAW THE HAA APPLIES TO THE SUBJECT PROJECT NOW BEFORE THE SIMI VALLEY CITY COUNCIL ON INSTANT APPEAL

The new November 4, Staff Report, at p. 6, in blatant violation of California state law falsely concludes:

"Because the living quarters in this Project do not include kitchens or kitchenettes, it is therefore not subject to the HAA."

"Any Residential Accommodation" (other than a mobilehome – separate law for those) conclusively negates any suggestion that specialized Senior Citizen Housing Development Projects will become excluded from Applicable HAA Mandates for Residential Housing Development Projects whereby Assisted living and Memory care “dwelling units” lack kitchens or kitchenettes!

No exaggeration is expressed hereby in describing the current November 4, 2019 Staff Appeal Analysis as sham legal analysis upon transparent misapplication of law to result in erroneous conclusions of law evident under controlling state law, in excessive bad faith attempt to continue to violate the law through suppression of needed specialized residential senior housing, and suppression of JM Squared Development, LLC’s legitimate entitlement to Project Conditional Use Permit Approval.

Whether this HAA applicable Senior Housing development project is called a senior residential assisted living facility with memory care or a residential care facility for the elderly that provides assisted living and memory care; either, having more than 35 residential dwelling units, or housing, as used interchangeably, are further specifically statutorily defined as a Senior Citizen Housing Development under the applicable housing bonus law that determines qualification for such bonus through use of Civ. Code § 51.3 definitions for senior housing projects.

Gov. Code Density Bonus law applicable to HAA Senior Development Projects, § 65915 subdivisions (b)(1)(C) and (f)(3)(A), both incorporate Civ. Code § 51.3 by reference for statutory “criteria” to define whether a developer(s) Senior Housing Development Project, already HAA APPLICABLE under the HAA’s intended broad inclusive mandate to apply to all residential housing development projects, § 65589.5 (h)(2)(A) or (B), further qualifies for a
special 20% Density Bonus. HAA mandated inclusion for Residential Housing Development Projects is quite purposely not limited to a particular “use” other than primarily residential.

C. UNDER APPLICABLE HOUSING ACCOUNTABILITY ACT (“HAA”), APPLICANT JM SQUARED DEVELOPMENT, LLC ALREADY HAS LEGITIMATE ENTITLEMENT RIGHT TO THE CONDITIONAL USE PERMIT, CUP-S-812, AS A MATTER OF APPLICABLE STATE MANDATE

HAA MANDATED APPROVAL, an entitlement by legitimate state right is held by Applicant JM Squared Development, LLC for the CUP-S-812, and Mitigated Negative Declaration to finally begin construction, on 2017 project inception, already two months overdue before the September 4 Planning Commission meeting, where this Project was set for Approval, the only Resolution on the Agenda, until Chairman Hodge closed out the hearing after Disapproval vote with the all too familiar refrain: “It’s a good project, not here.”

The subject CUP-S-812 Conditional Use Permit APPLICATION “Deemed Complete” May 29, 2019, became as of June 29, 2019, HAA Mandated “Deemed Consistent, Compliant, and in Conformity, and does not lose its HAA applicable status due to erroneous analysis, pulled far afield from applicable state Housing Development law and clearly intentioned HAA purpose, given new strength January 1, 2018, and now again, October 9, 2019, to bring forth APPROVALS for needed housing through strict state mandates.

Upon robust and now even further strengthened stated public policy and legislative intent, a “Housing development project” was and continues to be intentionally broadly defined to mean “a use” that is predominantly residential under the Housing Accountability Act at paragraph (2) of subdivision (h) of the HAA, Government Code § 65589.5, set forth in relevant part below (emphasis added):

h) The following definitions apply for the purposes of this section:

* * *

(2) “Housing development project” means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

JM Squared Development did not contend that this residential care facility for senior citizens – specialized Housing for Senior Citizens – falls under transitional or supportive housing definition (omitted from instant Appeal and herein above because inapplicable). Definition (C) “Transitional housing or supportive housing,” is analyzed in the new Staff Report while inexplicably, analysis of “(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use is glaringly omitted, especially since common area features such as the in-place hair salon and resident dining and lounges are noted in the current Nov. 4 Staff Report.
Again, Civil Code § 51.3 serves, for this yet unconstructed rather than “existing” Senior Citizen housing development, to provide additional controlling California state legal authority for HAA Applicability to subject Project that supplement already intentionally expansively broad HAA definition for Housing development Projects under § 65589.5 (h)(2)(A) or (B). The statutory “Goal” is to “Remove Barriers to Building Housing” as the City Attorney presents in slide 2/page 2 tonight (underline added).

