

November 26, 2024

Sean Mullin, Planning Manager
Community Development Department
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030
Email: smullin@losgatosca.gov

**Re: Letter of Justification / Formal Application Pursuant to
Builder's Remedy for 15495 Los Gatos Boulevard, Los Gatos
(APN 424-22-030).**

Dear Mr. Mullin:

Green Valley Corporation dba Swenson hereby submits a Formal Application, pursuant to Senate Bill 330 and the "builder's remedy," for its proposed residential "housing development project" at 15495 Los Gatos Boulevard in Los Gatos, California. This letter and the enclosed information represent the Project's Formal Application pursuant to Government Code section 65941.1(a).

A. Existing Property Description

The existing property consists of a mixed use of commercial retail and office space with minimal frontage along Los Gatos Boulevard and a very deep lot wrapping around McDonald's. The property abuts additional commercial/retail uses to the north and east, industrial automotive uses to the south and residential uses to the west.

B. Project Description

The proposed project consists of two buildings on top of a single podium providing 6-stories of residential housing and two levels of parking. There are two secure courtyards on top of the parking garage that will serve as the private outdoor recreation space for the tenants to enjoy. There is also a rooftop garden that will adorn a portion of the lower roof on the 7th floor. The project is on a single infill property parcel (Assessor Parcel Number APN 424 22 030) at 15495 Los Gatos Boulevard in Los Gatos ("Project Site"). The Project would replace the existing shopping center which is approximately.

The Project includes 190 market-rate units comprised of one bedroom, two bedroom and three-bedroom units ranging in size from 750 square feet to approximately 1,500 square feet.

The Project also includes 48 (i.e., 20%) Below Market Rate units ranging in a mix of one bedroom, two bedroom and three-bedroom units.

The Project seeks the City's approval under the Subdivision Map Act, including a

Parcel Map, a Vesting Tentative Map, and a Tract Map.

C. Compliance with the Objective Design Standards

The proposed project specifically addresses the Objective Design Standards and Guidelines for Multi-Family Development, and our responses are detailed in the excel chart/PDF that is resubmitted this round. There is only one item within the Town Objective Design Standards that we are using a waiver for and that is A.2 Short Term Bicycle Parking. The use of waivers will be considered for car parking, setbacks, height, etc. if those items come up through the process.

D. General Plan and Zoning - Builder's Remedy and the Housing Accountability Act

This Project is protected by the "Builder's Remedy" provisions of the Housing Accountability Act ("HAA"). (Gov. Code § 65589.5). These provisions prohibit a city, like the Town of Los Gatos, that does not have an adopted housing element that is substantially compliant with the Housing Element Law (Gov. Code § 65580 *et seq.*) from disapproving or conditioning in a manner that renders infeasible a housing development project "for very low, low-, or moderate-income households," even where the project is inconsistent with both the city's zoning ordinance and general plan land use designation. (Gov. Code § 65589.5(d)(5)). Projects for very low, low-, or moderate-income households are defined to include projects that provide 20 percent of the units for lower income households as defined in the HAA. (Gov. Code § 65589.5(h)(3)).

Because the City had not yet adopted a substantially compliant 6th Regional Housing Needs Assessment ("RHNA") Cycle Housing Element and the Project is a housing development project that will provide 20 percent of its units for lower income households, the Project is protected by the Builder's Remedy. Therefore, the City cannot deny or condition approval of the Project in a manner that would render it infeasible, notwithstanding any inconsistency of the Project with the zoning ordinance or General Plan land use designation of the Project Site. In other words, the City cannot lawfully require the Project to obtain a General Plan amendment or rezoning, nor can it disapprove the Project for not seeking and obtaining a General Plan amendment or rezoning.

E. Senate Bill 330

Signed into law on October 9, 2019, by Governor Newsom and effective January 1, 2020, SB 330 declared a statewide housing emergency. The bill places restrictions on certain types of development standards, amends the HAA, and makes changes to local approval processes and the Permit Streamlining Act (Gov. Code § 65920 *et seq.*). During the housing emergency period, as extended until 2030 by Senate Bill 8, all cities are subject to specified project review requirements and timelines regarding applications for housing developments. These changes include a prohibition on applying new zoning regulations and development standards or listing the project as a local historic landmark after a project's application is submitted, except under certain specified circumstances. Housing developments that meet all applicable objective general plan and zoning standards may only be subject to a limited number of public hearings, including continuances and appeal hearings.

