

## **7460 Lone Tree Way Density Bonus Request**

On behalf of TA Ohara, LLC (“Applicant”), this serves as a request for a density bonus consistent with State Density Bonus Law (Gov’t Code § 65915) and Municipal Code Chapter 17.720 for the proposed 26-unit housing project AB 2011 (“Project”) located at 7460 Lone Tree Way, (018-070-017) in the City of Brentwood (“City”).<sup>1</sup> The Further project details, including the vicinity map and site plan, may be found in the current plan set for the Project submitted concurrently with this request.

The vacant Project site is 0.7788 acres. The Project site has a GC General Plan designation and is in a C-3 zoning district. Further project details that serve as the affordable housing plan, including the unit mix, floor plans, a vicinity map and site plan, may be found in the plan set for the Project submitted concurrently with this request. The Applicant would work from existing City template forms for the affordable housing agreement and deed restriction which would be recorded prior to building permit issuance. No pro-forma is included with this request because Density Bonus Law and State guidance are clear that a financial study is not required under Density Bonus Law to qualify for its benefits.

To market the affordable units, Developer will work with City to obtain names of eligible households certified or maintained by City in accordance with City's Affordable Housing Program and will coordinate with the City on marketing the affordable units to those households.

As described in the AB 2011 application submitted concurrently with this request, because the Project site is within a metropolitan jurisdiction (See Exhibit C) and less than one acre in size, the applicable minimum density under Government Code 65912.123(b) is 30 units per acre. No city-wide zoning district permits at least 30 units an acre. However, the PA-1 Multiple-Family Very-High Density Residential (MFVHDR) district is located approximately 1.7 miles from the project site and permits multifamily uses at 15 to 35 units an acre. This would mean the project would be required to have a 30 unit an acre minimum density and 35 unit an acre maximum density. At 26 units on a 0.7788 site, the Project is 33.38 units an acre does not require a density bonus. If the City disputes that the 35 unit an acre maximum applies to the Project, using the AB 2011 *minimum* density of 30 units are acre, the Project’s base density would be 24 units. By providing 4 lower income units and 1 very low income unit, the Project conservatively<sup>2</sup> qualifies for a 27.5% density bonus which would allow up to 31 total units on the site. The Project is also entitled to at least one concession, unlimited waivers, and reduced parking ratios (AB 2011 projects do not require any parking and therefore this reduction is unnecessary).

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<sup>1</sup> AB 2011 projects are subject to Density Bonus Law. (Gov. Code § 65912.124(f).)

<sup>2</sup> Because the very low income also meets the definition of a lower income unit, the project would qualify for a 35% bonus if all 5 affordable units were considered lower income units.

### *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 v. City of San Diego* (2022) 74 Cal.App.5th 755, 770.)

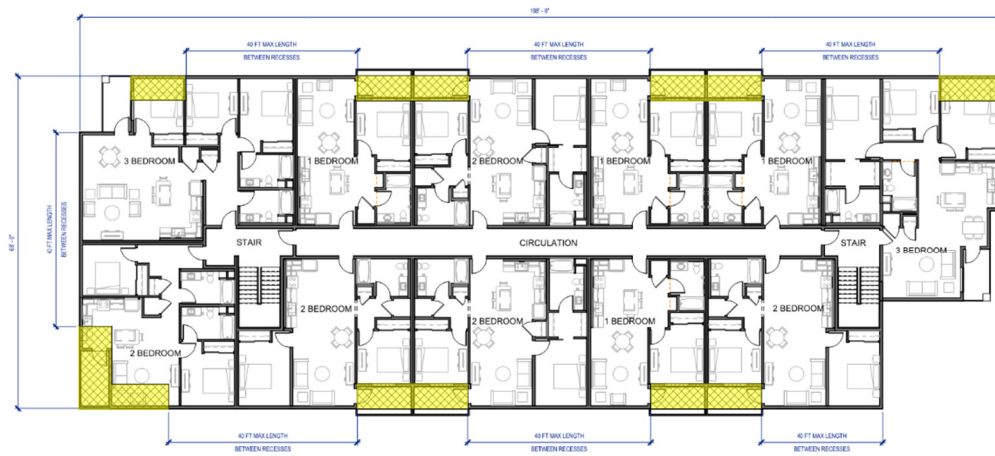
The Applicant is not requesting any concessions at this time but reserves the right to do so if the City identifies any applicable objective development standards that the Project does not comply with beyond those identified in the requested waivers below.

### *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 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.) Importantly, as explained by the Department of Housing and Community Development, “project applicants need not consider various alternatives that might be plausible on the site without concessions, incentives, or waivers.” (HCD January 20, 2022 Notice of Violation to the City of Encinitas).

