

September 29, 2022

Sean Kennings  
Contract Planner  
City of Mill Valley  
26 Corte Madera Avenue  
Mill Valley, CA 94941

**Re: 575 East Blithedale Avenue (PL20-4916)**

Dear Sean:

As you know, our firm represents Phil Richardson (“**Developer**”), who has applied to the City of Mill Valley (“**City**”) for approvals for the East Blithedale Avenue Housing Development project (“**Project**”), which include: a Conditional Use Permit, a Tree Removal Permit, Design Review, and a Vesting Tentative Tract Map. The Project would be developed at 575 East Blithedale Avenue (“**Project Site**”) in the City.

The City determined the Project application to be complete on April 30, 2021. In response to written comments from the City and several meetings with City staff, on February 25, 2022, the Developer submitted supplemental material revising the Project to address City-identified concerns. The February 25, 2022 submittal included numerous Project modifications to ensure that the Project would be consistent with applicable and objective City standards as well as to reflect City preferences and recommendations with respect to subjective standards.

Because the changes that were made had been previewed for City staff on multiple occasions, we hoped that the February 25, 2022 submittal would be well-received. Moreover, the City did not provide any response to the complete submittal within 30 days after February 25, 2022, which is the timeframe for a local agency to identify what it believes to be inconsistencies between an application and its standards before the application is automatically deemed consistent with such standards under the Housing Accountability Act. Therefore, we believed the City agreed that the evidence submitted on February 25, 2022 supports the conclusion that the Project is fully consistent with the City's applicable standards.

Given the above, we were taken aback when we received your letter to the Developer dated June 14th, 2022 that voiced staff's opinion that the February 25, 2022

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was not fully responsive to the City's feedback and that staff continues to have numerous concerns "that the proposed project design is incompatible with the natural and built character of the surrounding neighborhood" and that the Project does not meet standards "intended to achieve high quality design to preserve the scenic beauty of neighborhoods and quality of housing throughout the City."

Staff's reliance on subjective determinations is particularly concerning in light of their warning that "the Planning Commission will have significant concerns with the project design and the greater Mill Valley community will not support the proposed design concept." It sounds as though staff is actively working to identify subjective development standards – which do not provide a legal basis to reduce the density or deny the Project – that will inspire community opposition to a much-needed mixed use housing development project. This approach is particularly puzzling, given that: (1) the Developer has both modified its Project and provided substantial evidence to support the conclusion that the Project *does* comply with the standards in question; (2) the Project has already been deemed consistent with the standards in question; and (3) the Housing Accountability Act would impose severe legal penalties should the City act on staff's expressed concerns.

We also observe that staff's comments on the Project appear to directly contradict the contents of the City's Draft Housing Element Update that was submitted to the California Department of Housing and Community Development ("HCD") for review on August 23, 2022. In the Draft Housing Element, the City touts encouraging mixed-use development; integrating on-site affordable units into market-rate projects; and providing flexible development standards to accommodate mixed-use development. On its face, the Project is the exact type of mixed-use housing project that the City purports to encourage via its Draft Housing Element Update. If the City cannot process and approve a development like the Project, it raises the question whether its Draft Housing Element Update is adequate in addressing governmental constraints to housing production and jeopardizes the City's ability to obtain HCD's certification.

To help the City finalize its analysis of the Project's Planning Commission Hearing on November 8, 2022, we have prepared the following documents that are attached to this letter:

- A. Standard of Review Applicable to the Project
- B. Responses to City General Submission Comments
- C. Responses to "Objective" Standards and Criteria

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D. Responses to Subjective Standards and Criteria

E. Project Driveway Location Analysis

In addition, enclosed with this package is a revised plan submission that meets the criteria that you provided by email on September 13, 2022. At this point, we believe that the record strongly supports approval of the Project as proposed. The record further reflects that the City's stated concerns do not provide a factual or legal basis to deny the Project, for the reasons summarized above and detailed further in this letter's attachments.

We therefore respectfully request that you recommend the Planning Commission approve the Blithedale Terrace Mixed-Use Development application during its November 8, 2022 hearing.

Thank you for your consideration,



Eric S. Phillips

cc: Phil Richardson, Property Owner and Applicant  
Mark Cavagnero, Cavagnero Associates Architects  
Patrick Kelly, Director of Planning and Building, City of Mill Valley  
Inder Khalsa, Esq., Richards Watson Gershon  
Brian Heaton, HCD Housing Accountability Unit

## ATTACHMENT A

### Standard of Review Applicable to the Project

The City's June 14, 2022 letter expresses that it is the opinion of members of the City staff that the Project as proposed does not meet the design standards required for approval. This claim is not supported by the evidence in the record, nor does it provide a legal basis to deny this housing development project, which is protected by the Housing Accountability Act (Gov. Code § 65589.5)<sup>1</sup>.

