



Housing Division
701 Laurel Street/Menlo Park, CA 94025-3483
(650) 330-6706/Fax (650) 327-1759

MEMORANDUM

DATE: September 7, 2011
TO: Housing Commission
FROM: Douglas Frederick, Housing Manager

SUBJECT: Approval of Below Market Rate Agreement with CA 1460 O'Brien, LLC for commercial linkage fees for 1460 O'Brien Drive

PROJECT DESCRIPTION

The applicant, CA 1460 O'Brien, LLC, a California limited liability company, owns approximately 1.28 acres or 55,756 square feet known as 1460 O'Brien Drive. The applicant proposes to renovate an existing building, demolish 3,004 square feet of gross floor area, and change the use of the building from a combination of office, warehouse and manufacturing to all office uses. The size of the existing structure is 36,604 square feet of gross floor area and would be reduced to 33,600 square feet of gross floor area. The existing 112 parking spaces would become conforming at a ratio of one space per 300 square feet of gross floor area. The proposed new tenants will use the building as office space. A general contractor and an insurance agent will be the new tenants.

The applicant has applied to the City for a building permit to construct the renovation. Approval of a Below Market Rate Housing Agreement is a condition precedent to the approval of the applications and the issuance of a building permit for the project. Following the Housing Commission's review of the proposed BMR Agreement, the Planning Commission will review it at its meeting on September 19, 2011.

BMR Housing Program Requirement

Commercial buildings of ten thousand (10,000) square feet or more gross floor area are required to mitigate the demand for affordable housing created by the

commercial development project. In order to do so, it is preferred that a commercial development project provide below market rate housing on-site (if allowed by zoning), or off-site, if on-site BMR units are infeasible. Although the provision of actual BMR units is strongly preferred, it is not always possible to provide BMR housing units. In such cases, the developer shall pay a commercial in-lieu fee rather than provide actual BMR housing units.

The City's BMR Ordinance applies to commercial developments in which there is a conversion of floor area from a less intensive use (Group B or Commercial/Industrial uses) to a more intensive use (Group A or Office/R&D). Commercial in lieu fees are charged at different rates to these two groups based on the employee housing demand the uses produce.

The applicant is proposing to change the use of the existing building from a Group B (Commercial/Industrial) to a more intensive Group A use (Office/R&D), which triggers the BMR Ordinance.

Residential use of the property located at 1460 O'Brien Drive is not allowed by the applicable zoning regulations. Also, the applicant does not own any sites in the city that are available and feasible for construction of sufficient below market rate units to satisfy the requirements of the BMR Ordinance. Given these facts, the applicant has demonstrated that the development of below market rate units either on- or off-site is not feasible.

Commercial in lieu fees must be paid prior to the issuance of a building permit. The applicable in lieu fee is that which is in effect on the date the payment is made. Commercial in lieu fee rates are adjusted annually on July 1st, in accordance with the Ordinance and the BMR Housing Program Guidelines. The current commercial in lieu fee rates effective July 1, 2011 through June 30, 2012 are \$14.50 per square foot of gross floor area for Group A use and \$7.87 per square foot of gross floor area for Group B use.

The method of calculating the commercial in lieu fee for the project located at 1460 O'Brien Drive consists of the following table, based upon fees as of July 1, 2011:

	Use Group	Fee/SF	SF	Fee
Existing Office Portion	A-Office/R&D	\$14.50	19,766	(\$286,607.00)
Existing Non-Office Portion	B- All Other Com	\$7.87	16,838	(\$132,515.06)
Proposed Office Building	A-Office/R&D	\$14.50	33,600	\$487,200.00
	TOTAL FEE			\$68,077.94

Given this, the applicant would be required to pay a fee of \$68,077.94 in lieu of providing below market rate housing units either on or off the site located at 1460 O'Brien Drive.

Recommendation

Staff feels the applicant has sufficiently demonstrated that it is infeasible to provide actual BMR units either on- or off-site. Given this, staff recommends approval of the proposed BMR agreement in which the applicant will pay \$68,077.94 in lieu of providing below market rate housing units.

