

Attachment 7

- A. Letter on Waivers as per State Density Bonus Law**
- B. Site Plan Options to demonstrate inability to achieve allowable density and request for Waivers**



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July 29, 2020

Shetal Divatia, Senior Planner
Sunnyvale Community Development Department
456 W. Olive Ave.
Sunnyvale, CA 94086

Re: **Revised** Density Bonus Request for Tapti, LLC's 210 Ahwanee Avenue Project

Dear Ms. Divatia,

Thank you for the opportunity to submit Tapti's density bonus request for the construction of the residential condominium development located at 210 Ahwanee Avenue (the "210 Ahwanee Project" or the "Project"). As you know, Buchalter represents Tapti regarding the entitlement process for the 210 Ahwanee Project. I have revised Tapti's June 26, 2020 density bonus request in response to preliminary comments from the Sunnyvale Planning Commission offered at its study session on July 13, 2020.

Tapti is seeking a density bonus and related benefits for the 210 Ahwanee Project pursuant to the State Density Bonus Law, Government Code section 65915 *et seq.*, and the procedures for implementing the directive of that law as set forth in the Sunnyvale Density Bonus Ordinance, Sunnyvale Municipal Code ("SMC") Section 19.18.025. The State Density Bonus Law requires local jurisdictions to grant a density bonus, as well as development standard waivers/exceptions, and reduced parking standards, for proposed housing developments that include affordable housing units. The City of Sunnyvale (the "City") must approve a requested density bonus for eligible projects. (Gov. Code, § 65915(a).) Likewise, the City must approve a waiver or exception unless it can make certain written findings for denial of that waiver or exception. (Gov. Code, § 65915(e).)

Tapti is proposing to construct a four-story two-building concept with twenty-four (24) residential condominium dwelling units on two parcels totaling approximately 0.72 acres in size. Three of the twenty-four residential units will be affordable units and available for purchase by moderate-income households. This means that moderate-income households can have a combined annual income of between 80% and 120% of Santa Clara County ("County") area median income ("AMI") to qualify for the purchase of these condominiums. These residential

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Shetal Divatia, Senior Planner
July 29, 2020
Page 2

condominium units meet the definition of “common interest development” provided by Civil Code section 4100.

The Project site is located at 210 Ahwanee Avenue, with a High Density Residential (R-4) zoning designation and a General Plan land use designation of Residential High Density (RHI). The R-4 zoning district allows for a residential density of up to 36 dwelling units per acre, or up to 26 residential dwelling units on this 0.72-acre site. In order to construct the 24 residential dwelling units as part of this Project consistent with Tapti’s project objectives, Tapti is seeking a density bonus, a parking waiver, and development standard waivers/exceptions pursuant to the State Density Bonus Law and the Sunnyvale Density Bonus Ordinance, as described below.

Proposed Design

The proposed design consists of 24 condominium units in a two-building, four-story concept with a break in the building to meet fire department access requirements. The dual use drive aisle allows the proposed concept to meet density, parking, landscape and coverage requirements and satisfy Fire Code requirements.

Due to the site’s significant size limitations, Tapti’s proposed design moves the fire truck access to the center of the Project site and combines it with the residential driveway aisle which also provides access to the residential project parking spaces. Moving the Fire Department drive aisle access to the middle of the project does not require an additional drive aisle within the covered parking areas. In other words, the drive aisle has a dual use for fire department fire truck access and access to the residential parking spaces. The dual use of the drive aisle increases the number of parking spaces to 48 residential and 10 open parking to meet Sunnyvale parking standards and zoning requirements. With the drive aisle located in the middle of the site the proposed density is 33 du/ac within the required minimum of 28 du/ac and maximum 36 du/ac. The proposed design will also reduce the building height to 48’-6” due to increased garage wall bearing capacities every 2 parking spaces eliminating the need for wood parallam beams, and clearance for plumbing and mechanical ventilation requirements under parallams.

