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May 3, 2024

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

Re: 910 Mariposa Street – Full SB 35 Application.

Dear Mr. Onyebuchi:

Our firm represents Butterfly Gardens LLC (“Applicant”), the applicant of a previously approved project as well as a newly proposed higher-density housing development (“Higher-Density Project”) located at 910 S. Mariposa Street (“Site”) in the City of Burbank (the “City”). On December 26, 2023, the Applicant submitted a Notice of Intent (“NOI”) to Submit a Senate Bill 35 (“SB 35”) Streamlined Ministerial Application for the Higher-Density Project, which was accepted by the City.

In a letter from the City dated April 18, 2024, City staff confirmed that the NOI application had been deemed complete, and that staff had completed the required consultation process for the Higher-Density Project with the California Native American Tribes that are traditionally and culturally affiliated with the geographic area within which the Site is located. The City entered into an enforceable agreement with two tribes, the Fernandeño Tataviam Band of Mission Indians on January 19, 2024, and the Gabrieleño Band of Mission Indians - Kitz Nation on February 28, 2024, which satisfies the tribal consultation requirement in accordance with Government Code Section 65913.4(b).

Enclosed with this letter is the full SB 35 Streamlined Ministerial Review project application (“Full Application”) to determine the Higher-Density Project’s consistency with all applicable objective standards, as required by state law. This package includes the required application forms, plans and subdivision map, and supplemental information including a Consistency Matrix that provides additional responses for each of the applicable objective standards. These materials demonstrate that the Project, as fully submitted, is consistent with all objective standards.

Higher-Density Project Description

The Higher-Density Project as proposed in the Full Application consists of a total of 40 for-sale condominium units, including three (3) Very Low Income units, three (3) Moderate Income units and 34 unrestricted units. The total number of units in the Full Application has increased as compared to the project description in the NOI, which only included 30 units, three of which (or 15% of the base density) were Very Low Income units. The Applicant has made this change to the unit count in the Full Application to capture the additional density bonus now available under Assembly Bill 1287 (codified in Government

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Code Section 65915(v)) (“AB 1287”), which took effect on January 1, 2024 after the NOI was filed. AB 1287 provides a 100% density bonus for projects that include 15% Very Low Income units and 15% Moderate Income units as calculated on the base density (i.e., the pre density bonus project increment). Notably, the base density of 20 units has not changed; the change in the total unit count is solely the result of adding additional density bonus units permitted under State law.

SB 35 (as subsequently modified by Senate Bill 423, “SB 423”) does not prohibit an applicant from changing a proposed project between the time the NOI is filed and the time the full application is filed, provided that the project continues to meet objective development standards and other eligibility requirements. This is evident both from the lack of any explicit statutory limit on changing the project between NOI and full application stage, and from the fact there is a limit on how much an SB 35/SB 423 project can change after project approval. Government Code Section 65913.4(h) provides a process for a developer to submit modifications to an SB 35/SB 423 project after it has been approved and specifies that the local agency may apply new standards to the project if the changes exceed certain thresholds. The presence of subsection (h) and the lack of any equivalent section regarding pre-approval changes to the project (e.g., changes from NOI to full application submittal) is further evidence of a legislative intent that changes to the project made prior to approval are permissible.

Moreover, although the proposed project is required to meet objective development standards, SB 35/SB 423 includes an explicit carveout for additional density for which the project is eligible under Density Bonus Law. Government Code Section 65913.4(a)(5) provides that, to be eligible for ministerial, streamlined approval,

“The development, **excluding any additional density or any other concessions, incentives, or waivers of development standards for which the development is eligible pursuant to the Density Bonus Law in Section 65915**, [must be] consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section, or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier.”

The changes to the proposed project from the NOI stage to the full application are due solely to the application of State Density Bonus Law, and therefore do not change the fact that the project (prior to the award of any State Density Bonus Law related benefits) complies with the objective zoning standards, objective subdivision standards, and objective design review standards that were in effect at the time the applicant filed the NOI. Accordingly, the Higher-Density Project remains eligible for ministerial, streamlined approval.

Project Requests and SDBL Incentives and Waivers

The Higher-Density Project includes 15% Very Low Income units and is therefore entitled to three incentives/concessions and additional waivers of development standards. (Government Code Section 65915(d)(2)(C).) The Applicant is seeking two incentives and one waiver of development standards.

