

**PROJECT SPECIFIC QUESTIONS**  
**VILLAGE BAPTIST AFFORDABLE HOUSING DEVELOPMENT**  
**(825 DRAKE AVENUE, MARIN CITY)**  
**(December 2020)**

Affordable Housing Land Consultants, LLC (Applicants) submitted to the County the “Village Baptist Affordable Housing Project” pursuant to SB 35 on May 19, 2020 and submitted clarifying information on June 2, 2020, August 7, 2020, August 28, 2020 and September 2, 2020. The applicant proposes to demolish an existing 9,750 square foot church and construct a new 73,793 square foot multi-family apartment building on a lot located at 825 Drake Avenue in Marin City. The project would entail the construction of a five-story, 56 feet eight inches tall, residential building with 74 units restricted to very low income households, as defined in California Health and Safety Code Section 50105, and extremely low income households, as defined in Section 50106. More information about qualifying income limits for affordable housing units is available on the [Marin Housing Authority website](#).

**1. Why is this development proposed in Marin City?**

The 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U. S. Constitution as well as Article I Section 19 of the California Constitution define and govern property rights. Under the US and State of California laws, property ownership rights to real property include, amongst others, rights to make improvements to a property, such as erecting buildings, subject to limitations under the Marin County Development Code regarding the size, configuration, use of real property (“zoning laws”), and ordinances which control both the way the construction is to be performed and the minimum standards the buildings must comply with (“building codes”).

The property located at 825 Drake Avenue is privately owned land, zoned for residential use and development. The applicants, who own the property, are seeking permits to develop the site as a multi-family residential, and so doing exercising rights under the US and the State of California Constitutions. The real estate transaction between the prior property owner and the applicants and the selection of the site by the applicants for this development were made without involvement by the County of Marin.

**2. Could County staff have selected a different property for this type of development, and why did County staff not require the applicant to pursue one of the other sites?**

One of the roles of County government, as a political subdivision of the state, is to deliver the services mandated by the state and federal governments, including administration of land use (Planning) and health and safety regulations (Building and Safety). As a regulatory agency, the County exercises its land use authority through the review of development applications for compliance with land use regulations. As stated above, the Countywide Plan and the Zoning Code anticipate the development of the project site as a Multi-Family Residential. The County does not have legal authority to propose an alternative location for a project proposed by a private property owner on private land.

**3. Does the Village Baptist project meet the eligibility criteria for SB 35?**

Yes. As required by SB 35, the proposed development involves construction of "a multi-family housing development that contains two or more residential units" in an urban area

and on a site that will not displace existing rent-controlled and income-restricted housing units. None of the exclusionary criteria apply to the proposed development in that it is not located in or on a coastal zone, flood plain, earthquake fault zone, hazardous-waste site, wetland, or prime farmland. While the property is located in a high fire severity zone, the development will comply with fire hazard mitigation allowable under SB35. Therefore, the project qualifies for a streamlined, ministerial approval process provided in SB 35.

On October 1, 2020, the County issued a letter to the applicants determining that the project met the eligibility criteria established under SB 35. This letter can be found on the [County's website](#).

**4. What other sites in Marin County meet the SB 35 requirements? Why is Marin City the dumping ground for affordable housing projects?**

All properties within the unincorporated areas of the County that are designated for development of multi-family residential uses, or that have a countywide plan/zoning designation that allows residential or mixed-use with at least two-thirds of the square footage as residential use, could qualify as a site for an SB 35 application. SB 35 is a voluntary program that a project sponsor may elect to pursue, provided that certain stringent eligibility criteria are met, amongst others, setting aside at least 50% of the units to low income households.

**5. Why is this approval expedited?**

The County is mandated by state law to process eligible SB 35 applications within clearly defined timelines. SB-35 amends Government Code Section 65913.4 to require local entities to streamline the approval of certain housing projects by providing a ministerial approval process, removing the requirement for Design Review, Conditional Use Authorization or other similar discretionary entitlements, public hearings, and environmental review. Relieving applicants of the time and costs associated with discretionary review is one way the State of California advances state policy to encourage the development of additional affordable housing statewide.

SB 35 requires approval of qualified housing projects based on objective, regulatory standards. If a housing project meets certain requirements, then, depending on the size of the project, within 60 or 90 days the local government must identify any objective planning standards the project is not compliant with. In addition, the local government must identify the basis for which the project is not compliant with the objective planning standards. If the local government fails to identify any non-compliant standard within the requisite 90 or 180 days (depending on the size of the development), then the project is automatically determined to qualify with the local, objective planning standards, meaning it is deemed approved.