Eligibility and Calculation of Density Bonus

To be eligible for a residential density bonus, the City permits up to a 35% bonus as specified in the Density Bonus Law. (SMC § 19.18.025; Gov. Code § 65915(b)(1).) A common interest development is eligible for a density bonus if at least 10% of its total dwelling units are available for moderate-income households. (Gov. Code, § 65915(b)(1)(D).) A “moderate income household” means a household whose gross annual income is between 80% and 120% of the County AMI adjusted for household size. (Health & Safety Code § 50093.) If a proposed housing development is determined to be eligible for a density bonus, the local jurisdiction must

Buchalter

Shetal Divatia, Senior Planner
July 29, 2020
Page 3

grant the density bonus and, if requested, up to three incentives or concessions, unlimited waivers or reductions of development standards, and reduced parking ratios. (*See* Gov. Code § 65915(b)(1).) Here, however, Tapti is not seeking any incentives or concessions. Rather, Tapti is seeking a number of waivers/exceptions to development standards.

A density bonus is defined as an increase in density over the otherwise maximum allowable residential density applicable at the time an application for a proposed housing development is submitted. (SMC § 19.18.025; Gov. Code § 65915(f).) The amount of the density bonus is calculated on a sliding scale based on the percentage of affordable units at each income level included in the proposed housing development. To calculate the applicable density bonus, the City must assess what percentage of the project's total units, where "total units" includes only the units allowed under the existing density standards (*see* Gov. Code § 65915(b)(3)), are reserved for affordable housing. Common interest housing developments are eligible for up to a 35% density bonus if 40% of the proposed development is reserved for moderate income households. (Gov. Code § 65915(f)(4).) The State Density Bonus Law awards projects with at least 12% of the total units in the proposed common interest housing development reserved for moderate-income households to be eligible for a density bonus of 7% above the otherwise allowed residential density. (Gov. Code § 65915(f)(4).)

The number of bonus units is calculated by multiplying the total units by the percent density bonus, rounding up to the next unit. (*See* Gov. Code § 65915(q).)

Calculation of Density Bonus

Base density in R-4 zoning district: **36 du/acre**

Total Units allowed under R-4 zoning: $0.72 \text{ acre site} \times 36 \frac{\text{du}}{\text{acre}} = \mathbf{26 \text{ dwelling units}}$

Tapti Proposal under base density: **24 total units: 21 market rate units, 3 reserved for moderate-income households**

Percent Affordability: $3 \text{ total units} / 24 \text{ units reserved for moderate-income households} = \mathbf{12.5\%}$

→ *Eligible for 7% Density Bonus*

Density Bonus Units: $26 \text{ total units} \times 0.07 \text{ density bonus} = \mathbf{2 \text{ bonus units}}$

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Shetal Divatia, Senior Planner
July 29, 2020
Page 4

The Project is eligible for a 7% density bonus above the maximum residential density of 36 dwelling units per acre. The R-4 zoning district allows for up to 26 total units prior to application of the density bonus. Consistent with the zoning, Tapti proposes constructing 21 market rate residential condominium dwelling units and 3 moderate-income residential condominium dwelling units. Pursuant to the density bonus schedule in Section 65915(f)(4), the 210 Ahwanee Project is eligible for a 7% density bonus. This density bonus, therefore, allows for construction of up to 28 residential condominium dwelling units on the project site, or an additional two residential dwelling units. Rather than seek the maximum number of units permissible here, Tapti proposes constructing 24 residential units, or two units below the applicable maximum allowable residential density absent any density bonus. Projects that qualify for the density bonus are eligible for the waiver or reduction of development standards as indicated below. (Gov. Code § 65915(e)(1).)

Requested Waiver or Reduction of Development Standards

The State Density Bonus Law provides that the City may not apply any development standard that would have the effect of physically precluding the construction of a proposed housing development eligible for a density bonus. (Gov. Code § 65915(e)(1).) An applicant may seek an unlimited number of waivers or reductions. (Gov. Code § 65915(e)(2).)

In determining whether a development standard physically precludes a development, a City cannot consider whether a different project could be designed without granting a waiver, but instead must analyze whether the actual project before the City could not be constructed due to the development standard. For example, while elimination of project amenities such as courtyards and ground-floor uses could create additional space for residential units, the Density Bonus Law prohibits a City from requiring an applicant to strip an otherwise eligible project of amenities before considering a waiver request. (*See Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1347.) Thus, a City cannot deny a request for waiver based on concluding that the project could be redesigned—whether by eliminating amenities, adding additional stories, or reducing unit square footage—so as to accommodate additional units.

i. Waivers From Applicable Setback Standards

Tapti requests a waiver from the City of Sunnyvale's applicable setback standards which impose a minimum 9 foot side yard setback, a combined 20 feet of side yard setbacks. (SMC, § 19.34.030.) To allow for the drive aisle that meets Fire Department and City parking requirements, and to achieve the requested density, the Project will require a 7 foot ground floor setback on both sides, totaling 14 feet of side setbacks. Additionally, the City imposes a maximum building lot coverage in R-4 zones to 40%. (SMC, § 19.32.020.) To achieve the necessary density and affordability for the Project, Tapti will require a total of 44% lot coverage.