First enacted in 1982, the Housing Accountability Act has been expanded over the years to "significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects." (§ 65589.5(a)(2)(K).) When enacting significant amendments to the Housing Accountability Act in 2017 to strengthen its protections for housing projects, the Legislature found that its "intent has not been fulfilled." (*Id.*)

Accordingly, recent amendments to the Housing Accountability Act have emphasized that the law "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (§ 65589.5(a)(2)(L).) As such, only tightly-defined objective standards are relevant for purposes of evaluating housing development projects, and specific findings are required before a project may be denied.

The Housing Accountability Act applies to the review of any "housing development project," which includes residential units, mixed-use developments with at least two-thirds of the square footage designated for residential use, and transitional or supportive housing. (§ 65589.5(h)(2).) Here, the Project is a mixed-use project that includes 2,240 square feet of commercial office space integrated with 25 residential units, with far more than two-thirds of the Project's square footage being dedicated to residential uses. Therefore the Project is a mixed use development that meets the definition of a "housing development project" and is protected by the Housing Accountability Act.

One of the most important limitations under the Housing Accountability Act is that the City may deny approval of a housing development project on the basis that it is inconsistent with development standards **only** if those standards are "objective." (§ 65589.5(j); *California Renters Legal Advoc. & Educ. Fund v. City of San Mateo* (2022) 68 Cal.App.5th 820, 839-40.) A standard is subjective, rather than objective, if it "cannot be applied without personal interpretation or subjective judgment." (§ 65589.5(h)(8).) Standards must include "unequivocal and quantifiable language . . . to set minimum acceptable limits." (*Old E. Davis Neighborhood Ass'n v City of Davis*

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<sup>1</sup> All subsequent references are to the California Government Code, unless otherwise noted.

(2022) 73 Cal.App.5th 895, 914.) If planning documents “do not provide a formulistic method” for determining whether a proposed project complies with development standards, those standards are subjective, and cannot be used to limit a project’s ability to provide residential units. (*Id.* at 909.)

In addition, the Housing Accountability Act modifies the standard of review needed to approve the Project. Instead of asking whether the City’s findings are supported by substantial evidence, The Housing Accountability Act instead deems the Project consists with standards, regardless of the City’s determination, provided that there is substantial evidence that would allow a reasonable person to conclude that a proposed housing development project complies with pertinent standards. (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 777.)

Because there is substantial evidence in the record that the Project complies with all applicable objective standards, discussed in more detail in the following Attachments, the City may only deny or reduce the density of the Project if it makes written findings based on a preponderance of the evidence that that certain circumstances exist. (§§ 65589.5(d) and (j).) Specifically, the City would need to find that the Project would have a “specific, adverse impact” on public health and safety to deny it or reduce its density.” (§ 65589.5(j)(1).) A “specific, adverse impact” is a “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards” in effect when the Project application was submitted, for which there is no feasible method of mitigation. (§ 65589.5(j)(1)(A).) Conditions that would have a specific, adverse impact upon the public health and safety are intended to “arise infrequently.” (§ 65589.5(a)(3).)

Here, the City has made no such findings or even alleged that the Project would have an adverse impact upon the public health and safety. Even if it had, there is no evidence to support these claims, let alone a preponderance of the evidence. Accordingly, there is not a legal basis to deny the Project.

When a project is denied in violation of the Housing Accountability Act, an applicant, a housing organization, or a person eligible for residency in the housing development all have standing to challenge the denial in court. (§ 65589.5(k)(1)(A).) A reviewing court has the power to order the reconsideration of the project (or order the project’s approval if it was denied in bad faith) and shall award attorneys’ fees to successful plaintiffs. (*Id.*) In addition to substantial attorneys’ fees, continued noncompliance can lead to a minimum penalty of \$10,000 per unit (§ 65589.5(k)(1)(B)), and such penalty shall be increased to \$50,000 per unit when the continued noncompliance is done in bad faith. (§ 65589.5(l).) For the 25 unit Project, the maximum fine for continued, bad faith noncompliance with the Housing Accountability Act would be \$1,250,000, plus attorneys’ fees.

Accordingly, it is Developer’s sincere hope that the City acts to approve the Project as required by the Housing Accountability Act.

## **ATTACHMENT B**

### **Responses to City General Submission Comments**

*Comment 1: The Title Sheet should reflect number of parking spaces required by MVMC, and state law. Indicate the number of spaces required by MVMC for guest parking spaces (.25/unit), and spaces required for efficiency units. There appears to be a discrepancy between the site data table and the parking summary under project stats.*

The typographic error on Sheet A00 (Cover Sheet) was corrected so that the parking summary and the site data table are consistent. Pursuant to Government Code section 65915(p)(1), the maximum vehicular parking ratio is inclusive of parking for persons with a disability and guests. Accordingly, the MVMC guest parking space standard is not applicable, and no further changes are required.

