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June 28, 2021

**VIA E-MAIL**

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**Re: 166-176 E. Fremont Ave., Sunnyvale (APN: 309-01-006);  
Planning File #2020-7525**

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Dear Rebecca:

We write regarding the City's request for additional information regarding the density bonus request of TTLC Management Inc., an Arizona Corp dba Sunnyvale FCI, LLC, ("Sunnyvale FCI"), with respect to the above-referenced mixed-use housing development project ("Project") at 166-176 E. Fremont Avenue in Sunnyvale ("Project Site").

As you know, the 50-unit townhouse Project is meeting the City's inclusionary housing requirements (Sunnyvale Municipal Code, Chapter 19.67) by providing 12.5% of the units on-site as affordable to moderate income households. (Sunnyvale Municipal Code § 19.67.040). As a result, under the state Density Bonus Law (Gov. Code §§ 65915-65918) the Project is entitled to an 8% density bonus (Gov. Code § 65915(f)(4)), one incentive or concession that results in identifiable and actual cost reductions (Gov. Code § 65915(d)(2)(A)), and an unlimited number of waivers or reductions of development standards that would have the effect of physically precluding the construction of a Project (Gov. Code § 65915(e)).

The Density Bonus Law also favors the "expeditious processing" of density bonus applications and accordingly mandates that cities do a variety of things, including all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

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- (B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete.
- (C) Notify the applicant for a density bonus whether the application is complete pursuant to the timelines in the Permit Streamlining Act.
- (D) (i) If the local government notifies the applicant that the application is deemed complete, provide the applicant with a determination as to the following matters:
  - (I) The amount of density bonus for which the applicant is eligible.
  - (II) If the applicant requests a parking ratio, the parking ratio for which the applicant is eligible.
  - (III) If the applicant requests incentives or concessions or waivers or reductions of development standards, whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.
- (ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. (Gov. Code § 65915(a)(3)).

The City determined the Project application was deemed complete on January 27, 2021. Thus, the City was required at that time to determine if the Project application contained “adequate information” with respect to its incentives and concessions and waivers or reductions of development standards. Although we have already provided this information in various correspondence, for the City’s convenience hereby do so again in this letter.

We also note that the City is required to grant the incentive or concession requested unless the City makes a written finding, based upon substantial evidence that the incentive or concession does not result in identifiable and actual cost reductions or that granting the incentive or concession would have a specific, adverse impact, upon public health and safety and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households. (Gov. Code § 65915(d)(1)). These findings cannot be made here.

Similarly, the City is required to grant the waivers or reductions of development standards unless the City makes a written finding, based upon substantial evidence that the waivers or reductions of development standards would have a specific, adverse impact, upon public health and safety and for which there is no feasible

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method to satisfactorily mitigate or avoid the specific, adverse impact. (Gov. Code § 65915(e)(1)). This finding cannot be made here.

The Project seeks one incentive or concession, as follows:

**PW-16 – Underground overhead lines**

Undergrounding Project utilities would be cost prohibitive since the homeowners to the south receive their electricity for over-head lines served by the over-head alignment along the south property line of Fremont Corners Shopping Center. The project would have to bear the cost of undergrounding and re-establishing the backyards to at minimum 8 properties and potentially a total of 14 separate properties. Granting this incentive or concession would thus produce identifiable and actual cost reductions.

And the Project seeks eight waivers or reductions of development standards (see attached exhibits), as follows:

**PL-1 – Commercial square footage**

The General Plan states that “Commercial—FAR: minimum = 10%, typical maximum = 25%.” It also says that “[s]pecific densities and intensities determined by Specific Plan or Area Plan” and “future mixed uses *should include* commercial components equal to a minimum of 10% of the lot area.” (Emphasis added). This 10% commercial FAR provision is subjective within the meaning of the HAA, which defines “objective” to mean “*involving no personal or subjective judgment* by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code § 65589.5(h)(8) (emphasis added). To the extent it could possibly be seen as objective, however, Sunnyvale FCI seeks a waiver of development standards pursuant to the Density Bonus Law.

Sunnyvale FCI will remodel the existing building within its existing footprint and upgrade the surrounding hardscape areas as designated outdoor dining areas that will be leased as floor area to the future tenants of the building to meet the 10% lot area standard in the General Plan. This outdoor floor area has been considered as leasable floor area within the parking calculations for the Project as a whole. Understanding that the City is encouraging mixed uses and also considering the temperate climate and the “new normal” for outdoor dining and recreating during the COVID era, Sunnyvale FCI has purposefully delineated ample leased outdoor floor area to benefit the business owner to attract future patrons.

**PL-2 – Housing density**

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The General Plan provides for “average densities” of 18 units per acre in Village Centers and says that “[s]pecific densities and intensities determined by Specific Plan or Area Plan.” The General Plan further provides that “residential uses in most Village Mixed-Use areas are anticipated to achieve an average density of 18 dwelling units per acre (medium density), with the same variations in density described in the Corridor Mixed-Use section above. If determined to be appropriate due to more intensive surrounding uses (such as at the corner of Tasman Road and Fair Oaks Avenue), residential densities may be higher subject to a public review process.”

This average 18 du/ac provision is subjective within the meaning of the HAA. To the extent it is objective, however, the Project substantially complies with it. (See, e.g., *Joshua Tree Downtown Business Alliance v. County of San Bernardino*, 1 Cal.App.5th 677 (2016) (relying on the longstanding principle that state law does not require precise conformity of a proposed project with the land use designation for a site, or an exact match between the project and the applicable general plan; instead, a finding of consistency requires only that the proposed project be “compatible with the objectives, policies, general land uses, and programs specified in” the applicable plan). In addition, to the extent necessary Sunnyvale FCI seeks a waiver of development standards to allow .09 of a unit above 18 du/ac. The nature of the townhome style of the Project is functionally a stacked townhome. While the townhomes use side-by-side tandem garages, the living spaces are intertwined as stacked townhomes. If one is removed it takes the second away, along with it, thereby reducing the total project by two units to 48 instead of 50, thereby dropping the density to 17 du/ac. Such a requirement, if imposed, would decrease the density from that which is sought by the City in the LUTE and by the applicant in connection with this Project, contrary to the provisions of state housing law. Moreover, the City is required to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the Project. (Gov. Code § 65915(r)).

### **PL-3 – Frontage landscaping**

The commercial setback along E. Fremont Ave exists at 29'. The new residential building (Bldg 1) does not front E. Fremont Ave. The residential building has a 15' wide landscape strip adjacent to its front doors which face west towards the 24 Hr Fitness parking lot. Should the City maintain it requires a 15' setback to the side of the residential building, then FCI is requesting a waiver to that standard under density bonus law. Additionally, should the side of the residential building along E. Fremont be required to be pulled back to 15' to accommodate landscaping, the Project would lose 2 units (the architecture is designed in two-unit modules), which would drop density below the average of 18 du/ac to 17 du/ac. Such a requirement, if imposed, would decrease the density from that which is sought by the City in the LUTE, contrary to the provisions of state housing law. Moreover, the City is required to facilitate and

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accommodate development at the density allowed on the site by the general plan and proposed by the Project. (Gov. Code § 65915(r)).

#### **PL 4 – Buffer landscaping**

Section 19.37.040(b) of the Sunnyvale Municipal Code applies to projects in a residential zoning district and is inapplicable here. The Project is in an existing commercial zoning district. The Project Site already has an existing masonry wall along the portion of the eastern property line adjacent to the existing commercial building. The Project will maintain this wall. All other edge conditions are shown on the landscape plan are existing. Providing a 10' buffer of landscaping along the eastern or southern property boundaries will fully obliterate all available parking for the commercial and residential guest uses. Without the imposition of the buffer landscaping, the Project can provide the total number of parking stalls required.

#### **PL-5 – Site plan**

The Sunnyvale Municipal Code requires trees to be planted and maintained throughout the parking lot to ensure that at least fifty percent of the parking area will be shaded within fifteen years of tree establishment. As shown in the Parking Shade Coverage Analysis, the parking area tree canopy coverage will be 15,200 sf of the parking area's 47,051 sf, or 32.3%. Compliance with this requirement would cause the Project to lose units. Therefore, Sunnyvale FCI seeks a waiver of this development standard.

The submittal dated November 23, 2020 has a Parking Shade Coverage Analysis on Sheet L008. This analysis indicates that 69.13% of the outdoor parking spaces will be shaded in 10 to 15 years based on tree species (without counting the drive aisles). FCI investigated if larger tree species could be installed in certain areas along drive aisles to increase the percentage of drive aisle shading. However, the majority of these drive aisles occur between residential structures with parking inside garages. Based upon this site being VMU, and not CN, and considering the definition of parking lot is intended to facilitate commercial uses only, the site area covered with residential garages should count towards parking lot shading within a VMU project. Since the City has not accepted the use of residential garages towards parking shading, the waiver is requested from the 50% requirement.

