

# REUBEN, JUNIUS & ROSE, LLP

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**Delivered Via Electronic Mail (phillip.brennan@mountainview.gov)**

Phillip Brennan, Senior Planner  
City of Mountain View  
Community Development Department, Planning Division  
500 Castro Street  
Mountain View, CA. 94039-7540

**Re: 870 East El Camino Real  
Application of Density Bonus Law to the Project  
Our File No.: 6984.17**

Dear Mr. Brennan,

We greatly appreciate the input from Community Development Department staff over the past several months on the pending project (“**Project**”) at 870 East El Camino Real (“**Property**”), particularly the attention to potential design revisions that would minimize the apparent bulk and massing of the Project. Though the state Density Bonus Law (“**DBL**”) allows Equity Residential (“**EQR**”) to increase residential density at the Property based on the 33 very-low-income units the Project will provide, we firmly believe that the additional density can and should be added in a manner that minimizes the effect when viewed from the surrounding neighborhood. The revised Project will add 191 net new units at the Property in two new buildings located far away from the existing single-family residential neighborhood northwest of the Project along Moraga Drive and Muir Drive. This presents a significant “win-win” situation for both EQR and the City’s affordable housing goals.

We have reviewed the City’s Density Bonus Program Guidelines (“**Guidelines**”) posted on the City’s website.<sup>1</sup> It is our understanding that the Project is not subject to the Guidelines as EQR submitted a “preliminary application” under Senate Bill 330 prior to the adoption of the Guidelines. Nevertheless, EQR recognizes that the Guidelines were intended in part to facilitate uniform processing of DBL applications and has structured this letter to explain application of the DBL to the Project as anticipated in the Guidelines.

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<sup>1</sup> City of Mountain View, Density Bonus Program Guidelines, Last Updated: May 2021.

**Site Plan:**

See Sheet A1.01 of the drawing set submitted concurrently with this letter.

**Site Description:**

See Sheet G0.01 of the drawing set submitted concurrently with this letter.

**Replacement Determination:**

Total number of dwelling units existing on site in the five-year period preceding the date of submittal of the application:

- **180 units.**

Total number of bedrooms in each dwelling unit existing on the site in the five-year period preceding the date of submittal of the application:

- **0 studio units**
- **132 1-bedroom units**
- **48 2-bedroom units**

The total number of dwelling units that are or were subject to a recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low- or low-income households, including, but not limited to, the CSFRA in the five (5) year period preceding the date of submittal of the application:

- **180 units (CSFRA)**

The total number of occupied dwelling units and the income and household size of all residents of currently occupied units or a statement from the applicant that such information is unknown:

- **See Affordable Housing Compliance Plan submitted May 27, 2021.**

The total number of vacant dwelling units on the site and the income and household size of the prior residents occupying those dwelling units when the site contained the maximum number of dwelling units or a statement from the applicant that such information is unknown:

- **See Affordable Housing Compliance Plan submitted May 27, 2021.**

**Land Donation:**

Not applicable (density bonus not premised on land donation).

**Child Care:**

Not applicable (density bonus not premised on child care).

**Condominium Conversion:**

Not applicable (Project does not include condominium conversion).

**Incentives/Concessions:**

As noted above, the Project will provide thirty-three (33) units at rates affordable to families making up to fifty percent (50%) of County median income (i.e., very-low income units). These 33 units are equivalent to 11.1 percent of the 297 total Base Units, as that term is used in the Guidelines. Because the Project will provide at least eleven percent of the units at rents affordable to very-low income families, the Project is entitled to two “incentives/concessions” under the DBL (“**Concession**”).<sup>2</sup> Concessions can include, among other things, a “modification of zoning code requirements . . . that exceed the minimum building standards approved by the California Building Standards Commission . . . that results in identifiable and actual cost reductions, to provide for . . . rents for the targeted units to be set [at the levels required to obtain the density bonus].”<sup>3</sup>

**Concession #1 – Open Area**

The Project proposes to utilize its second Concession to allow a 4,863 square feet reduction in the Open Area requirement. The ECRPP provides that a project in the MIC should provide at least 40 percent Open Area<sup>4</sup>, a project located in LIRO should provide at least 55 percent Open Area<sup>5</sup>, and a project located in both LIRO and MIC areas should provide a weighted average of the required Open Area based on the proportion of the project in each area.<sup>6</sup> In this case, the project is located in both the MIC and LIRO areas, and the weighted average of required Open Area is 211,582 square feet.<sup>7</sup> To provide the entire 211,582 square feet of Open Area the Project would need to eliminate some surface parking and make a corresponding increase in spaces provided in the underground garage.

