

12/15/2021

Ted Luthin, Chair  
Design Review Board  
c/o Planning Department  
7120 Bodega Ave.  
Sebastopol, CA 95473  
Via email delivery

RE: 771 and 773 First Street, Sebastopol

Dear Chair Luthin:

We are in receipt of the Planning Department's staff report regarding the interpretation of Mitigation Measure No. 8 (M8) and how it should be applied to a proposed single-family home in the subdivision. The Board's direction was to separate the meaning of M8 from the application of M8. The board separated the meaning from actual design review to focus solely on how the Mitigation Measure was to be read, with design review issues to be reviewed at a subsequent meeting. The staff report fails to follow this direction.

The staff report misstates facts, proposes arbitrary and capricious standards, and includes irrelevant analysis regarding the meaning of Mitigation Measure No. 8<sup>1</sup>. This results in a prejudicial analysis of both interpretive issues as well as the previously proposed project (which is not before the Board at this meeting).

#### **Agenda Item**

- The hearing agenda description does not comport with the DRB's direction. The DRB directed staff to notice a hearing to consider M8. Contrary to the DRB's direction, the December 15, 2021 hearing agenda description is limited to "size." This materially and prejudicially skews the focus of the hearing, which should integrate an interpretation reflecting *all* the elements of M8, not just one.

#### **Inappropriate and prejudicial references<sup>2</sup>**

- Understanding Mitigation Measure No. 8 is critical to the design of the subsequent proposed project. The staff report assumes the project will be the design previously submitted; however, we are awaiting the Board's understanding – where needed - of Mitigation No. 8 before we consider whether revisions to the previous design are warranted. Details and analysis about the square footage of the previously proposed home or other elements of that design are *not* before the Board for action and should *not* have been a focus of the staff report.

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<sup>1</sup> To be clear, the vast majority of M8 is clear and unambiguous based on M8's plain language.

<sup>2</sup> We address specific items in the staff report, but do not waive and expressly preserve our right to challenge the irrelevant items in the staff report and the biased analysis in the staff report.

- The staff report misstates the conditioned square footage of the previously-submitted design at 5,321 square feet when it is actually 4,521 square feet.
- The staff report accurately describes the main floor area as 2,990 square feet, but in initially describing the 'lower floor', the report states it is 3,623 square feet, which includes unconditioned space and the garage, areas not typically included when describing home square footage. Such areas are typically described separately rather than combined with conditioned space. This is a prejudicial description that is contrary to how the Zoning Ordinance defines a dwelling and the common understanding of home size.
- The staff report on page 2 states, "...it's also important to keep in mind the other mitigation measures relevant to this resolution which also include a Tree Protection Plan prior to the approval of a grading permit." Then on pages 3 - 5, the report focuses *at length* on tree and grading issues associated with the submitted design; however these issues are not noticed, were not what the Board directed be addressed at this meeting, and were not what staff told the applicant would be at issue during. Inclusion prejudices the matter before the Board: where needed, understanding ambiguous language in Mitigation Measure No. 8.

#### **Biased Analysis of M8**

- The City cannot ignore the entirety of M8. Limiting the DRB's consideration to "size" is an abuse of discretion and impermissibly renders the remainder of M8 superfluous.
- The City cannot add language that is not there to M8. For example, M8 does not call for an average of other home sizes, nor does it establish a measurement to determine the "general area." Both of these things are impermissible additions to the language in M8.
- Even if limiting the discussion to "size" followed the DRB's direction, the City is not making an "apples to apples" comparison. The staff report compares the conditioned space of allegedly similar homes to the conditioned and unconditioned space of the previously proposed home. This approach is arbitrary, capricious, prejudicial, and factually inaccurate.
- The report states that 'similar homes' "...should only be applied to those home (sic) within the incorporated limits of Sebastopol." There is no valid rationale for this approach, and it conflicts with the plain language of M8. The actual, physical general area includes unincorporated territory, and as noted in our previous correspondence, this site is most similar to First Street properties and larger lot, unincorporated Sebastopol properties.
- The staff report states it would be "unfair" to discount uninhabitable/unconditioned or storage space. This language is biased, judgmental, lacking both evidentiary and legal foundations, and prejudicial. While in the future, the Board will review the actual home design, massing, and the like, the issue at hand at this time is the meaning of M8. It is incontrovertible that the Zoning Ordinance definition of 'dwelling' does not include uninhabitable spaces and that the common understanding of home "size" matches that definition.

- Use of a 600' (or 650', as stated elsewhere in the report) radius as to what constitutes the 'general area' is arbitrary, capricious, and conflicts with the plain language of M8, particularly since there has been very little residential construction, and even less on 'similar' lots, in the general Sebastopol area in recent decades. The ¼ mile standard is applied to assess proximity (and walkability) to transit stops. We have seen no record of the City considering less than this distance for any other projects in the past. This should be the minimum for the board to consider when determining 'general area.'

### **Board Action**

The issue is the plain language of M8 and to the extent the plain language is unclear, the meaning of the ambiguous language; not the project design, not tree issues, not grading issues. The Board should construe M8 as follows:

For purposes of interpreting and applying Mitigation Measure No. 8, the Board finds that 'size' means conditioned square footage; that 'height' means building height as defined in the Zoning Ordinance; 'similar homes' includes homes on sites that are similarly situated to this lot, on larger lots of more rural character; 'more recent construction' means within approximately 25 years prior to the subdivision approval and/or a subject application; 'general area' means greater Sebastopol, as defined by its zip code; 'First Street area' means First Street and areas adjacent to it; 'Swain Woods neighborhood' means homes on several streets, including but not limited to all or portions of Swain Avenue, Swain Woods Terrace, Blossomwood Avenue, Palm Avenue, Jewell Avenue, and Parquet Street.

We thank you for your careful consideration of this matter.

Greg Beale, Design/Builder

cc: Larry McLaughlin, City Manager/City Attorney  
Rose and Steve Schoch  
Tina Wallis, Attorney at Law  
Kenyon Webster, Planning Consultant