*Comment 2. On Sheet A01, provide elevations that correspond with the A-8 call out on Sheet A01.*

A label corresponding with the location of elevation A-8 has been added to Sheet A01.

*Comment 3. Demonstrate project compliance with parking requirements for ADA, and EV Charging.*

Sheet A02 has been updated to indicate locations of ADA compliant spaces and future EV-capable parking spaces.

*Comment 4. Include a detail drawing of the trash enclosure. The trash enclosure must be of a size to accommodate all required trash bins for the project, including, trash, recycling, and organic waste, pursuant to AB 1383*

The trash enclosure is drawn to scale on the site plan on Sheet A01. A detail drawing is not required by the City's completeness checklist, nor is it standard at this stage in the entitlement process. Construction drawings will illustrate details compliant with local and state requirements prior to building permits.

*Comment 5. Provide project data for open space requirements, including information for total common spaces and individual private space. Per MVMC Section 20.48.10, total outdoor space required is 36 s.f per unit at 36 (25) = 900 s.f..*

The requested data has been added to Sheet A01.

*Comment 6. Confirm the project meets the useable outdoor living space dimensions of 5'x10'.*

Useable outdoor living space is now dimensioned on unit plans A09, A15, A16, A17. Six units on Building E do not meet this standard; according, the Developer requests

that the standards be reduced to accommodate its design as proposed as part of its Density Bonus Application pursuant to Gov. Code section 65915(e).

*Comment 7. Confirm that the balconies located on Building E do not encroach within the front setback and west side setback. MVMC Section 20.60.070 allows for a 30% encroachment. The plans should clearly show dimensions of balconies to determine the extent if any encroachment occurs, and if so, how they need to comply with setback or whether or not an additional waiver per the State Density Bonus Law is required.*

The balconies do encroach within the 30% limitation, and dimensions have been added to Sheet A01.

*Comment 8. The newly proposed common open space area (pocket park at the north end of the site) – presents challenges for optimal usage, is not located in a centralized, and safe area and does not appear to be inviting for future residents of the development.*

Comment noted. The comment includes subjective observations that are more fully discussed in Attachment D.

*9. Confirm whether perimeter fencing is proposed along the property lines.*

No perimeter fencing is proposed.

*10. Please be advised that story poles will be required prior to the project merits review by the Mill Valley Planning Commission. Staff will coordinate with you so that the story poles are in place at least two weeks before the first scheduled hearing.*

Comment noted. A placeholder revised story pole plan has been provided, and the Developer will provide a final plan as a slip sheet once the civil engineering and surveying consultant completes it.

*11. Please be advised that the project may require conditions to confirm tree replacement or in-lieu fees required for removal of trees pursuant to Chapter 20.67 of the Mill Valley Municipal Code regulating Trees on Privately Owned Property.*

Comment noted.

## ATTACHMENT C

### Responses to “Objective” Standards

In its June 14, 2022 letter, the City characterized the following topics as relating to “objective criteria and standards.” For ease of reference, the responses are labeled using the City’s convention; however, this does not indicate agreement that the standards are, in fact, objective. We also note that staff’s comments were provided more than 30 days after the Developer provided updated information to its already-complete application, and therefore the Housing Accountability Act deems the Project consistent with all applicable standards. (Gov. Code § 65589.5(j)(2)(B).) However, as discussed further below, even if this were not the case, there is substantial evidence to support the conclusion that the Project is consistent with the City’s standards.

It is our understanding that subsequent to the June 14, 2022 letter, the City’s Transportation Consultant completed its traffic study and confirmed that the Project is consistent with the City’s LOS standards as expressed in General Plan Policies M.9-7 and M.9-8. No further analysis is required.

With respect to the City’s *Multi-Family Residential, Downtown Residential, & Mixed-Use Design Guidelines & Development Standards* (“Design Guidelines”), staff notes that there is a disagreement with respect to whether Building Privacy, Standard #E.2 (p. 67) is subjective or objective. Standard #E.2 says in full: “Locate windows away from, or screen windows from, direct views of private outdoor areas of neighboring properties.”

There is no quantification or uniformly verifiable standard that explains what constitutes a “direct” view, nor is there a description of what constitutes a “screen” for purposes of complying with the Design Guidelines. The interpretation and application of Standard #E.2 requires personal or subjective judgement, and it therefore is not an “objective” standard as defined by the Housing Accountability Act.

