EXHIBIT 13

May 4, 2023

Cassandra Pruett, AICP, Planner
Community Development & Planning Department
City of Glendale
633 E. Broadway, Suite 103
Glendale, CA 91206

Re: 246 N. Jackson Street, Glendale, CA – Density Bonus Project

Dear Ms. Pruett:

This letter is being submitted by the Applicant to address the Glendale Homeowners Coordinating Council's ("GHCC") appeal of the Planning Commission's November 2, 2022 approval of the above-referenced density bonus project. In particular, the November 16, 2022 Appeal by the GHCC states that the Planning Commission made three mistakes that should invalidate its decision to approve the project:

1. Staff miscalculated the incentives by counting multiple concessions and waivers the setbacks as only as one incentive;
2. Invalid calculation of base density and density bonus units;
3. There is no evidence that one of the units was owner occupied and thus the number of replacement affordable units is deficient.

Nowhere, however, does the Appellant connect these points to the two findings required under Government Code Section 65915(d)(1) to deny the proposed project, i.e., the concessions and waivers do not result in identifiable and actual reductions to provide the affordable housing on-site, and/or they will have a specific, adverse impact upon the public's health and safety. Moreover, the Appellant does not account for the fact that whether the City approves one concession for five setbacks, or one waiver for multiple minimum unit size deviations, the net effect is the same. In many regards, therefore, the bases for the appeal are red-herrings that put form over substance.

As explained in your Staff Report, the Applicant is requesting two concessions and two waivers under the State Density Bonus Law ("SDBL"). The first concession is to increase the maximum height and stories of the proposed building to 36-feet, 11-inches and three stories because the Code otherwise would limit the project to only 26 feet in height under the R-1250 zone for lots less than 90 feet in width. The second concession is to reduce the minimum required setbacks at the front of the parcel and at the street side of the subterranean garage, as well as to reduce the building's required front and interior-south setbacks on the second and third floors, along with the interior-north setbacks on the first, second and third floors.

In addition to these two concessions, the Applicant is requesting two waivers that are necessary to make construction of the project as envisioned with the density permitted under the

SDBL physically possible. The first waiver is from the minimum unit size requirements in GMC 30.11.050, because seven of the eleven proposed units do not meet the minimum unit size. The second waiver is from the maximum floor area ratio of 1.20 because that ratio would limit the project to 8,904 square feet while the proposed project is 9,760 square feet. Although the difference of 856 square feet may seem insignificant, the reality is that the additional square feet allows the project to provide an additional affordable housing unit with common space amenities and a project that adheres to the City's Development Standards and Design Guidelines.

Any objections by the Appellant to the documentation supporting the requested waivers is rebutted by the May 4, 2023 letter addressing the necessity for the waivers submitted by a licensed architect discussing the merits of the project and illustrating that the project will be physically precluded from being built as envisioned and at the density and with the requested concessions, if the waivers are not granted. Without the requested waivers the project cannot be physically built as proposed, nor can it comply with the City's Development Standards and Design Guidelines. Such an outcome is inconsistent with the goals and purposes of the SDBL as explained under the case-law and statutes cited below.

As the Staff Report for the Planning Commission's November 2, 2022 hearing concluded, these two concessions and two waivers are needed to "facilitate the proposed design and ensure architectural character that meets the City's Design Guidelines, including three distinct and separate common open spaces with amenities on the building's ground level and on the third floor deck"; and the additional height and stories are needed for the construction of the three units on the third-floor because of the narrow width of the lot (lots less than 90 feet in width are limited to two story / 26 feet in height).

Staff's conclusion and the Planning Commission's approval were thus consistent with California law. As the Court explained in *Wollmer v City of Berkeley* (2011), 193 Cal.App.4th 1329, 1346 -1347, "nothing in the statute requires the applicant to strip the project of amenities, such as an interior courtyard, that would require a waiver of development standards. Standards may be waived that physically preclude construction of a housing development meeting the requirements for a density bonus, period. (§65915, subd. (e)(1).) 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. Wollmer's argument goes nowhere. Had the City failed to grant the waiver and variances, such action would have had "the effect of physically precluding the construction of a development" meeting the criteria of the density bonus law. (*Ibid.;* see *Wollmer I, supra,* 179 Cal.App.4th at p. 947, 102 Cal.Rptr.3d 19.) If the project were not built, it goes without saying that housing units for lower-income households would not be built and the purpose of the density bonus law to encourage such development would not be achieved. The trial court properly interpreted the statute, and the City proceeded in the manner required by law in granting the waivers."

