



ANDREW L. FABER
JAMES P. CASHMAN
NANCY J. JOHNSON
JEROLD A. REITON
JONATHAN D. WOLF
KEVIN F. KELLEY
MARK MAKIEWICZ
JOLIE HOUSTON
BRIAN L. SHETLER
HARRY A. LOPEZ
CHARLES W. VOLPE
CHRISTINE H. LONG
AARON M. VALENTI
CHRISTIAN E. PICONE
SUSAN E. BISHOP

SANDRA G. SEPÚLVEDA
KIMBERLY G. FLORES
DAWN C. SWEATT
TYLER A. SHEWEY
JAMES F. LANDRUM, JR.
MICHAEL J. CHENG
EILEEN P. KENNEDY
JOSHUA BORGER
BENJAMIN M. JOHNSON
STEPHEN C. SCORDELIS
C. DAVID SPENCE
BRANDON L. REBBOAH
TIMOTHY K. BOONE
STUART B. SPENCER
WENDY C. KROG

TEN ALMADEN BOULEVARD
ELEVENTH FLOOR
SAN JOSE, CALIFORNIA 95113-2233

TELEPHONE: (408) 286-5800
FACSIMILE: (408) 998-5388

www.berliner.com
Branch Offices
Merced, CA • Modesto, CA

MERAV AVITAL-MAGEN
PABLO TAGRE
ALEXANDRIA N. NGUYEN
MONICA S. HAMMER
LEILA N. SOCKOLOV
ALAN LAW
BLAINE R. COX
ANGELA SHAW
DAVID A. BELLUMORI
NATHAN C. BRADY
LINDSAY I. WALCZAK
MAKAYLA A. WHITNEY
JACE D. LYNCH
MARISA J. MARTINSON
MARIA I. PALOMARES
BENJAMIN H. WOHLFORD
KEVIN S. LANDIS
OMEED RAJAEI
TIFFANY A. SCOGGIN

CHRISTIAN D. WICK
VEENA A. BANSAL
JULIA L. COVELLO
AZITA RAHIM
JOSEPH H. FELDMAN
MATTHEW C. TOSCANO
JEANETTE MARTINEZ
ROBERT AVERSA-GOODMAN
SHANY KLEIN
MILAN NEDA
KIM G. DESCAMPS
MORGAN H. WAHLER
CAITLIN CAPRIOTTI
JOSEPH C. FORGATCH
GARRETT D. BERGHOLD
TONY INFANTE
IAN M. DURUPT
KELSEY JOHNSON
RAMSIN YOUKANA

FOUNDERS

SANFORD A. BERLINER (d. 2020)
SAMUEL J. COHEN

OF COUNSEL

STEVEN L. HALLGRIMSON
PEGGY L. SPRINGGAY
FRANK R. UBHAUS
STEVEN J. CASAD
KATHLEEN K. SIPLE
MICHAEL B. IJAMS

NANCY L. BRANDT
BRADLEY HEBERT
ERIC D. CAPRON
THOMAS P. MURPHY
FRED A. SILVA

March 19, 2025

c h x t l d
cleverhomes by tobylongdesign
6114 La Salle Avenue #552
Oakland, CA 94611

Planning Division
Community Development Department
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Re: Justification letter submitted in support of resubmission for housing
development project at 101 Blossom Hill Road, Los Gatos (APN: 529-11-036)

Dear Sir or Madam,

This firm represents Lonny and Patricia Oswalt, Trustees of the Lonny and Patricia Oswalt Living Trust / Lonny Oswalt, Trustee of the Lonny Lee Oswalt Living Trust (together, the “Applicant/Owner”), in connection with their application for construction of a 63-unit residential condominium building (the “Project”) on the property located at 101 Blossom Hill Road, Los Gatos, CA; APN: 529-11-036 (the “Property”) in the Town of Los Gatos, California (the “Town”). The Project was submitted pursuant to the Housing Crisis Act of 2019 (“SB 330”) and the Housing Accountability Act (the “HAA”), specifically including the “Builder’s Remedy” provision, as acknowledged by the Town. The Applicant received the Town’s technical review comments dated December 23, 2024, determining the application to be incomplete and requiring a resubmittal of plans and application materials to address certain specified deficiencies.

The following responses serve as the Applicant's "Letter of Justification" and are submitted in support of the resubmittal being filed by Toby Long and Lonny Oswalt (on behalf of the Applicant), along with supplemental/revised materials.

General responses to Town's comments

The Project is proposed under the "Builder's Remedy" provision of the HAA. Gov. Code §65589.5(d)(5). Accordingly, any changes reflected in the enclosed materials are being made voluntarily, and the Town is prohibited from denying the Project notwithstanding its noncompliance with any zoning requirements or requirements that stem therefrom.