An analysis comparing (a) the estimated cost reduction to construct the Project with the Concession to (b) the estimated cost to provide the affordable units that justify the density bonus is attached as Exhibit A.

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<sup>2</sup> Code § 36.14.45(a)(1); Gov. Code § 65915(d)(2)(A).

<sup>3</sup> Gov. Code § 65915(k)(1). Concessions also include “[o]ther regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for . . . rents for the targeted units to be set [at the levels required to obtain the density bonus].” Gov. Code § 65915(k)(3).

<sup>4</sup> ECRPP, Table 9, p. 25.

<sup>5</sup> ECRPP, p. 28; Code § 36.10.70.

<sup>6</sup> ECRPP, p. 29.

<sup>7</sup>  $[(50,671 \text{ square feet in MIC} / 398,459 \text{ total square feet} * 40\%) + (347,788 \text{ square feet in LIRO} / 398,459 \text{ total square feet} * 55\%)] * 398,459 = 211,582 \text{ square feet}$

**Waivers:**

The DBL generally requires a local agency to waive “any development standard that will have the effect of physically precluding the construction of a development meeting the criteria [for a density bonus] . . . at the densities or with the concessions or incentives permitted by [the DBL] . . .”<sup>8</sup> The Project is entitled to a thirty-five percent (35%) density bonus because it provides more than eleven percent of the units at rents affordable to very-low income families. The Project, with the density bonus units, cannot be developed unless waivers for height and setbacks are provided, as described below and shown in the illustrations in Exhibit B.

*Waivers #1-2 – Height*

As noted above, Building F is located within the LIRO portion of the Property. The Project will utilize 20.5% of its allowed 35% density bonus to increase the density within the LIRO area from 200 units to 241 units. To allow for the addition of these 41 units, Building F will grow from a four-story building to a six-story building (each full floor plate above the first floor has 20 units). Without the increase in height, the Project could not provide the 41 density bonus units.

The application of the density bonus will be slightly different for Building G because it is located within the MIC portion of the Property which is governed by a floor area limit. The Project will utilize its 35% density bonus to increase the floor area within the MIC area from 1.85 FAR to 2.497 FAR. To allow for the addition of 0.647 FAR, Building G will grow from a four-story building to a six-story building (each floor plate is approximately 23,000 square feet of gross floor area with a partial sixth floor being 12,445 square feet). Without the increase in height, the Project could not provide the density bonus units that will be constructed in this 0.647 FAR.

*Waivers #3-5 – Setbacks*

Several setbacks applicable to the Project are calculated by reference to height. For example, the ECRPP requires there to be a setback between structures on the same lot of no less than 35% of the sum of the opposing wall heights, with a minimum of 15 feet.<sup>9</sup> Setbacks between principal structures and side setbacks are also calculated based on the height of the building. The ECRPP specifies that maximum

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<sup>8</sup> Gov. Code § 65915(e)(1) (“In 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 [density bonus] criteria . . . at the densities or with the concessions or incentives permitted by this section.”).

<sup>9</sup> ECRPP, p. 33.

height adjacent to residential shall not be higher than the distance to a residentially zoned property. As such, the 28-foot eastern side setback would restrict Building F to a maximum wall plate height of 28 feet, and therefore prohibit necessary construction vertically to accommodate the proposed units. Without a relaxation of these setbacks, the Project could not increase height to allow for the construction of the density bonus units.

A table showing the waivers is below.