Here, as in *Wollmer, supra*, if the Applicant cannot create a larger building via the concessions and waivers requested, the proposed project is reduced from 11 units with one affordable unit to 6 units with no affordable units, which is contrary to the spirit and intent of the

SDBL. 1

Eleven units, however, are also only possible if the minimum size of some of the units are reduced slightly so that the project can comply with the City's Design Guidelines and Design Guidelines. In particular, and as described by license architect in the May 4, 2023 letter, the site is fully built out under the proposed design and there is no room to push the building boundary any further than what is being proposed with the concessions for setbacks and for height/stories. There also is no extra space on the site for larger units because the common open space ratio and the landscape ratio already are at the code minimums. Similarly, the interior circulation elements such as the corridors, staircases and elevator shafts are at the code minimums. As such, if the Applicant must comply with the minimum unit size requirements, the project will lose one, probably 2 units, one of which will be the on-site affordable unit. The project also will lose its distinct common open spaces and amenities on the ground level, and on the 3rd floor deck. At that point, it makes no sense to build a density bonus project. Instead, the Applicant would be the by-right 6-unit project, which is contrary to the purposes of the SDBL.

As the Court explained in *Wollmer*, *supra,* the SDBL "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." *Id.* Applying the same logic negates Appellant's arguments regarding the validity of the waivers, since a waiver for minimum unit size shall not require a project to give up portions of its common open space amenities or portions of its landscape area amenities, in order to create additional living area to avoid a waiver. As the Court explained in *Wollmer*, *supra,* granting of a waiver shall not take away from the project's amenities.

The necessity for the second waiver from the maximum floor area ratio of 1.20 is the same. As described in the license architect's May 4, 2023 letter, the proposed project has a floor area ratio of 1.32 so that it can construct the 9,760 square feet needed for all eleven units. Without it, the maximum floor area ratio is 1.20, and the project could be no larger than 8,904 square feet, which results in the loss of one, probably two units, including the on-site affordable unit. The requested deviation is thus minor and consists of only 856 square feet of additional floor area over the allowable limit so that the project can provide all eleven units with the one on-site affordable unit and the amenities and open-space shown on the plans. Without the additional 856 square feet, the units size also shrinks even further thus exacerbating the minimum unit size problem.

Simply put, the two waivers will provide the necessary building square footage and unit count to allow for the desired project size, the desired project unit-mix, and the desired project amenities to bring this project to fruition as envisioned as explained I the architect's letter, with the density and requested concessions allowed under the SDBL.

To state the converse, denying the requested waivers from the floor area ratio and minimum unit size requirements will physically preclude the project from being built per the desired unit mix, per the desired number of bedrooms, per the desired net livable area and per the

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1. The 11 unit calculation is consistent with the City's recently adopted Housing Element that shows the property listed on the site inventory in Appendix A.

desired net average unit size, and with the density permitted under the SDBL.

The two concessions and waivers thus are not contrary to state or federal law. Rather, they are in keeping with the SDBL, which rewards a "developer who agrees to build a certain percentage of low-income housing with the opportunity to build more residences than would otherwise be permitted by the applicable local regulations." *Friends of Lagoon Valley*, 154 Cal. App. 4th at 824 (*citing to Shea Homes Ltd. P'ship v. Cnty. of Alameda*, 110 Cal. App. 4th 1246, 1263 (2003)); *Latinos Unidos*, 217 Cal. App. 4th at 1164. "In its specifics, section 65915 establishes a progressive scale in which the density bonus percentage available to an applicant increases based on the nature of the applicant's offer of below market-rate housing." *Wollmer*, 193 Cal. App. 4th at 1339-40. To achieve its goals, the SDBL also "shall be interpreted liberally in favor of producing the maximum number of total housing units." Cal. Gov't Code § 65915(r).

For this project, separate from the economics of the project, without the concessions and waivers, the Applicant cannot construct the third floor, nor the third-floor units and open-space amenities in the project. Rather, adhering to the City of Glendale's height and story limits would result in a 2-story project consisting of 6 units. Further, adhering to the City of Glendale setback and minimum units size requirements, would force the proposed project to pull the building back in 3 of its 4 directions, thus resulting in a much narrower and small building and the loss of five units.

In sum, not obtaining the approval of the requested concessions and waivers would result in a smaller building with less units and amenities and fewer affordable bedrooms. The project would transform from a housing development project consisting of one- and two-bedroom units for families, including low-income families, into a project of studio and one-bedroom units not conducive to family living or the neighborhood.

As to the Appellant's inaccurate claim regarding the invalid calculation of base density and density bonus units, seems to be an objection to the termination of the 1972 Easement for and condition of approval #4 required by the Department of Public Works Department that the applicant dedicate a portion of the property at the southeast corner of California Avenue and Jackson Street for an ADA-compliant handicamp ramp. The 1972 Easement is for a public right of way.