As you know, SB 330 was designed to help address the state's housing shortage by placing restrictions on certain types of development standards, amending the HAA, and making changes to local approval processes and the Permit Streamlining Act. Gov. Code §65920 et seq. During the housing emergency period, all cities are subject to specified project review requirements and timelines regarding applications for housing developments. These requirements 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.

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. In addition, the local agency has no role in determining the completeness of a Preliminary Application. Thus, if the applicant complies with the checklist, then the Preliminary Application is complete at the time of filing, and vested rights accrue at that moment, without any affirmative action by the Town required or allowed. In the Applicant's case, the Project is currently vested.

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, plus 2 ½ years following the date of final approval.

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).

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. Gov. Code §65589.5(k)(1)(a)(i)(III) and §65589.5(o)(4).

Under SB 330, housing development projects that comply with applicable objective general plan and zoning standards are subject to a maximum of five public hearings prior to final action by the Town. Gov. Code §65905.5(a). The Town 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. Gov. Code §65905.5(a).

Specific responses to Town’s comments

1. Mixed-use component omitted from application:

- a. The Project is not mixed use because it is designed to be used entirely for residential. I understand that the Preliminary Application had reflected office use; that has now been removed.
- b. Further, the Project is not required to comply with the zoning code due to the applicability of the Builder’s Remedy provision of the HAA. Gov. Code §65905.5(c).

2. Below Market Price (BMP) units:

- a. The Project complies with the HAA’s requirement for at least 20% of the units to be affordable. Please see “Affordable Housing” sheet that has been added to this resubmission.
- b. Further, the Town is prohibited from denying the Project notwithstanding any noncompliance with the BMP due to the Builder’s Remedy provision of the HAA.

3. Benefit to the community:

- a. The Project exterior has carefully considered the Town’s Objective Design Standards to articulate massing and differentiate façade elements on all levels. Classical proportions and materials are used to reflect the historic character of the Town.

- b. The Project features generous open space, landscaping and walking paths at the southeastern corner and intersection of Blossom Hill and University Ave. This provides a transition from the adjacent Vasona Park.
 - c. A pool area for use by residents is proposed at the northeast corner of the Property.
 - d. A courtyard garden serves a buffer area adjacent to the existing residential neighborhood at the northwest corner of the Property. This serves to exceed the Objective Design Standards for community recreation space.
 - e. The Project provides high quality housing in an appropriate location, in close proximity to a variety of other uses that further the community's ability to shop, work, and recreate close to where they live.
 - f. The Project is directly adjacent to bus line 27 on N. Santa Cruz Avenue, promoting community transportation.
 - g. The Project is directly adjacent to two bicycle lanes along University Avenue and N. Santa Cruz Avenue, promoting community transportation and recreation.
 - h. The Project is directly adjacent to Vasona Park across University Avenue, providing convenient access to public recreation and trail access.
 - i. The Project is directly adjacent to three public roads (Blossom Hill Road, University Avenue and N. Santa Cruz Avenue), promoting vehicle movement.
 - j. The Project adds BMP units.
 - k. The Project has been designed to comply with all applicable requirements for access for physically disabled persons.
 - l. The Project's approval at a higher density than would otherwise be allowed will have no impact on other sites in the zoning district or the integrity of the district as a whole, since the Builder's Remedy under which the Project is being proposed is time-limited (in that it only applies when a jurisdiction is out of compliance).
4. Traffic impact:
- a. The Project has been designed to meet all traffic safety requirements, with future revisions contemplated in connection with CEQA requirements to be provided by the Town.
 - b. It is important to note that the Property was previously owned by California State Automobile Association (CSAA) (the Applicant purchased the Property from CSAA on June 3, 2011). I understand that CSAA operated the Property for over 40 years, with regular vehicle traffic. Thereby, vehicle traffic associated with the Project should be comparably less than historic uses by CSAA.

5. Meeting Town's housing needs: The Project intends to help address state's housing crisis by providing both market rate and 20% affordable housing units, assisting the Town in meeting its Regional Housing Needs Allocation (RHNA) targets.

This Letter of Justification incorporates by reference the Applicant's responses to the Town's staff responses, all as reflected in the Objective Design Standards Checklist (Excel spreadsheet). The Applicant is working in good faith with the Town to comply with the Objective Design Standards. If and to the extent the Town determines that the Project is not compliant with the Objective Design Standards and/or Staff Comments by various departments, then the Applicant hereby asserts Builder's Remedy exemption(s).

If you have any questions or would like to discuss, please feel free to reach out to me.

Very truly yours,

BERLINER COHEN, LLP



TYLER A. SHEWEY

E-Mail: tyler.shewey@berliner.com

TAS

cc: Lonny and Patricia Oswalt, Trustees of the Lonny and Patricia Oswalt Living Trust
Lonny Oswalt, Trustee of the Lonny Lee Oswalt Living Trust