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September 8, 2022

Via E-Mail Only

Irene Borba
Director of Planning & Building
City of Belvedere
450 San Rafael Ave
Belvedere, CA 94920

Re: Mallard Pointe - General Plan Density

Dear Ms. Borba:

Our office continues to represent Mallard Pointe 1951 LLC in connection with this project. This letter is in response to the continued assertions by BRIG that the density allowed for this site in the City's general plan can be achieved by using exclusively duplexes. It cannot, and the documentation submitted by BRIG itself demonstrates this fact.

Only July 1, 2022, the counsel for BRIG wrote to the City and stated, "if it can be shown that the R-2 zoning classification is inconsistent with the General Plan's Medium Density MFR designation, then no rezoning would be required for the Project despite the R-2's prohibition of apartment houses." This is a true statement. The Housing Accountability Act (aptly often referred to as the anti-NIMBY law) states:

"A proposed housing development project is not inconsistent with the applicable zoning standards and criteria, **and shall not require a rezoning**, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan."
(Cal. Gov. Code § 65589.5(j)(4).)

This code section was added to address the practice of cities adopting zoning code densities lower than the general plan density in order to force projects into discretionary rezoning processes.



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This is the exact scenario here. The City's General Plan density for the property is 48-56 units per acre, but then the zoning code bans attached multifamily housing except for duplexes. As will be discussed below, duplexes could never yield such a density.

The State Density Bonus law also addresses the issue of general plan densities that do not conform to zoning code densities, or that cannot be achieved due to zoning standards. Government Code, Section 65915(o)(4) defines, "Maximum allowable residential density" as:

"the density allowed under the zoning ordinance and land use element of the general plan, or, **if a range of density is permitted**, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project."

This section then goes on to make the following critical statement:

"If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail."

This is a very clear statement. If parts of the zoning code get in the way of achieving the density in the general plan, those parts of the zoning code may not be enforced. This applies to numerical development standards, use restrictions, and anything else. **The general plan density controls.**

Pursuant to the MFR General Plan Designation, the Property has an allowable density range of 12 to 48 units if Mallard Road were to remain. However, in a development program that no longer utilized an interior roadway, the allowable density would range from 14 to 56 units. The attorney for BRIG wants to argue about net v. gross acreage for the purposes of general plan density calculation. However, this argument misses the fact that Mallard Road is *private*, there is no obligation to keep it, and a multifamily project only taking access off of Community Road could easily be designed, thereby allowing a 56-unit base density yield. This distinction is not particularly relevant, however, as the Project seeks to keep the existing road in generally the same place.



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Accordingly, the question becomes: Can 48 units reasonably be constructed while strictly adhering to the R-2 regulations, including the ban on apartment houses? The answer is a rather obvious and unequivocal **no**.

BRIG's counsel submitted a Site Study showing 24 duplexes crammed onto the Property and claiming that said plan meets, "all applicable development standards in the R-2 zoning, with no waivers or variances needed." This plan was supposedly prepared by a local professional, but it violates multiple municipal code standards and is also an unrealistic project. For example, BRIG's "professional" appears to have missed BMC Section 19.60.030(B), which states the following:

"In any zone other than a single-family residence zone, only one main building, whether a public building, apartment house, apartment court, main dwelling or otherwise, shall be located, constructed or maintained on any lot, except that two or more such main buildings may be erected, located or maintained on a lot if the building area in which each such main building and its accessory structures are located has, separate and distinct from the building area for any other main building on the same lot, **at least the minimum lot frontage, the minimum average width, the minimum lot area, the minimum setback line and yard requirements prescribed by this Title for a lot in that zone.**"

This means that for every duplex greater than one that is paced on the property, all the traditional subdivision standards need to be met (i.e lot size, frontages, widths, etc.). The BRIG plan fails immediately on all of these criteria, as well as many others.

Specifically, the following standards are not met:

- Minimum lot size of 6,000 sf
 - **Only 3,850 sf is shown**
- Minimum lot width of 60' average
 - **Only 52' is shown**
- Minimum lot frontage of 60'
 - **Only 52' is shown**



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- Minimum lot area of 3,000 sf per 1- and 2-bedroom unit
 - **Only 1,925 sf per unit is shown**
- Minimum front and side yard setbacks to achieve BFE+1'
 - **The massing does not “wedding cake” as required (This could be achieved in some locations since low and unmarketable ceiling heights of 8’ are being shown in the plan)**
- Minimum rear yard setbacks on lagoon fronting lots
 - **Many lagoon fronting duplexes are placed within the setback, which presumably is based on a fictitious property line in the lagoon as opposed to the bulkhead as required by ordinance**
- Off-street parking of 2 spaces per unit
 - **Without a variance, tandem parking is not allowed**

Further, public policy and market considerations are ignored in the sham site plan on the following basic issues, which were all incorporated in the Mallard Pointe design based on community input:

- No units are handicap accessible as designed
- There is no visitor parking and all guests as well as some residents would be forced to park on Community Road
- All units are 1- or 2-bedroom as opposed to a mix that includes 3+ bedroom units
- No units have single level living or ground floor primary suites

The BRIG duplex plan is not achievable under the R-2 zoning. No amount of letters from BRIG members will change this fact. Suggesting that 20/units acre could be achieved with a duplex product just further strains the credulity of the group. Even reaching 12 units/acre with duplexes under the current R-2 zoning would be a challenge given the site’s dimensions and irregular configuration.

The Legislature has directed that the state’s housing laws "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (Government Code §65589.5(a)(2)(L).) This direction includes density interpretations. In fact, the precise issue of zoning use prohibitions that do not yield allowable general plan densities was just litigated in Los Angeles: <https://www.yimbylaw.org/press/lawsuit-against-city-of-los-angeles>.



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In ruling for the applicant, the court was adamant that state housing laws required local governments to accommodate the general plan's density, even when zoning classifications dictated lower densities or had use restrictions on the housing types necessary to achieve such densities.

Why is BRIG so opposed to the idea of apartments? This hostility is particularly concerning when Belvedere has just been deemed "the most segregated neighborhood of white wealth in the Bay Area." (The Ark Newspaper, August 31, 2022, citing a study by Bay Area Equity Atlas.) This study found that there are a grand total of **zero** Black, Asian, or Latino renter households in the entire City of Belvedere. (*Id.*) Despite these statistics, BRIG still wants to pull up the drawbridge and continue its crusade to be sure no new apartments get built at Mallard Pointe. This behavior is exactly why the state has slowly wrested away local control of housing projects.

We would ask that the City please promptly schedule a hearing on this project.

Thank you.

Very Truly Yours,

A handwritten signature in blue ink that reads "Riley F. Hurd III". The signature is written in a cursive, flowing style.

Riley F. Hurd III

CC: Client
Members of the City Council
Members of the Planning Commission
Robert Zadnik, City Manager
Barbara Kautz
Ann Danforth