#	Standard	Bldg.	Location	Required / Max	Proposed	Waiver	Proportion
1	Building Height <sup>10</sup>	F	LIRO	36' <sup>11</sup>	63'1"	27'1"	1.75 <sup>12</sup>
2		G	MIC	55' / 4 stories <sup>13</sup>	71'7" / 6 stories	16'7" / 2 stories	1.30 <sup>14</sup>
3	Max. Height Adjacent to Residential <sup>15</sup>	F	LIRO	28' <sup>16</sup>	68'10"	40'10"	1.80 <sup>17</sup>
4	Side Setback:	F	LIRO	58'9" <sup>18</sup> (between Bldg. F and Avante Hotel) <sup>19</sup>	45'	13'9"	1.23 <sup>20</sup>
5	Setback Between Structures on Same Lot	F&G	BOTH	47'7"	38'	9'7"	1.20 <sup>21</sup>

Where, as here, waivers cumulatively allow a greater percentage relaxation of development standards than the percentage density bonus allowed, the City's Guidelines require the

<sup>10</sup> Consistent with the Code, the height shown does not include projections above the roof that are exceptions under Section 36.08.30. Stair penthouses are included in the height above. Minimum roof height is typically 9 ft lower.

<sup>11</sup> Building height for Building F (LIRO) is restricted to 36' to top of wall plate per R3 zoning for flat-roofed designs; there is no specific restriction on building stories.

<sup>12</sup>  $(36' + 27.083') / 36' = 1.75$

<sup>13</sup> Maximum building height is proportional to the distance to a residentially zoned property. This requirement is only applicable to development in the LIRO area.

<sup>14</sup>  $(55' + 16.581') / 55' = 1.30$

<sup>15</sup> Maximum building height is proportional to the distance to a residentially zoned property. (ECRPP, p. 30.) This requirement is only applicable to development in the LIRO area.

<sup>16</sup> The nearest residentially zoned property is 28 feet away in Sunnyvale. This requirement is measured to top wall plate or top of roof coping or parapet for flat-roof designs as measured from adjacent grade (rather than top of curb).

<sup>17</sup>  $(68.833' + 40.833') / 60.833' = 1.80$

<sup>18</sup> Setback requirement: 15 ft. or the height of the adjacent building wall of the subject parcel as measured to the top of the wall plate, whichever is greater. (Code § 36.10.70.)

<sup>19</sup> Wall height measured at the point of building in closest proximity to the property line.

<sup>20</sup>  $(58.747' + 13.747') / 58.747' = 1.23$

<sup>21</sup>  $(47.581 + 9.581) / 47.581 = 1.20$

applicant to provide a “description of the unique constraints of the project or lot that necessitates the additional reduction.”<sup>22</sup> Here, the Property is unique in that it is quite large and the existing residential buildings, most of which will remain, are built at a lower density and height than is allowed under current zoning.<sup>23</sup> As a result of the large site and retention of many of the existing lower-density buildings, the two new buildings will need to be significantly taller to accommodate the density bonus units (proportionality of 1.75 rather than 1.35).

**Conclusion**

Application of the DBL to the Project would significantly increase the affordability of the required affordable units and move the City closer to its affordable housing goals. With your help, EQR has shaped this proposal to be sensitive to its neighbors and anticipated community concerns. Moreover, there are not many sites in the City like this one, large enough to allow for the addition of a substantial number of density bonus units with only minimal changes to the massing as perceived from nearby properties.

Very truly yours,

**REUBEN, JUNIUS & ROSE, LLP**



Matthew D. Visick

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<sup>22</sup> Guidelines, p. 5.

<sup>23</sup> The density bonus is the “density increase over the otherwise maximum allowable gross residential density” of the Property as a whole (Gov. Code § 65915(f).)