1. Preliminary Application

SB 330 allows an applicant to submit a Preliminary Application for any “housing development project,” meaning a project that is at least two-thirds residential by square footage. (Gov. Code § 65941.1). A Preliminary Application is separate and distinct from, and does not require as much detail as, a traditional development application—i.e., a “Formal Application.” SB 330 precludes local agency input into the required contents of a Preliminary Application. For example, the local agency may not add to the 17-item checklist.¹ In addition, the applicant may elect to use a city’s Preliminary Application checklist, a checklist created by the California Department of Housing and Community Development, the applicant’s own checklist, or no checklist at all. (Gov. Code § 65941.1(b)). Finally, the local agency has no role in determining the completeness of a Preliminary Application.² Thus, if the applicant complies with the checklist, then the Preliminary Application is complete at the moment of filing-and vested rights accrue at that moment—without any affirmative action by the City required or allowed.

If an applicant submits a Formal Application within 180 days of submitting a Preliminary Application, then the zoning, design, subdivision, and fee requirements in effect at the time the Preliminary Application was submitted shall remain in effect for the remainder of the entitlement and permitting process, with certain limited exceptions,³ plus two and one-half years following the date of final approval.

This is the earliest form of vested rights provided in the state Planning and Zoning Law and it is completely applicant controlled. By way of submitting this resubmittal, we have met the Formal Application requirements within the timeframe designated and look forward to working with the Town on finalizing our entitlement approvals.

2. Consistency with General Plan and Zoning

SB 330 provides that a housing development project “shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent, compliant, or in conformity.” (Gov. Code § 65905.5(c)(1)). It also provides that a proposed housing development project “is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria, but the zoning for the project site is inconsistent with the general plan.” (Gov. Code § 65905.5(c)(2)).

¹ Gov. Code § 65941.1(b)(3) ("A checklist or form shall not require or request any information beyond that expressly identified in subdivision (a).").

² Gov. Code § 65941.1(d)(3) ("This section shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application or a development application for purposes of compliance with this section.").

³ Exceptions to this rule include: (1) development impact fees, application and permit processing fees, capacity or connection fees, or other charges may be annually adjusted based on a published cost index (Gov. Code § 65589.5(o)(2)(A)); (2) where the requirement is necessary to avoid an adverse impact to public health or safety as defined in state law (Gov. Code § 65589.5(o)(2)(B)); (3) where the requirement is necessary to avoid or lessen an impact under CEQA (Gov. Code § 65589.5(o)(2)(C)); (4) where the project does not commence construction within two and one-half years of the project's site permit being issued (Gov. Code § 65589.5(o)(2)(D)); and (5) where the project increases by more than 20 percent in the number of units or total square footage beyond the preliminary application, except as the project may be revised using a density bonus (Gov. Code § 65589.5(o)(2)(E)).

3. Early Statutory Vested Rights

As noted above, the filing of a Preliminary Application provided the earliest form of vested rights established in California law. Subject to certain limited exceptions, SB 330 provides that a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a Preliminary Application was submitted. (Gov. Code § 65589.5(o)). An applicant for a housing development project may bring legal action to enforce the HAA if a local agency requires or attempts to require a housing development project to comply with an ordinance, policy, and standards (which includes those relating to development impact fees, capacity or connection fees, or permit processing fees), not adopted and in effect when a Preliminary Application was submitted. (See Gov. Code § 65589.5(k)(1)(a)(i)(III) and § 65589.5(o)(4)).

4. Limited Public Hearings

Under SB 330, housing development projects that comply with applicable objective general plan and zoning standards are subject to a maximum of five public hearings⁴ prior to final action by the City. (Gov. Code § 65905.5(a)). The City must consider and either approve or disapprove the project at one of these five hearings, after which no further hearings may be held in connection with project approval. (*Id.*).

F Justification For The Project / Conclusion

This Formal Application submittal responding to the Town's letter response from our Preliminary Application meets the requirements since the project is proposed at a time of the California's Housing Crisis (Housing Crisis Act of 2019). Swenson is available for any meetings or phone calls to discuss the Project, or this completed Formal Application with you at any time.

⁴ The term "hearing" is broadly defined to include informational hearings, hearings at which the project is continued to another date, sub-committee hearings, and appeal hearings. (Gov. Code § 65905.5(b)(2)).



Sincerely,

Mark Pilarczyk
Vice President, Development
Green Valley Corporation DBA Swenson