HAA Housing development projects and eligibility for a Density Bonus integrate in two instances: 1) Affordable Housing Development Projects, and 2) Senior Citizen Housing Development Projects (HAA/Density Bonus Presentation, p. 9/slide 9). For Density Bonus eligibility, “‘Housing development,’ as used in this section, means a development project for five or more residential units, including mixed-use developments,” § 65915 (i).

The Housing laws therein set forth under the two integrated Gov. Code sections are quite on point for the already HAA Applicable subject Project as City Attorney Lonnie Eldridge accurately reviewed for his HAA/Density Bonus Presentation: the HAA applies to all housing (Presentation, p. 3/slide 3). Therein under Density Bonus law, you will additionally find statutory senior “dwelling unit” housing definition. Incorporated into the Density Bonus Law, by Gov. Code directive, § 65915 subdivisions (b)(1)(C) and (f)(3)(A), is Civ. Code § 51.3:

(a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) “Qualifying resident” or “senior citizen” means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

* * *

(4) “Senior citizen housing development” means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. . . .

(5) “Dwelling unit” or “housing” means any residential accommodation other than a mobilehome.

D. JM SQUARED DEVELOPMENT, LLC, UNDER HAA MANDATE FOR PROJECT DEEMED CONSISTENT, COMPLIANT, AND IN CONFORMITY HAS A LEGITIMATE STATE LAW ENTITLEMENT RIGHT TO THE CUP-S-812 AND MITIGATED NEGATIVE DECLARATION

City Council lacks legal authority to exercise discretion to uphold the Planning Commission September 4, 2019 Disapproval/denial that was a prejudicial abuse of discretion as a matter of law pursuant to HAA mandate effective June 29, 2019, for this Project. City Council has the
obligation and duty to uphold the law and Approve this Project now, over four months past date of legitimate entitlement by state right to the conditional use permit too long denied.

The City of Simi Valley agency did not, as it shall under Gov. Code, Housing Elements § 65589.5 (j)(2)(A)(i) if it considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, provide JM Squared Development, LLC with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity within 30 days of the May 29th date that the application for the housing development project of 150 or fewer housing units is determined to be complete.

§ 65589.5 (j)(2)(B): “If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

Gov. Code Density Bonus § 65915 subdivisions (b)(1)(c) and (f)(3)(A) both incorporate Civ. Code § 51.3, which is thereby made applicable to yet unconstructed residential Senior Citizen Housing Development Projects to determine whether or not the “criteria” -- for an already HAA APPLICABLE senior citizen Housing development Project – is satisfied to further qualify the Housing Project for the 20% Density Bonus, without low income unit requirement.

Again, that defining function of Civ. Code § 51.3 for already HAA Applicable Senior Citizen Development Projects also serves as the state statutory source for definition of “senior housing units” the same statutory source for Density Bonus law use to define a qualifying HAA Senior Housing Development Project, senior residential housing under HAA § 65589.5 (h)(2)(A) or (B). Applicable state law conclusively negates exclusion due to lack of kitchen/kitchenettes within Project housing residential dwelling units for this Senior Citizen Housing Development Project, as a matter of law as set forth in the Appeal, and necessarily further detailed herein to address current November 4, 2019 Staff Report’s sham legal analysis upon transparent misapplication of law that resulted in specious conclusions of law evident under controlling state law.

The applicable body of law was certainly reviewed and explained by Simi Valley’s City Attorney in his second such Presentation (first presented October 23) tonight on the HAA and Bonus Density law taken together; yet the current Staff Appeal Analysis, impermissibly attempts to avoid, and therefore not compel City Council to apply the law that City Attorney Mr. Eldridge must know is mandated on Appeal!