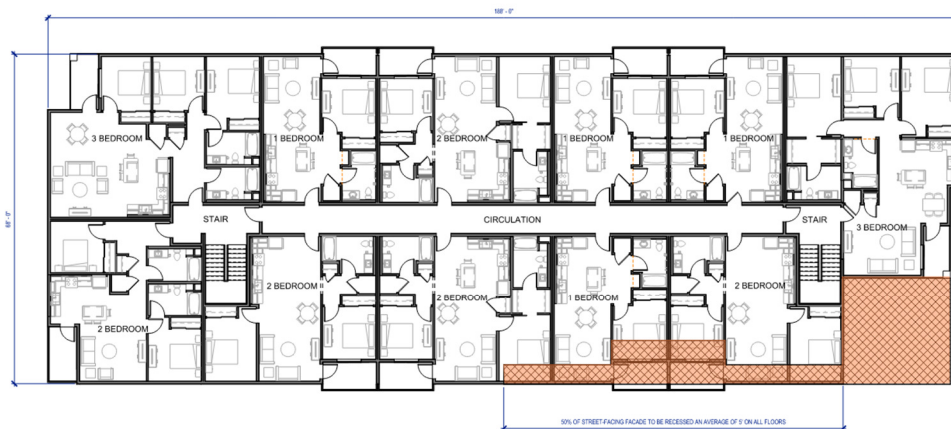
The Applicant requests the following waivers from the multi-family objective standards guidelines adopted by emergency ordinance:

*3.4 Architecture Standard G:* Creating major breaks at minimum of 5 feet deep and 10 feet wide, at a maximum of 40 feet apart and extending at least two-thirds of the height of the building would eliminate the ability to provide the Project’s 3-bedroom units and would therefore physically preclude development of the density bonus project. See Diagram below:

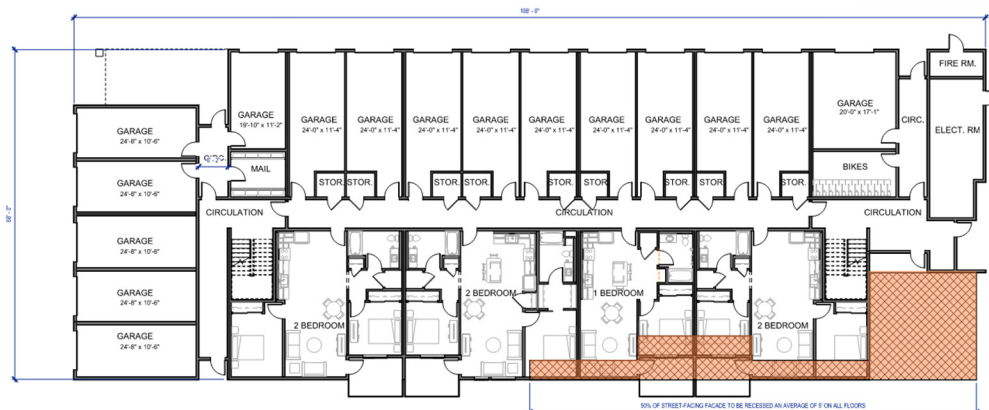


SECOND AND THIRD FLOOR PLANS | 2  
N.T.S.

**3.4 Architecture Standard Q:** The building facades are longer than 50 feet along both public streets. Creating an average of 5- foot offsets across 50% of the building frontage would increase the minimum building setback resulting in the elimination of dwelling units or



SECOND AND THIRD FLOOR PLANS | 2  
N.T.S.



FIRST FLOOR PLAN | 1  
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substantially smaller units. Therefore, strict application of this standard would physically preclude construction of the density bonus project. See Diagram below:

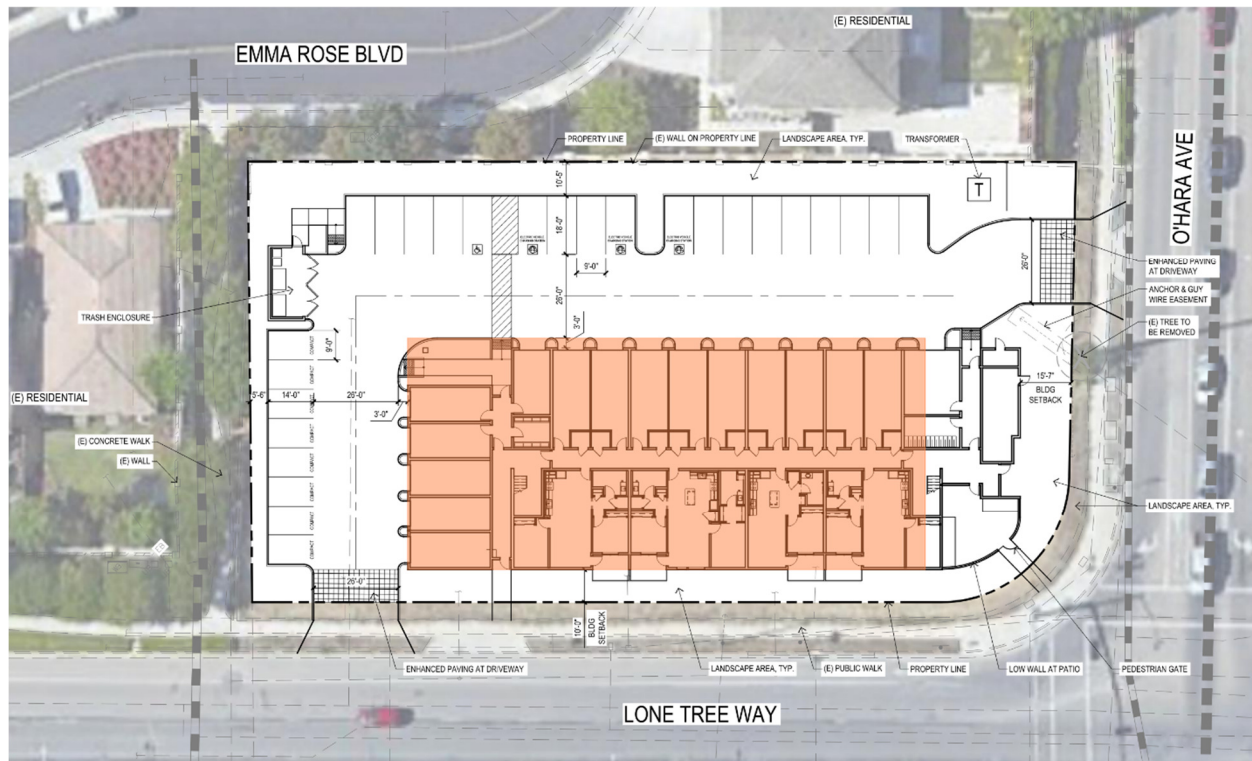
*3.4 Architecture Standard R:* Creating an average of 5-foot offsets across 25% of the building façade on all floors would result in the elimination of units or substantially smaller units, and the loss of parking spaces and/or resident storage facilities. Therefore, strict application of this standard would physically preclude construction of the density bonus project. See Diagram below:



*3.5 Usable Open Space – Private and Shared Standard A.* This requirement would result in approx. 11,500 SF (.27 Acres) of required shared open space with is approximately one-third of the entire 33,924 SF site area (.78 Acres) which would preclude any meaningful residential development to occur on this site and therefore physically preclude construction of the density bonus project at the density proposed and required by AB 2011 (minimum 30 units per acre).

The requirement that no more than 50% of the required private open space be covered by a roof or balcony would eliminate the ability to stack balconies and would in the elimination of dwelling units or substantially smaller units and stepbacks larger than required by AB 2011.

Therefore, strict application of this standard would physically preclude construction of the density bonus project. See Diagram below:



*3.5 Usable Open Space – Private and Shared Standard B.* This requirement would result in 2 passive and 1 active recreation outdoor amenities for a total of 1,100 SF. This quantity and program of usable outdoor recreation space would result in a loss of units and parking do to the very limited site area (0.7788 acres). Therefore, strict application of this standard would physically preclude construction of the density bonus project. Also, Usable outdoor space compliant with Open Space Standard A. is not being provided so these standards would be a derivative waiver.

*3.5 Usable Open Space – Private and Shared Standards C & D.* Usable outdoor space compliant with Open Space Standard A. is not being provided so these standards would be a derivative waivers.

*Additional Waivers.* To the extent the City takes the position any additional development standards apply that the project is not consistent with, the applicant requests a waiver from those standards. (See, e.g., *Bankers Hill*, 74 Cal.App.5<sup>th</sup> at 775 “unless one of the statutory exceptions applies, so long as a proposed housing development project meets the criteria of the Density Bonus Law by including the necessary affordable units, a city may not apply any development standard that would physically preclude construction of that project as designed . . .”).

*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 based on the permitted maximum 35 units an

acre. If the City takes the position that 30 units an acre is a maximum density, the project requests a 12% density bonus for a total of 26 units.

The Applicant also does not request the reduced parking ratios set forth in Government Code Section 65915(p) be applied to the project as no parking requirement applies under AB 2011.

The Applicant may adjust its Density Bonus request as the Project proceeds through AB 2011 processing. We look forward to working with you on the Project.