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June 16, 2023

Joseph Onyebuchi, Associate Planner
City of Burbank
275 East Olive Ave
Burbank, CA 91502

Re: 910 Mariposa Street – SB 35 Application and Density Bonus Incentive Requests

Dear Mr. Onyebuchi:

Our firm represents Butterfly Gardens LLC, the applicant of a housing development located at 910 S. Mariposa Street in the City of Burbank (the "City"). The project includes the demolition of all existing structures on the site and the new construction of six three-story residential structures, containing a total of 23 for-sale townhomes ranging from 1,329 to 2,030 square feet in size and a total of 44 enclosed parking spaces and two open parking spaces (the "Project").

On October 27, 2022, Butterfly Gardens LLC filed a Notice of Intent ("NOI Application") to file an SB 35 Ministerial Application for the Project. On December 23, 2022, the City issued a letter in response to the Notice of Intent to file an SB 35 Ministerial Application which provided a SB 35 Eligibility Criteria and Consistency Analysis ("NOI Consistency Analysis"). In this letter, the City confirmed that the Project meets the SB 35 eligibility criteria per Government Code Section 65913.4, with two exceptions: Affordability and Subdivisions.

The City's Consistency Analysis confirmed that the Project was consistent with the height standard of Burbank Municipal Code ("BMC") Section 10-1-806(A). Relative to this standard, the NOI Consistency Analysis stated:

"The maximum height of a structure shall be determined by its distance from the closest lot line of any property zoned for residential use. At 50 – less than 150 feet, the maximum height is 35 feet. At 150 – less than 300 feet, the maximum height is 50 feet.

The Project includes residential buildings that are located within 150 of R-1-H residentially zoned properties located across Mariposa Street to the west. The Project proposes a maximum height of 34'10" for its triplex structures, 35' for its fourplex and fiveplex structures. Therefore, the Project complies with the applicable maximum allowable height of 35 feet that is applicable to similarly zoned properties that are located within 150 feet of other residential zoned properties."

On April 24, 2023, the City issued a letter which stated that the NOI was deemed complete and a full SB 35 application may be submitted. On May 2, 2023, Butterfly Gardens LLC submitted a full SB 35 Streamlined Ministerial Application (the "SB 35 Application") which was accepted by the City. With the SB 35 Application, Butterfly Gardens LLC provided a response to demonstrate how the Project was in fact consistent with the Affordability and Subdivisions criteria, as well as all other objective standards noted as applicable to the Project by the City's NOI Consistency Analysis. The SB 35 Application also included a request for an incentive to waive the Art in Public Places (BMC 10-1-1114) requirement, as BMC 10-1-640(A)(6) permits a project which provides at least 10 percent of the total units for Low Income Households to request one incentive which result in identifiable, financially sufficient, and actual cost reductions for the project.

On June 7, 2023, the City issued a letter in response to the SB 35 Application which indicated that submittal was incomplete and the Project was inconsistent with one objective standard related to overall building height pursuant to Burbank Municipal Code ("BMC") Section 10-1-806(A). BMC Section 10-1-806(A) requires that:

"1. The maximum height of a structure shall be determined by its distance from the closest lot line of any property zoned for residential uses as follows:

<i>DISTANCE FROM R-1, R-1-H OR R-2 LOT LINE (OR COMPARABLE PD ZONE)</i>	<i>MAXIMUM HEIGHT</i>
<i>(i) 0 - less than 25 feet</i>	<i>1 foot height per 1 foot distance for any part of the structure (roof and architectural features must also comply with maximum height restrictions within first 25 feet)</i>
<i>(ii) 25 - less than 50 feet</i>	<i>25 feet (roof and architectural features may exceed the maximum height, up to 35 feet, if a 45 degree angle as depicted in Diagram No. 1 is maintained)</i>
<i>(iii) 50 - less than 150 feet</i>	<i>35 feet (roof and architectural features may exceed the maximum height, up to 15 additional feet, if a 45 degree angle as depicted in Diagram No. 1 is maintained)</i>
<i>(iv) 150 - less than 300 feet</i>	<i>50 feet (roof and architectural features may exceed the maximum height, up to 15 additional feet, if a 45 degree angle as depicted in Diagram No. 1 is maintained)"</i>

The code goes on to specify certain exceptions:

2. The maximum height of a building, for those portions more than 25 feet from a R-1, R-1-H, and R-2 lot line, shall be measured to the ceiling height of the highest room permitted for human occupancy. The maximum height of a structure, for those portions of a structure less than 25 feet from R-1, R-1-H, and R-2 lot line, shall be measured to any part of the structure.

3. Conditional Use Permit is required for structure height greater than 35 feet.

4. *Structure height shall be measured from grade as defined by this chapter.*
5. *For structures or portions of a structure between 25 feet and 50 feet from the R-1, R-1-H, R-2, or comparable PD zone, roof and architectural features may exceed the maximum height, up to 35 feet, if a 45 degree angle as depicted in Diagram No. 1 is maintained.*
6. *The portion of a structure within the distance requirement (e.g. 25 to less than 50 feet) shall meet the height requirement for that section (e.g. 25 feet). Should a structure extend beyond one (1) or more of the distance requirements, the portions of that structure may meet each height requirement separately.*

The Project is located across an existing public street from the properties in the R-1-H zone to the west and also includes a new 37-foot dedication. As such, the architectural plans submitted with the SB 35 Application demonstrate that none of the proposed structures of the Project are within 25 feet of the adjacent R-1-H zone.¹ The plans show that two of the structures on the western half of the Project site are within 50-150 feet of the R-1-H zone, and are thus subject to a 35 foot height limit. The City's June 7, 2023 letter stated:

"The Project proposes top-of-plate heights at 32' 5", which is less than the maximum requirements at that distance. However, the plans depict encapsulated stairwells that lead to roof decks throughout the project, resulting in a building height that exceeds the maximum 35' height limit. Further, the stairwells do not qualify for the height exception listed in BMC 10-1-130, which permits equipment needed to operate and maintain a building above the maximum top of plate height. The stairs are considered a structural feature that provide access to proposed recreational roof decks, generally considered an optional amenity feature, and are therefore not considered equipment integral to the operation of use of the building. Therefore, this exception does not apply."

The design of the two buildings on the west side of the Project include stair housing plates (also known as "dormers") which exceed the 35-foot height limit by approximately 7 feet, 9 inches within 50-150 feet of the R-1-H zone. In order to accommodate this additional height, Butterfly Gardens LLC would like to modify the Project's request for one eligible incentive to permit the height increase which will accommodate the stair housing plates, up to 7 feet, 9 inches above the 35 foot height limit. This incentive will allow for more efficient construction and site design which will result in cost reductions for the Project and provide for affordable housing costs for the sale of the two (2) Low Income units.

Enclosed with this letter are the materials needed to respond to the City's June 7, 2023 incomplete letter. The modification of the incentive requests resolves the singular standard (height) with which the Project was considered inconsistent, so the Project may now be considered as consistent with all objective standards. With this submittal, we look forward to the City's concurrence that the Project meets all objective standards, has submitted a complete SB 35 Application and may receive approval by the City Council.

¹ Refer to sheet A1.0.

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Sincerely,

Dave Rand

Dave Rand
Partner
of RAND PASTER & NELSON, LLP

DR

cc: Fred Ramirez, Assistant Community Development Director
Scott Plambaek, Planning Manager
Joseph McDougall, City Attorney