There is further obvious failure within Staff Appeal Analysis to acknowledge the fact that affordable Residential Undergraduate Residential Housing Development Projects that include construction of dormitories, commonly called dorms, are HAA Applicable Projects, and may qualify for a Density Bonus as Staff Appeal Analysis also falsely states the HAA would not apply to dormitory units (at p. 6); of course, the majority of undergraduate residential units do not have kitchens or kitchenettes.
Gov. Code Density Bonus law § 65915 (b)(1)(F)(i): “Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:”

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges.

Proper Staff Appeal Analysis of the State Housing Density Bonus Gov. Code statutory scheme should not result in failure to acknowledge that Civil Code Section 51.3 applies to define senior residential units. Contrary to Staff Appeal Analysis, this section is not limited to application for “existing” housing or for call upon to remedy, rather Civil Code § 51.3 is activated to define through Gov. Code § 65915 subdivisions (b)(1)(c) and (f)(3)(A) already HAA Applicable yet unconstructed Senior Citizen Housing Development Projects that will qualify for the 20% Density Bonus with 35 or more senior housing units therein defined in Civil Code § 51.3 (other concessions potentially available for Senior and Affordable housing apply separate analysis and criteria for each type).

New, Nov. 4 Staff Report Planning Commission Findings (p. 4), for Conditions, “Sanitation“ (interestingly), now scrubs out ”senior housing consisting of more than 35 units” under *B-21 (Sept. 4 Staff Report p.23); Nov. 4 Agenda Exhibit 3, Part 1 of 2) from the original Staff Report for the September 4 Planning Commission Hearing. Money to be assessed remains the same, however, this new finding instead states “residential care facility” under Sanitation Condition *B-21. This new Planning Commission Project finding replaces language of the very statutorily defined source, Civ. Code § 51.3, where proper Staff Appeal Analysis will find additional confirming applicable definition for senior “dwelling units” or “housing” as therein interchangeably used to most conclusively determine that “any residential accommodation” means kitchen/kitchenette are not required in the senior citizen dwelling units within a specialized senior citizen housing facility.

This “sanitation” on paper has no effect to change the law of what is broadly understood as an HAA mandated Senior Citizen Housing Development facility with more than 35 “residential units,” for predominantly residential “use.” Such sanitation does serve to reveal that the Nov. 4 Staff Appeal Analysis endeavored to ignore the specific statutory definitions for senior residential housing units within Civ. Code §51.3 definitions, to then disingenuously state (at p. 5): “The term ‘residential units’ is not defined in law,” in order to then falsely, as a matter of established California law, conclude: “Because the living quarters in this Project do not include kitchens or kitchenettes, it is therefore not subject to the HAA.”

As a matter of sound California law, senior dwelling units, housing, are statutorily defined for seniors within senior citizen housing development projects as “any residential accommodation,” absolutely no HAA requirement exists in controlling state law for kitchens or kitchenettes in these senior residential dwelling units, and are logically contraindicated for this specialized senior citizen housing development Project, a senior assisted living residential facility with memory care.
II. CONCLUSION

Current Staff Appeal Analysis (at p. 5) is correct: “If the Project were subject to the HAA, the City’s discretion would be limited because of the strict requirements of that law.”

As a matter of controlling state law set forth in the Appeal, and further herein, the HAA applies to this housing development project. The City is without legal discretion to uphold the September 4 Planning Commission Disapproval/Denial vote. Indeed, JM SQUARED DEVELOPMENT, LLC, effective June 29, 2019, obtained legitimate state entitlement right to the subject Conditional Use Permit, CUP-S-812, for this senior citizen housing development Project Application Deemed Complete May 29, 2019 (See City Attorney Presentation, pp. 2 and 6, and subject APPEAL filed 9/18/19).

The strongly stated legislative intent and public policy at the fore of remarkably “out loud” HAA law was purposefully given real teeth, effective January 1, 2018, to meaningfully and effectively curb the capability of the City of Simi Valley to disapprove this Conditional Use Permit Project Application. As strictly mandated, this housing development project was already, by HAA mandate as of June 29, 2019, deemed consistent, compliant, and in conformity (Gov. Code § 65589.5 (j)(2)(B); see also subject Appeal, filed September 18, 2019). Furthermore, upon project record, Simi Valley’s Dept. of Environmental Service, Planning Commission Staff Report Recommended Approval.