Incentive for Fee Deferral

Burbank Municipal Code (“BMC”) 10-1-640(A)(3) permits applicants to request “Deferred development impact fees” as an incentive/concession. As such, the Applicant requests a deferral of

payment of all development impact fees applicable to the Higher-Density Project so that they may be paid 24 months from the issuance of the Certificate of Occupancy. This deferral of payment of development impact fees will result in identifiable and actual cost reductions for the project, by allowing the Applicant to construct and sell units prior to the payment of a large lump sum for development impact fees. Thus, the existing financing for the project may be directed to the permitting and construction costs for the three Very Low and three Moderate Income units and will lower the overall costs of financing. The cost reductions resulting from the deferral of fees will enable the project to provide the three Very Low Income units and three Moderate Income units.

Incentive for Balcony Encroachment into Front Yard

The Applicant requests an incentive to provide relief from BMC Section 10-1-806(C)(2), which restricts balconies from encroaching more than four (4) feet into a required front yard. Pursuant to BMC Section 10-1-806(C)(2), the structure must be setback at least 5 feet or 20 percent building of the building height, whichever is greater, and the setback may be averaged. According to this standard, the Higher-Density Project is required to provide a front yard of 12 feet, 9 inches, which is 20 percent of the proposed height of 63 feet, 8 ½ inches. As demonstrated on the architectural plans pages 20-22, the enclosed building maintains an average setback between 31 feet, 7 inches and 50 feet, 9 inches on the first through fifth floor. On average, the building maintains a larger than required setback, which is measured after accounting for the 37 foot dedication from the existing property line. Pursuant to BMC Section 10-1-624(G)(2), buildings or portions of a building above 40 feet in height facing the street must be recessed by an additional 5 feet from the required setback. The building design complies with this requirement at the fourth and fifth levels, where it provides an additional 5 feet of setback for an average required setback of 17 feet, 9 inches.

BMC Section 10-1-1211 (C) and (E) permit eaves, cornices, canopies, belt courses, sills and other similar architectural features to project into any required front yard not more than 4 feet and uncovered porches, patios and platforms or landing places, which do not extend above the level of the first floor of the building, may project into any required front yard not more than 5 feet. Due to the angle of the new property line after accounting for a 37 foot dedication, the balconies provided at the southwestern edge of the building encroach into the required 12 foot, 9 inch foot setback by approximately 5 feet, 3 inches on the first through third floor and encroach into the 17 foot, 9 inch setback by approximately 6 feet, 10 inches. The application includes a request for an incentive to permit this encroachment of the balcony space, which extends from the building wall. The requested incentive provides identifiable cost reductions that provide for affordable housing by increasing the building envelope of the project through the reduction of required setbacks so that additional residential units can be provided, including three Very Low and three Moderate Income units.

Waiver of Development Standards for Height

The Applicant is requesting a waiver of development standard that would have the effect of physically precluding the construction of the Higher-Density Project at the density permitted under Density Bonus Law. (Government Code Section 65915(e).)

BMC Section 10-1-806(A), which is the most restrictive height standard applicable to the Higher-Density Project, 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 Higher-Density Project are within

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25 feet of the adjacent R-1-H zone.¹ The plans show that the western one-third of the Higher-Density Project structure is within 50-150 feet of the R-1-H zone, subject to a 35 foot height limit, and the eastern two-thirds of the Higher-Density Project structure is within 150-300 feet of the R-1-H zone, subject to a 50 foot height limit, as measured from the average site grade to the ceiling height of the highest room permitted for human occupancy, or the “top of plate” or “T.O.P.” as labeled on the architectural plans. The building is proposed to range in height from approximately 53 feet, at the westernmost and easternmost portions of the site, to a maximum height of 63 feet, 8 ½ inches measured from the average site grade to the T.O.P. Any portion of the building that rises above height of 63 feet, 8 ½ inches is a permitted architectural feature or equipment needed to operate the building, as allowed by BMC 10-1-1301.

The Applicant requests a waiver of development standards to permit a maximum height of 63 feet, 8 ½ inches measured from the average site grade to the T.O.P. The waiver will allow an additional 2-3 stories of height across the building, which is necessary to physically accommodate the proposed density of 40 units. Without the waiver, the project would be physically precluded from providing units at the third, fourth and fifth levels, which would result in a reduction of approximately 25 units. The total project would be reduced by 2-3 stories of height and would be precluded from providing 40 total units, including six affordable units. As such, the waiver for additional height is requested to permit a height of 63 feet and 8 ½ inches measured from the average site grade to the T.O.P.

With this submittal, we look forward to the City’s review and approval of the full ministerial streamlined application for the Higher-Density Project.

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

¹ Refer to Page 28 of the architectural plans for a diagram showing the distance of the High-Density Project from the R-1-H zone.