

July 10, 2021

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

Via Email

Re: 222 E. 4th Avenue, San Mateo – Density Bonus Law Project

Dear Ms. Lao,

This correspondence revises and supplements Lane Partners' March 24, 2021, letter to you regarding the application of the state Density Bonus Law to the project. This correspondence is in response to comments and questions from City Staff over the last few months, including your May 7 comment letter. Except as revised herein, the content of the March 24 letter is unchanged.

Lane Partners is proposing to develop the above-referenced property as a mixed-use development consisting of ground floor retail, three levels of commercial office space, and one level consisting of ten (10) multi-family housing units serving low-income families (at the 80% AMI level). We have engaged an affordable housing partner to assist in the design of the affordable housing units and to lease and manage the units upon completion.

As a procedural matter, please note that a preliminary application submitted pursuant to SB 330 (see Gov. Code § 65941.1) does not provide a mechanism for a local agency to determine its completeness; a completeness determination only applies to the subsequently-submitted formal development application. (Gov. Code § 65941.1(d)(2),(3).) However, the comments set forth in your May 7 letter should significantly reduce the processing and review time once the formal development application is submitted.

The purpose of this letter is to remind the City that the project is subject to the state Density Bonus Law ("DBL") and that the application is subject to Government Code section 65915(a). By providing ten residential units on the fifth floor, the project qualifies as a "housing development" under the DBL, which City Staff has confirmed.

A. Density Bonus

The project's ten residential units will be available to lower income households (80% AMI), thus the project automatically qualifies for a density bonus of up to 80% above the maximum

allowable residential density of an FAR of 3.0.¹ Even though this yields a maximum FAR of 5.4, the project will be developed at a 3.1 FAR.

Your May 7 correspondence claims that an FAR increase should not be considered a density bonus and should instead be characterized as a waiver request. Although a density bonus inherently increases a project's density, whether based on a unit per acre or FAR calculation, please be advised that Lane Partners hereby submits the FAR increase as a waiver request, per your direction. It is self-explanatory that without this FAR increase, the project could not be constructed as proposed, thereby meeting the criterion for a waiver request.

B. AB 1763 Automatic Height Increase

Because the project will provide 100% of the residential units to lower income households and is located within a half-mile of a major transit stop, AB 1763 mandates that the project receive a building height increase of up to three additional stories or 33 feet.² At this point, the project seeks only a height increase from four to five stories, which is necessary to accommodate the project's affordable units.

C. Requested Incentives

Per the amendments to the DBL enacted by AB 1763, the project is entitled up to four incentives.³ Under the DBL, the definition of an "incentive" includes, but is not limited to, a reduction in site development standards or a modification of zoning code requirements, or other regulatory incentives proposed by the developer, that result in identifiable and actual cost reductions to provide for affordable housing costs.⁴

A local agency must grant the incentive request unless it can make a written finding, based on substantial evidence, that: (1) the incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs; (2) the incentive would have a specific, adverse impact on the public health, safety, or physical environment or upon an historical resource; or (3) would be contrary to state or federal law.⁵ We submit that none of those findings can be made in this case.

The first incentive seeks partial relief from the retail frontage requirements set forth in Zoning Code section 27.38.110. As depicted in the Downtown Area Plan's "Required Retail

¹ Gov. Code § 65915(f)(3)(D)(i).

² Gov. Code § 65915(d)(2)(D).

³ *Ibid.* In our October 27 correspondence, we requested an incentive regarding the City's onsite parking requirements. Per the amendments to Government Code section 65915(p)(3) effective January 1, 2021, we request that the City not impose any vehicular parking standards upon the project. As such, an incentive is no longer necessary for relief from a city's parking standards.

⁴ Gov. Code § 65915(k).

⁵ Gov. Code § 65915(d)(1).

