

MEMORANDUM

September 20, 2022

To: Irene Borba, Director of Planning and Building

From: M. R. Wolfe & Associates, P.C.
on behalf of Belvedere Residents for Intelligent Growth (BRIG)

cc: Members of the City Council
Members of the Planning Commission
Robert Zadnik, City Manager
Barbara Kautz

Re: Mallard Pointe Project – General Plan Density

This responds to the September 8, 2022 letter from Riley F. Hurd of Raghianti Freitas LLP, the attorney for Mallard Pointe 1951 LLC, the developer of the proposed Mallard Pointe project (“Project”).

On July 1 of this year, BRIG submitted a memorandum to the City that attached, among other things, a schematic site plan prepared by licensed architect and Belvedere resident Alex Seidel. (BRIG Memo to Irene Borba, July 1, 2022, Attachment 5.) The plan showed how 48 duplex units could be built on the Project site in accordance with R-2 zoning standards, thereby achieving the General Plan-specified density of 20 units per net acre without an apartment building, which as you know is a prohibited use in the R-2 zone. As stated at the time, the purpose of the plan was not to present an alternative development proposal for the site, but rather to refute the Developer’s unsubstantiated assertion that achieving a density of 20 units per net acre is physically impossible unless an apartment building is constructed.

Now, rather than providing facts or documentation to support its assertion, the Developer attacks BRIG’s schematic plan for allegedly failing to meet all R-2 zoning standards, which is ironic given that the Developer stridently argues that these same zoning standards should be waived for its own Project. Regardless, as explained below, the Developer’s criticisms of BRIG’s schematic plan are misplaced and ultimately irrelevant to the larger question of whether R-2 zoning requirements are consistent with the General Plan.

First, as should go without saying, the burden is not on BRIG, or indeed the City, to prove that R-2 zoning is consistent with the General Plan and that 48 duplex units can be built on the Project site. As BRIG explained in its July 1 memo, that is what both the General Plan and the R-2 zoning plainly envision, and that is what the City expressly found when it adopted its Housing Element in 2015. (*See* BRIG Memo, July 1, 2022, at pp. 5-6.) Instead, the burden is on the Developer, who is seeking to bypass the R-2's apartment prohibition, to prove inconsistency with the General Plan and physical impracticability of achieving the General Plan density of 20 units per net acre with duplex units.

Second, the Developer's assertion that BRIG's architect "missed BMC section 19.60.030(B)" is misleading. That code section provides that in any zone other than a single-family residence zone (including the R-2) only one main building may be constructed on any one **lot**, except that more than one may be constructed on a single **lot** if each adheres to the lot area, width, setback, and yard standards applicable to single lots. The Developer claims that the duplex buildings shown on BRIG's schematic plan do not adhere to lot size, lot width, lot frontage, setback, and parking standards of the R-2 zoning, suggesting that this somehow constitutes proof that 48 duplex units cannot feasibly be built at the site.

What the Developer fails to acknowledge is that the Project site has not been subdivided into individual lots. BRIG's schematic therefore did not assume any such subdivision. The Belvedere Zoning Code plainly distinguishes a "parcel," which is defined as "all contiguous land held by one owner" (BMC § 19.08.381), from a "lot" which is "a single parcel of land bounded by established lot lines as shown on the latest official map thereof on file with the County Recorder[.]" (BMC § 19.08.290). As shown on the attached Assessor's Parcel Map (**Attachment 1**), the Project site is made up of three parcels in common ownership that have not been subdivided into individual lots.¹ Therefore, the provisions of BMC section 19.060.030 governing the number of buildings allowable on a single lot do not apply. The Developer's reliance on this section to argue broadly that 20 units per net acre cannot be built at the site without an apartment building is therefore clearly erroneous.

The Developer's point that BRIG's schematic includes lagoon-fronting duplex buildings that are not set back ten feet from the lagoon bulkhead as required by the Zoning Code, while technically correct, is immaterial and not dispositive. The buildings can easily conform to the setback requirement, as shown on the attached revised schematic plan. (**Attachment 2**.)

¹ By way of comparison, the parcels across the Belvedere Lagoon to the northeast have plainly been subdivided into multiple individual lots as depicted by numerous lot lines.

In sum, BRIG's schematic plan was presented solely as prima facie evidence to refute the Developer's bald claim that the General Plan-specified density of 20 units per net acre cannot be achieved with duplex units consistent with the R-2 zoning. It is not BRIG's burden to prove the General Plan and R-2 zoning are consistent with one another. To the contrary, that is to be presumed, particularly given the City's previous findings and conclusions that the R-2 zoning is in fact fully consistent with the General Plan. (*See* July 1, 2022 BRIG memo, pp. 5-6.) It is plainly the Developer's burden to prove, with facts and evidence and not mere assertions, that the R-2 zoning is inconsistent with the General Plan; and that 48 duplex units cannot feasibly be built at the site. The Developer continues to fail to meet that burden, and its criticisms of BRIG's plan amount to little more than an effort to distract City staff from that fact.

Thank you for your consideration of these additional points.

MRW: