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July 5, 2023

VIA E-MAIL

Linda Ly, Associate Planner
Planning Division
Community Development Department
City of San Mateo
330 West 20th Avenue
San Mateo, CA 94403

Re: 477 9th Avenue – Density Bonus Project Request In Support Of PA-2022-047

Dear Ms. Ly:

We represent The Martin Group in connection with its application for a proposed mixed-use project located at 477 9th Avenue. Our client is excited to put forth a proposal to revitalize an underutilized site in the City's Downtown Plan Area, and to provide much needed market-rate and affordable housing and employment uses within one-half mile of the San Mateo Caltrain Station. As evidenced by City Council discussions over the last few years, as well as the City's current Regional Housing Needs Allocation of more than 7,000 new housing units over the next eight-year cycle, the City has a severe need to add affordable and market-rate units to its housing stock. By providing both residential and office uses in the Downtown area, including 15 percent of the project's "base" units as very-low income affordable units, the project will not only help to alleviate some of the strain on the City's housing stock and contribute significantly toward the City's satisfaction of its RHNA obligations, but also help reduce vehicle miles traveled (VMT) due to its mixed-use nature and proximity to transit and other uses.

The Martin Group submitted a Preliminary Application for Housing Development Project (SB 330) Application Number PA-2022-005 and a corresponding Preliminary Application Number PA-2022-004, on January 14, 2022, and resubmitted its Planning Application Number PA-2022-047 on January 23, 2023. The purpose of this letter is to supplement PA-2022-047 and to formally request certain concessions and waivers as permitted by the Density Bonus Law.

As you are aware, the Density Bonus Law authorizes the waiver of development standards to the extent they would physically preclude construction of a proposed project with the permitted "bonus" units or with the requested concessions. (Gov. Code § 65915(e).) As detailed below, in order to accommodate 40 additional bonus units, the project will require a waiver from the City's floor area ratio standard.

In addition to the requested waiver, the applicant is also requesting concessions to reduce the parcel coverage requirement of San Mateo Municipal Code Section 27.48.065, and to increase

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the percentage of the total parking spaces that may be compact spaces pursuant to Section 27.64.265(2). The requested concessions would provide the project with identifiable and actual cost reductions, as described below.

1. Project Description

The proposed project would demolish an approximately 21,600 square foot, single-story office building that was constructed in the early-1980's. The 1.6-acre site would be redeveloped with 120 rental dwelling units (80 units allowed by zoning and 40 "bonus" units authorized by the Density Bonus Law) constructed over approximately 27,076 square feet of office uses within a five-story, 209,204 gross square foot, 53'-6" tall building. The project would also include a number of residential amenities and open spaces, including an approximately 1,800 square foot fitness center for residents, a 2,651 square foot lounge area, a 760 square foot residence "club area," a 649 square foot roof deck, an 8,944 square foot central courtyard common area, and 10,599 square feet of at-grade open space and landscaped areas that include a 1,770 square foot plaza and a 640 square foot dog park. In total, the Project would provide 20,192 square feet of common open space and 2,076 square feet of private open space, for a total of 22,268 square feet. The building would also include a 2,548 square foot lobby/leasing office area. Finally, the project would provide 141 vehicle parking spaces in an above-ground garage and nine surface parking spaces, for a total of 150 vehicle parking spaces, and 132 long-term bicycle parking spaces in a secure area and 12 short-term bicycle parking spaces.¹

The project proposes an efficient use of the site area, including reduced residential parking provided mostly within a covered multi-level garage. The building is also required to avoid placing structures within an existing 40-foot wide railroad easement along the site's western edge, in addition to providing necessary site circulation areas and emergency access, surface parking spaces, loading, open space, and setback areas.

2. Density Bonus Project Details

The project is located in the E2-2 (Executive Offices) zoning district which permits residential uses with a special use permit, subject to the "Minimum Development Standards" in Section 27.24.040 for the R4 zoning district. (San Mateo Municipal Code § 27.48.030.) The maximum base residential density in the R4 district is 50 dwelling units per acre, which would allow 80 units on the 1.6-acre project site.

Of the 80 base residential units, the project would provide 15 percent, or 12 units, as affordable units to very-low income households. As a result, pursuant to the Density Bonus Law (Gov. Code

¹ As expressly permitted by the State Density Bonus Law, the project includes two tandem spaces that provide four of the 112 residential parking spaces. Government Code section 65915(p)(5) states that "a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking."

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§ 65915(f)(2)) the project is entitled to a 50 percent density bonus, which would allow for development of 120 residential units at the project site, consisting of 108 market-rate units and 12 very-low income affordable units (since the number of affordable units is calculated based on the 80 units allowed by zoning). By committing to providing 15 percent of the “base” units as very-low income units, the project is also entitled to three incentives or concessions, and an unlimited number of waivers. (Gov. Code § 65915(d)(2)(C), (e).)