This interpretation is consistent with the Court of Appeal’s holding in *California Renters Legal Advoc. & Educ. Fund v. City of San Mateo* (“CARLA”) (2022) 68 Cal.App.5th 820. In *CARLA*, the Court found that a design guideline contemplating two alternative design options to achieve a city’s goals was subjective because it was ambiguous as to whether a building *must* incorporate either option. (*CARLA*, 68 Cal.App.5th at 841.) Here, Standard #E.2 gives developers the option to either “locate windows away from” or “screen windows from” direct views of private outdoor areas of neighboring properties. By redesigning the Project to include a privacy screen over the west balconies of Units E9 and E1, Developer has complied with this subjective standard. Pointedly, the *CARLA* court noted that the city in that case could have easily created an objective standard if it had desired to do so – after all, other standards, such as those relating to setbacks, specified requirements down to the foot. (*Id.*) Had Mill Valley wished to set an objective standard, it could have specified that windows must be



located only on certain building faces, at a specified number of feet from adjacent properties, and at specific heights; however, no such objective requirement exists. Given that the existing design standard is subjective, the HAA prohibits the City from denying the Project under this standard.

Regardless, the Project has been redesigned in response to the City's previous comments. Consistent with Design Guideline E.2's suggestion, the Project includes a privacy screen over the west balconies of Units E9 and E1, which are adjacent to a property with a single dwelling unit. The screening prevents direct views of the neighboring property and its private outdoor area from the units' balconies or windows. Moreover, the proposal includes landscaping which would further achieve these purposes.

The privacy screens are illustrated on Sheets A15, A17 and A18, as well as in the south-west corner site view on Sheet A23. The relevant landscaping is illustrated on Sheet L2.

## **ATTACHMENT D**

### **Responses to Subjective Standards**

In its June 14, 2022 letter, the City characterized the following topics as relating to “subjective criteria and standards.” As discussed above, subjective standards do not provide a basis to deny or reduce the density of the Project, so the City’s continued emphasis on these items is puzzling. We also note that staff’s comments were provided more than 30 days after the Developer provided updated information to its already-complete application, and therefore the Housing Accountability Act deems the Project consistent with all applicable standards. (Gov. Code § 65589.5(j)(2)(B).) However, as discussed further below, even if this were not the case, there is substantial evidence to support the conclusion that the Project is consistent with the City’s standards.

1. Land Use Chapter, LU.1 Residential Development LU.1-2 (p. 28): “New residential development or remodels should avoid a design approach or architectural features that exaggerate height, bulk or mass and create incompatibilities in relation to neighboring properties, distant public views from across a canyon or other parts of the City, or views from the public right-of-way.”

*Although you state compliance with this policy in your response memo from February 2022, Staff notes that the proposed project is out of scale with the surrounding neighborhood including compatibility issues with regards to bulk mass, shade, shadow and general poor inter-relationship with neighborhood. The project remains out of scale with the surrounding neighborhood.*

The Project site is zoned C-L Limited Commercial and is proposed as a mixed-use residential development, as opposed to a residential-only development. The site is surrounded by both existing residential and commercial uses. Therefore, the proposed design is intended to create compatibilities with both neighboring contexts, as befitting a mixed-use project.

Specifically, the design proposal makes efforts to relate to the neighboring buildings through mass and rooflines. The sloped roofs of the townhomes on the Project site’s northern section relate to the sloped roofs of neighboring residences further north, up the hill. The multi-use building at the front of the site maintains a low stepped mass that relates to the neighboring commercial buildings with their low horizontal rooflines. It is therefore appropriately scaled for its context and the neighboring properties.

Additionally, as the City acknowledges, Design Guideline LU.1 is subjective. It does not include a uniformly verifiable standard that can be known by reference to available benchmarks or criteria without personal or subjective judgement. Reasonable minds could differ about whether the project is “incompatible” with

neighboring properties. By contrast, the Project is consistent with objective standards that define height and setbacks or otherwise regulate bulk and mass. Conformance with applicable standards that implement this General Plan policy suggests that the Project is consistent with Policy itself and demonstrates that the Project would not create “incompatibilities.”

2. Civic Vitality Chapter, CV.4 Public/Commercial Space and Events CV.4-3 (p. 101): “Encourage new development, particularly in infill areas, to provide small plazas, pocket parks, civic spaces, and other gathering places that are available to the public to help meet recreational demands.”

*As stated in your response memo from February 2022, a new publicly accessible pocket park has been proposed at the rear (north) of the project site. Staff is concerned that this park will not be readily accessible to the public and will also become problematic for residents of the development to use as well as management and maintenance of the space. The placement of the pocket park also raises defensible space concerns.*

The cited General Plan policy encourages, but does not require, the Project to incorporate gathering spaces such as pocket parks. In response to previous City comments, the Developer incorporated a pocket park in a portion of the site that can be made available to on-site residents and the public generally. The park is accessible to pedestrians from East Blithedale Avenue, and the residential units that frame the space would provide “eyes on the park” to help reduce safety concerns. The pocket park would be privately maintained and would not be a burden to City services.