**Exhibit List**

- A .....Concession Analysis – Open Area
- B ..... Waiver Diagrams

# Exhibit A



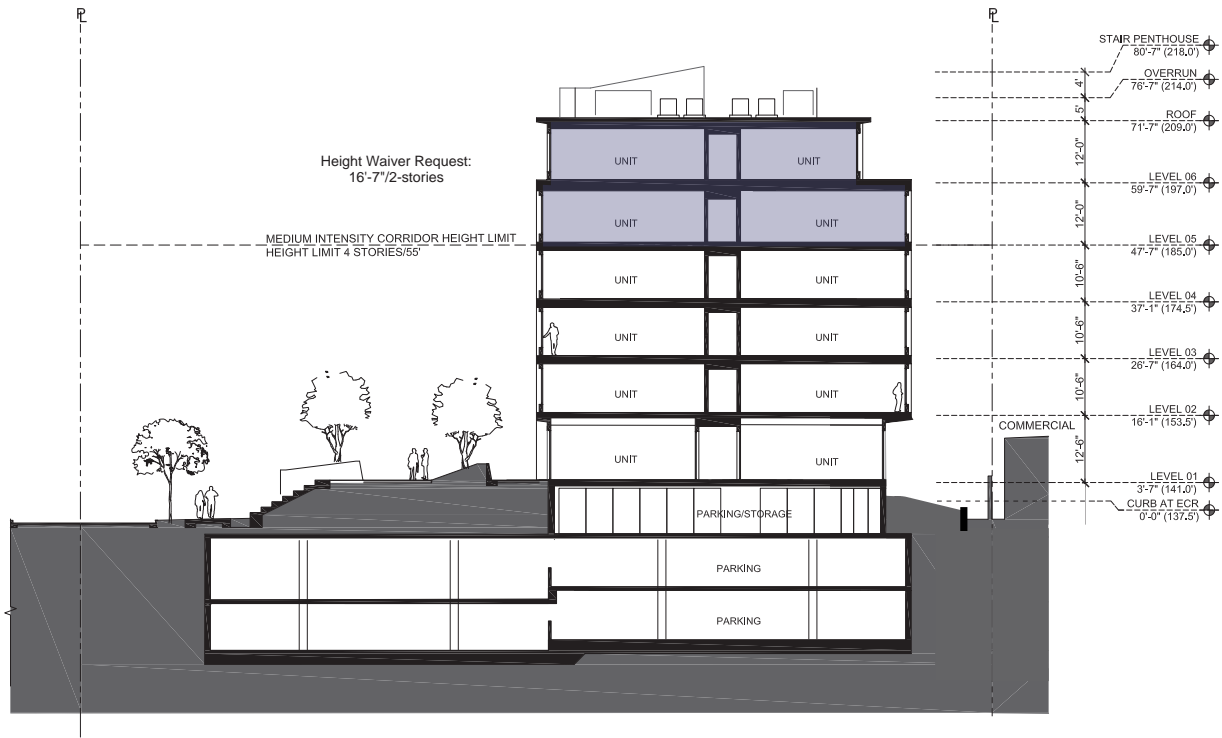
**870 E. EL CAMINO REAL / MOUNTAIN VIEW - 35% State Density Bonus  
 Concession Request for reduction in Open Area requirement**

> Subgrade garage area would need to be increased to allow deletion of existing surface parking to provide code required Open Area

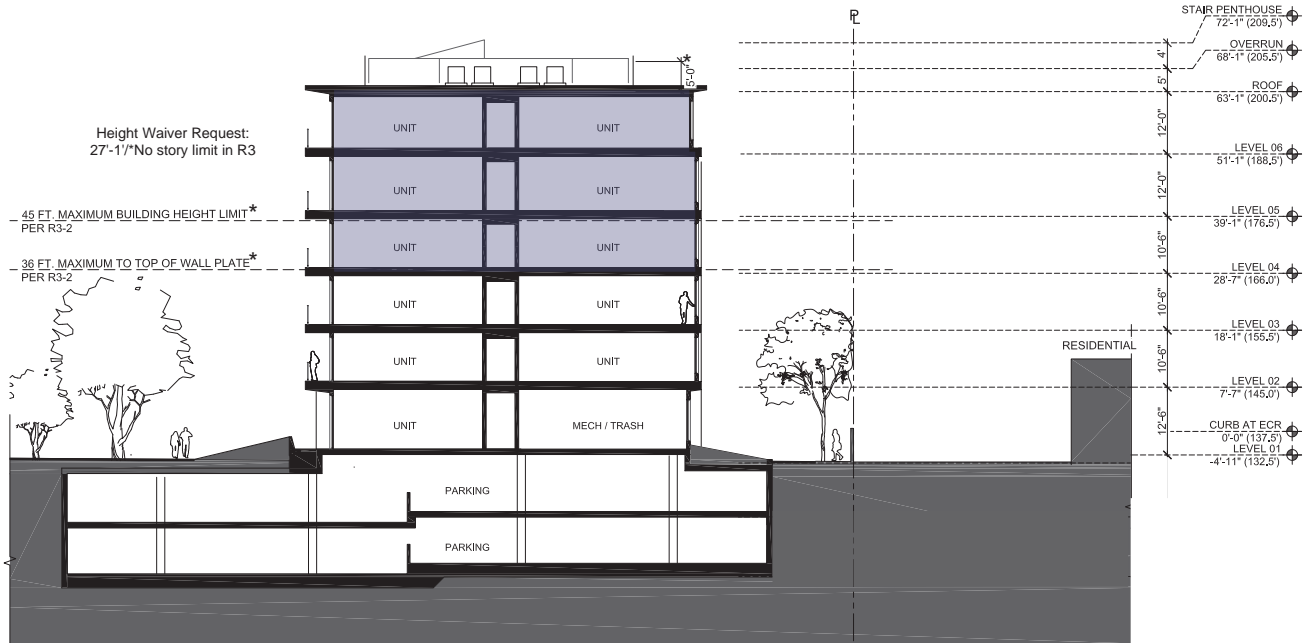
<b>REDUCTION IN DEVELOPMENT COST</b>	
<b>Open Area Concession Request</b>	<b>4,863 sf</b>
Structured Parking sf/space	400 <i>(includes drive aisles, etc.)</i>
# of Garage Spaces to be Added	13 <i>(rounded up)</i>
Incremental Cost per Garage Space	<u>\$40,000</u>
<b>Total Reduction in Development Cost</b>	<b>\$520,000</b>

