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October 18, 2023

Somer Smith, AICP
Associate Planner
City of San Mateo Community Development
Department
330 West 20th Avenue
San Mateo, CA 94403

Re: Nazareth Vista LLC Mixed-Use Development Project
616 South B Street - PA 2022-037; APNs 034-194-030, 034-194-140
Amended Density Bonus Request Letter

Dear Ms. Smith:

This letter is on behalf of applicant Nazareth Vista LLC (“Applicant”) in support of their entitlement application for a housing development project on 616 South B Street, San Mateo, CA 94403 (“Project”). This letter addresses the Project’s density bonus, parking ratio, and several waivers that are being requested by the Applicant for the Project. This letter also incorporates feedback provided by the City of San Mateo (“City”) in its letters dated June 17, 2022; November 22, 2022; and March 9, 2023 (as amended on March 17, 2023).

Project Overview

The Project proposes a parking garage in the basement, three commercial spaces and additional parking on the first floor, and shared residential areas on the second and fifth floor. The Project also proposes 48 rental residential units across the second, third, fourth, and fifth floors. The Project has a base density of 32 units calculated upon a base density of 50 du/ac at 0.64 gross

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acres.¹ The Project will provide 5 Very Low Income units, or 15% of base density (4.8 units), rounded up to the nearest whole number. Providing 15% of base units as Very Low Income entitles the Project to a 50% density bonus, pursuant to Government Code Section 65915(f)(2). Fifty percent of the base density of 32 units is 16 units. As a result, the Project will receive a bonus of 16 units to its 32 base units to bring the total for the Project to 48 housing units.

The Project also incorporates the parking ratios set forth in Government Code Section 65915(p)(2)(A). Government Code Section 65915(p)(2)(A) provides that a housing development with 11% Very Low Income units that is also one-half mile from a major transit stop to have a parking ratio that does not exceed 0.5 spaces per housing unit. Because 15% of the base units of the Project are designated as Very Low Income, and the Project is approximately 0.4 miles from the San Mateo Station serviced by Caltrain, the Project will be entitled to a parking ratio that does not exceed 0.5 spaces per housing unit. Therefore, the Project is required to provide a minimum of 24 spaces.

The Project will have 53 residential parking spaces, exceeding the minimum parking requirement of 24 spaces. The Project will have another 19 spaces dedicated for visitor and retail parking, satisfying the requirement for 19 retail parking spots, and resulting in a total of 72 parking spaces. Thus, the Project satisfies both the residential and commercial parking minimums.

However, the Project qualifies for parking reductions based on AB 2097, which went into effect on January 1, 2023. This new legislation prevents state and local public agencies from “impos[ing] or enforce[ing] any minimum automobile parking requirement on a residential, commercial, or other development project if the project is located within one-half mile of public transit.” The Project is within 0.5 miles of public transit. As a result, although the Project will satisfy current parking requirements, the City may not “impose or enforce” these requirements because.

The Project is eligible for three concessions/incentives, pursuant to Government Code Section 65915(d)(2)(C). At this time, the Project does not propose any concessions/incentives, but the Applicant reserves the right to modify the Project to take advantage of these concessions/incentives, if necessary or appropriate. Finally, the Applicant requires five waivers also outlined below.

Waivers

Government Code Section 65915(e) states that the City shall waive any applicable development standard that would have the effect of physically precluding the Project unless the local agency finds that the waiver would (1) violate state or federal law; or (2) have a significant and unmitigable impact on public health or safety, as defined in Government Code 65589.5(d)(2).

The standard for considering waiver requests was interpreted by the court recently in *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755 (“*Bankers Hill*”). In *Bankers*

¹ Density for purposes of a density bonus is calculated based upon dwelling units per gross acre. See Gov. Code, § 65915(f).

Hill, neighborhood groups challenged a height waiver for a project that was granted by the City of San Diego, because they claimed that the project could have been redesigned to avoid the need for a height waiver. The court found that the city lacked discretion to deny a height waiver because once the applicant had “established its eligibility for the density bonus . . . , it was entitled to a waiver of any development standards that would preclude construction” of the proposed project unless the city could make findings of a specific, adverse impact on public health or safety, or unless granting the waiver would violate state or federal law (*Bankers Hill*, p. 774).

As a result, the Applicant has the initial burden of justifying a waiver by showing that under Government Code Section 65915, the Project qualifies for the density proposed, and that the Project cannot be constructed as proposed unless the waiver is granted. If the Applicant meets this burden, the burden shifts to the City to identify a significant, adverse impact on public health or safety, or a violation of federal law. The Applicant is not required to consider or propose alternative projects that attempt to achieve the same density without the waivers sought.

As outlined in the Project Overview above, the Project qualifies for a density bonus with a maximum density of 48 units. The Applicant has designed a project with 48 units. The development standards discussed below would physically preclude construction of the Project. Thus, the Project is entitled to be granted the below waivers from standards unless the City makes a finding for denial as described above. The Applicant is unaware of any circumstances that would justify finding for denial.