However, the public right of way at issue is <u>for sidewalk purposes only</u> and the 1972 Easement does not create a uniform width for the sidewalk along both California Avenue and Jackson Street. Further, as the Applicant has previously explained, the existing Easement results in a measurement of 9 feet from the face curb to the existing property line, which is 3 feet less than what is required under the City's standards for an ADA-compliant handicap ramp. In other words, absent a new dedication or easement, it is impossible to construct an ADA-complaint handicap ramp as required by the city, between the existing face of curb and the existing property line. Hence, the reason Public Works has imposed condition #4.

The Appellant concedes in its appeal papers that there is no practical difference between an easement and a dedication. As such, the only question is what is the best way to make the new

required 3-foot dedication. The first option is to overlay the required dedication on top of the 1972 easement. The problem in doing so is that the purpose of the 1972 easement is not the same as the purpose of the dedication. As such, the legal description for the old easement would have to be amended and modified to eliminate that part of the area that will be used for the ADA ramp dedication, so that the legal description for the area that is to be used for the ADA ramp does not conflict with an existing encumbrance. As such, the first option requires the preparation and recording of an amended easement agreement with new legal descriptions between the applicant and the City, and also the preparation and recording of the new dedication for the handicap ramp, with the requisite legal descriptions, and any adjustments of the legal descriptions for the lots line impacted by them.

The second, far simpler option is to simply terminate the existing easement and record a new dedication with the appropriate legal descriptions that provides for the necessary dimensions between the existing face of curb and the property line in order to accommodate an ADA-compliant handicap ramp. Option number 2 is far simpler, is much more direct and is far more efficient.

Although the Appellant also seems to be arguing that the City is required to keep the 1972 easement, cities terminate old easements all the time; particularly, in order to comply with new State and Federal laws. Here, the City is complying with the SDBL by facilitating a project with more housing units, as well as complying with the Federal American with Disabilities Act. Cal. Gov't Code § 65915(r) states that to achieve its goals, the SDBL "shall be interpreted liberally in favor of producing the maximum number of total housing units", which is what the City is doing.

Further, although the Appellant seems to be arguing that the second option provides the applicant with 21 sq. ft. more than the first option, the Appellant's objection fails to address the required findings to deny the project and are more form over substance. Cal. Gov't Code § 65915(r) states that to achieve its goals, the SDBL "shall be interpreted liberally in favor of producing the maximum number of total housing units." Appellant's arguments are thus contrary to the intent and spirit of the SDBL, since excluding the 21 sq. ft. of lot area from the density bonus density calculation, will results in a 9-unit project versus a 11-unit project and the loss of 2-units.

The same can be said of the Appellant's claim that one of the three units being demolished was not "owner occupied" and, therefore, that the City miscalculated the number of replacement units required under the SDBL. As the Housing Department and Planning Commission concluded, the IRS Tax Form 593 used by the Seller, plus the Grant Deed that shows "Letticia Banaag" as the previous owner and the seller of the property, are consistent with the name of the landlord on the two August 2020 Tenant Estoppel Certificates for the two-upper-level units occupied by tenants, as well as the name of the landlord on the Mutual Termination of Rental Agreements that were signed before Applicant closed escrow. All of these tenant documents are limited to only two of the units being tenant occupied, because Ms. Banaag was occupying one of the 3 units; specifically, the lower-level unit was occupied by Ms. Banaag and the two upper level units were tenant occupied.

To add to that evidence, enclosed is a letter from Mr. Paul Sarkissian dated February 16, 2023, who co-represented buyer during the acquisition of the property, stating that he directly communicated with Ms. Banaag at her unit on the property, and that he saw Ms. Banaag packing her belongings before vacating her unit. Further, the Applicant will testify at the City Council hearing that he too witnessed the seller, Ms. Banaag, packing her belongings before vacating her lower level unit. This direct evidence should put to rest any objection to the fact that one of the units was owner occupied.

As such, the City's calculation of the number of required replacement units and density bonus in the Housing Department's February 2022 Memo and the November 2022 Staff Report are valid.

Please let me know if you have any questions or need anything further.

Sincerely,

Artshar LLC
Art Simonian – Manager

Attachments:

Letter from Mr. Sarkissian dated February 16, 2023 - Exhibit A
Letter addressing the necessity for the waivers dated May 4, 2023

EXHIBIT A

SO-CAL REALTY
& PROPERTY MANAGEMENT
RESIDENTIAL & COMMERCIAL

February 16, 2023

Artshar LLC
501 WEST GLENOAKS BLVD
#556
GLENDALE, CA 91202

Re: 246 N. Jackson street, Glendale, CA ('Property")

To whom this may concern:

I am a licensed broker in the state of California and I Co-represented Artshar LLC ("Buyer"), with the acquisition of the property located at 246 N. Jackson Street, Glendale, CA ("Property"). The purchase and sale agreement was accepted by buyer and seller and escrow was opened on or around July 13, 2020, and the close of escrow occurred on September 2, 2020.