<b>COST TO PROVIDE AFFORDABLE UNITS</b>					
<i>Value Loss to Reduce BMR Rent from 65% AMI (Mountain View BMR) to 50% AMI (State Density Bonus VLI)</i>					
<u>Lost Rent / Unit Calculation</u>					
	65% AMI	50% AMI	Incremental Lost Rent / Unit	# BMR Units	Incremental Lost Rent / Mo.
1 Bedroom BMR Rent / Mo.	\$2,155	\$1,658	(\$497)	24	(\$11,928)
2 Bedroom BMR Rents / Mo.	\$2,425	\$1,865	<u>(\$560)</u>	9	<u>(\$5,040)</u>
Average / Total Lost Rent / Mo.			(\$514)	33	(\$16,968)
<u>Lost Value Calculation</u>					
Incremental Lost Rent / Yr.	(\$203,616)				
Capitalization Rate	<u>4.25%</u>				
<b>Cost to Provide Affordable Units at 50% AMI</b>	<b>(\$4,790,965) (Lost Value)</b>				

# Exhibit B



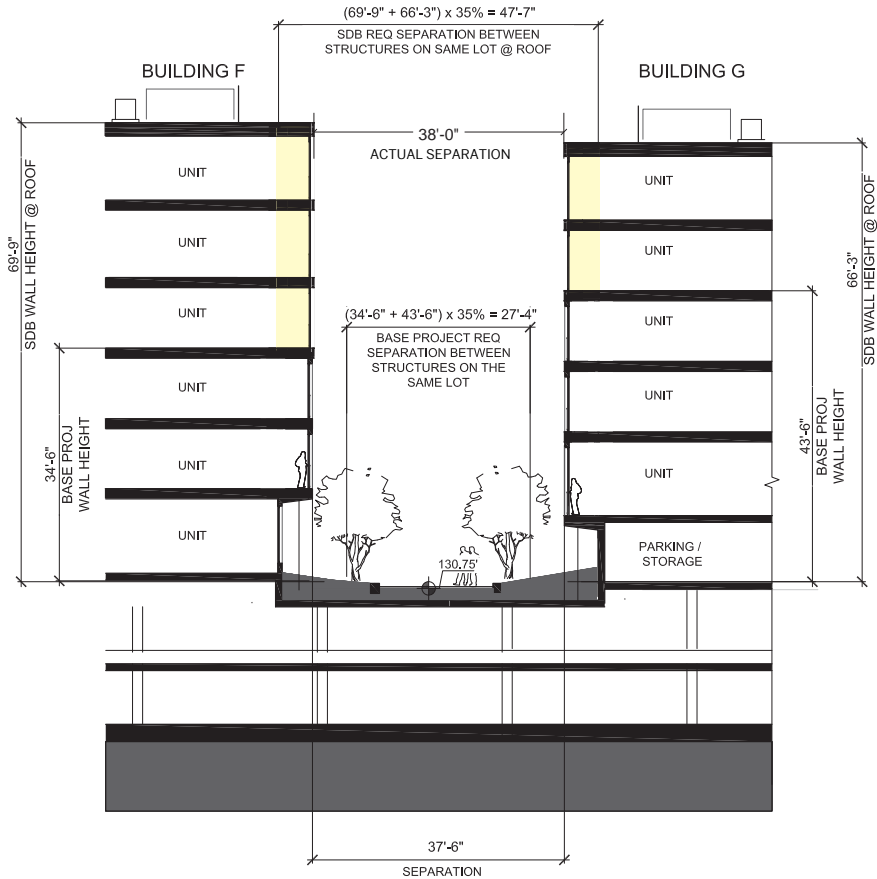
**BUILDING G - EAST WEST SECTION**



**BUILDING F - EAST WEST SECTION**

HEIGHT LIMIT WAIVER

\* PER SEC. 36.10.70. - R3 ZONE DEVELOPMENT STANDARDS: HEIGHT LIMITATIONS SHALL NOT APPLY TO ELEVATOR PENTHOUSES. ROOF SCREENS SHALL BE THE MINIMUM NECESSARY HEIGHT TO FULLY SCREEN ROOFTOP EQUIPMENT, NOT TO EXCEED AN ADDITIONAL TEN (10) FEET BEYOND THE MAXIMUM BUILDING HEIGHT.



