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# CITY OF BELVEDERE

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August 16, 2022

Mallard Point 1951, LLC Bruce Dorfman 39 Forrest Street  
Suite 202  
Mill Valley, CA 94941

**Re: Mallard Pointe 1951, LLC - Compliance Review**

Dear Mr. Dorfman:

On June 23, 2022, the City determined that the application for Mallard Pointe submitted on May 24, 2022 was complete in that that application contained all of the items listed in the City's application forms. On July 20, 2022, as required by Government Code Section 65589.5(o)(2), the City provided a detailed list of items describing all inconsistencies between the project submitted on May 24, 2022, and adopted City plans, ordinances, standards, and requirements.

On July 18, 2022, the City received a revised application for Mallard Pointe, including removal of two accessory dwelling units and a revised density bonus application. On August 5, 2022, revised plans were submitted showing the removal of the two accessory units.

The City has reviewed those revised applications and determined that they contain all of the items listed in the City's application forms. The City hereby provides a detailed list of remaining inconsistencies as required by Government Code Section 65589.5(j)(2).

**Applications for Waivers, Concessions, and a Parking Reduction.** The project applications include requests for waivers, concessions, and a parking reduction. The City can only grant those requests if the project is eligible for a density bonus pursuant to Section 65915 of the California Government Code. To be eligible for a density bonus, the project must provide a

minimum of five percent very low-income units based on the total number of units excluding any bonus units, or ten percent low-income units based on the total number of units excluding any bonus units. (See Government Code Sections 65915(b)(1)(A), (b)(1)(B), (0)(6).) The project must also provide all replacement housing for existing units occupied by very low- and low-income units to be eligible for a density bonus, concessions, waivers, and parking reductions. (Government Code Section 65915(c)(3).)

The project now includes 40 units, with no bonus units requested. The four lower income units proposed (total of very low- and low-income units) equal 10 percent of the "total units," as defined by the statute. Therefore, the project as now proposed meets the minimum requirements of Section 65915(b)(1)(A) to apply for waivers, concessions, and parking reductions.

The application asserts that it also provides all replacement housing required by Section 65915(c)(3). However, despite repeated requests by the City, no evidence has been submitted to the City regarding the incomes of the existing tenants to support these assertions. Until that evidence is submitted to the City, the City cannot confirm that the project is eligible for the requested waivers, concessions, and parking reductions.

Because the project has been deemed to be complete, State law (Government Code Section 65915(a)(3)(D)) requires that the City inform you regarding whether the project is eligible for the parking ratio requested and whether the application contains sufficient information to make a determination regarding the waivers and concessions requested. At this time the City lacks sufficient information to determine whether the project is eligible for parking reductions, waivers, and concessions. The following information is provided assuming that the income information to be submitted supports the applicant's assertions regarding replacement housing.

**Requested Parking Ratio.** Government Code Section 65915(p)(1) provides that a project eligible for a density bonus cannot be required to provide more parking than one space for a studio or one bedroom unit; 1.5 spaces for a two-to three-bedroom unit; and 2.5 spaces for a unit with four or more bedrooms, inclusive of guest parking and spaces for persons with a disability. Onsite parking may be required through tandem parking or uncovered parking. (*Id.* Section 65915(p)(5).)

The project proposes 29 spaces for the single-family and duplex units where 32 spaces are required by Belvedere Municipal Code (BMC) Section 19.68.020. City Code requires two spaces per unit for single-family and duplex units, resulting in a requirement for 32 spaces for 16 total units (six single-family and ten duplex units). All ten duplex units are 2-3 bedrooms. Thus, City Code requires 20 spaces for these duplex units, and Government Code Section 65915(p)(1) allows for 15 parking spaces for these units, five less than the City requirement. A reduction of three parking spaces meets the standard contained in Section 65915(p)(1).

Additionally, not all spaces are located in a garage or carport as required by BMC Section 19.68.050.A, as tandem parking on the driveways is proposed. This is consistent with Government Code Section 65915(p)(5).

**Requested Waivers and Concession.** The project has requested one concession and five waivers, as follows:

Concession: Open Space for Apartments: 2,868 square feet provided where 10,350 square feet is required by Section 19.52.150.A

Waivers: The project has requested the following five waivers:

- A. Apartment House: An apartment house is proposed, where Section 19.28.030 does not permit apartment houses.
- B. Height for Apartments: 34 foot 6 inches proposed where 22 feet (with allowances for up to 26 feet) is required by Section 19.28.040.
- C. Lot Frontage for Lot 5: 27 feet is provided where 60 feet is required by Section 19.28.040.
- D. Lot Coverage for Apartments: 63 percent is proposed where a maximum of 40 percent (excluding uncovered decks) and 60 percent (including uncovered decks) is required by Section 19.28.040.
- E. Signage: The submitted signage plan shows a 24 square foot sign where Section 19.72.030 allows a maximum of four-square feet per lot.

As noted, the City requires additional information to verify the project's replacement housing obligations in order for the City to make a determination regarding the parking reductions, concessions, and waivers when the project is heard by the Planning Commission and City Council, which is designated to make decisions on concessions and incentives. (BMC Section 19.52.160.) If the project provides adequate replacement housing and the City Council approves the concession and waivers, the project will be consistent with the City's standards; if the project either does not provide adequate replacement housing or the City Council does not approve the concession and waivers, it will be inconsistent with the City's standards.

**Construction Time Limits.** The cover letter states that a waiver is requested for construction time limits, but the Density Bonus application does not list this as a requested waiver. We note that a separate application was filed for an Extension of Construction Time. As this application is for a modification that is not a development standard, as defined in Government Code section 65915(0)(1), it is not eligible to be granted as a waiver.