I was personally present at the physical inspection when Buyer performed its physical inspection of the Property. Also present at the physical inspection was the seller of the property Letticia Banaag ("Seller"). The Property consists of three units and one unit is located on the ground-level and two units are located on the upper-level of the Property. Ms. Banaag was occupying the lower-level unit of the Property.

Furthermore, during the physical inspection, Ms. Banaag was in the process of packing boxes and getting ready to move-out of her ground-level unit, since her intent was to vacate the Property upon the close of escrow. I also recall Ms. Banaag mentioning to me that her family had been occupying the ground-level unit of the Property for very long time.

Sincerely,

PAUL SARKISSIAN
BROKER/OWNER
CalBRE Lic: 01452059
SO-CAL REALTY
DRE Lic: 01452059
335 N. BRAND BLVD. #200
GLENDALE CA 91203
TEL: 310-892-7285
FAX: 818-484-5827

The applicant is requesting the following Two (2) Concessions/ Incentives necessary in order to make the project affordable pursuant to GMC Section 30.36.070 A.

1) An increase the maximum height and stories to 36'-11" and 3-stories (measured from Average Grade to top of the elevator shaft).

2) A reduction of the minimum setbacks at the front and street side setbacks of the subterranean garage. Also, a reduction of the building's minimum setbacks at the front setback, interior south setback and also at the north street-side setback.

The project also qualifies for parking concessions under GMC 30.36.090 (B) and California Government Code Section 65915. Specifically, under GMC 30.36.090 (B), housing developments that include at least twenty (20) percent low-income units, or eleven (11) percent very-low income units, and are located within one-half mile of a major transit stop with unobstructed access, upon the request of the applicant, the required vehicle parking ratio, inclusive of handicapped and guest parking, is not to exceed one-half (0.5) space per bedroom. As such, only 9 parking spots are required for the 17 bedrooms in the proposed project and the applicant is providing 15 parking spaces, which is 6-more parking spaces than required.

INCENTIVES OR CONCESSIONS:
A Density Bonus for the allowable incentives or concessions shall be granted unless, based on substantial evidence, any one or more of the following findings can be made (GMC 30.36.080.A):

A. **The incentive or concession does not result in identifiable and actual cost reductions to provide for affordable housing costs or to provide affordable rents;**

The evidence submitted by the Applicant with this application and incorporated herein by reference shows that the incentives/concessions do result in identifiable and actual cost reductions and are required in order to provide for affordable housing costs or to provide affordable rents. As explained below, the requested concessions are required to allow for additional buildable area to provide more units at market rates that would reduce the cost of subsidizing the affordable units on-site as allowed under the State Density Bonus Law. Further, both concessions are needed to facilitate the proposed design and ensure architectural character that meets the City's Design Guidelines, including three distinct and separate common open spaces with amenities on the building's ground level and on the 3rd floor deck. Further, the additional height/stories is necessary for the construction of the 3rd floor that otherwise could not be achieved. Without the construction of the 3rd floor, the additional market rate units that offset the overall costs per unit for the project that enable the construction of a subsidized very low-income affordable unit, cannot be achieved. In particular, the applicant is requesting two concessions:

1) to increase the maximum height and stories to 36-feet, 11-inches and three (3) stories (where 26 feet is the height limit in the R-1250 zone for lots less than 90 feet in width), and

2) to reduce the minimum required setbacks at the front and at the street side setbacks of the subterranean garage, and to reduce the building's required setbacks at the front setback on the second and third floors, at the interior-south setback on the second and third floors, on the interior-north setbacks on the first, second and third floors.

The Applicant is requesting these concessions because the proposed project is located on a property in the R-1250 (High Density Residential) Zone where lots having a width of 90 feet or less are only allowed a maximum of 2-stories and a maximum of 26 feet height limit (plus an additional 5 feet of height for roofed areas having a minimum pitch of 3:12), which is more restrictive than the R-1250 height standard for lots having a lot width of 90 feet or more. Therefore, without the height concession, the proposed

project is subject to a 26-foot and 2-story height limit and cannot be built as a three-story building with 11 units. Instead, it would only be six (6) units on 2-sories without any affordable units. The additional floor area and building height/stories thus will enable the construction of additional buildable area on the third floor to provide more units on-site thereby increasing the total number of units so that one very-low income affordable unit can be built on-site.