#### **PI-7 – Parking compact spaces**

Sunnyvale FCI requests that the City allow the use of compact stalls within the VMU land use designation to facilitate mixed uses on this small Project Site. The Municipal Code prohibits compact parking stalls for new development of nonresidential uses and mixed uses. The Project Site has two existing

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driveway entrances and an existing building configuration that does not allow for standard size stall depths on both sides of the drive aisle while accommodating the new site plan for the 50-unit Project; all while meeting the Fire Department drive aisle width requirements. The compact spaces proposed meet the typical compact stall dimensions and are widely used throughout the Bay Area to accommodate more parking than would typically be accommodated using larger standard spaces. Therefore, Sunnyvale FCI seeks a waiver of the development standard to provide full size parking stalls for every space on site. Should full size parking stalls be mandated, the commercial building set to be remodeled would have to be demolished.

The proposed compact parking spaces are located between the eastern property line and the eastern side of the existing commercial building, where a drive aisle and parking spaces are currently located. The dimension between the building and the property line is 66.5 feet, which perfectly fits two rows of compact spaces (30 feet), a drive aisle (26 feet), landscaping between parking and the eastern property line (5 feet), and sidewalk/curb between the commercial building and parking (5.5 feet). The compact spaces are necessarily located in the proposed location due to dimensional limitations of the proposed property, as well as the need to maintain parking spaces that are critical to the health of already struggling small businesses in this area.

#### **PL-9 – Front and side setbacks**

Sunnyvale FCI is requesting a waiver of the 24' side setback development standard as the unit type used in this Project is designed to meet the density prescribed within the VMU on a parcel with existing confined dimensions. Meeting the 24' setback for Building 1 along its west facing façade would cause the loss of the entire building of 11 units; this would reduce the Project to 39 units, or 14 du/ac. Such a requirement, if imposed, would decrease the density from that which is sought by the City in the LUTE and by the applicant in connection with this Project, contrary to the provisions of state housing law. Moreover, the City is required to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the Project. (Gov. Code § 65915(r)).

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Thank you for your cooperation in these matters. Sunnyvale FCI looks forward to the Planning Commission Hearing set for July 12.