Alternative locations on the site would result in a loss of residential development capacity and a reduction in density below the 25 units currently proposed. Because the City’s concerns are not based on objective standards, and further modifications would result in a loss of units in the Project, no further changes are appropriate.

3. Mill Valley Municipal Code Section 20.08.070: *As indicated below (emphasis underlined), the City’s definition of “mixed-use” describes an integrated development project with significant functional interrelationships and a coherent physical design. Staff is concerned that the project, as proposed, is inconsistent with this definition, specifically because the two architectural designs proposed to be included in the project are significantly different, do not relate to one another, and do not present a coherent physical design.*

“20.08.070 (C) MIXED-USE BUILDING. A ‘mixed-use building’ means any building containing one or more dwelling units, together with commercial and/or

business and professional office use. Mixed-use buildings include, but are not limited to:

- i. MIXED-USE. 'Mixed-use' means a property on which various uses such as office, commercial, institutional, and residential are combined in a single building or on a single site in an integrated development project with significant functional interrelationships and a coherent physical design. A 'single site' may include contiguous properties."

*Staff acknowledges your attempt to revise the project to provide a more coherent physical design relationship for the entirety of the site. However, staff is still concerned that the project design is now overly skewed with heavier material selections. The visual simulations provided in your resubmission reflects a very stark, "heavy" finish that is insensitive to the site conditions and neighborhood. Staff is concerned that the comments have not been addressed and/or the project design will be poorly received by the Planning Commission and the community.*

These new concerns are unrelated to any design standard included in Municipal Code Section 20.08.070. Municipal Code Section 20.08.070's design standards have to do with the physical design of buildings contained within any given development project and are completely silent on the relationship of a mixed-use building with the surrounding neighborhood. These concerns are more related to Site Planning and Design Standard #1.A, which is addressed below. As staff has acknowledged, the Project has already been redesigned in response to City comments to strengthen the "coherent physical design" between the Project's office and residential uses. Accordingly, there should be no concern about the Project's status as a "mixed-use" development as defined by the zoning code.

4. Site Planning and Design - Standard #1.A (p. 53): "The design of multi-family and mixed-use developments shall be compatible with the natural and built character of the surrounding neighborhood. New development should also respect the characteristics of the specific site, including existing natural topography, vegetation, and drainage patterns on a site..."

A. Neighborhood Context. Development proposals for both remodel and new multi-family residential and mixed-use projects should understand how the design fits into the neighborhood context, considering the massing, siting, landscaping and orientation of buildings. New project designs should complement surrounding residential and mixed-use areas."

*Staff continues to note that the mixed-use building at the front of the development is not compatible with residential properties surrounding the project site. Although staff understands that C-L properties allow for a 15-foot setback, the proposed project should be consistent with the prevailing setbacks along the*

*block where the project is located, as well as the provisions in the City's Zoning Code. This standard is illustrated in the figure on the upper right side of page 53. Staff notes that the residential properties along Blithedale (on either side of the project site) are set back approximately 30 feet from the face of the curb, while the proposed mixed-use building is setback only 15 feet from the face of the curb. This is inconsistent with prevailing setbacks along the block and inconsistent with the figure on page 53.*

The design was modified in response to City input and the revised Project is sensitive to site conditions and the neighborhood. The revised design elegantly combines the "heavier" look of adjacent commercial buildings with the "lighter" look of adjacent residential properties to provide a smooth transition from commercial to mixed-use to residential zones. The buildings fronting the street incorporate wood trellises, generous glazing, a concrete parking podium, vertical wood siding, and long horizontal roof lines that thematically match the adjacent commercial building at 619 East Blithedale Avenue. On the other hand, the uphill buildings' stained cedar siding, fenestration, roof lines, and trellis details thematically match the residences in the neighborhood. By tying together these two architectural styles with design elements common to all buildings on the Project site, the revised design provides a smooth transition between the adjacent commercial and residential sites in a way that is consistent with both parts of the neighborhood.

Moreover, the Project is consistent with applicable, objective development standards regarding neighborhood context as defined by massing, siting, landscaping and building orientation standards.

As we have previously pointed out, the City's Development Standards applicable to the C-L Zone define a minimum front yard setback of 5 feet and a maximum front yard setback of 15 feet. (See page 46.) Therefore, the proposed setback of 15 feet is consistent with the City's requirements. Any further setback, such as the one you continue to suggest, would contradict objective standards in the City's regulations and would reduce the density of the project in violation of the Housing Accountability Act.

5. Site Planning and Design - Standard #1.A.4 (p. 53): "Design building heights and upper story step backs to reduce impact on neighboring properties and the public right-of-way and allow access to sun light and natural ventilation."