3. Waiver Required to Accommodate the Bonus Project

Pursuant to the Density Bonus Law, a local agency shall not apply "any development standard that will have the effect of physically precluding the construction of" the density bonus project at the density permitted by the Law. (Gov. Code § 65915(e).) Regarding waivers, courts have clarified that “a city may not apply any development standard that would physically preclude construction of that project *as designed*, even if the building includes ‘amenities’ beyond the bare minimum of building components.” (Bankers Hill 150 v. City of San Diego (2022) 74 Cal.App.5th 755, 775 [emphasis added], citing Wollmer v. City of Berkeley (2011) 193 Cal.App.4th 1329, 1346.)

To allow for development of the project with the 50 percent density bonus, the applicant requests a waiver to exceed the maximum FAR of 2.0 to physically allow for development of the 40 density bonus units which otherwise cannot be accommodated within a smaller building envelope. As shown on the plans, each level of residential (floors three through five) accommodates between 39 to 41 units. In order to accommodate the additional 40 bonus units, an additional floor is therefore required. This waiver is further required because the Project as designed includes 112 parking spaces for the 120 residential units (approximately 0.93 spaces/unit), and San Mateo counts above-grade parking as gross floor area, which for the project is equal to 0.88 FAR. Thus, parking accounts for a significant allocation of the allowable FAR. A waiver is appropriate here because it is not physically possible to accommodate the additional 40 base units without exceeding the FAR limit of 2.0, when accounting for the 80 base residential units, the principally permitted office space, lobby, fitness and amenity areas, and the parking garage. Without a waiver of the FAR limit, the project with the bonus residential units would be physically precluded.

4. Requested Concession to Provide Identifiable and Actual Cost Reductions

By providing 15 percent of the total base units in the project as very-low income units, the project is eligible for three incentives/concessions pursuant to the State Density Bonus Law. The Density Bonus Law defines concessions as modifications or reductions from development standards that result in identifiable and actual cost reductions to provide for affordable housing costs. (Gov. Code § 65915(k)(1).) The project is requesting two concessions, which together would save the project between approximately \$1,500,000 and \$2,800,000. This is a significant cost savings to allow the project to provide the 12 very-low income affordable units, which are estimated to cost \$438,000 per unit, or \$5,256,000 total. The local government must grant a requested concession unless it makes one of the findings set forth in Government Code Section 65915(d). By requiring a local

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government to grant incentives *unless* it makes particular findings, the statute places the burden of proof on the local government to overcome the presumption that incentives will result in cost reductions. (Schreiber v. City of Los Angeles (2021) 69 Cal.App.5th 549, 556.)

a. Parcel Coverage Requirement

Section 27.48.065 of the City's Zoning Code requires that projects within the E2 zoning district provide 20 percent of the site as at-grade open space.² The approximately 69,975 square foot project site would therefore be required to provide 13,995 square feet of at-grade open space to comply with the standard. Due to site constraints and other factors including cost, the project proposes to provide a total of 10,599 square feet of at-grade open space, including a 640 square foot dog park for residents, a 1,770 square foot publicly accessible plaza along 9th Avenue, and an additional 8,189 square feet of landscaped and pedestrian circulation areas. To allow for this alternative means of compliance with the intent of the City's Code, the applicant requests a concession to provide the balance of the required open space area as above-grade open spaces. In addition to the at-grade open space areas, the project would provide above-grade common open spaces that would be accessible to all project residents, consisting of a 649 square foot roof deck and 8,944 square foot elevated internal courtyard. In total, the project would provide 20,192 square feet of common open space, and an additional 2,076 square feet as private open space in the form of decks, for a combined total of 22,268 square feet of open space (8,273 square feet more than is otherwise required by Section 27.48.065).

If the project is required to strictly comply with Section 27.48.065, the applicant would need to either construct a narrower and taller building than is proposed (requiring the building to exceed the 55-foot height limit) in order to physically create sufficient area at-grade to meet the standard, or provide some amount of parking below-grade. This is because approximately 7,000 square feet of space would need to be removed and "displaced" elsewhere within the project in order to keep the program consistent. As a result, if this 7,000 square feet were relocated as below-grade parking, this would require construction of approximately 35 parking spaces below grade at a cost of approximately \$50,000 per space, or \$1,750,000. Alternatively, 7,000 square feet of office space would be required to move to the third floor and displace an equal amount of residential square footage (approximately eight units), requiring construction of a partial sixth floor, including an additional elevator landing, stairwells, and life safety system upgrades at a cost of approximately \$400 per square foot, or \$2,800,000. Building subterranean parking would be cost-prohibitive, and adding an additional level to the structure would also result in diminished

² It is worth noting that if the project site were designated with an R4 residential overlay district classification, a 10% open space requirement would apply instead of the 20% requirement. While not expressly reflected in the zoning ordinance, if a 10% standard is sufficient for sites within an overlay district, it would follow that the same 10% standard should be sufficient for similarly situated sites (i.e., also zoned E2 and within the Downtown Plan area) that are seeking to provide housing subject to the same R4 standards with a special use permit.