In addition, the proposed design ensures an architectural style and character that complies with the City's Design Guidelines, including three distinct and separate common open spaces with amenities on the building's ground level and on the 3rd floor deck. To achieve that design, the Applicant is proposing a 36-foot, 11-inch high building, thereby exceeding the maximum allowed height limit of 26 feet, measured from Average Grade to the top of the elevator shaft (Average Grade means the average of the highest and lowest top of curb elevations of the curb adjacent to the property). The additional height in not only necessary for the construction of the 3rd floor but it is also necessary for and elevator shaft to be built to provide access to the 3rd floor units. Without the construction of the 3rd floor, the additional market rate units that offset the overall costs per unit for the project that enable the construction of a subsidized very low-income affordable unit, cannot be achieved.

Further, the property is a corner lot and it is located at the southeast corner of Jackson Street and California Avenue with an abutting alley along its eastern property line. The majority of the properties located on the east side of Jackson Street, between California Avenue and Wilson Avenue, have a front setback of approximately 15 feet or less. The project meets the minimum and average setback requirements for the 1st building floor. However, t the 2nd and 3rd floors do not meet the minimum (have 20' versus 23' minimum), but otherwise do meet the average requirements. The concession from the front setback code requirement thus allows a more contextual project by allowing the proposed project to conform to the existing surrounding neighborhood since at a minimum the project will maintain a 20 feet front setback. The corner location of the property also minimizes any impacts from the north street-side setback reduction, especially since California Avenue and the alley further separate the property from the adjacent properties. Last, the Applicant has placed the common area that is accessible by the project's residents at the center of the 3rd floor, pulled back from the perimeters of the project, and abundantly setback from the property to the south thereby avoiding any impacts on it and ensuring adequate sun and air onto the property south of the project.

As for the second concession, the Applicant is requesting, a reduction of the minimum setbacks as follows:

- To reduce the subterranean front setback to 4'-4" from the minimum 20' and 7'-5" from the 23' average.
- To reduce the subterranean north street-side setback to 4 inches from the minimum 5 feet and 8 feet average.
- To reduce the building front setback on the 2nd and 3rd floors to 20'-0" from the minimum 23'.
- To reduce the interior-south setback on the 2nd floor to a minimum of 5'-0" and an average of 11'-10" from the minimum 8' and 11' average. Note, the average setback of the 2nd floor, on the interior-south side, does meet code.
- To reduce the north street-side setback on the 1st floor to a minimum of 4'-0" and an average of 7'-11" from the minimum 5' and 8' average.
- To reduce the north street-side setback on the 2nd floor to a minimum of 4'-0" and an average of 8'-7" from the minimum 8' and 11' average.
- To reduce the north street-side setback on the 3rd floor to a minimum of 4'-0" and an average of 7'-7" from the minimum 11' and 14' average.

The reduction in setbacks will enable the construction of the necessary additional buildable area that is needed to construct the 11 units on-site with one (1) very-low income affordable unit. Absent the

reductions in the setback, the proposed project would have to pull the building back in all directions. Adhering to the City of Glendale setback requirements, will result in much narrower and small building and the loss of five (5) units. These additional five (5) market rate units are necessary to offset the overall costs per unit for the project that enable the construction of a subsidized very low-income affordable unit. In sum, absent concessions for height/stories and for setbacks, to comply with the City of Glendale Development Standards means building a smaller 2-story building with less units and amenities, which would be more like a project consisting of studios and 1-bedrooms rather than a housing development project for families, including a very-low income family.

B. **The incentive or concession will have a "specific adverse impact upon public health and safety", as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the housing development unaffordable to low-income and moderate-income households. As used herein, "specific adverse impact upon public health or safety" means a significant, quantifiable, direct, and unavoidable impact, basedon objective, identified written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or the land use designation in the general plan shall not constitute a specific, adverse impact upon public health or safety.**

The two concessions / incentives do not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property that is listed in the California Register of Historical Resources. Rather, the applicant is seeking approval of two concessions pursuant to California Government Code Section 65915 and GMC Chapter 30.36 (Density Bonus Incentives) in order to provide one (1) unit affordable to very-low income households. No specific adverse impacts upon public health or safety or on the physical environment or on any real property that is listed in the California Register of Historical Resources would occur by granting the requested incentives or concessions. While taller than surrounding buildings, the project will meet building and safety codes and there are similarly sized residential buildings elsewhere in the City. Further, the project falls within the definition of a transit priority project and is categorically exempt under CEQA because of the lack of any specific adverse environmental impact.