As deemed complete, this Project met objective standards required by the City for consistency, compliance and conformity. Requisite verifiable objective criteria were long methodically molded into and onto this project by Simi Valley’s own Stratis Perros, City Deputy Environmental Services Director/City Planner, and Donna Rosser, Senior Planner, knowledgeable City Planners working with applicant JM Squared Development’s project architects, beginning back in 2017.

This project further contributes to Simi Valley’s Housing Element Policy HE-4.3 that sets forth specific intent to, in relevant part: “Encourage the construction of specialized housing for senior citizens in the community.” Evident at the hearing, this Project was shut down in violation of strict HAA state mandate by NIMBY-swayed public officials; echoing public opposition, four commissioners impermissibly raised the same personal and/or subjective judgments of inconsistency, noncompliance and nonconformance at Hearing Sept. 4, 2019.

Should Simi Valley City Council endeavor to continue to violate California state law by November 4 vote for project disapproval/denial to stand upon Appeal, rather than reverse and Approve, there will be final exhaustion of administrative remedies. JM Squared Development, LLC, and HAA Housing Organization Advocate “Yes In My Backyard” (October 24, 2019 Letter from “YIMBY,” email attachment), may properly bring all applicable causes of action, including violation of JM Squared Development, LLC’s right to procedural due process of law under § 1983 of the Civil Rights Act of 1871, 42 U.S.C.

All available causes of action then ripen for robustly purposed litigation scrutiny directly in Federal Court (see LA Times article on June, 2019 U.S. Supreme Court Decision, email attachment) to reach proper judicial determinations upon all legal remedies pursued, for all
damages thereby available, including bad faith punitive damages transparent on the City of Simi Valley’s record for this CUP-S-812 Project Application, with attorneys’ fees and costs.

Respectfully submitted on behalf of CUP-S-812 Applicant JM SQUARED DEVELOPMENT, LLC on November 4, 2019, for November 4 Hearing on Appeal before the Simi Valley City Council

By: Bonnie L. Bercu, Esq. SBN: 169150
General Counsel, JM Squared Development, LLC
17942 Ventura Blvd., Encino, CA 91316

Cell: (818) 633-1177, Office: (818) 996-4757
Reporting from Washington — The Supreme Court's conservative majority gave a major boost to property rights Friday, ruling that developers and landowners may go directly to federal court and seek compensation for a “taking” of their property.

The 5-4 decision overturned a 1985 precedent that said property owners may not sue in federal court if their development plans were blocked until they had sought and been denied compensation from local officials or a state agency. This process often stretched over many years, effectively blocking a development, according to its critics.

The decision is likely to have its greatest impact in California, even though it began with a Pennsylvania woman’s complaint that people were walking across her property to visit a burial site.

California has especially strict regulations for development in its cities and along the coast, and property owners have repeatedly claimed...
these regulations and other zoning rules have the effect of “taking” their property.

Led by Chief Justice John G. Roberts Jr., the high court said property rights stand on the same footing as other rights protected by the Constitution. He pointed to the 5th Amendment, which says “private property [shall not] be taken for public use, without just compensation.”

Giving property owners a right to sue in federal court is a crucial step to “restoring taking claims to the full-fledged constitutional status the framers envisioned when they included the clause among the other protections in the Bill of Rights,” Roberts said in Knick vs. Township of Scott, Pa.

The decision is “one of most important property-rights cases in over 30 years,” said Los Angeles attorney Paul Beard II.

“For years, federal 'takings' plaintiffs have effectively and inexplicably been denied access to the federal courts,” Beard said. “As of today, the federal courthouse doors are open. We should see a steady stream of new claims against laws and regulations that deprive or significantly impair an individual’s or business’ property interests.”

Among other things, the decision could give property owners greater power to challenge local bans against fracking to extract oil and gas, he said.

Lawyers for the Pacific Legal Foundation, who represented Rose Knick, the Pennsylvania woman, called it a “landmark victory for property rights.”

“This decision is a very long time coming for Rose and other property owners who have had federal courtroom doors slammed shut in their faces whenever they seek compensation for a governmental taking of their private property,” said attorney Dave Breemer. “The court’s decision sends a message that constitutionally based property rights deserve federal protection just like other rights.”