Sincerely,

MILLER STARR REGALIA

*Bryan W. Wenter*

Bryan W. Wenter, AICP

BWW/kli

Attachments

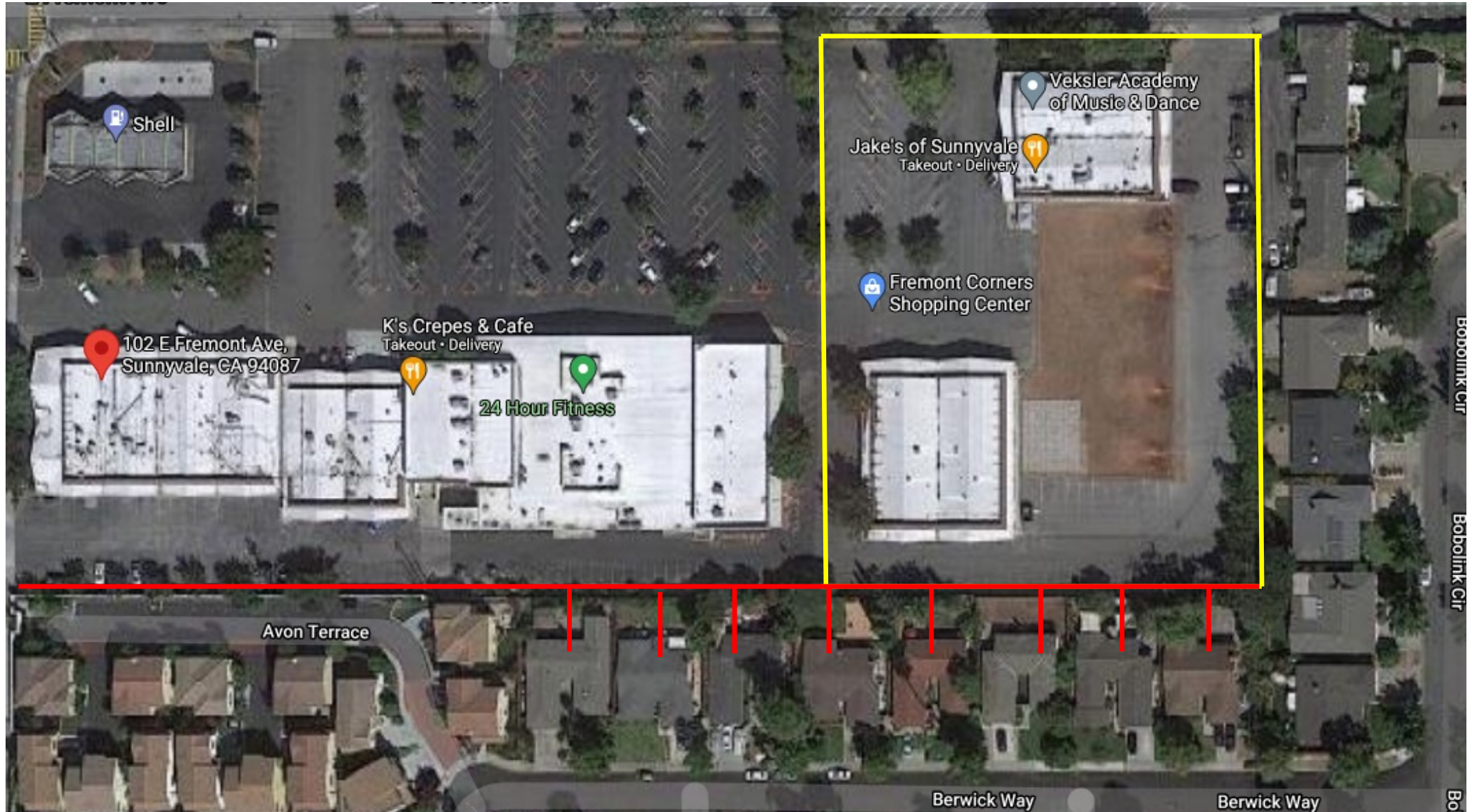
cc: Shétal Divatia, AICP, Senior Planner  
Noren Caleve-Lepe, Planning Manager  
Leah Beniston, Vice President – Entitlements