This application was submitted pursuant to SB 35. The Village Baptist Church application was originally submitted on May 27, 2020, deemed to be eligible for SB 35 processing on October 1, 2020, and found to be compliant with all SB 35 standards on November 30, 2020.

**6. How will other entitlements be affected?**

SB-35 states that a project must be consistent with objective zoning and design standards, which are standards that involve no personal or subjective judgment by a public official.

They must be uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the applicant and the public official prior to submittal. Therefore, projects that elect to take advantage of streamlining stipulated in SB-35 are only subject to objective standards and are not subject to subjective or discretionary processes.

**7. We do not need additional public housing in Marin City.**

As stated above, the applicant is a private entity pursuing a project on a site it currently owns pursuant to rights conferred to all property owners in California. Other than routine oversight over project matters, the project and project sponsor have no relationship to Marin County or any of agencies with Marin County. The applicant is seeking to develop this property under various state laws that permit a project with increased density through ministerial process pursuant to state law. The affordable development is not public housing to the extent it is and will not be owned or managed by the Marin County Housing Authority.

**8. What is the relationship between this development and the Housing Authority's Golden Gate Village Revitalization project?**

This application has no relationship to the Housing Authority or the Golden gate Village Revitalization project.

**9. Why is this large development not being scheduled for public hearings with the Planning Commission and the Board of Supervisors?**

Public hearings are not allowed on SB 35 projects because they are ministerial projects which do not require Use Permit, Design Review or other discretionary local government review or approval. In other words, SB 35 relieves applicants of the time and costs for public hearings is one way the State of California advances state policy to encourage the development of additional affordable housing statewide.

**10. Why is an Environmental Impact Report not being prepared for such a large development?**

The California Environmental Quality Act ("CEQA") review is not required for SB-35 eligible projects because they are subject to a ministerial approval process. Projects submitted through the ministerial permit process are not required to conduct environmental review and are not subject to a public hearing. Ministerial review is a non-discretionary process. Relieving applicants of the time and costs for environmental review for SB 35 projects is one way the State of California advances state policy to encourage the development of additional affordable housing statewide.

**11. Can the County require the applicant to prepare traffic study?**

No. Like most cities and counties, Marin County does not have objective planning standards that mandate the preparation and implementation of a traffic study outside of implementing CEQA. Only studies that are required by an objective planning standard can be required.

**12. Please enforce your zoning code's height limit.**

The subject property is governed by the RMP – 34 (Residential, Multiple-family Planned District) zoning designation, which permits a maximum height of 30 feet above surrounding

grade. The applicant requested relief from the height standard as a concession, invoking a provision in the state density bonus law, asserting that the affordability of the development could not be attained without the additional height. As approved, the development will result in a 56-foot eight inches tall building.

**13. Is the applicant seeking a density bonus?**

Yes. As allowed under State law, the applicant has requested an 80 percent density increase over the otherwise maximum allowable gross residential density because the development proposes and has agreed to ensure that all units, except the manager's unit, will be rented to households at the very low and extremely low income levels.

**14. Why are you approving a building that is taller than all other buildings in Marin City?**

The State Density Bonus Law is one of the main ways in which State law encourages affordable housing development. Government Code section 65915 allows applicants that provide sufficient affordable housing in their residential projects to receive in return, an increase over the otherwise maximum allowable residential density (a "density bonus"), as well as other benefits. The Density Bonus Law enables eligible applicants to receive (1) a density bonus, (2) incentives and concessions, (3) waivers and reductions of development standards, and (4) reduced parking requirements. To determine how many bonus units are awarded, the Density Bonus Law uses a sliding scale based on the percentage of affordable units provided and their level of affordability.

Under the State Density Bonus Law, the applicant has requested an 80 percent density increase over the otherwise maximum allowable gross residential density and a concession to increase height from 30 feet to 56 feet eight inches.

In order to deny the concession (increase in height), the County will have to find that the request would not *"result in identifiable and actual cost reductions to provide for affordable housing."* As detailed in the application material, the requested concession is necessary to allow the construction of the density bonus units on the site. If the project were restricted to comply with the County's height restrictions, and the requested concessions were denied, the bonus units would be eliminated, translating to an increase in land and soft costs per unit. This would be contrary to the State Density Bonus Law and the Housing Accountability Act, both of which limit the County's discretionary authority over the project.