Justice Brett M. Kavanaugh cast the deciding vote. The case was first argued on Oct. 3, when Kavanaugh’s nomination was before the Senate. He was confirmed a week later, and the court later announced it would rehear the Knick case in January, presumably because the justices were split 4-4.

The majority also included Justices Clarence Thomas, Samuel A. Alito Jr. and Neil M. Gorsuch.

In dissent, Justice Elena Kagan faulted the court for overturning a long-standing precedent. She said the ruling will “channel a mass of quintessentially local cases involving complex state-law issues into federal courts.”

She said the 1985 case, Williamson County vs. Hamilton Bank, arose when a local planning commission rejected a property owner’s development plan. She said the high court was right then to rule that a constitutional violation arose only when the owner was denied “just compensation” by the government.

“Today’s decision overthrows the court’s long-settled view of the takings clause. ... Under the cover of overruling only a single decision, [it] smashes a hundred-plus years of legal rulings to smithereens,” she wrote. The ruling “makes federal courts a principal player in local and state land-use disputes.”

She closed with a warning of what’s ahead. She noted that last month, the court had overturned another long-standing precedent, prompting Justice Stephen G. Breyer “to wonder which cases the court will overrule next.”

“Well, that didn’t take long,” Kagan said. “Now one may wonder yet again.”
Joining her dissent were Justices Ruth Bader Ginsburg, Sonia Sotomayor and Breyer.

Terry Sachs, a Philadelphia lawyer who defended Scott Township near Scranton, said she was disappointed by the ruling but still hoped to prevail.

“For hundreds of years, it has been the law in Pennsylvania and many other states that cemetery property is different — that a person or corporation who acquires land on which grave sites have been consecrated may not simply pave them over or forbid bereaved family from visiting,” Sachs said. “We are confident that no court — federal or state — would find it unconstitutional to hold the plaintiff to these responsibilities.”
RESOLUTION NO. 2019-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SIMI VALLEY APPROVING CONDITIONAL USE PERMIT (CUP-S-812) AND THE PROJECT’S MITIGATED NEGATIVE DECLARATION, TO CONSTRUCT AND OPERATE A RESIDENTIAL CARE FACILITY WITH 68 ASSISTED LIVING UNITS AND 40 MEMORY CARE UNITS LOCATED ON COCHRAN STREET, 150 FEET EAST OF WELCOME COURT

WHEREAS, the Applicant, JM Squared Development, LLC, has requested approval of a Conditional Use Permit (CUP-S-812) for that vacant 1.6-acre portion of a 19.2-acre site on Cochran Street, 150 feet east of Welcome Court, known as Ventura County Assessor’s Parcel Nos. 650-0-260-03, -280-02, -280-03 and by the legal description attached hereto as Exhibit A, for the purpose to construct and operate a residential care facility with 68 assisted living units and 40 memory care units; and adopt the project’s Mitigated Negative Declaration; and

WHEREAS, on September 4, 2019, the Planning Commission of the City of Simi Valley considered evidence and testimony on CUP-S-812, and the Mitigated Negative Declaration, and denied the project by a 4:1 vote; and

WHEREAS, on November 4, 2019, the City Council considered evidence and public testimony on the project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The findings for adoption of CUP-S-812 and the Mitigated Negative Declaration contained in Exhibit 3 of the City Council staff report dated September 4, 2019, and incorporated herein by reference, are approved.

SECTION 2. The Project Mitigated Negative Declaration contained in Exhibit 3 of the City Council staff report dated September 4, 2019, and Project Conditions, attached hereto within Exhibits B, are hereby adopted.

SECTION 3. Conditional Use Permit No. CUP-S-812 is hereby approved, subject to compliance with all the conditions attached hereto as Exhibit B.
SECTION 4. The time within which judicial review must be sought for administrative decisions is governed by California Code of Civil Procedure Section 1094.6.

SECTION 5. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the Office of the City Clerk.

PASSED and ADOPTED this 4th day of November 2019.

