

## **State Density Bonus Law Provisions Applicable to the Mallard Pointe Housing Development**

On January 26, 2022, the City of Belvedere received an application for a housing development at Mallard Point. The project proposes to demolish 22 existing rental duplex and fourplex housing units on the project site and replace those with 42 new units. The proposed new units would include six single-family homes, ten duplex units, 23 apartments, and three accessory dwelling units. The project also includes two units intended for occupancy by very low-income households and two units for moderate-income households.

The application currently requests several modifications of Belvedere's zoning regulations under state Density Bonus Law:

- An increase in the number of units from 30 normally allowed by the zoning ordinance to 39 (the three accessory dwelling units are allowed in addition to the allowed density);
- A "concession" to reduce minimum private outdoor open space;
- "Waivers" to increase building height; reduce side setbacks; decrease lot area per unit; increase lot coverage; and allow an apartment house in the R-2 zone.

Additional requests could be added if the developer revises the application.

Key provisions of state Density Bonus Law are described below. Belvedere is required to comply with state Density Bonus Law, even if state law conflicts with the City's zoning and other development standards. The City will review Mallard Pointe's eligibility for a density bonus, concession, and waivers as part of its review of the project application.

### **Eligibility for a Density Bonus**

The Density Bonus Law requires a city to allow a greater number of units than allowed under the zoning if the housing project provides a specified percentage of affordable units at certain income levels. It provides that a project is entitled to a bonus over the maximum density allowed in the City's general plan. For instance, a project is eligible for a 20 percent increase in the number of units if five percent of the units (not including the bonus units) are affordable to very low-income households. As an example, a project that is allowed 100 units by the local general plan is allowed a total of 120 units if 5 units (5% of 100 units) are affordable to very low-income households. The number of allowed bonus units increases on a sliding scale to 50 percent, if 15 percent of the units are affordable to very low-income households.

The Density Bonus Law also allows for bonuses if the project includes units for moderate and low-income housing, although the bonus is lower. If 10 percent of for-sale units are affordable to moderate-income households, the bonus is limited to five percent. A project that is 100 percent affordable is entitled to an 80 percent bonus, or to unlimited density if within one-half mile of a major transit stop such as the Tiburon Ferry. Housing projects that provide housing for senior citizens,, whether affordable or not, are entitled to a 20 percent bonus.

Once a project is eligible for a density bonus, it is also eligible for "concessions," "waivers," and reductions in the City's usual parking standards, even if the project does not request a density increase.

### **Concessions**

“Concessions” (also called “incentives”) are modifications of zoning or design standards that result in “identifiable and actual cost reductions” to provide for the affordable housing included in the project. Concessions can also be requested for mixed use zoning or for other regulatory changes that reduce costs. Developers are entitled to one to four concessions depending on the percentage of affordable units and the affordability category (very low, low, etc.).

The City may require a developer to provide “reasonable documentation” to demonstrate that the concession meets the definition included in density bonus law. The City must grant the concession, unless it has evidence that the requested concession either does not result in cost reductions; violates state or federal law; or causes a “specific, adverse impact” on public health or safety or on a property included in the California Register of Historical Resources, and there is no feasible way to avoid the impact.

### **Waivers**

The City is not allowed to apply any “development standard” to a project eligible for a density bonus that will have the effect of “physically precluding” construction of the project at the permitted density or with the allowed concessions. A “development standard” is a “site or construction condition” such as height limits, setbacks, and open space requirements. Developers may apply for an unlimited number of waivers of these development standards..

Like concessions, the City must grant the waiver, unless it has evidence that the waiver violates state or federal law or causes a “specific, adverse impact” on public health or safety or on a property included in the California Register of Historical Resources, and there is no feasible way to avoid the impact. In a case that was recently published, the Court of Appeal stated that:

[U]nless one of the statutory exceptions applies, so long as a proposed housing development project meets the criteria of the Density Bonus Law by including the necessary affordable units, a city may not apply any development standard that would physically preclude construction of that project as designed.

This decision requires the City to approve waivers unless they violate state or federal law or have a “specific adverse impact,” as defined.

### **Parking Reductions**

If a project is eligible for a density bonus, the City cannot require more than one parking space for studios and one-bedroom units or 1.5 spaces for two-bedroom units or more, although the developer can choose to provide more spaces. The maximum number of spaces includes guest parking and parking for disabled persons. The parking may be in tandem or uncovered.