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December 6, 2022

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VIA E-MAIL (JARMER@LOSGATOS.GOV)

Ms. Jennifer Armer
Town of Los Gatos
110 East Main Street
Los Gatos, California 95030

Re: Revised 405 Alberto Way - Waivers and Concessions Letter

Dear Ms. Armer:

Buchalter, a Professional Corporation, represents LPG Development (LPG) as land use counsel for the proposed development of the 2.15 acre property located at 405 Alberto Way, Los Gatos, California, APN 529-23-018 (“Property”) The Town of Los Gatos (“Town”) previously approved a 74,260 square foot two-story office building on the Property (“Approved Project”). LPG submitted an application to modify the Approved Project to include 60 multi-family dwelling units instead of a commercial office building (“Revised Project”), consistent with the State’s and Town’s prioritization of housing development. The Revised Project includes 9 Below Market Price (BMP) units, per section 29.10.3000 *et. seq.* of the Los Gatos Town Code.

The state Density Bonus Law applies to residential projects that set aside at least 10% of units as affordable for low income households. (GOV § 65915(b)(1)(A).)¹ The affordable units included in the Revised Project comprise approximately 15% of the total units on the Property. Thus, the Revised Project is eligible for the benefits of the state Density Bonus Law. The purpose of this letter is to provide the Town with the necessary information regarding the Revised Project’s eligibility under the state Density Bonus Law provisions for a waiver of the height limitation and parking requirements.

¹ The Town’s BMP [Guidelines](#) define low income households consistent with state Density Bonus Law and the United States Department of Housing and Urban Development, as [summarized](#) by the State Department of Housing and Community Development. A household in Santa Clara County is considered Low Income if household income totals do not exceed 80% of the Area Median Income (AMI) for the County.

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Waiver or Reduction of Development Standards under State Density Bonus Law

Projects receiving a density bonus under the state Density Bonus Law are entitled to a waiver or reduction of development standards that would otherwise “physically preclud[e] the construction of a development meeting the criteria” of the Density Bonus Law at the densities or with the concessions or incentives permitted by the law. (GOV § 65915(e)(1).)

Physical Constraints of the Property

The following limitations physically constrain the developable area on the Property:

1. A fire lane is required around the perimeter of the Property to provide adequate emergency vehicle access to each of the proposed buildings for life safety purposes. Due to the size of the site and proximity to the freeway, the fire lane must be located on a minimum of 12,250 square feet thereby constraining the area available for construction of the condominium buildings on the Property.
2. The variation in the Property’s elevations and overall site topography, as well as the existing freeway along the western boundary of the site requires that the fire lane occupy a significant portion of the otherwise developable area on the Property.

These constraints necessarily require LPG to seek a development waiver to allow for the construction of the Revised Project at the density permitted under the state Density Bonus Law. Accordingly, LPG is requesting a waiver of the Town’s height limitation to allow for the physical development of the Revised Project at the proposed density.

Height Limit Increase

The Property consists of 2.15 acres, or 93,654 square feet. Open space and public amenities would occupy 53,473 square feet of the Property. The fire lane occupies a minimum of 12,250 square feet of the Property. Accordingly, the developable area on the Property is limited to the remaining 27,931 square feet. Because of the limited developable area, the requested increase in building height would allow the Revised Project to include three floors of residential units in a podium construction over parking.

Government Code section 65915(e)(1) allows for eligible density bonus projects to receive waivers of development standards that would “have the effect of physically precluding the construction of a development . . . *at the densities or with the concessions or incentives permitted by this section*” (emphasis added).

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The maximum building height in the CH zone is 35 feet (LGTC § 29.60.440). Strict application of that development standard would reduce the building height by 15 feet, requiring the removal of an entire floor from each building. This would result in the loss of 18 dwelling units on the Property, including the loss of units set aside for low income households. Applicability of the maximum height limit requirement, therefore, physically precludes development of the number of proposed units that would otherwise be permitted at the density provided by the state Density Bonus Law. Accordingly, a waiver of the minimum lot size requirement applied to the lots indicated here would allow for the physical development of the Revised Project at the density allowed under the state Density Bonus Law.