**15. What is the maximum number of units that can be built at this location, and how can you approve a development that exceeds the maximum number of homes that is allowed by the property's zoning?**

Without the State density bonus, the zoning would allow a maximum of 41 units on this property. The project site is subject to the Countywide Plan's MF 4.5 (Multi-Family Residential, 11-40 units per acre) land use designation, and the City-Centered Corridor policies. This land use designation translates to a potential residential density range of 11.11 to 40.4 units for the subject property, given its size of 1.01 acres. Under the State Density Bonus Law, each component of density calculation resulting in fractional units, shall be separately rounded up to the next whole number. Therefore, the project is permitted for 41 units under the Countywide Plan.

Under State law, since the proposed project is an affordable housing project for lower-income households and is located less than one-half mile from a major transit stop, the project qualifies for a density bonus increase of 80 percent, or 33 additional units, above the otherwise maximum allowable density under the Countywide Plan under the State Density Bonus law. Therefore, the State Density Bonus Law increases the number of units permitted at this location from 41 units to 74 units.

**16. Can the County request financial pro-forma in support of the concession requests?**

No. On January 1, 2017, the State Density Bonus Law was amended to relax the requirements to substantiate a request for a concession. Financial pro-formas and third-party reviews may no longer be required.

**17. The proposal will not have enough parking spaces because tenants will still have cars. What is the county doing to address congestion on our streets that will be made worse from this development? How can you approve fewer parking spaces than is required by county code?**

SB 35 expressly provides exemptions for parking waivers and reductions (Government Code section 65913.4(d)(1)). Mixed-use projects must provide parking for the commercial component of the development as required by the County's Zoning Code. All exclusively residential projects approved to SB 35 may not be required to provide more than one parking space per residential unit, and no residential parking may be required for those projects located within one-half mile from public transit, such as this. This development will provide 24 on-site parking spaces.

**17. How can you ensure that the affordable units will be made available first to Marin City residents?**

Under Fair Housing laws, no local preferences are permitted. While there cannot be preferences for local residents, the County can work with the applicant on the marketing plan to ensure that people who live and or work locally know about the availability of the units and can apply to live in the development.

**18. Please deny this application. It does not belong in Marin City.**

In reviewing the application, the County staff found that there are no objective inclusionary or exclusionary standards that would disqualify the project from a streamlined, ministerial review process, or from the qualifying for density bonus. The project meets the criteria for a streamlined approval process.

The Housing Accountability Act (HAA), (codified in Government Code Section 65589.5), restricts the County's ability to deny an affordable or market-rate housing project that is consistent with planning and zoning requirements, such as this. The HAA overrides the use of considerations like neighborhood compatibility or detriment when a project complies with all applicable development standards. Recent amendments to SB 35 expressly clarified that projects utilizing the SB 35 qualify for the protections under the HAA (Gov. Code, § 65913.4, subd. (g)(2).)

Furthermore, if the County denies the project for other than objective design standards, a court may impose fines in a minimum amount of ten thousand dollars (\$10,000) per housing

unit in the housing development project on the date the application was deemed complete and direct the County to issues permits for the development.

**19. Knowing all of the requirements and the limitations that the state law places on county planners, could the county have imposed a moratorium on housing developments in Marin City so that the county could evaluate the development's impacts on infrastructure, public services, and other impacts to residents?**

The State of California Legislature has declared that California has a housing supply and has barred local judications from imposing a moratorium or similar restriction or limitation on housing development until 2025.

**20. How long is the County's approval of this development valid for?**

The approval will remain valid for three years from the date of the final action (November 30, 2020) and will remain valid so long as vertical construction has begun and is in progress. A one-time one-year extension can be granted by the County to the original three-year period.

**21. What additional permits are required?**

The applicant is still required to obtain all other permits which are required, including but not limited to a) Demolition Permits; b) Grading Permits; c) Encroachment Permits; and d: Building Permits.

**22. How else can we get our concerns addressed?**

The State Legislature has articulated state policy to advance the development of affordable housing statewide. Legislation such as SB35, the Housing Accountability Act, and the Density Bonus laws are intended to remove perceived impediments to the ability to construct housing to meet the state's housing crisis. Please contact your legislators in the Asssembly and Senate to raise concerns about the effects of the legislation.