# 1) Density Bonus Concession: Undergrounding electrical along the southern property line

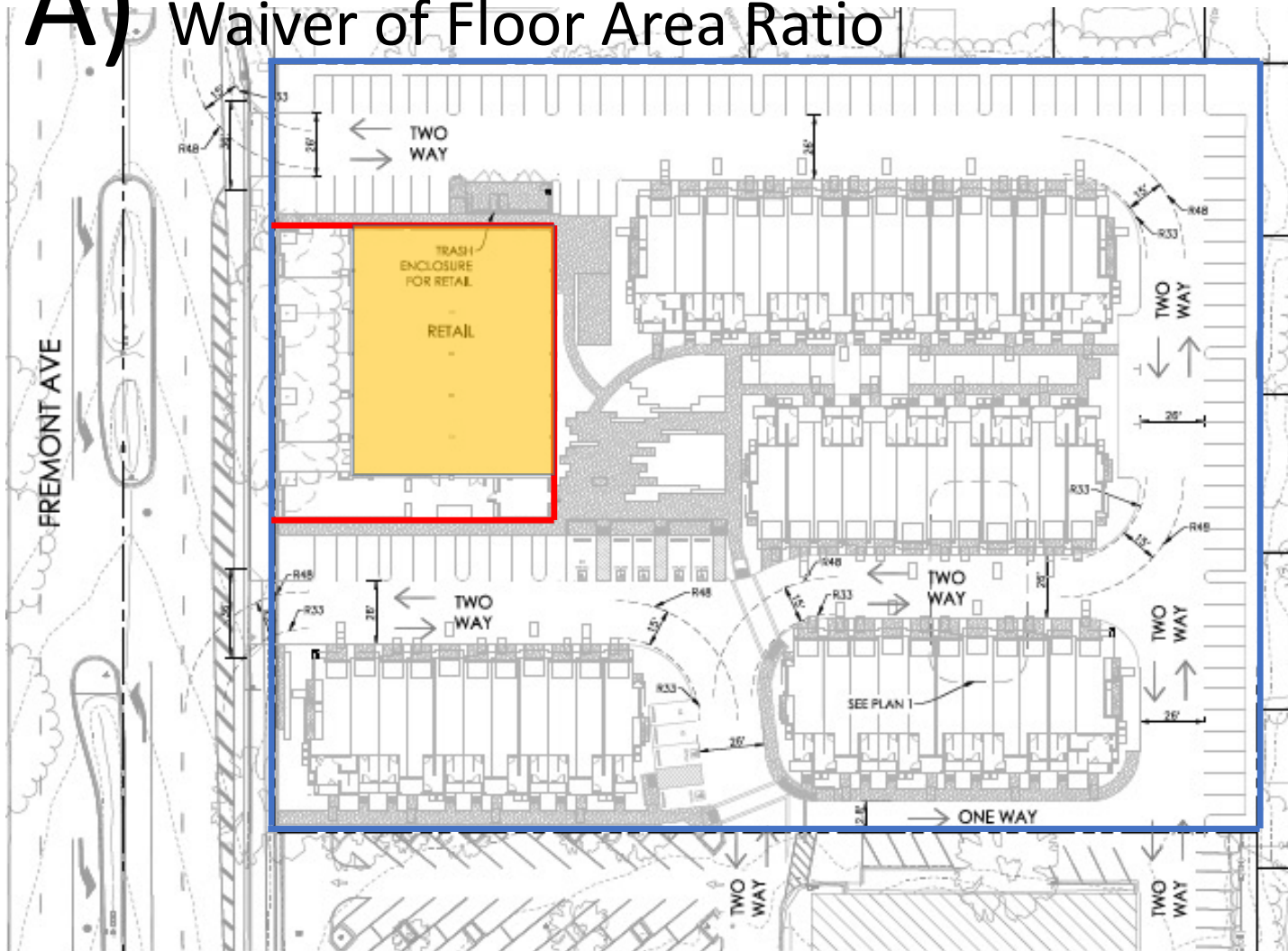
Project Area

Overhead  
Power





# A) Waiver of Floor Area Ratio



- Property Boundary 2.76 AC (116,305 SF)
- Proposed leased retail area 12,066 SF (10% Lot Area)
- 8,300 SF Existing Retail (6.7%)

## Village Mixed-Use

This category provides neighborhood-serving commercial uses integrated with residential uses. In the future, most residents can expect to have a mixed-use Village Center within one-quarter to one-half mile of their homes. The Village Centers should typically be located at a crossroad of arterials or major collector streets and have excellent pedestrian and bicycle connections.

Commercial uses are a crucial component of these sites, and future mixed uses should include commercial components equal to a minimum of 10% of the lot area, up to a maximum of about 25%. The residential uses in most Village Mixed-Use areas are anticipated to achieve an average density of 18 dwelling units per acre (medium density), with the same variations in density described in the Corridor Mixed-Use section above. If determined to be appropriate due to more intensive surrounding uses (such as at the corner of Tasman Road and Fair Oaks Avenue), residential densities may be higher subject to a public review process. Residential uses will likely be concentrated near street corners above commercial uses and may give the appearance of a medium- to high-density development. Village Mixed-Use developments