*As stated in your response memo from February 2022, you indicate that second-story step backs are not required. Staff continues to have concerns with the upper second story along the western property boundary that does not include an appropriate step back and looks right down on the neighbor to the west of the proposed project. Staff finds that this proposed condition does not comply with*

*the objective standard in Design Guidelines 3.2 on page #69, as noted above. To comply with this standard, redesign the project to step back the upper story on the west side of the property.*

Not only are second-story setbacks not required by the code, but an attempt to enforce such a standard here would result in a reduction in the residential density that is permitted on the site. The guideline as written is a clear example of a subjective design standard and very similar to the design standard a court found to be subjective in *CARLA*. There, the court found that a design guideline contemplating both a “transition” and a “step in height” was ambiguous as to whether a building *must* incorporate a setback in height because of the multiple options for achieving the city’s goals. (*California Renters Legal Advoc. & Educ. Fund v. City of San Mateo* (2022) 68 Cal.App.5th 820, 841.) Here, the design guideline contemplates “building heights” and “upper story step backs” to achieve its goal of reducing impact on neighboring properties and is ambiguous as to whether this impact can be reduced with building height alone, with a setback, or with both. The Code allows three stories in height with a setback; however, when less height is proposed (such as the two stories proposed here), no step back is required.

The *CARLA* court also took issue with the fact that the design guidelines in that case offered no guidance on how extensive a setback must be, leaving reasonable minds to differ on whether a design would be adequately stepped back or not. (*Id.*) Likewise, Mill Valley’s design guidelines are silent on what type of setback is required, lending to subjectivity in determining whether it is satisfied. Pointedly, the *CARLA* court noted that the city in that case could have easily created an objective standard for step backs if it had desired to do so – after all, other standards, such as those relating to setbacks, specified requirements down to the foot. (*Id.*) Since no such requirements existed for step backs, the only reasonable conclusion was that this standard was subjective. So, too, is the standard here. Given that the design standard is subjective, the HAA prohibits the City from denying Developer’s Design Review Application under this standard.

In any case, Developer has respected the goal of this standard by designing buildings which reduce impacts on neighboring properties through screening and landscaping to maintain the privacy of the residential use to the west and a choice to build only two stories where three would have been permitted.

6. Transitional Guidelines, Standard #3.2 (p. 69): “Ensure that projects built adjacent to existing lower-scale residential development respect the scale of adjacent properties. Transitions can be made by varying the massing within a project, stepping back upper stories and varying sizes of elements to transition to smaller-scale buildings (see the Multi-Family Residential and Mixed-Use

Development Standards regarding height, setbacks, and setbacks).” Compliance with this standard is illustrated by the “Do This, Not This” figure on page 69.

*As stated in your response memo from February 2022, your response is that Standard #3.2 is a subjective Design Guideline. Staff continues to disagree with your assessment and does not find “Building E” in compliance with the illustrated condition on page 69. As stated, you believe the diagram represents a transition from a three-story building and third story stepped back from the first two floors and the adjacent property. Staff finds that the diagram, as depicted, requires a setback to be implemented so that the upper unit (E9) includes a proper transition to the residential property to the west, as explicitly illustrated in the “Do This, Not This” figure. As clearly demonstrated in that figure, the upper stories on the proposed building where E9 is located should be stepped back because it is adjacent to a lower-scale single-family home.*

Transitional Guideline Standard #3.2, like Site Planning and Design Standard #1.A.4, is a subjective standard. Like the standard at issue in the *CARLA* case, Transitional Guideline Standard #3.2 allows an applicant to choose between various options to make an appropriate transition, including by “varying the massing within a project, stepping back upper stories, and varying sizes of elements to transition to smaller-scale buildings.” The standard is therefore subjective and per the HAA, cannot be used to deny approval of the project. Here, Developer has chosen to meet this standard by varying the massing within the project, placing two-story buildings along the street and three-story buildings up the hill; no setback is necessary.

7. Building Design - Roof Forms, Standard #B.7 (p. 64): “Design roofs to incorporate pre-plumbing and pre-wiring of homes for easy installation of solar water heating and photo-voltaic (PV) solar panels, where feasible. Solar panels should be incorporated into roof design and be low-profile where possible.”

*Staff confirms the introduction of solar panels on Sheet A03. The visual simulations demonstrate that the solar panels detract further from the appearance of the project. Design project to screen panels from public view pursuant to Section 4.B of the Multi-family Residential and Mixed-Use Design Guidelines.*

Section 4.B of the Multi-family Residential and Mixed-Use Design Guidelines says that “Solar panels . . . **do not** need to be screened.” Staff’s comment directing the Developer to redesign the solar panels to screen them from view blatantly contradicts the plain text of the Design Guidelines.

8. Building Design - Building Privacy, Standard #E.3 (p. 67): “Locate or screen upper floor balconies and decks in areas that minimize the loss of privacy for neighboring properties.”

*Staff is still concerned that the project does not address objective Standard E.2 (as described above), and a redesign is necessary to address the other standards in Section E, including E.2.*

See discussion above addressing this issue.

9. Building Design - Building Privacy, Standard #E.5 (p. 67): “Design the height of the structure, its location on the site, and its architectural elements to avoid unreasonable impacts to the privacy of adjoining properties.”

*Staff is still concerned that the project is not addressing objective Standard E.2 (as described above), and a redesign is necessary to address the other standards in Section E, including E.5.*

See discussion above addressing this issue.

10. Building Design - Materials and Colors, Standard #F.2 (p. 68): “Use materials and colors consistent with the desired architectural character of the building and neighborhood.”

*Although the project has been redesigned to provide consistent architectural materials for the entire site, Staff continues to note that the board-formed concrete design of the front buildings are in contrast with the neighborhood. In addition, the proposed architectural styles and the materials and colors are not consistent with the surrounding residential neighborhood. The project should be redesigned to address these concerns.*

With respect to the comment regarding “board-formed concrete design,” the comment seems to imply that the Project consists mainly of board-formed concrete. Although it is correct that the Project incorporates board-formed concrete, mainly around the parking garages, we wish to clarify that the predominant design element is stained cedar siding accented with aluminum and vinyl window frames, as follows:





As befitting a mixed-use project with commercial and residential components, this treatment is entirely consistent with residential and commercial properties in the vicinity of the Project, including the renovated “MIXT” restaurant that the City recently approved:



Other adjacent and near-by properties featuring board-formed concrete include:



It should not be possible to conclude that board formed concrete elements “contrast” with the neighborhood. The same is true for the color, materials, and styles of the Project.

As noted above, particularly in point 4., the Project draws from the surrounding architectural context of both commercial and residential uses, which is appropriate for a mixed-use development located on a site with C-L zoning. The buildings fronting the street incorporate wood trellises, generous glazing, a concrete parking podium, vertical wood siding, and long horizontal roof lines that thematically match the adjacent commercial building at 619 East Blithedale Avenue. Furthermore, the predominant material of the front buildings is stained wood siding, which is consistent with the architectural character of the residences in the neighborhood, nicely tying together the character of commercial buildings on one side with residential buildings on the other. As noted above, board formed concrete is only used for where foundations and retaining walls emerge from the ground as necessary at semi basement and garage conditions, consistent with how the material is used in surrounding properties. The uphill buildings’ stained cedar siding, fenestration, roof lines, and trellis details further tie the Project in with the other residences in the neighborhood.

11. Transitional Guidelines - Standard #3.1 (p. 69): “Consider how the style, massing, rhythm, setbacks, and materials of new construction may affect the character of adjacent development.”

*Although the project has been redesigned, Staff continues to note that the project design along the East Blithedale Avenue frontage are different in massing, rhythm, setbacks and materials choices than the residential properties surrounding the project site. Also, as described above, the massing of the proposed buildings does not comply with both objective and subjective standards and will impact the privacy of the residential property to the west of the site.*

These concerns are repetitions of concerns addressed above; see points 1., 4., 5., 6., and 10. above.

## **ATTACHMENT D**

### **Project Driveway Location Analysis**

The Project Site is located on the north side of East Blithedale Avenue, starting approximately 140 feet west of the Camino Alto intersection. The Project Site extends approximately 225 feet east along East Blithedale Avenue. Two existing “T” intersections with the south side of East Blithedale Avenue are located in the vicinity of the Project Site: the Ryan Avenue intersection is at the east end of the Project Site, and the Nelson Avenue intersection is slightly west of the Project Site.

As currently designed, over 2,000 square feet of office space and 12 of the housing units are proposed in a single structure at grade, which would be accessed from a driveway located near the west end of the Project Site that leads into a parking structure. The Project’s remaining 13 units would be dispersed on the north end of the Project Site and accessed from a driveway near the east end of the Project Site that would be aligned with the Ryan Avenue intersection, converting the existing “T” intersection into a four-way intersection.

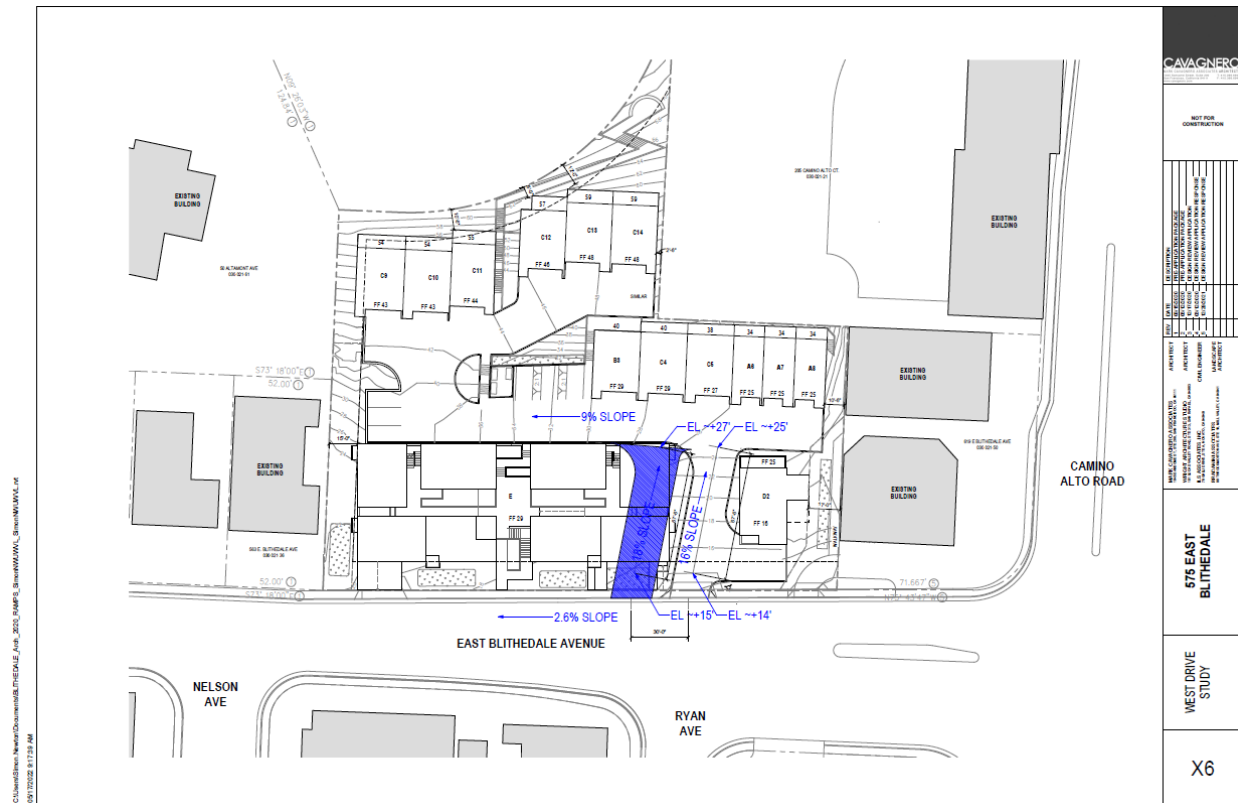
Although not reflected in its written comments, City staff has expressed concern to the Developer that the Project could result in traffic congestion due to vehicles entering or exiting the Project due to the proximity to the East Blithedale Avenue / Camino Alto intersection east of the Project Site, and because of the level of traffic activity that already exists at Ryan Avenue. City staff expressed an interest in relocating the Project’s eastern driveway further west.

Initially, City staff asked if the Project’s eastern driveway could be relocated to the Project Site’s western edge, adjacent to the existing single family home and offset from Nelson Avenue. This offset configuration could cause conflicting traffic movements between vehicles using the driveway and vehicles turning from Nelson Avenue on the East Blithedale, and it would generally be less favored than the proposed design for this reason.

Moreover, the Marin Fire Department allows a maximum allowable drive slope of 18% for properties such as the Project Site. Because the Project Site slopes up sharply as it moves north from East Blithedale Avenue, multiple switchbacks would be required to maintain an 18% grade. The restricting condition is that East Blithedale Avenue slopes at 2.6% as it moves east to west; however the Project site’s mid-site cross drive slopes 9% to reach the elevations where the northern-most townhomes currently sit. In other words, the site’s slope rises at more than 3 times the rate of Blithedale’s slope.

The Project has been designed to maximize its unit count using a shared internal drive aisle from the east; if the Project were designed with access from the west, much more of the site would be devoted to switchbacks, and a loss in unit count would result.

To maintain a relatively straight driveway, as is shown in the current proposed Project, it would only be possible to move the driveway approximately 30' west from where it is currently located. See below:



The alternative would also result in a loss of units, since the driveway would be relocated through the Project's main building. It would also create an offset intersection with Ryan Avenue. As discussed above, off-set intersection conditions are generally less safe and not preferred to aligned four-way intersections.

It is also worth noting that this precise issue was raised in the 2010 EIR for a previous version of the Project, which ultimately determined "Based on the traffic engineers' observations and professional opinion, the location for the Project driveway presenting the least potential for adverse safety conflicts and the greatest potential for acceptable traffic operation is the proposed location opposite Ryan Avenue." The current Project's proposal maintains this location, and it is our understanding that the City's recent traffic study for the Project confirmed that the design would not result in traffic safety impacts. Accordingly, no further alternative driveway locations need be explored.