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efficiency and substantially increased construction costs. Further, if the development program was squeezed enough to require two additional levels to accommodate the project within a reduced building footprint, the project would be required to utilize more costly Type III-A wood construction for all floors above the above the Type I-A podium, instead of the proposed three levels of Type V-A wood construction. By allowing for a reduction in the required at-grade open space area and a reallocation of the open space to internal, elevated open space areas, the requested incentive/concession will result in a more efficient project with identifiable and actual cost reductions of between \$1,750,000 to \$2,800,000 to provide for the 12 very-low income affordable housing units to be provided as part of the project, which affordable units are estimated to cost \$438,000 per unit, or \$5,256,000 total.

In the alternative, the applicant requests relief from the at-grade open space requirement as a waiver. The project building is required to avoid an existing 40-foot wide railroad easement along the site's western edge, in addition to providing necessary site circulation areas and emergency access, surface parking spaces, loading, open space, and setback areas. Therefore, if the project is required to provide all 13,995 square feet of the open space requirement at-grade, development of the project with the 40 density bonus units would be physically precluded because the open space area would further reduce the allowable building footprint and envelope under the otherwise applicable FAR and height standards (which would be true even with the requested waivers).³

b. Additional Compact Spaces

The Martin Group requests a second concession to modify the requirements of San Mateo Municipal Code Section 27.64.265(2) limiting the percentage of the total parking spaces that may be compact spaces to 40 percent, or 60 spaces. In order to accommodate the higher percentage of CAV spaces in the garage, particularly the required spaces with electric vehicle charging equipment, while also retaining the proposed office and residential square footage, including amenities, and providing all of the 150 parking spaces included in the project design, the project now proposes to include 50 percent, or 75 spaces, of the total parking spaces as compact spaces. This would increase the number of compact parking spaces by 15 spaces.

Compact spaces are inherently more cost-effective than non-compact spaces because the cost of a parking space is determined by the cost per square foot times the square footage of the parking stalls. Compact spaces, by virtue of being compact, therefore result in actual cost reductions.

If the project is required to comply with the limitation in Section 27.64.265 within the currently proposed building envelope and footprint, by contrast, the project would need to be redesigned to: (i) reduce the office square footage in order to continue to provide the proposed 120 residential

³ As noted above, the holding in Bankers Hill 150 v. City of San Diego precludes the City from requiring that the project be redesigned—to reduce building amenity spaces, to eliminate parking spaces, or otherwise—in order to avoid the need for a waiver.

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units (inclusive of the 50 percent density bonus units), (ii) develop a level of parking below grade, or (iii) reduce the number of density bonus units included in the project in order to retain the office square footage.

Revenue from office leasing is essential for the project to provide the proposed 15 percent of units as very-low income affordable units. Thus, a concession to increase the percentage of compact spaces from 40 percent to 50 percent of the total spaces would allow the project to retain the office square footage as proposed, increasing the overall revenue to the project and providing the project with identifiable and actual cost reductions to provide for affordable housing costs.

If the project was instead required to develop a level of parking below grade in order to remain below the existing height limit and retain the existing lot coverage and other project specifications, the great cost associated with that below-grade construction (at more than \$50,000 per stall, or \$1,500,000) would preclude the project from being able to provide the desired number of affordable units and at the proposed very low-income affordability level. Therefore, by allowing the project to proceed as currently designed, the requested concession provides the project with identifiable and actual cost reductions to provide for affordable housing costs.

In the alternative, the applicant requests relief from the compact space limitation as a waiver. If the project is limited to providing only 40 percent of the total spaces as compact spaces, development of the project with the 40 density bonus units would be physically precluded because the additional parking area needed would further reduce the available occupiable building area within the current building envelope as designed.

* * *

On behalf of the applicant, we appreciate your time and attention to this matter and look forward to working with you. If any additional materials would assist the City's review of our request, or if you have any questions, please do not hesitate to let us know.

Regards,

A handwritten signature in black ink, appearing to read 'Frank Petrilli', with a long horizontal flourish extending to the right.

Frank Petrilli