

February 19, 2025

VIA E-MAIL

Ms. Deanna Chow
Assistant Community Development Director
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
dmchow@menlopark.org

**Re: Updated State Density Bonus Law Requests for 3705 Haven Avenue and
Housing Accountability Act Issues**

Dear Ms. Chow:

We write on behalf of our client, 3705 Haven LLC (“Owner”), to update its requested State Density Bonus Law (“SDBL”) benefits for a proposed residential project (“Project”) located at 3705 Haven Avenue (“Property”) in the City of Menlo Park (“City”). We last sent a list of requested SDBL benefits on February 11, 2025, and have updated it in response to City comments. Regarding the Housing Crisis Act (“HCA”) and Housing Accountability Act (“HAA”), which prevent the City from requiring compliance with subjective desires and standards, please refer to our July 29, 2024, letter.

As currently proposed, the Project would make 15 percent of its base units (66 units) affordable to very low-income households and six percent of its base units affordable to moderate-income households. These affordable units make the Project eligible for a 72.5 percent density bonus. (Gov. Code, § 65915, subds. (f)(2), (v).) In addition, the Project remains entitled to the following SDBL benefits: three incentives/concessions, an unlimited number of waivers, and use of certain vehicular parking standards. (See *id.*, subds. (d)(2)(C), (e)(1), (p).)

The Owner requests the following SDBL benefits:

- **Density Bonus.** The maximum density permitted for Bonus Level Development in the R-MU zone is 100 dwelling units per acre. At this density, the approximately 0.66-acre Property could have 66 units. The Project requests a 69.7 percent density bonus to provide 112 units (66 units + 46 bonus units). This results in a density of 169.7 dwelling units per acre, which is greater than the 100 dwelling units per acre permitted by the Municipal Code.

- Incentives

- Exceeding 75 Percent Rental Cap. BMR Program Units (i.e., those units provided to satisfy City inclusionary requirements) must comply with the City's BMR Guidelines, which restrict rental amounts for such units from exceeding 75 percent of market rate rents. (BMR Guidelines, § 4.1.2.) This restriction particularly impacts moderate income units and, applied here, would render the Project economically infeasible. Thus, the Owner requests an incentive to allow rents for moderate income BMR Program Units to exceed the 75 percent cap, up to the rental amount permitted by the Health and Safety Code section 50053. This incentive will result in cost savings through increased revenue from the moderate income units, thus reducing overall costs and facilitating the production of affordable housing.
- Adding Rather Than Replacing a Utility Pole. The City asked the Project to replace an existing utility pole that transitions power lines from above ground to underground. Rather than replace this pole, the Project would accomplish the necessary step up by adding a utility pole. Adding a new pole rather than replacing the existing utility pole results in significant cost savings due to the decrease in construction necessary to add a new pole compared to replacing the existing pole. Replacing the existing pole would require construction of an additional underground vault and more extensive underground exploration efforts than necessary for a new pole.
- Not Pre-Plumbing For Recycled Water. City Municipal Code section 16.45.130(3)(D) requires all new buildings to be dual plumbed for the internal use of recycled water. The Owner requests an incentive to not pre-plumb the Project for recycled water. There is no recycled water available now or in the foreseeable future for the Project's location. Not pre-plumbing for recycled water saves hundreds of thousands of dollars in construction costs and thus results in an identifiable and actual cost saving to provide for affordable housing.

- Waivers

- Increase in Residential Floor Area Ratio ("FAR"). The maximum Bonus Level Development residential FAR is 225 percent. The Owner requests a waiver of this standard to allow an FAR of 409 percent. This waiver is necessary for the Project to be constructed at the density allowed and as designed by the Project applicant. Absent this waiver, the density bonus units would not fit in the Project.