**Replacement Housing and Relocation Plan.** The City cannot approve the application unless the project conforms with the replacement housing provisions of the Housing Crisis Act of 2019 (Section 66300(d)) and contains sufficient replacement housing to meet the requirements of density bonus law (Section 65915(c)(3)) (these requirements are incorporated into the Housing Crisis Act). The following additional information is needed to verify conformance:

1. A copy of each of the income certifications provided by all tenants providing certifications, identification of which units are occupied by lower income tenants, and a copy of all communications with tenants regarding their potential relocation benefits. Note that all tenants who currently occupy the units, or who occupy the units prior to demolition, are potentially eligible for the benefits provided under the Housing Crisis Act. Income limits for lower income households have substantially increased since the initial survey was completed, and the certifications should be updated to utilize the current income limits. The increase in income limits is a state regulation and therefore is applicable to the project.
2. A completed relocation plan for lower income households (which you have indicated is being prepared by your consultant). Since it appears that fewer than 15 tenants are entitled to relocation benefits, please refer to the attached Model Relocation Plan prepared by the Department of Housing and Community Development for required information. The submittal should include the information that can be provided at this time.

**Public Works/Engineering Comments.** Please see attached July 13, 2022, comments from the Public Works Department with comments related to the merits and adequacy of submitted plans. The submitted plans do not conform with the following standards:

1. **Preliminary Stormwater Control Plan.** The City cannot confirm compliance with California's State Water Resources Control Board, Phase II Stormwater National Pollutant Discharge Elimination System (NPDES) Permit for small MS4s, Provision E.12, "Post-Construction Stormwater Management Program." until the comments under #2 are addressed.
2. **Preliminary Storm Drain Design.** The City cannot confirm compliance with Belvedere Municipal Code, Chapter 18.20 Tentative Map, Section 18.20.020 Information to be shown, C. until the comments under #3 and #15.a are addressed.
3. **Boundary Survey.** The City cannot confirm compliance with Belvedere Municipal Code Section 18.20.020 in that the existing parcel boundaries identified on the plan do not match the existing parcel boundaries as identified on the record of survey prepared by CSW-ST2, dated 2020.
4. **Lotting and Layout Plan.** The City cannot confirm compliance with Belvedere Municipal Code, Chapter 18.20 Tentative Map, Section 18.20.020 D until the scope

of work beyond the project property line is clearly shown and evidence provided of an existing easement or other right to perform work beyond the project property line . Also, site "Section A" must be to scale and include the proposed elevations of the following: lagoon water surface (higher elevation), bulkhead, lot pads (Lot 9 and Lot 12), streets (Mallard Road and Community Road), apartment parking elevation (Lot 12), finished floor elevations (first floor, Lot 9 and Lot 12) to verify compliance with floodplain standards.

5. **Landscaping:** There is an existing SD pipe and proposed easement along the southerly property line of Lot 11. Landscape Plan L-1.0 identifies trees along this alignment. The trees within this easement area violate the existing easement, and those trees must be eliminated.

**Other District Comments.** The comments listed below are from special districts that are neither part of the City of Belvedere nor subsidiary to the City and are being provided as a courtesy.

**Tiburon Fire District.** Please see attached June 20, 2022, comments from the Tiburon Fire Department with comments related to the merits and adequacy of submitted plans. The project does not comply with Roadway and Driveway Minimum Clearance standards in that the dimensions of Mallard Road do not meet 20 feet unobstructed; see red cloud on MP Set "1 Mallard Fire Lane 2-16-22" page TM-3. The "Required" items in the comment letter would be conditions of approval.

**Marin Municipal Water District (MMWD).** Please see attached June 20, 2022, comments from Marin Water with comments related to the merits and adequacy of submitted plans. The project will not comply with MMWD standards until purchase of additional water allotment and water supply for fire flow requirements are confirmed.

**Sanitary District No. 5.** The Sanitary District has no additional comments from the February 11, 2022, comment letter. The project does not comply with District's Sanitary Code Section 3.05.390 until the items identified in the letter are addressed and a will serve letter can be issued.

Additional applications or project modifications may be needed to correct the inconsistencies. The City may also request information needed to comply with the California Environmental Quality Act and may request the applicant to clarify, amplify, correct, or otherwise supplement the information submitted. (Government Code Section 65944.) If you wish to proceed with this project, please advise how you intend to rectify the above inconsistencies in writing at your earliest convenience.

In addition, approximately \$10,971.20 remains of the initial \$30,000 deposit provided to the City for project review. An additional deposit of \$30,000 will be required to continue processing the project. The City has now entered a contract with Ascent Environmental to determine the

appropriate CEQA document and requires an additional deposit of \$69,000. The CEQA work cannot be completed unless the City receives those funds.

Please note that the categorical infill exception established by CEQA Guidelines Section 15332 requires significant investigation. The project only qualifies for that exemption if the City rules out the exceptions to that exemption based on substantial evidence in the record. Those exceptions include, without limitation, the conditions listed in CEQA Guidelines Sections 15300.2 and 15332. Also note that a project is not eligible for the categorical infill exemption unless it is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.

Thank you for your attention to these items. Please contact me at [iborba@cityofbelvedere.org](mailto:iborba@cityofbelvedere.org) or (415) 435-8907, or MIG project planner Tricia Stevens at [tstevens@migcom.com](mailto:tstevens@migcom.com) or (916) 698-4592, if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Irene C. Borba". The signature is fluid and cursive.

Irene Borba  
Director of Planning and Building  
City of Belvedere

Cc: File  
Robert Zadnik, City Manager

- Attachment 1: Model Relocation Plan
- Attachment 2: Public Works comments
- Attachment 3: Fire Department comments
- Attachment 4: Water District comments
- Attachment 5: Sewer District comments