C. **The incentive or concession will be contrary to state or federal law.**

The two incentives/concessions that are requested will not be contrary to state or federal law and do not require any other discretionary entitlement. The applicant is requesting to use the parking concession under GMC 30.36.090 (B). Pursuant to this section, upon request of the Developer, the City may not require a vehicle parking ratio greater than one-half space (0.5) per unit, inclusive of guest and handicap parking for a density bonus project. As such, only 9-parking spots are required for the 17-bedrooms in the proposed project and the applicant is providing 15-parking spaces, which is six (6) more than required.

WAIVERS OR REDUCTIONS IN DEVELOPMENT STANDARDS:

The applicant is requesting the following two (2) waivers.

1) A waiver from the minimum unit size requirements in GMC 30.11.050, whereby the units listed below do not meet the minimum unit size and are slightly shy of the minimum unit size requirements.

- Unit 102 is 574 square feet and slightly shy of the minimum 600 square feet requirement.
- Unit 103 is 574 square feet and slightly shy of the minimum 600 square feet requirement.
- Unit 202 is 574 square feet and slightly shy of the minimum 600 square feet requirement.
- Unit 203 is 574 square feet and slightly shy of the minimum 600 square feet requirement.
- Unit 204 is 768 square feet and slightly shy of the minimum 800 square feet requirement.
- Unit 302 is 574 square feet and slightly shy of the minimum 600 square feet requirement.
- Unit 303 is 768 square feet and slightly shy of the minimum 800 square feet requirement.

2) A Waiver to allow an increase in FAR to 1.32 (9,760 SF) were a maximum FAR of 1.20 (8,904 SF) is permitted. The requested deviation is minor and consists of only 856 SF of additional floor area over the allowable limit.

Besides the requested waiver, the project does not include any additional waivers of any Building and Safety, Fire Department, Engineering or other requirements pertaining to health or safety.

A Density Bonus for the following waivers or reductions in development standards shall be granted only all of following findings can be made (GMC 30.36.080.B):

A. **The application of said development standard(s) will have the effect of physically precluding the construction of the housing development at the density and with the incentives or concessions granted pursuant to this chapter;**

The California density bonus laws dictate a density calculation methodology that results in a maximum number of units for a given project site, which for the subject property equates to a maximum allowable density of 11-units. It is the applicant's intent is to optimize the project's density with a balanced unit mix consisting of 1-bedrooms and 2-bedrooms within this allowable 11-unit density. The requested waiver is required to allow relief to provide for a more balanced unit mix that will meet the desired 11-unit program of the proposed development project and the minimum unit size requirements in GMC 30.11.050 would physically preclude the construction of the housing development at the density and with the incentives or concessions granted pursuant to this chapter.

Similarly, the waiver to allow for a minor increase in the allowable floor area of 0.12% is minuscule. The proposed project floor area ratio is 1.32 above the allowable floor area ratio of 1.20, but the increase provides the necessary building area to allow for the desired project size, project unit-mix and project amenities to bring this project to fruition. As such, the proposed project includes appropriately sized apartment units, an appropriate number of bedrooms and unit-mix, to attract families to the project and to provide a high-quality living experience to its residents.

Please refer to the May 4, 2023 letter by a licensed architect to Ms. Pruett, discusses the merits of this density bonus application by addressing the necessity for the waivers and illustrates how the project will be physically precluded from being built as envisioned and at the density and with the above requested concessions, if the waivers are not granted.

B. **The waiver or reduction in development standards will not have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;**

There is no evidence that the waivers will have a specific adverse impact upon public health and safety or the physical environment. The applicant is seeking approval of waivers pursuant to California Government Code Section 65915 and GMC Chapter 30.36 (Density Bonus Incentives) in order to provide one (1) unit affordable to very-low income households. No specific adverse impacts upon public health or safety or on the physical environment or on any real property that is listed in the California Register of Historical Resources would occur by granting the requested waiver.

Further while the units listed above are smaller than the minimum requirements of GMC Section 30.36.080 (B), the project will meet building and safety codes and there are similarly sized residential units elsewhere in the City. The current trend of urban infill multifamily unit sized is smaller in footprint compared to traditional units built during the latter part of the 20th century. Similarly, while the floor area of the proposed project is slightly greater than the maximum requirements of GMC Section 30.11.030, the project will meet building and safety codes and there are multiple examples affordable projects with similar FAR deviations elsewhere in the City. There are no requested waivers of any other Building and Safety, Fire Department, Engineering or other requirements pertaining to health or safety.

C. **The waiver or reduction in development standards will not have an adverse impact on any real property that is listed in the California Register of Historical Resources;**

There is no evidence that the waivers will have a specific adverse impact on any real property that is listed in the California Register of Historical Resources. There is no real property that is listed in the California Register of Historical Resources within the vicinity of the proposed project, nor any environmental impacts, cumulative or otherwise, that would occur by granting the requested waiver.