- Increase in Height. The maximum Bonus Level Development height is 70 feet, plus an additional 10 feet for a location in a flood zone, for a total of 80 feet. (Mun. Code, § 16.45.050.) The Owner requests a waiver to increase the maximum height to approximately 86 feet measured from average natural grade to top of roof plywood, excluding rooftop mechanical equipment, stairs, and the elevator. With this increase in the maximum height, the average building height would be 71.1 feet. The waiver is necessary for the Project to be constructed at the density allowed and as designed by the Owner. Absent the waiver, the density bonus units would not fit in the Project.
- Decrease Ground-Floor Height. City Municipal Code section 16.45.120(3) requires a minimum ground-floor height of 10 feet for residential uses. The Owner requests a waiver to decrease this minimum to no lower than 8.5 feet. The waiver is necessary for the Project to be constructed at the density allowed and as designed by the Owner. Absent the waiver, the Project would further exceed the height limit.
- Decrease in Parking. The City Municipal Code is a bit unclear regarding whether a leasing office in a multifamily apartment building must be parked as an office use. The Municipal Code requires two parking spaces per 1,000 square feet of office. (Mun. Code, § 16.45.080.) The Owner requests a waiver to provide no office parking. In addition, the Project provides 99 full sized parking spaces for 112 units, which is fewer parking spaces than required. (*Id.* § 16.45.080.) The parking waivers are necessary for the Project to be constructed at the density allowed and as designed. Absent these waivers, the Project would need to reduce units to make room for additional parking spaces.
- Reduction in Parking Space Size. To address City concerns regarding the number of parking spaces, Owner requests the ability to construct compact spaces, which would be 7.5 x 15 feet rather than 8.5 x 16.5 feet, and to decrease the wall clearance from one foot to no clearance. The size of the compact spaces is consistent with city of San Francisco requirements, indicating that such spaces would be useable and safe. At this time, Owner has yet to study exactly how many spaces it could add to the Project, but compact spaces would allow the Project to get closer to the City's desired parking ratio of 1 space per unit.
- BMR Unit Size. The BMR Guidelines, section 5.1, states, "BMR housing units shall generally be of the same proportionate size (number of bedrooms and square footage) as the market-rate units." The BMR Program Units (i.e., the 15 percent affordable units provided to comply with the City's inclusionary ordinance) have the same proportionate bedrooms as the market-rate units but are not the same size. A waiver is

requested to allow some BMR Program Units to be slightly smaller than the market-rate units to allow the Project to fit the density allowed in the design proposed. HCD has affirmed that waivers can be requested to alter inclusionary requirements. (See HCD Letter to West Hollywood, dated Sept. 2, 2022, at p. 3 [“The SDBL can be used to modify or waive provisions of an inclusionary ordinance.”].)

- Reduction in Ground Floor Transparency. City Municipal Code section 16.45.120(3) requires 30 percent of the ground floor to be transparent. The Owner requests a waiver to reduce the ground floor glazing to below 30 percent. The waiver is necessary for the Project to be constructed at the density allowed and as designed by the Owner. To meet ground floor transparency requirements, the required indoor bicycle parking and utility space would need to be relocated to the second floor, replacing units.
- Minor Building Modulations. City Municipal Code section 16.45.120(2) includes certain standards related to building mass and scale. While the Owner believes that the Project design meets the intent of the Municipal Code, it has been determined that the proposed building design is not completely compliant with these standards. The Owner thus requests a waiver to allow the Project’s minor building modulations along the south and east building facades to be accepted. The waiver is necessary for the Project to be constructed at the density allowed and as designed by the Owner. Altering the proposed design would either reduce units, if the proposed design was “pushed in,” or would impact design intent and coordinated elements (e.g., location of backflow preventers, areas of common open space, etc.), if the proposed design was “pushed out.”
- Private Open Space. City Municipal Code section 16.45.120(4) includes certain standards related to the provision of private open space. The Project design intends to comply with the specified private open space requirements, but it has been determined that there is a slight deficiency in the total amount of private open space. The Owner thus requests a waiver to allow the Project’s private open space to be accepted. The waiver is necessary for the Project to be constructed at the density allowed and as designed. Increasing the amount of private open space would require either reducing unit sizes or encroaching into the setback area.

The Owner also may request additional waivers, if needed, for the Project as designed.

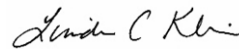
When considering SDBL requests, it is important to remember that “[i]n no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development [with affordable housing] at the densities or with the concessions or incentives permitted by” SDBL. (Gov. Code, § 65915, subd. (e)(1).) Cases have confirmed that incentives and waivers must be granted even if a different

project design would avoid the need for the requested incentives or waivers. (E.g., *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 775 [incentives must be granted even though decreasing the open space would reduce the need for incentives]; *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346–1347 [waivers must be granted even though decreasing project amenities would reduce the need for waivers].)

* * *

Please do not hesitate to contact me if you have any questions about any of the above.

Sincerely,



Linda C. Klein

cc: Ruby Huang, 3705 Haven LLC
Fahteen Khan, Associate Planner
Eric Phillips, Assistant City Attorney