Attest:

_______________________________
Lucy Blanco, City Clerk

_______________________________
Keith L. Mashburn, Mayor of the City of Simi Valley, California

Approved as to Form: Approved as to Content:

_______________________________
Lonnie J. Eldridge, City Attorney

_______________________________
Brian Paul Gabler, Interim City Manager

Ronald K. Fuchiwaki
Interim Environmental Services Director
RESOLUTION NO. SVPC 14-2019

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SIMI VALLEY DENYING CONDITIONAL USE PERMIT CUP-S-812 AND THE PROJECT’S MITIGATED NEGATIVE DECLARATION, TO CONSTRUCT AND OPERATE A RESIDENTIAL CARE FACILITY WITH 68 ASSISTED LIVING UNITS AND 40 MEMORY CARE UNITS LOCATED ON COCHRAN STREET, 150 FEET EAST OF WELCOME COURT

WHEREAS, the applicant, JM Squared Development, LLC has requested approval for a Conditional Use Permit CUP-S-812 for an approximately 1.6-acre portion of a 19.2-acre site located on the south side of Cochran Street, 150 feet east of Welcome Court, known as Ventura County Assessor's Parcel No. 650-0-260-030; -025, and by the legal description attached hereto as Exhibit A, to construct and operate a residential care facility with 68 assisted living units and 40 memory care units; and

WHEREAS, an Initial Study and Mitigated Negative Declaration were prepared for the project, and advertised from August 14, 2019 to September 3, 2019; and

WHEREAS, the Planning Commission held a duly noticed public hearing to consider this request on September 4, 2019 and the Planning Commission considered all evidence and testimony read at the public hearing.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF SIMI VALLEY DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings for the Mitigated Negative Declaration contained in the Planning Commission staff report dated September 4, 2019, and incorporated herein by reference, are not adopted.

SECTION 2. The project Mitigated Negative Declaration contained in the Planning Commission staff report dated September 4, 2019 prepared for CUP-S-812 is denied.

SECTION 3. The findings, for denial, for CUP-S-812, are hereby adopted as follows:

1. The proposed use is not consistent with the purpose, intent, goals, policies, programs, and land use designations of the General Plan (SVMC Section 9-52.070.G.2) in that the following General Plan Policies cannot be met:
a. General Plan Land Use Policy LU-4.8 states: Design buildings to be architecturally integrated into the terrain and blend with the natural environment. The proposed development would not blend in with the natural environment due to the large scale of the proposed building. Therefore, this policy cannot be met.

b. The purpose of the Residential Medium Density Land Use designation is to encourage a predominantly single-family residential environment with a wide range of lot sizes, but an overall density similar to the bulk of single-family developments on the valley floor. The proposed development is not consistent with the purpose and intent of the General Plan in regards to housing type and bulk of the proposed building being out of scale. Therefore, the project is not consistent with the Residential Medium Density Land Use.

2. The design, location, operating characteristics, and size of the proposed use is not compatible with the existing and future land uses in the vicinity, in terms of aesthetics, character, scale, and view protection (SVMC Section 9-52.070.G.4): The building scale is not softened by having a one-story portion of the building since the one-story portion is only a small portion of the building and the building being set closest to the hillside to lower the building visibility does not lessen the appearance of the building. The proposed residential care facility is not compatible with the existing adjoining single-family and multi-family residential uses. Therefore, this finding cannot be met.

SECTION 4. Conditional Use Permit No. CUP-S-812 is hereby denied.

SECTION 5. The time within which judicial review must be sought for administrative decisions is governed by California Code of Civil Procedure Section 1094.6.
PASSED and ADOPTED this 9th day of October, 2019

Attest:

__________________________  __________________________
Jennifer Dodson               Tim Hodge, Chairperson
Recording Secretary          Planning Commission

Approved as to Form:  Approved as to Content:

__________________________  __________________________
David Caceres                Stratis Perros, Deputy Environmental
Assistant City Attorney      Services Director/City Planner

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Planning Commission of the City of Simi Valley, California, at a regular meeting held on September 4, 2019, by the following vote:

AYES: Commissioners, Casselberry, Jr., Tolson, Vice Chairperson Mann, and Chairperson Hodge

NAYS: Chairperson Rice

ABSTAIN: None

ABSENT: None

ATTEST:

__________________________
Jennifer Dodson
Recording Secretary