D. **The waiver or reduction in development standards will not be contrary to state or federal law;**

The waivers will not be contrary to state or federal law and do not require any other discretionary entitlement. There is no evidence the waivers will be contrary to state or federal law and in fact are requested under the State Density Bonus Law.

May 4, 2023

Ms. Cassandra Pruett
Planner – City of Glendale
633 E. Broadway, Suite 103
Glendale, CA 91206

Re: Density Bonus Review Case No. PDBP2120753 at 246 N. Jackson Street, Glendale, CA
Letter Addressing the Necessity for the Waivers

Dear Ms. Pruett:

The above case was heard by the planning hearing officer ("PHO") on June 1, 2022, and the PHO decision was issued on July 7, 2022. The PHO approved the density bonus application request, and the case was then appealed to the Planning Commission ("P.C.") on July 21, 2022. The P.C. heard the case on November 2, 2022, and the P.C. decision was issued on November 2, 2022. The P.C. denied the appeal and sustained the PHO decision with a 5-0 vote, and the case was again appealed to City Council.

This letter is to further discuss the merits of the application by addressing the necessity for the waivers and will illustrate that the project will be physically precluded from being built as envisioned and at the density and with the incentives or concessions granted, if the waivers are not granted.

Background on the requested Two (2) concessions and Two (2) waivers:

As a project background, the applicant is requesting the following Two (2) Concessions necessary in order to make the project affordable pursuant to GMC Section 30.36.070 A:

1. A concession to increase the maximum height and stories to 36'-11" and 3-stories; and
2. A concession to reduce the minimum setbacks at the front and street side setbacks of the subterranean garage. Also, a reduction of the building's minimum setbacks at the front setback, at interior south setback and also at the north street-side setback.

The applicant is requesting the following Two (2) waivers since without the waivers the project would be physically precluded from being built as envisioned, and with the density and with the above requested concessions:

1. A waiver from the minimum unit size requirements in GMC 30.11.050, whereby 7-units do not meet the minimum unit size and are slightly shy of the city of Glendale minimum unit size requirements; and
2. A waiver to allow an increase in FAR to 1.32 (9,760 SF) were a maximum FAR of 1.20 (8,904 SF) is permitted. The requested deviation is minor and consists of only 856 SF of additional floor area over the allowable limit.

Justification for approval of the minimum unit size waiver:

Applicant is requesting a waiver from the minimum unit size requirements in GMC 30.11.050, because 7-units do not meet the minimum unit size. In particular:

- The state density bonus calculations and methodology for the project results in an 11-unit project, with one of the 11-units designated as a very low-income unit as computed and verified by the City of Glendale Housing Department [1];

- The 11-unit density has been configured into the project by creating Six (6) two-bedroom units and Five (5) one-bedroom units. In order to adhering to the minimum unit size requirements of GMC 30.11.050, therefore, the project would have to at a minimum provide the following unit sizes:

    - Six (6) 800 SF 2-bedroom units (6 x 800 SF) = 4,800 SF of livable area
    - Five (5) 600 SF 1-bedroom units (5 x 800 SF) = 3,000 SF of livable area
    - At a minimum the project would have to consist of = **7,800 SF of livable area**

The proposed project's livable area, however, is 194 square feet short of this required minimum. Specifically, some units are larger to be able to provide two-bedroom units; but, seven of them are not and do not meet the minimum size requirements. Since the project complies with the various City of Glendale's Development Standards that preclude the project from adding any additional livable area to meet the City's minimum unit size requirements, a waiver is thus necessary. In particular:

- The maximum allowable lot coverage for the project site is a 50% ratio, and the applicant has proposed a lot coverage of 49.75% ratio, just shy of it. It is physically impossible to push beyond the current footprint of the proposed project without going over the 50% floor area ratio and therefore additional area cannot be borrowed from the landscape and common open space portions of the project, in order to increase the livable areas of the project to meet the minimum unit size requirements of the Code;

- The minimum required landscape area is a 25% ratio, and the applicant has provided a 25 % ratio. There is no additional livable area available there to meet the minimum unit area requirements of the Code;

- The applicant also is providing the minimum required open space areas. There is thus no additional livable area there to be used either. In fact, the lot coverage ratio is the governing factor in determining the outline of the ground level floor plan which in turn determines the boundary of the area that can be utilized for the common open space. Since the project is unable to push beyond its current footprint without going over the 50% floor area ratio, it is physically impossible to look for additional livable area within the proposed ground level common open space area;

[1] The 11 unit calculation is consistent with the City's recently adopted Housing Element that shows the property listed on the site inventory in Appendix A.

