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February 18, 2022

VIA E-MAIL

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

Re: 3832 18th Street (2020-001610CUA)

Dear Office of the City Attorney:

Our office represents MJ Mission Dolores, LLC, owner of 3832 18th Street, as well as the nonprofit corporation Yes In My Back Yard (YIMBY) and Sonja Trauss in her individual capacity. MJ Mission Dolores applied for a conditional use authorization (CUA) to construct a 19-unit, six-story group housing project at 3832 18th Street. The project provides three affordable units to qualify for a 35% density bonus under state law.

On October 14, 2021, the Planning Commission conditioned the CUA to eliminate the sixth floor of the project, which will have the same effect as lowering the density of the project and will impact the ability of the project to provide housing. The condition eliminates the common room and group kitchen facilities, greatly reduces the available bike storage on a site without parking, effectively eliminates two units, eliminates all private open space, and would cause multiple Planning and Building code compliance issues. The Planning Commission did not impose the condition to mitigate any identified impacts, but rather described the condition as a “design improvement.” Our clients participated in the Planning Commission’s October 14 hearing under protest because the City failed to act prior to the expiration of the Permit Streamlining Act’s mandatory deadlines, and thus the project was already deemed approved as a matter of law.

The Planning Commission’s action would have the same effect as lowering the project density, would impact the ability of the project to provide housing, and would render the project infeasible. Thus, the Planning Commission condition violates the Housing Accountability Act. In addition, the project sponsor is entitled to construct the project at the height proposed as one of the two incentives or concessions for which the project is eligible, or as a development standard waiver, under the State Density Bonus Law.

Our office submitted an appeal of the Planning Commission’s conditional approval on November 12, 2021 pursuant to Planning Code § 308. That appeal was rejected on November 22, 2021 due to an insufficient number of neighbor signatures submitted with the appeal. However, an appeal was also submitted by Athanassios Diacakis on October 14, 2021, which was accepted on November 18, 2021. Pursuant to Planning Code § 308.1(a), the Planning Commission’s action

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does not become effective unless and until the Board of Supervisors acts on Mr. Diacakiswas' appeal.

As explained above, the Planning Commission's approval violates both the Housing Accountability Act and the Density Bonus Law. We are prepared to enforce our clients' rights to the full extent of the law. However, due to the pending appeal, the Planning Commission's action is not yet effective or ripe for adjudication. We intend to fully participate in the Board of Supervisors' appeal process to hopefully resolve this matter administratively as a gesture of good faith, notwithstanding the fact that the project was already deemed approved. We intend to initiate litigation thereafter, if necessary.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



Brian O'Neill

cc: Office of the Clerk of the Board (via email)