Alternative: The Height Limit Increase May be Allowed as an Incentive/Concession

If the Town is unable to grant a waiver from the existing height limit, this requested reduction may be alternatively approved as a concession under state Density Bonus Law. An applicant is eligible for a specified number of incentives/concessions, tied to the number of affordable units provided, as long as those incentives/concessions result in identifiable and actual cost reductions to provide for affordable housing costs. (GOV § 65915(d)(1)(A).) The Revised Project sets aside 15% of the total units as affordable to low income households, qualifying it for one incentive/concession. (GOV § 65915(d)(2)(A).)

The maximum building height in the CH zone is 35 feet (LGTC § 29.60.440). Strict application of this development standard would reduce the building height by almost one third. Reducing the Revised Project building height by 15 feet would reduce the overall size of the Revised Project, economically precluding its construction and prohibiting LPG from constructing the affordable units proposed as part of the Revised Project. The increased building height reduces the costs of providing affordable units by creating construction efficiencies and an inherent reduction in cost by constructing a greater number of units on the Property. The number of units and sizes of the units proposed would not be able to be constructed without granting the concession requested. Accordingly, mandating compliance with LGTC § 29.60.440 would economically preclude construction of this affordable housing project.

Thus, in addition to considering a waiver of the building height limitation pursuant to state Density Bonus Law, we request that the Town also consider granting a concession due to the loss of construction efficiencies that would affect the feasibility of constructing both the affordable and market rate units. In lieu of the waiver, the Town may consider the concession under the statute's incentive/concession provisions as another basis for the height exception.

Application of State Density Bonus Law Parking Requirements

Projects receiving a density bonus under the state Density Bonus Law are entitled to reduced parking ratio requirements. Developments setting aside at least 10% of units as affordable for

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low income households are required to provide 1.5 parking spaces for every two or three bedroom unit. (GOV § 65915(p)(1)(B).) As 54 of the 60 units are two and three bedroom units, the minimum required parking for the Proposed Project Modifications is $6 (1br) + 81 (2br/3br) = 87$ parking spaces for residents and additional guest parking spaces. The Revised Project includes 114 resident parking spaces with 12 guest parking spaces. Thus, the parking standard established by state Density Bonus Law will be met for both the residential units and guest parking.

Housing Accountability Act Applicability

The Housing Accountability Act (HAA) establishes state policy that local governments “not reject or make infeasible housing development projects . . . that contribute to meeting the need determined pursuant to” the applicable housing element. (GOV § 65589.5(b).) When a housing development project complies with all applicable objective general plan, zoning, and subdivision standards in effect when an application was deemed complete, the local government can only deny the project upon finding that: (1) the project will result in a specific adverse impact to public health and safety, and (2) there is no feasible method to mitigate that impact. (GOV § 65589.5(j)(1)(A)-(B).) The HAA further explains that “receipt of a density bonus, incentive, concession, waiver, or reduction of development standards . . . shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, [or] standard.” (GOV § 65589.5(j)(3).)

The Town has not expressed any concern that the Revised Project will result in any threat to public health and safety. Notwithstanding the Town’s determination to grant the waivers LPG requests under Density Bonus Law, the Revised Project remains in conformity with the applicable General Plan and zoning policies and applicable objective development standards. The Revised Project does not require rezoning because the Revised Project is consistent with the CH zone development standards.

We appreciate the Town’s consideration of LPG’s request for the waiver of the height limitation and implementation of the state Density Bonus parking requirement for the 405 Alberto Way project. With the requested waiver and parking standard, LPG will be able to develop the 54 multi-family units, including 8 affordable units, it is proposing on the Property.

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We hope that this letter clarifies any questions regarding the density bonus waiver and parking standard requested. Please let Randy Lamb or I know if you have any questions or need further information regarding the density bonus request.

Sincerely,

BUCHALTER
A Professional Corporation

A handwritten signature in blue ink, appearing to be 'AG', with a long horizontal line extending to the right.

By

Alicia Guerra

AG

cc: Randy Lamb
Greg Bucilla