- The project's setbacks are already at or just below the City's minimum setback requirements, hence the necessity for the requested Concession for the project's setbacks (1 of 2 of the requested concessions is for setbacks). Therefore, additional livable area cannot be attained by encroaching onto the setbacks.

  Although, the East setback is greater than the minimum, the East setback area has been utilized in its entirety to satisfy the landscape requirements, the common open space requirements and necessary circulation elements that dictate a second form of exit from the subterranean parking garage. These factors, in addition to the limitations pertaining to the enlargement of the project's footprint illustrated above, preclude additional livable area to be gained by encroaching onto the common open space portions, the landscape portions or the circulation portions of the project in order to meet the minimum unit size requirements of GMC 30.11.050.

- Additional Development Standards relating to the height and number of stories further preclude the project from meeting the minimum unit size requirements under the Code. One of the two requested concessions of the project is for height / stories in order to increase the maximum height and stories to 36''-11" and three (3) stories (where 26' is the height limit in the R-1250 zone for lots less than 90 feet in width). The 36'-11" height of the project further defines and sets the vertical boundaries of the building envelope and precluded additional livable area to be gained by expanding beyond the boundaries of the Budling Envelop in order to meet the minimum unit size requirements of GMC 30.11.050.

- Last but not least, additional factors pertaining to the uniform building code dictate minimum widths and clearances necessary to meet building code. The interior corridor clearances have been reduced to the bare minimum in order to meet basic ADA clearances, along with other circulation factors necessary in order for the fire department to be able to navigate a gurney through the project. These uniform building code requirements, in addition to the limitations illustrated above, prevent additional livable from encroaching into the circulation elements in order to meet the minimum unit size requirements.

In conclusion, the project's compliance with the City's other development standards leaves no room to spare on the site since the proposed project is already at the bare minimum in meeting the various components of the City's Development Standards, the City's Design Guidelines, and basic building codes. Adhering to the City's minimum unit size requirements, therefore, will physically preclude the project from being built as envisioned at the density allowed under the SDBL with the requested concessions.

Justification for approval of the increased FAR waiver:

Applicant is requesting a waiver to allow an increase in floor area ratio ("FAR") to 1.32 (9,760 SF) where a maximum FAR of 1.20 (8,904 SF) is permitted. The requested deviation is minor and consists of only 856 SF of additional floor area over the allowable limit. In particular, without the requested waiver for FAR, the project floor area will have to be reduced by 856 SF, which reduces the number of units from 11-units down to 10, probably 9-units. Further, the loss of two units means the loss of the affordable unit; and, by reducing the project by 856 SF, the minimum unit size problem gets worse because the unit size shrinks even further. Last, the increase in FAR to 1.32 from the allowable floor area of 1.20, will provide the necessary building square footage to allow for the desired project size, for

the desired project unit-mix, and for the desired project amenities to bring this project to fruition as envisioned, all while complying with the City's open – space, landscaping, and building and safety codes.

In sum, as the Staff Report concludes, these two concessions and two waivers are needed to "facilitate the proposed design and ensure architectural character that meets the City's Design Guidelines, including three distinct and separate common open spaces with amenities on the building's ground level and on the third floor deck"; and the additional height and stories are needed for the construction of the three units on the third-floor because of the narrow width of the lot (lots less than 90 feet in width are limited to two story / 26 feet in height).

Staff's conclusion and the Planning Commission's approval are thus consistent with California law. As the Court explained in *Wollmer v City of Berkeley* (2011), 193 Cal.App.4th 1329, 1346 -1347, "nothing in the statute requires the applicant to strip the project of amenities, such as an interior courtyard, that would require a waiver of development standards. Standards may be waived that physically preclude construction of a housing development meeting the requirements for a density bonus, period. (§65915, subd. (e)(1).) 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. Wollmer's argument goes nowhere. Had the City failed to grant the waiver and variances, such action would have had "the effect of physically precluding the construction of a development" meeting the criteria of the density bonus law. (*Ibid.;* see *Wollmer I, supra,* 179 Cal.App.4th at p. 947, 102 Cal.Rptr.3d 19.) If the project were not built, it goes without saying that housing units for lower-income households would not be built and the purpose of the density bonus law to encourage such development would not be achieved. The trial court properly interpreted the statute, and the City proceeded in the manner required by law in granting the waivers." Here, as in *Wollmer, supra*, if the Applicant cannot create a larger building via the concessions and waivers requested, the proposed project is reduced from 11 units with one affordable unit to 6 units with no affordable units, which is contrary to the spirit and intent of the SDBL.

We, therefore, respectfully ask that you deny the appeal and approve the project accordingly.

Sincerely,

Artin Simonian

Simonian & Associates

Licensed Architect – License # C 27485