ATTACHMENTS

- A. Proposed BMR Agreement for 1460 O'Brien Drive

BELOW MARKET RATE HOUSING IN LIEU FEE AGREEMENT

This "Agreement" is made as of this ___ day of _____, 2011 by and between the City of Menlo Park, a California municipality ("City") and CA 1460 O'Brien, LLC, a California limited liability company("Developer"), with respect to the following:

RECITALS

- A. Developer owns a certain real property in the City of Menlo Park, County of San Mateo, State of California, consisting of approximately 1.28 acres or 55,756 sqft, more particularly described as Assessors Parcel Number: 055-473-100 and 055-473-110 JPN: 111-050-000-0009T ("Property") more commonly known as 1460 O'Brien Drive.
- B. Developer proposes to renovate an existing building, demolish 3,004 square feet of gross floor area, and change the use of the building from a combination of office, warehouse and manufacturing to all office uses. The size of the existing structure is 36,604 square feet of gross floor area and would be reduced to 33,600 square feet of gross floor area. The existing 112 parking spaces would become conforming at a ratio of one space per 300 square feet of gross floor area and a building gross floor area of 33,600 square feet. Developer has applied to the City for a building permit to construct the renovation.
- C. Developer is required to comply with chapter 16.96 of City's Municipal Code, (BMR Ordinance"), and with the BMR Housing Program Guidelines adopted by the City Council to implement the BMR Ordinance ("Guidelines"). In order to process its application, the BMR Ordinance requires Developer to submit a Below Market Rate Housing Agreement. This Agreement is intended to satisfy that requirement. Approval of a Below Market Rate Housing Agreement is a condition precedent to the approval of the applications and the issuance of a building permit for the project.
- D. Residential use of the property is not allowed by the applicable zoning regulations. Developer does not own any sites in the City that are available and feasible for construction of sufficient below market rate units to satisfy the requirements of the BMR Ordinance. Based on these facts, the City has found that development of such units off-site in accordance with the requirements of the BMR Ordinance and Guidelines also is not feasible.
- E. City has determined not to require Developer to provide below market rate units and, under the terms of the BMR Ordinance and the Guidelines, Developer therefore is required to pay an in lieu fee as provided in this Agreement. Developer is willing to pay said fee on the terms set forth in this agreement, which the City has found are consistent with the BMR Ordinance and Guidelines.

NOW, THEREFORE, the parties agree as follows:

1. Developer shall pay the applicable in lieu fee as provided in the BMR Ordinance and Guidelines. The applicable in lieu fee is that which is in effect on the date the payment is made. The method of calculating the fee for the Project consists of the following table, based upon fees as of July 1, 2011. Rates change annually on July 1:

	Use Group	Fee/SF	SF	Fee
Existing Office Portion	A-Office/R&D	\$14.50	19,766	(\$286,607.00)
Existing Non-Office Portion	B- All Other Com	\$7.87	16,838	(\$132,515.06)
Proposed Office Building	A-Office/R&D	\$14.50	33,600	\$487,200.00
TOTAL FEE				\$ 68,077.94

2. The fee shall be paid before the issuance of a building permit for the project and may be paid at anytime after approval of this agreement by the Planning Commission. If for any reason, a building permit is not issued within a reasonable time of payment of the fee, upon request by Developer, City shall promptly refund the fee, with out interest, in which case the building permit shall not be issued until payment of the fee is again made at the rate applicable at the time of payment.
3. This agreement shall be binding on and inure to the benefit of the parties hereto and their successors and assigns. Each party may assign this Agreement without the consent of the other, provided the assignment is in writing.
4. If any legal action is commenced to interpret or enforce this Agreement or to collect damages as a result of any breach of this Agreement, the party prevailing shall be entitled to recover all reasonable attorney's fees and costs incurred in such action from the other party.
5. This Agreement shall be governed by and construed in accordance with the laws of the State of California
6. The terms of this agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.
7. This Agreement supersedes any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof.
8. Any and all obligations or responsibilities of Developer under this Agreement shall terminate upon the payment of the required fee.

9. To the extent there is any conflict between the terms and provisions of the Guidelines and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

CITY OF MENLO PARK

CA 1460 O'Brien, LLC

By: _____
City Manager

By: _____
Robert Williamson
Managing Member