Shetal Divatia, Senior Planner
July 29, 2020
Page 5

Additionally, Tapti requires an exception to the ground floor setback to provide for greater distance between the ground floors of the two buildings at 29 feet. I have updated our request to correct the distance between the ground floors of the two buildings at the Planning Commission's direction.

ii. Waivers From Private Usable Open Space Standard

The Project includes private decks for the units facing W. Ahwanee Avenue. Tapti proposed to incorporate glass walls around the decks to reduce outdoor noise levels for residents using their outdoor decks. City staff requested that the exterior design treatment for the decks not include glass walls. Without the proposed sound attenuation, the private decks do not meet the City's exterior noise standards and the private decks are not included in the usable open space as shown on Sheet 17 of the Project plan set. Accordingly, Tapti requests a waiver of the private usable open space requirement.

These waivers/exceptions of City development standards are necessary to ensure affordability and feasibility of a project that meets required health and safety requirements set forth in the Fire Code. Tapti also evaluated two options for a single building design. Due to the significantly constrained site, both single building design options would nearly halve the number of units on the property and would require major technical modifications. For example, these alternatives would require certain Fire Department standards that result in two drive aisles and a "hammerhead" turnaround for fire trucks and to allow for proper pull of fire hoses. Due to technical aspects (e.g. plumbing, ventilation, structural requirements, etc.), these single building design options would also reduce Project density below the City's density minimum to 19 or 20 du/ac (depending on the option) compared to the permitted 28 du/ac, and would increase the building height from 48'-6" to 56'-0" which would exceed the City's allowable height limit.

The setback and lot coverage waivers and exceptions here allow for a two building Project that not only accommodates the proposed number of affordable units, but provides the most efficient use of space given the site constraints. This proposal requires only one Fire Department-approved drive aisle and meets ADA accessibility requirements. Setback reductions are necessary to ensure that the drive aisle can accommodate both resident vehicles and fire trucks. Additionally, the project seeks a waiver of the fourth floor setback to increase the distance between the fourth floors of the two buildings.

Due to the technical aspects of this alternative, this proposal will not exceed the City's height limit and will meet the City's density requirements. Accordingly, a waiver and/or exception of these development standards is necessary to ensure the physical feasibility of the Project at the density permitted under the Density Bonus Law. (*See* Gov. Code, § 65915(e)(1).) Moreover, these waivers/exceptions to the City's development standards promote the health and



Shetal Divatia, Senior Planner
July 29, 2020
Page 6

safety of City residents by meeting the necessary standards that accommodate both Fire Department and ADA accessibility.

Requested Parking Standard Reduction

Finally, recent changes to the State Density Bonus Law allow for an applicant to request and be entitled to reduced parking standards for a Density Bonus project. For two- and three-bedroom units, an applicant may request that the City not impose a parking ratio exceeding two onsite parking spaces per unit. (Gov. Code, § 65915(p)(1)(B).) This parking ratio includes guest and handicapped parking. (Gov. Code, § 65915(p)(1).) Tapti originally requested a reduction in the parking ratio. Based on questions from the Planning Commission at its study session, we reviewed the design and have further clarified the parking waiver to request that the City authorize more tandem parking spaces, rather than a reduction in parking ratios.

The City of Sunnyvale requires two parking spaces per each two- or three-bedroom unit: one assigned space per unit and one unassigned space per unit. (SMC, § 19.46.060.) The 210 Ahwanee Project includes 12 two-bedroom units and 12 three-bedroom units. Application of the Sunnyvale Special Housing Development parking ratio standard would therefore require the Project to include 24 assigned and 24 unassigned parking spaces, totaling 48 parking spaces. To satisfy this parking requirement, the Project proposes to include 10 unassigned parking spaces as tandem spaces.