Increased Ramp Slope

The Applicant requests a waiver to San Mateo Municipal Code (“SMMC”) Section 23.40.050(g)(1)(C) which requires that ramps that have no pedestrian access and are not emergency vehicle access easements have a maximum grade of 18%. The Project proposes a 20% grade. By increasing the length of the ramp and reducing the grade to 18%, the Project would lose 4 parking stalls. The Project is providing more than the minimum required amount of parking stalls as an amenity for its residents because renters frequently seek out on-site parking when looking for housing. As a result, without this waiver, the Applicant would be precluded from constructing the Project as designed because it would be forced to eliminate this amenity.

The development at issue in *Bankers Hill* was designed with several amenities, including a courtyard. The development could have been redesigned to eliminate the courtyard and eliminate the need for a waiver of the local height restriction. However, the court in *Bankers Hill* upheld precedent that “when a developer proposes a project that qualifies for a density bonus, the law provides a developer with broad discretion to design projects with additional amenities even if doing so would conflict with local development standards.” (*Bankers Hill*, p. 774-775.) As a result, the court in *Bankers Hill* concluded that the development was entitled to a waiver of the height limit, even though the development could have been redesigned to conform with the height limit by eliminating the space taken up by the courtyard which was included as an amenity in the development for its future residents.

Thus, under *Bankers Hill*, the Applicant is entitled to a waiver to the 18% maximum grade because the Applicant is providing abundant parking spaces as an amenity to residents. The

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Applicant has established the Project's eligibility for the density bonus and enforcing the 18% maximum grade would preclude construction of the Project as designed. Therefore, the Applicant is not required to redesign the Project to accommodate the 18% maximum grade and to eliminate extra parking that is being included as an amenity for future residents.

Increased Compact Stalls

The Applicant requests a waiver to SMMC Section 27.64.265 which provides that 30% of parking stalls may be compact when the number of required spaces is from 10 to 100. The Project has 72 parking stalls, so under the existing law, 30% of those spaces can be compact. The Project has 35 compact parking spaces which means 49% of parking stalls are compact. As a result, enforcing the compact stall limit would result in 13 fewer parking spots.

Again, the Project is designed to provide excess parking as an amenity for future residents. As stated above, the Project is not subject to a parking ratio under AB 2097. Nevertheless, the Project is still designed to provide, on average, nearly 1.5 stalls per unit because abundant on-site parking is often an amenity that is sought out by potential residents. Under *Bankers Hill*, because the Project has qualified for a density bonus, the Project will be entitled to waivers of development standards that would physically preclude construction by requiring a redesign that eliminates amenities.

Therefore, the Project would be physically precluded from construction as designed without the increased number of compact stalls. Consequently, the City must grant the waiver because the Applicant is not required to redesign the project to accommodate the limit on the number of compact parking stalls.

Curbside Loading Berths

The Applicant requests a waiver to the requirement that the Project provide on-site loading, specifically to include a 10' x 25' off-street loading berth per SMMC Section 27.64.390. Including on-site loading by providing an off-street loading berth in the Project would preclude the construction of the development at proposed density. Designing the Project to incorporate an off-street loading berth would require that the garage provide a vertical clearance of 14 feet, per SMMC Section 27.64.320. Redesigning the garage to provide 14 feet of clearance will result in the potential elimination of housing units on the floor above the parking garage, reducing the density of the Project as designed.

Furthermore, including on-site loading will also eliminate approximately 3 parking spaces and obstruct the flow of commercial and residential traffic in and out of the ground floor and basement parking garages. As stated above, the Project is providing abundant parking, despite not being required to do so under AB 2097, as an amenity of the Project. Therefore, the City must grant this waiver because the addition of an off-street loading berth will result in the Project not being built at the proposed density and the elimination of an amenity.

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Setback Requirements

The Applicant requests a waiver to the 20-foot setback requirement along 7th Avenue per SMMC Section 27.28.084. The Project currently has no setback along 7th Avenue, so enforcing the 20-foot setback requirement would preclude the Project from being constructed as designed at the proposed density. Adding a 20-foot setback would result in reducing the building's footprint and as a result, losing affordable residential units. Because the Project has qualified for a density bonus, the Applicant cannot be required to redesign the project under *Bankers Hill*. The Applicant asks that the City grant a waiver to this setback requirement to allow the Project to be constructed as designed at the proposed density.

The Applicant requests an additional waiver to the 15-foot rear setback per SMMC Section 27.28.086. The Project currently has an 11" rear setback, so complying with this setback requirement would decrease the building's footprint and reduce the number of affordable units the Project can provide. Because the Project has qualified for a density bonus, and this setback requirement would also prohibit the Project from being constructed as designed at the proposed density, the Applicant asks that the City also waive this setback requirement pursuant to the holding in *Bankers Hill*.

Floor Area Ratio

The Applicant requests a waiver to the floor area ratio limit ("FAR") the Project is subject to. The Project is in a C1-3/R5 district, which has a FAR of 3.0 pursuant to SMMC Sections 27.26.050, 27.28.050, 27.29.110, and 27.30.050. The Project is on a 27,921 sq/ft lot and has a total floor area of 84,132 sq/ft. Consequently, the Project has a FAR of 3.01. If the Project was required to comply with a FAR of 3.0, it would be required to reduce its total floor area to 83,763 sq/ft. This would result in eliminating housing units from the Project and reducing the total number of affordable housing units.

For the foregoing reasons, the Project qualifies for a density bonus and associated waivers. Please let me know if I can assist you further in understanding the Project.

Very truly yours,

BERLINER COHEN, LLP



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