Frontage Zones” map (Fig. 11), the project site is required to establish retail or similar uses along its South Ellsworth Avenue, East 4th Avenue, and South B Street frontages. Our incentive request is to except the retail requirement along the S. Ellsworth Avenue and S. B Street frontages of the project site. Due to the location of the project’s parking garage, office and residential lobbies, bike storage, and trash rooms, the minimum 75% retail frontage requirement along these two frontages cannot be met. This requested modification of the City’s Zoning Code requirements would result in project cost reductions that would help offset the costs of providing the affordable housing units. It is widely recognized that the economic effects of the Covid-19 pandemic include the devastation of the urban retail sector. Requiring the project to comply with Section 27.38.110 would make the project economically infeasible to construct and operate. Reducing the retail requirement from three frontages to one would yield cost savings to help offset the costs of providing the affordable units. We will nevertheless maintain pedestrian-friendly ground floor frontages along S. Ellsworth Avenue and B Street. (The project design contemplates typical retail and a transparent office lobby along S. Ellsworth and typical retail and the affordable residential lobby along B Street.) Please note that the project will provide retail frontages of 47% along South B Street and 47% along South Ellsworth Avenue.

As you know, a major concern is preserving the loading zone on the B Street frontage for both Draeger’s and any future grocery store tenants. Lane Partners has developed a plan that would comply with the 2020 Bicycle Master Plan (BMP) while maintaining the functionality of the loading zone, and we are confident that a mutually agreeable solution can be reached. If we cannot, however, we will use our second incentive to obtain relief from the application of any development standards that would eliminate or restrict this loading zone.

Your June 22 email to me claims that neither an incentive nor a waiver may be used as an exception to any City standard prohibiting loading on B Street, and that a Zoning Code amendment and SPAR approval would be required. Your email does not explain why the requested change to the City’s loading zone requirements cannot be secured by an incentive or a waiver or how the statutory findings to deny such a request could be made. If you have any further information, please share it. On July 6, I submitted a letter to the City Manager regarding the need for the loading zone in its proposed location, so I hope that we can resolve this issue without further delay.

While we believe that the two requests above are better suited as incentives rather than development standard waivers, Lane Partners looks forward to discussing with Staff the project’s compliance with City regulations and the use of incentives and waivers as needed.

D. Requested Development Standard Waivers

Regarding development standard waivers, they are unlimited, and AB 1763’s partial limitation on waivers is restricted to situations involving the use of waivers from maximum density controls, which is not applicable here. The project’s development standard waivers that are

identified at this point of the entitlement process are as follows:⁶

- City Code section 27.38.080 limits structures in the CBD zoning district to the maximum bulk limits in Chapter 27.40. The project will exceed the bulk standards set forth in Section 27.40.030, which, if applied, would physically preclude development of the project.
- City Code section 27.38.100(b) requires at least 75% of a project's building line to be built to the property line. The project will not meet this requirement along its Ellsworth frontage (70% of the building line is built to the property line) as the project is designed to provide a large public plaza in this area which is designed to engage the community and activate the pedestrian realm. Without the requested waiver, this development standard would physically preclude development of the project.
- Sidewalk width requirements on B Street are required to meet sidewalk type A10 in Appendix A of the Pedestrian Master Plan. The project cannot meet this requirement along the B Street frontage due to the proposed separated bike lane and loading zone configuration on B Street. Compliance with this development standard would physically preclude construction of the project.
- City Code section 27.71.120 requires street trees to be planted along public street at a spacing not to exceed 30 feet except to allow for utilities, street furnishings and driveways. The project cannot meet this requirement along the B Street frontage due to the proposed separated bike lane and loading zone configuration on B. Compliance with this development standard would physically preclude construction of the project.

Lane Partners reserves its rights to seek additional waivers or reductions from otherwise applicable development standards that would preclude development of the project that may arise as a result of the entitlement process.

We look forward to working with Staff on our proposed project and should you have any questions or please do not hesitate to contact me.

Regards,



Marcus Gilmour

⁶ Even if an applicant does not propose a waiver or reduction of a development standard, a city may not apply any development standard that would have the effect of physically precluding development of project. (Gov. Code § 65915(e)(1).) Also, please note the comment in Section A above regarding increasing the FAR through a waiver request.