### BUILDING F AND BUILDING G SEPARATION

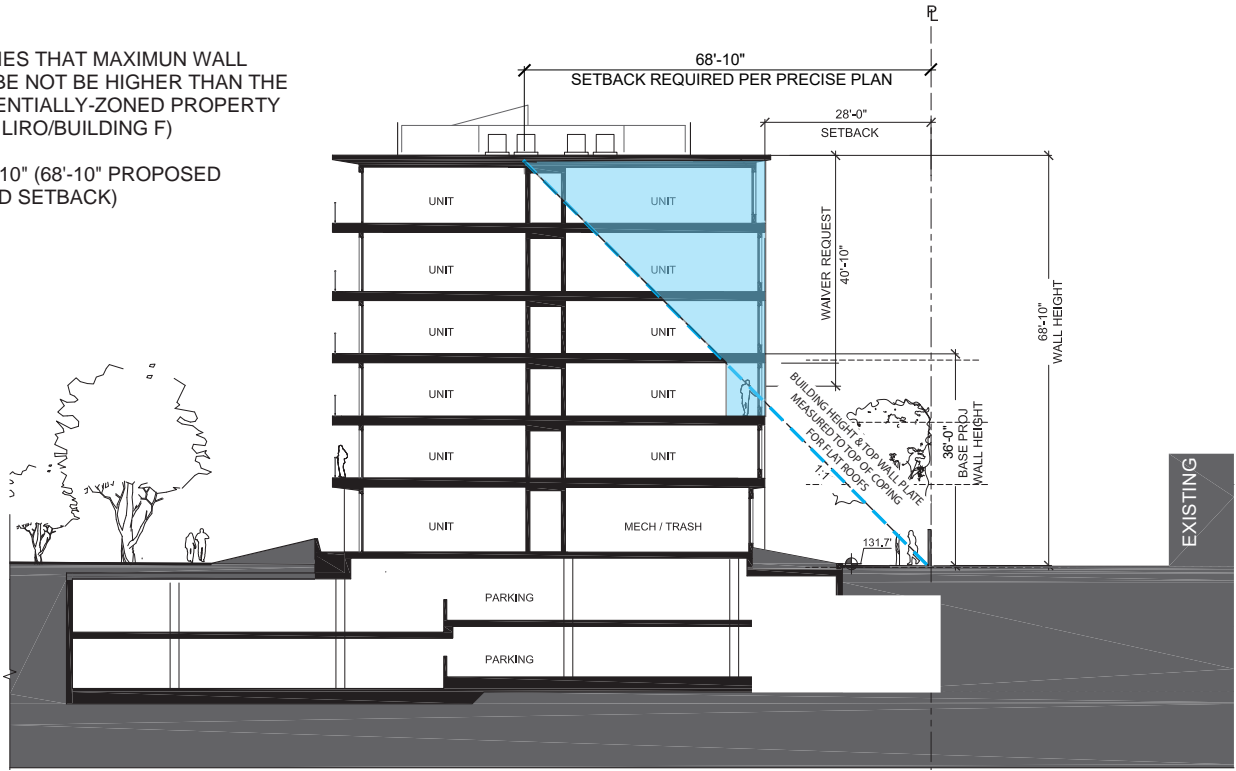
SEPARATION BETWEEN STRUCTURES WAIVER

PRECISE PLAN SPECIFIES THAT THE SEPARTION BETWEEN STRUCTURES ON THE SAME LOT SHOULD BE NO LESS THAN 35% OF THE SUM OF THE OPPOSING WALL HEIGHTS

WAIVER REQUEST: 9'-7" (47'-7" REQUIRED SEPARATION - 38'-0" PROPOSED SEPARATION)

PRECISE PLAN SPECIFIES THAT MAXIMUM WALL PLATE HEIGHT SHALL NOT BE HIGHER THAN THE DISTANCE TO A RESIDENTIALLY-ZONED PROPERTY (ONLY APPLICABLE TO LIRO/BUILDING F)

WAIVER REQUEST: 40'-10" (68'-10" PROPOSED HEIGHT - 28' PROPOSED SETBACK)