Regardless, Tapti requests that the City apply the tandem parking standard to the Project as provided under subdivision (p)(1)(B) of the Density Bonus Law. Residential projects that provide more than 10% affordable units in a common interest development are eligible for a reduced parking ratio standard and our approach is to compensate for the reduction in assigned parking spaces with more unassigned tandem spaces. The 210 Ahwanee Project is eligible for this parking ratio because the Project reserves three units (12.5%) of its 24 units for households that fall within the moderate-income threshold. Application of this parking standard requires that the 210 Ahwanee Project provide two onsite parking spaces for each two- and three-bedroom unit. (Gov. Code, § 65915(p)(1)(B).) This would require a total of 48 parking spaces (24 two- and three-bedroom units x 2 parking spaces = 48). Tapti proposes providing a total of 48 parking spaces: 38 assigned covered spaces and 10 unassigned uncovered spaces. Accordingly, Tapti's proposal, is consistent with the both the parking ratio provided by the City's Special Housing Development regulations and the ratio provided under the Density Bonus Law.

Conclusion

Tapti is looking forward to continued discussions with the City regarding the 210 Ahwanee Project and the density bonus request outlined in this letter. We understand that the City is continuing to review the documentation Tapti has provided for the Project. Based on those comments, we will continue to communicate with City staff regarding any modifications to

Buchalter

Shetal Divatia, Senior Planner
July 29, 2020
Page 7

the waivers and exceptions sought through the State Density Bonus Law.

If you have any questions regarding Tapti's requested density bonus, please feel free to contact the undersigned.