## LAND USE AND TRANSPORTATION — ECONOMY

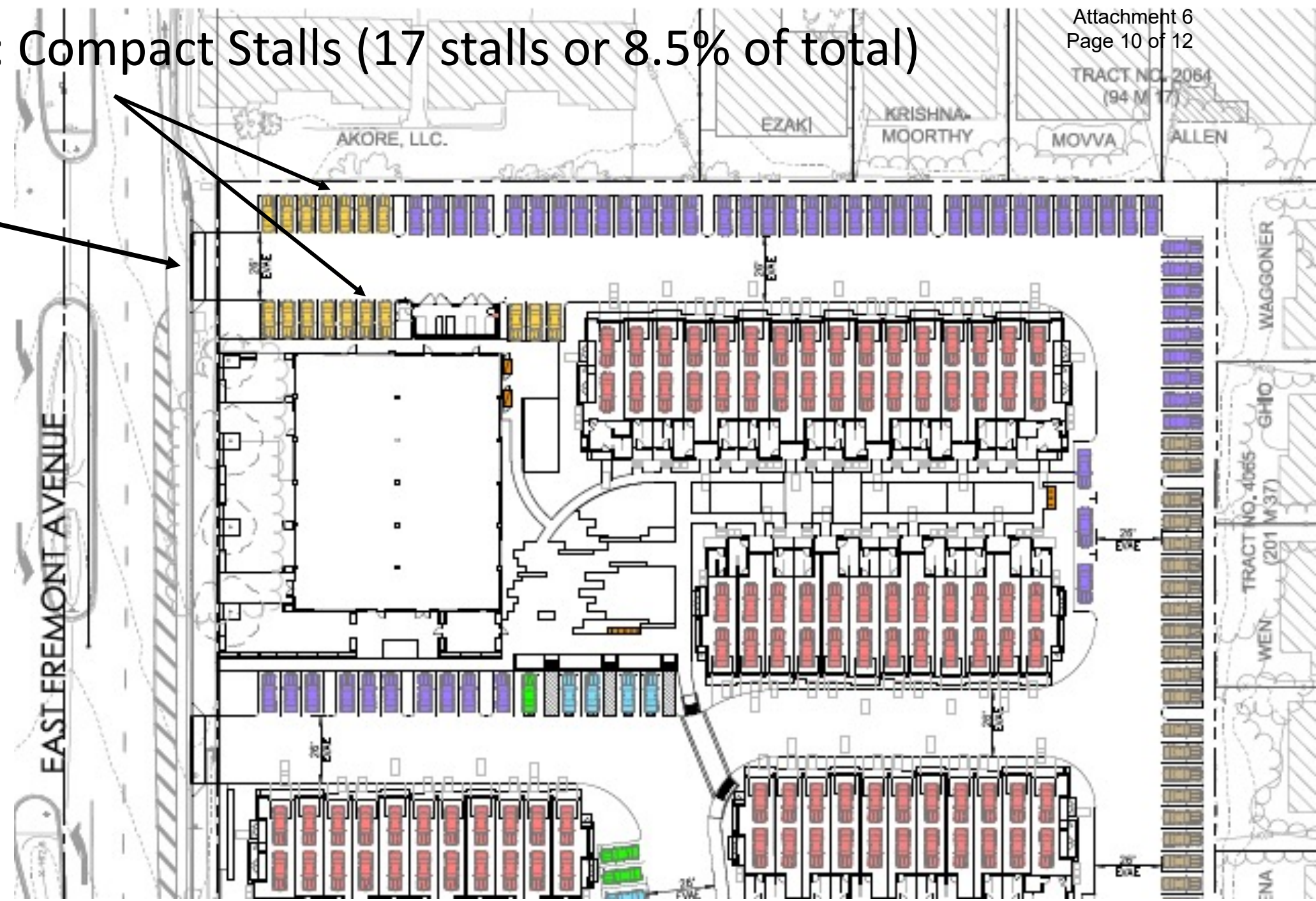
will be designed to provide buffers between higher-intensity sections and the adjacent lower-density neighborhood. Densities and intensities within each Village Mixed-Use area should be further refined and implemented with a specialized plan such as a precise plan, specific plan, or area plan and a toolkit of development standards and design guidelines.

LAND USE CATEGORY	VILLAGE MIXED-USE
DESCRIPTION	Allows neighborhood-serving commercial uses integrated with residential uses, typically located near arterial intersections or major collector streets providing pedestrian and bicycle connections. Promotes residential uses concentrated near street corners above commercial uses and buffers between higher-intensity development and adjacent lower-density neighborhoods.
DENSITY/INTENSITY	Commercial—FAR: minimum = 10% , typical maximum = 25% Specific densities and intensities determined by Specific Plan or Area Plan
TYPICAL ZONING DISTRICTS	(MU-V) Mixed-use Village (LSP) Lakeside Specific Plan (very high density residential with hotel)