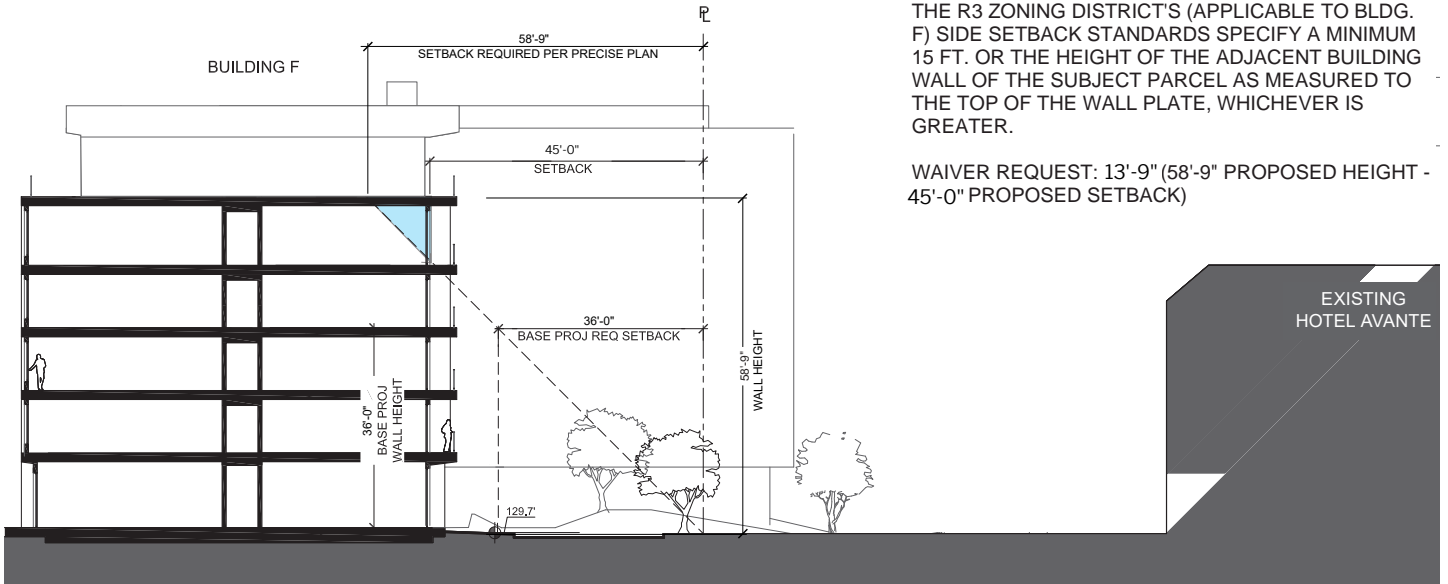


WALL PLATE HEIGHT WAIVER

### BUILDING F - MAXIMUM HEIGHT ADJACENT TO RESIDENTIAL

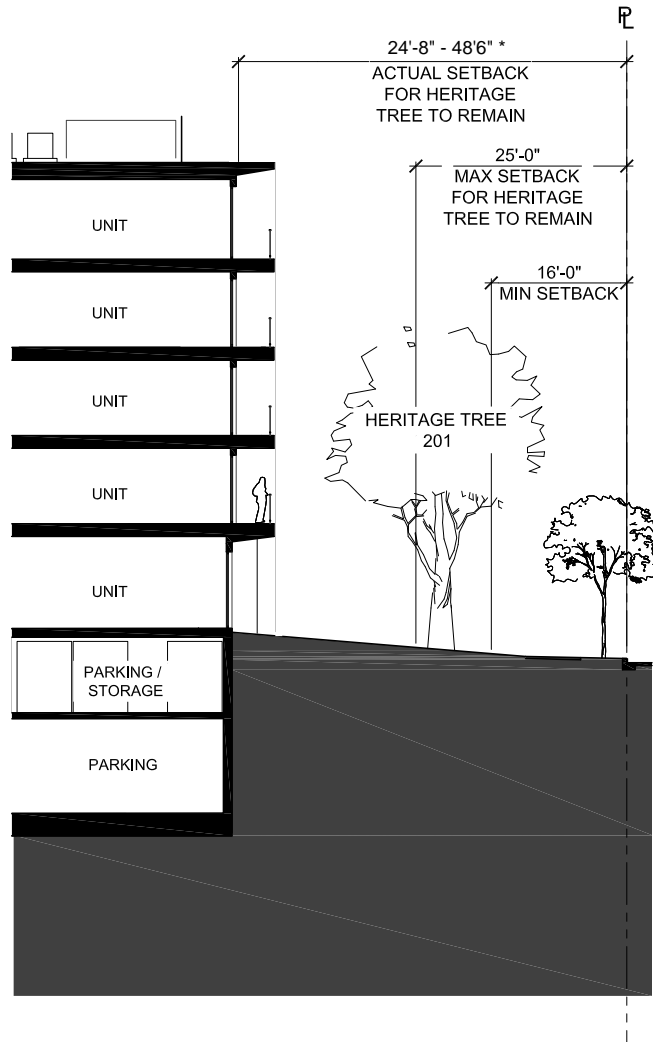
THE R3 ZONING DISTRICT'S (APPLICABLE TO BLDG. F) SIDE SETBACK STANDARDS SPECIFY A MINIMUM 15 FT. OR THE HEIGHT OF THE ADJACENT BUILDING WALL OF THE SUBJECT PARCEL AS MEASURED TO THE TOP OF THE WALL PLATE, WHICHEVER IS GREATER.

WAIVER REQUEST: 13'-9" (58'-9" PROPOSED HEIGHT - 45'-0" PROPOSED SETBACK)



SIDE SETBACK WAIVER

### BUILDING F SETBACK ADJACENT TO SOUTH PROPERTY LINE / HOTEL AVANTE



**BUILDING G SETBACK AT EL CAMINO**

EXCEPTION TO ALLOW FOR ADDITIONAL SETBACK FROM THE PRECISE PLAN'S MAXIMUM SETBACK ALONG EL CAMINO REAL (25 FEET MAX.) TO ALLOW PRESERVATION OF HERITAGE TREE #201.

\* SEE ARBORIST REPORT FOR HERITAGE TREE TO REMAIN: EVALUATION OF IMPACTS AND RECOMMENDATIONS: "HERITAGE TREE #201, LOCATED ON THE EL CAMINO REAL FRONTAGE, IS A HEALTHY SPECIMEN THAT THE CITY HAS ENCOURAGED THE PROJECT TEAM TO PERSEVERE IN PLACE. THE CITY IS AWARE THAT BY RETAINING THIS TREE, THE BUILDING WILL NOT COMPLY WITH THE 25' STREET FRONTAGE REQUIREMENT AS STATED IN THE CITY'S SPECIFIC PLAN. THE PROJECT TEAM DEVELOPED THE DESIGN OF THE FOOTPRINT OF THE BUILDING TO RESPECT THE PRESERVATION OF HERITAGE TREE #201 AND HAS ADHERED TO THE SPECIFIC PLAN REQUIREMENTS AFTER CLEARING THE HERITAGE TREE'S CANOPY