Sincerely,

BUCHALTER
A Professional Corporation

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By

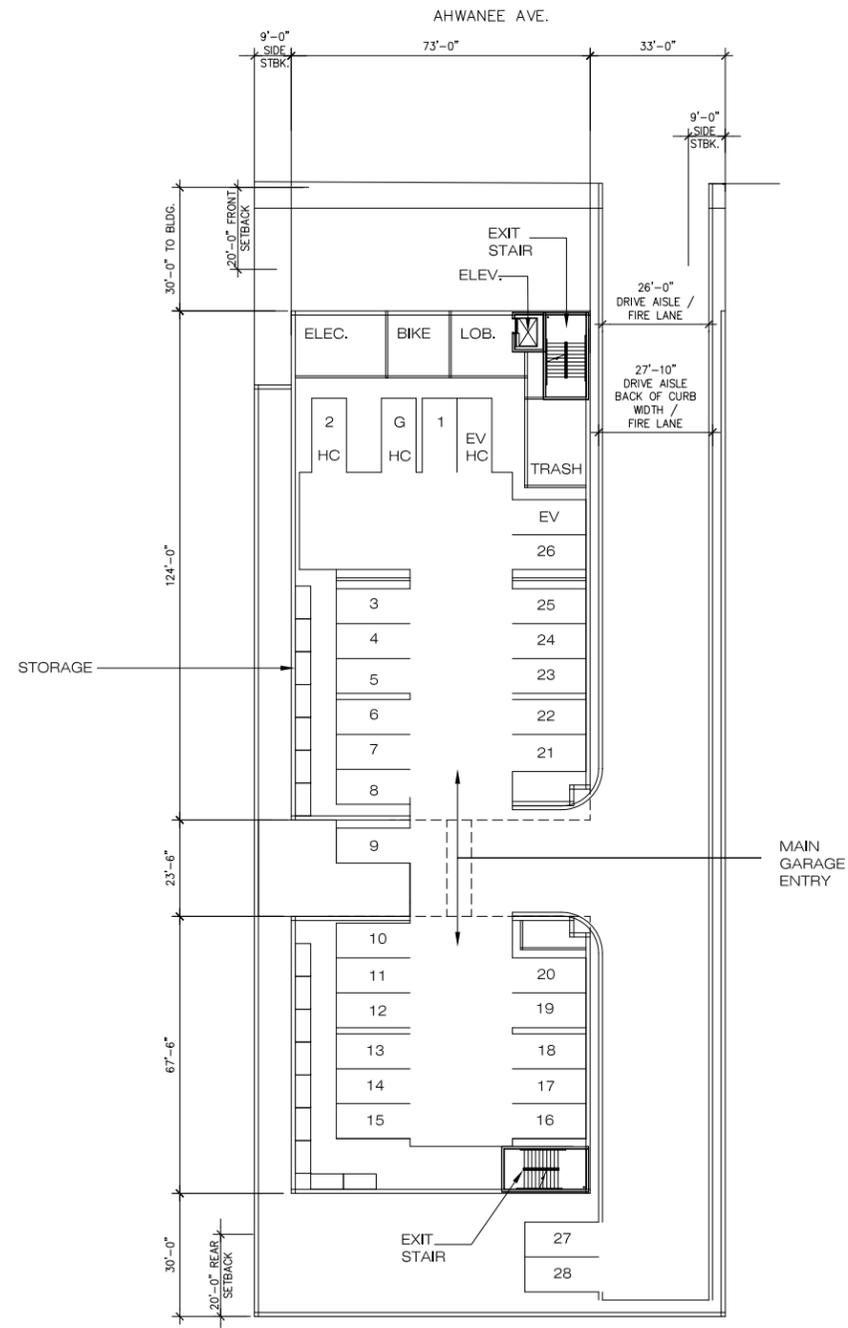
Alicia Guerra
Shareholder

A handwritten signature in black ink, appearing to be 'Braeden Mansouri', with a long horizontal line extending to the right.

Braeden Mansouri
Associate

AG:vs

Cc: Rebecca Moon
Andy Miner
Kishore Polakala
Ramana Reddy
Mahesh Kumar
Dirk Thelan



GROUND LEVEL BUILDING PLAN
28 PARKING STALLS +
1 GUEST HC + 2 EV STALLS

SINGLE BUILDING - OPTION 1 (14 UNITS)

SITE SUMMARY

	REQUIRED	PROVIDED
DENSITY	28 DU/AC MIN / 36 DU/AC MAX.	19 DU/AC
LOT COVERAGE	14,209 SF.	13,984 SF.
BUILDING HEIGHT	55'	50'

PARKING SUMMARY

	REQUIRED		PROVIDED
RESIDENTS	2 CAR / DU	28 STALLS	28 STALLS
GUEST	3 BEDROOM	0.5 CAR / DU	3.50 STALLS
	4 BEDROOM	0.65 CAR / DU	4.55 STALLS
	TOTAL		7 STALLS
	EV STALLS		2 STALLS
TOTAL			31 STALLS