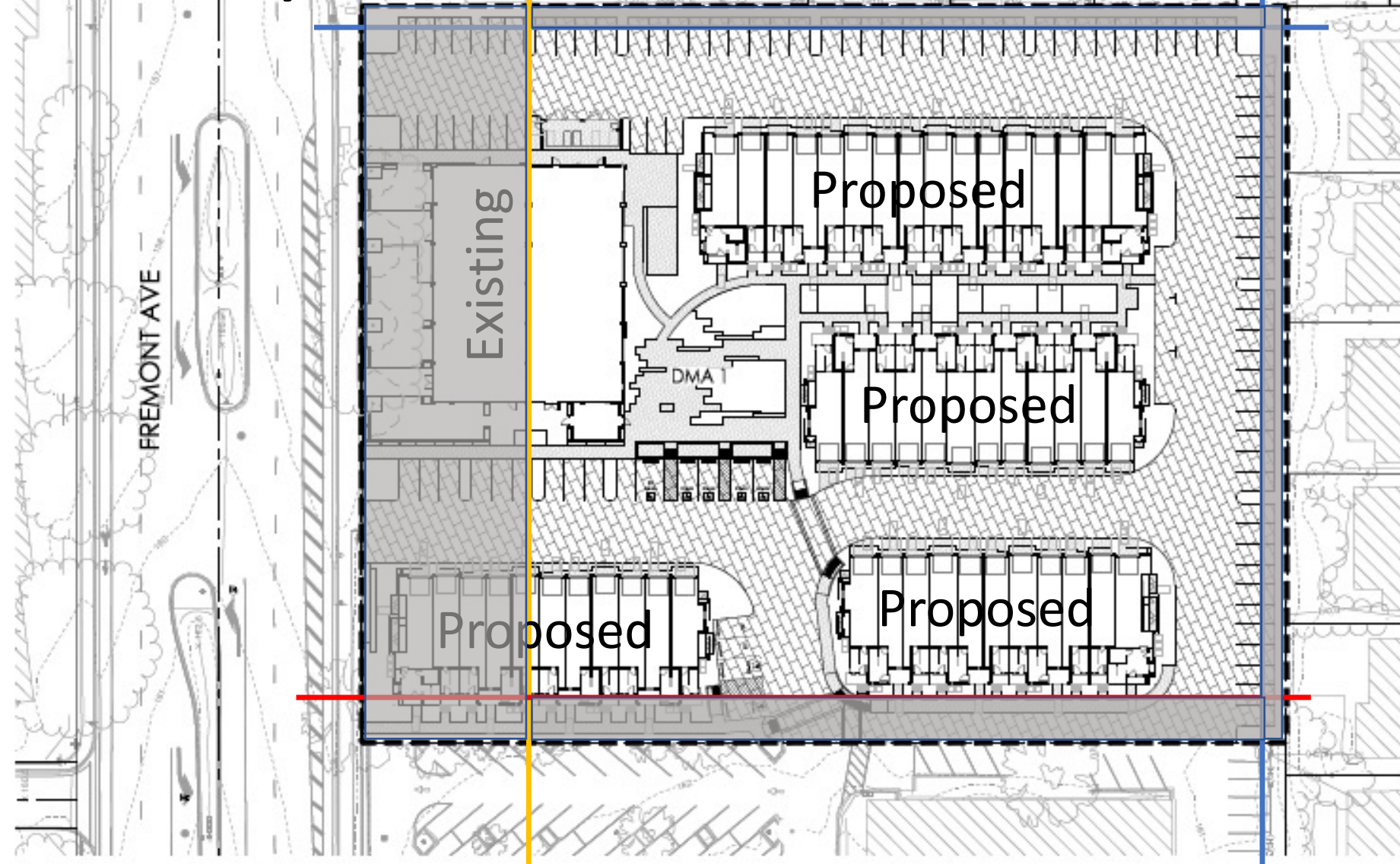


# B) Waiver : Compact Stalls (17 stalls or 8.5% of total)

26' wide existing  
driveway width  
and location  
required by Fire  
Department



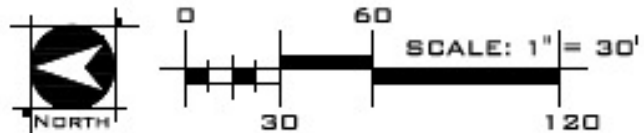
# C,D,E,) Waiver of Setbacks (3 conditions)



- 10' landscape buffer
- 70' front setback
- 24' side setback
- Lost useable site area

Implementation of these setbacks would:

- Remove 85 parking stalls
- Loss of 11 units
- Demo of existing commercial building planned for remodel





# F) Waiver : 50% drive-aisle and parking lot shading



Drive-Aisle - all  
pervious pavers



Shade Tree

32.38% shading proposed

Parking Lot Shading was adopted in 2013 prior to the adoption of the 2017 LUTE – Village Center Concept. In reality, the residential parking garages should be counted as parking shade