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File No. 086852

May 3, 2022

**VIA E-MAIL**

Jeremy Lochirco  
Acting Planning Manager  
City of Hayward  
777 B Street  
Hayward, CA 94541

**Re: Updated Request for Density Bonus Consistent with Government Code Section 65915 for Proposed Revised Maple & Main Project**

Dear Mr. Lochirco:

On behalf of Goel Hayward MF, LLC (“Applicant”), this letter serves as an updated request for a density bonus, waivers, and concessions, and application of parking standards consistent with State Density Bonus Law (Gov’t Code § 65915) for the proposed 314-unit Maple & Main mixed use development (“Project”) in the City of Hayward (“City”). Further project details, including the Project’s zoning, assessor parcel numbers, vicinity map, and site plan, may be found in the current plan set for the Project on file with the City. An Affordable Housing Plan for the Project is being submitted concurrently with this letter.

The City’s Affordable Housing Ordinance (“AHO”) requires a residential project that will satisfy affordable housing requirements through the provision of onsite rental units to provide 6% affordable units evenly split between low income and very-low income units with the ability to provide units at lower affordability levels.

Of the Project’s proposed 19 affordable rental units, 16 of those units (or 5% percent of the 314-unit base project) would be very-low income units restricted to very-low income households, and the other 3 units would be low income units restricted to low income households (collectively, the “Affordable Units”). The Project’s proposed Affordable Units exceed the City’s AHO requirements by delivering more very-low income units than is otherwise required.

A mixed use project that provides at least 5% very-low income units qualifies for the following benefits under Density Bonus Law: “(1) a ‘density bonus;’ (2) ‘incentives and concessions;’ (3) ‘waivers or reductions’ of ‘development standards;’ and (4) prescribed ‘parking ratios.’” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 769; Gov Code § 65915(b)(1)(B), (i).)

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In this case, the Affordable Units qualify the Project for a 20 percent density bonus, unlimited waivers, one concession, and reduced parking ratios.

### *Requested Concessions*

“[I]ncentives and concessions are intended to assist in lowering the cost to build a project that includes affordable housing by allowing the developer to avoid development standards. [Citation] An ‘incentive or concession’ is defined as a ‘reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards ... that results in identifiable and actual cost reductions.’ [Citation] The law states that a ‘site development standard’ includes setbacks, height limitations, and other requirements imposed by ‘any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.’ [Citation] The applicant is not required to prove the requested incentives will lead to cost reductions; the incentive is presumed to result in cost reductions and the city bears the burden to demonstrate otherwise if it intends to deny the incentive.” (*Bankers Hill 150*, 74 Cal.App.5th 755 at 770.)

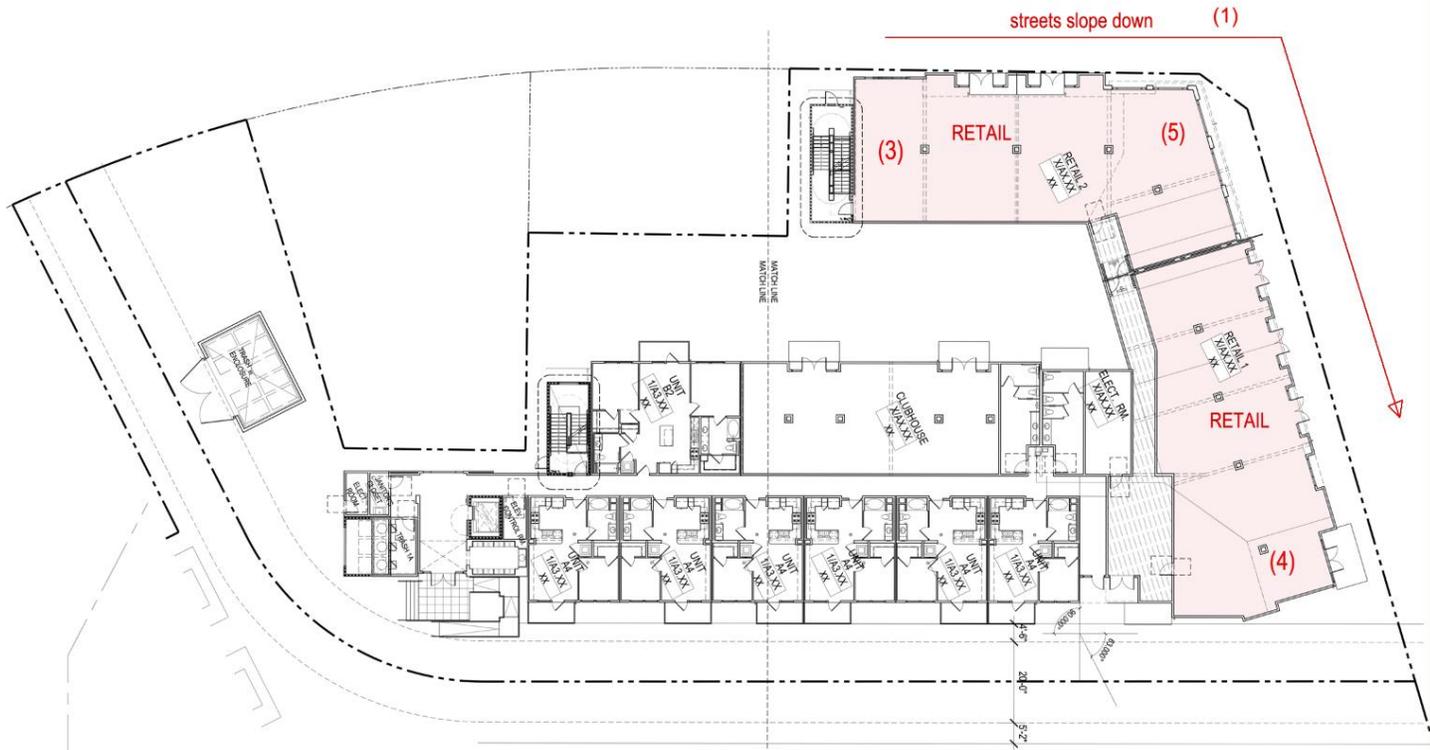
The Applicant requests the following concession:

**Ground Floor Commercial Ceiling Height** - Per 10-28.2.2.060 - URBAN NEIGHBORHOOD (UN), the minimum required Retail Height is 14’. Although the Project exceeds this standard at the retail corner, the retail heights are reduced to +/-12’ over approximately 85% of the retail frontage. This is a result of sloping grade at the retail corner of the Project site and the retail spaces have been designed to follow the slope of the adjacent streets. (1) The second level floor plate that acts as the ceiling for the retail space is a single level plane. (2) The lowest plate height (ceiling height) is 11’-8” along McKeever (3). The lowest plate height (ceiling height) is 12’-2” along Maple (4). The tallest plate (ceiling height) is located at the corner of McKeever and Maple street and was accomplished by eliminating a second level unit. That plate (ceiling height) exceeds 18’-0” (5)

Extending the ceiling line of the McKeever and Maple street retail space to the remaining retail spaces would require the loss of the market-rate residential units above those retail spaces which would result in an identifiable substantial loss of revenue needed to subsidize the affordable units. Alternatively, raising the entire building by 2’4” to meet the minimum retail height requirements in all retail spaces would require structural steel lateral bracing elements throughout the 1<sup>st</sup> level of the building. Avoiding the need to use structural steel in the building design would result in a substantial construction cost reduction to help offset the costs of the

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affordable units.<sup>1</sup>



<sup>1</sup> These same factors would support the use of a waiver. The loss of units would physically preclude construction of the density bonus project. The structural steel would result in intrusions into the residential units to accommodate the steel on the first floor that would reduce floor area and would impact required accessible clearances in kitchens and bathrooms along the corridor side of the units and physically precluding construction of the density bonus project (6)(7) (upper dashed line represents raised residential floor height and lower dashed line represents raised 14' retail ceiling height). Even if a waiver is not requested, the City would be required to grant one for a development standard that "would physically preclude construction of [the] project as designed . . ." (*Bankers Hill 150*, 74 Cal.App.5th 755 at 775.)

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*Requested Waivers*

Government Code Section 65915(e)(1) provides, in part, that “[I]n no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section.” The right to waivers has been broadly interpreted by the courts. (See *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346–1347 [“Standards may be waived that physically preclude construction of a housing development meeting the requirements for a density bonus, period. [] The statute

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does not say that what must be precluded is a project with no amenities, or that amenities may not be the reason a waiver is needed.” “[A] city must offer a *waiver or reduction* of development standards that would have the effect of physically precluding the construction of a development at the density, or with the requested incentives, permitted by the Density Bonus Law. [] For example, if a city ordinance imposes a building height limitation, a city must waive that limitation for a development that is eligible for a density bonus if imposing the height limit would physically preclude construction of the proposed building with the requested incentives and at the density allowed by the Density Bonus Law. There are no financial criteria for granting a waiver.” (*Bankers Hill 150*, 74 Cal.App.5th at 770.)

The Applicant is requesting a waiver from the following development standard that physically preclude the development of the proposed density bonus project:

1. **Lined Building Width along Main Street** - Per 10-28.3.3.140 - LINED BUILDING, the maximum allowed width of the exterior building main body is 320'. The project Lined Building width is 350' which exceeds the maximum allowed width. Reducing the building width or breaking the building into multiple structures would result in the loss of residential units. Therefore, compliance with the Lined Building Width requirements would physically preclude construction of the proposed density bonus project.

*Other Density Bonus Requests*

Government Code Section 65915(f) provides that an applicant may request a lesser density bonus than it is entitled to, including “no increase in density.” The Project requests a 0% density bonus.

The Applicant also does not request the reduced parking ratios set forth in Government Code Section 65915(p) be applied to the project.

The Applicant may adjust its Density Bonus request as the Project proceeds through processing. We look forward to working with you on the Project. Please feel free to call me if you have any questions.

Sincerely,

/s/ *Christian Cebrian*

Christian H. Cebrian

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