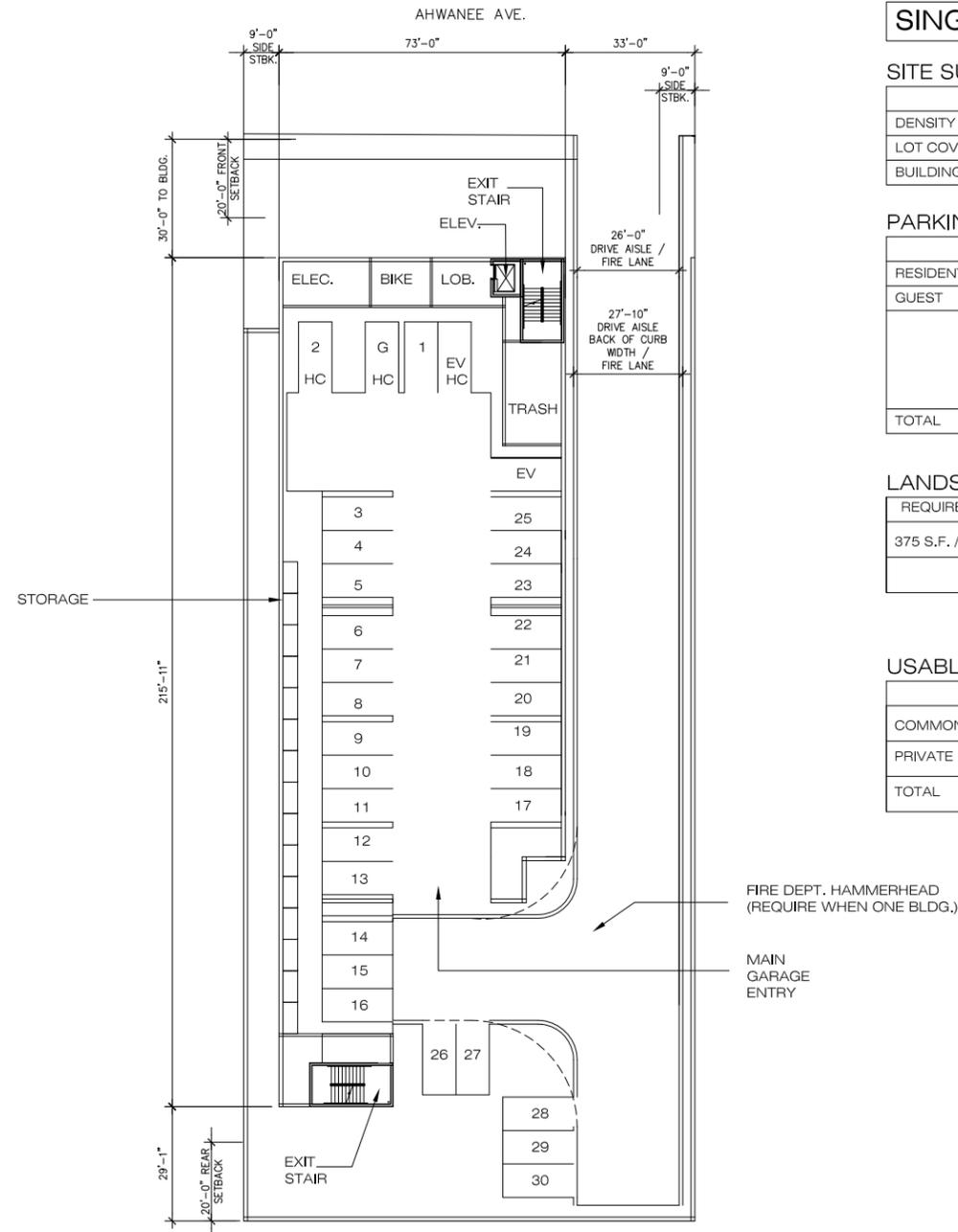
LANDSCAPE SUMMARY

REQUIRED		PROPOSED
375 S.F. / DU	(375 S.F. x 14 DU = 5,250 S.F.)	7,500 S.F. = 535 S.F. / DU

USABLE OPEN SPACE SUMMARY

	REQUIRED		PROPOSED
COMMON	300 S.F. / DU	(300 S.F. x 14 = 4,200 S.F.)	4,200 S.F. = 300 S.F. / DU
PRIVATE	80 S.F. / DU	(80 S.F. x 14 = 1,120 S.F.)	1,120 S.F. = 80 S.F. / DU
TOTAL	380 S.F. / DU	(380 S.F. x 14 = 5,320 S.F.)	5,320 S.F.





GROUND LEVEL BUILDING PLAN
30 PARKING STALLS +
1 GUEST HC + 2 EV STALLS

SINGLE BUILDING - OPTION 1 (15 UNITS)

SITE SUMMARY

	REQUIRED	PROVIDED
DENSITY	28 DU/AC MIN / 36 DU/AC MAX.	20 DU/AC
LOT COVERAGE	14,209 SF.	13,374 SF.
BUILDING HEIGHT	55'	5'

PARKING SUMMARY

	REQUIRED	PROVIDED
RESIDENTS	2 CAR / DU	30 STALLS
GUEST		
3 BEDROOM	0.5 CAR / DU	4 STALLS
4 BEDROOM	0.65 CAR / DU	4,55 STALLS
TOTAL		8 STALLS
EV STALLS		2 STALLS
TOTAL		33 STALLS

LANDSCAPE SUMMARY

REQUIRED	PROPOSED
375 S.F. / DU	(375 S.F. x 15 DU = 5,625 S.F.)
	7,500 S.F. = 500 S.F. / DU

USABLE OPEN SPACE SUMMARY

	REQUIRED	PROPOSED
COMMON	300 S.F. / DU	(300 S.F. x 15 = 4,500 S.F.)
PRIVATE	80 S.F. / DU	(80 S.F. x 15 = 1,200 S.F.)
TOTAL	380 S.F. / DU	(380 S.F. x 15 = 5,700 S.F.)

FIRE DEPT. HAMMERHEAD
(REQUIRE WHEN ONE BLDG.)

MAIN
GARAGE
ENTRY

