

**APPLICANT RESPONSES TO DRB RECOMMENDED  
CONDITIONS OF APPROVAL  
(11-7-22)**

81. The applicant shall meet with the Richmond Yacht Club (RYC) prior to the public hearing before the City Council to make a good faith effort to resolve issues including but not limited to the following: property boundary, drainage, stormwater, fencing design, access to lockers and open space.

**Response** – *Proposed COA #81 is acceptable as written.*

- ~~82. Roof deck drawing to eliminate 5 roof top decks adjacent to RYC parking lot~~

83. Public art shall be required at the corner retail building.

**Response** – *Proposed COA #83 is acceptable, but we would request the condition be reworded as follows –*

*“Public Art and/or elements of historical relevance shall be included in the design of the Gateway Plaza located adjacent to the retail node in the northwest corner of the site.”*

84. Minimum bay trail setback from any house shall be a minimum of 12-feet.

**Response** – *Applicant objects to the inclusion of this development standard as a Condition of Approval for the following reasons. Because 10% of the homes (16 residential units) in the Terminal One SFR Project will be affordable units in accordance with the requirements of the City’s Inclusionary Housing Ordinance (see proposed COA #10), the Project qualifies under the State’s Density Bonus Law for the waiver or reduction of development standards which would physically preclude construction of the Project as designed. Because application of a development standard that mandates a minimum setback of 12 feet for any home located adjacent to the Bay Trail (a) would require significant changes to the design of the Project that would impact the project density and (b) would preclude construction of the Project as designed, State law prohibits its imposition as a Condition of Approval. See the following Response to proposed COA #85 for a more detailed explanation of the provisions of the State’s Density Bonus Law that prohibit application of development standards that would physically preclude construction of the Project as designed.*

**Steps Already Taken to Address Concerns Regarding Bay Trail Setbacks** -- *It should also be noted that Applicant has already taken steps to address the concerns that have been expressed by TRAC with regard to the width of the Bay Trail and the setback of homes located adjacent to the Bay Trail. As a result of input from TRAC, significant modifications were made to the design of the Project during the design review process to increase both the width of the Bay Trail corridor located adjacent to the Yacht Club and the setback of the homes located adjacent to this segment of the Bay Trail. It is our understanding that the changes that were made to the design of the Bay*

*Trail corridor adjacent to the Yacht Club are acceptable to TRAC. These modifications resulted in the loss of both a single-family home and an accessory dwelling unit and a commensurate reduction in Project density.*

85. Units in the middle of the project shall have a third story limited to 80% of the floor area below for 50% of the units.

**Response** – *Because 10% of the homes (16 residential units) in the Terminal One SFR Project will be affordable units in accordance with the requirements of the City’s Inclusionary Housing Ordinance (see proposed COA #10), the Project qualifies under the State’s Density Bonus Law which allows the design of a qualifying project to assume the waiver or reduction of otherwise applicable development standards and prohibits the imposition of any such development standards unless certain findings are made, none of which apply to proposed Condition 85. Accordingly, the approval of the Terminal One SFR Project cannot be conditioned as the DRB recommends because imposition of the proposed condition is inconsistent with and prohibited by State law.*

#### **Discussion**

**State Law Prohibits Imposition of the 80% Limitation on Third-Floor Massing** -- *In accordance with the requirements of Richmond Municipal Code (RMC) Article 15.04.603 (Inclusionary Housing and Affordable Housing Linkage Fee), ten percent of the dwelling units in the SFR Project will be made available at affordable sales prices to moderate income households. As a result, the SFR Project qualifies under the State’s Density Bonus Law (Gov. Code Sections 65915-65918) for a waiver or reduction in development standards that conflict with the design of the Project. As the Staff Report for the DRB public hearing held on October 26, 2022 provides at pages 4-5 -- Applicant has requested, and the design of the SFR Project contemplates, modifications to a number of the development standards that would have been applicable to the Project if the Terminal One Property was in a RM-1 zoning district. The development standards Applicant seeks to waive or reduce include the following limitation with respect to “Maximum Upper Story Massing ([as a] % of Ground Floor Footprint)”:*

*“The RM-1 zoning district sets forth a maximum upper story massing of 80% for the 3<sup>rd</sup> story and above. Applicant requests for the ability to have a 100% upper story massing for the 3<sup>rd</sup> story.”*

*Recent case law interpreting the State Density Bonus Law prohibits the application of development standards such as the 80% limit on third-story massing to a development like the Terminal One Project that meets the requirements for a density bonus, if imposition of the standard “would physically preclude construction of [the] project as designed.” See Bankers Hill 150 v. City of San Diego, 74 Cal.App.5<sup>th</sup> 755, at p. 776. Imposition of the 80% limitation for which provision is made in the DRB’s recommended Condition of Approval would preclude construction of the Terminal One SFR Project as it has been designed. As a result, the inclusion of this development standard as a Condition of Approval is prohibited by State law.*

***Impacts of 80% Third-Floor Massing Limit on Design of SFR Project*** -- When early in our discussion with the Chair of the DRB, Mr. Livingston expressed a desire to see “a third floor mass reduction to mitigate the vertical mass” (see Jonathan Livingston’s notes from 6/22/22 DRB Study Session) and indicated an intention to apply the 80% third floor massing standard applicable in RM-1 zoning districts to the design of the SFR Project, we explained that:

- *The Terminal One Property was zoned Planned Area (PA) District.*
- *One of the explicit purposes of a PA District is to enable a “superior development” by allowing the application of development standards under the PA District that are different from “the standards applicable to the underlying base district” (RMC Article 15.04.810.040F).*
- *Two features of the SFR Project which contribute to the superior character of the Terminal One development are the Junior Accessory Dwelling Units that are a featured component of the Plan 3 and Plan 4 residences and the flexible live/work-space of the Plan 6 Duet residences that can function as a home office, a commercial work place, or a fourth bedroom. These Junior ADU and flex-space features occupy the entire ground floor living areas of the larger three-story Latitude homes, where they can be accessed by separate entries. With the second floor of these three-story homes dedicated primarily to communal space (kitchen/dining/great room/study area), and with the floor area of the third floor limited by a building footprint that ranged from roughly 900 square feet (Plans 5 and 6) to roughly 1,200 square feet (Plans 3 and 4), special care was taken in the design of the third-floor to assure that the available space was allocated efficiently to accommodate a three-bedroom floor plan that would include a master bedroom/bath/walk-in closet.*
- *If the third-story floor area of one-half of the 64 homes that front on greenway corridors in the center of the project is limited to 80% of the area of the building footprint (as the DRB proposes), the impact on both the project economics and functionality would be severe.*
- *First, the Project would lose an average of roughly 200 square feet of living area per home resulting in a cumulative reduction of 6,800 square feet in the marketable square footage of the 34 homes that would be impacted. With an average home size of approximately 2,200 square feet, such a loss of marketable space would be the equivalent of reducing the unit count and density of the Project by three homes.*
- *Second, because the design of these homes involves an allocation of space that is already exceedingly efficient, if homes within the Project are required to conform to the RM-1 standard for third floor massing, not only would these homes lose roughly 200 square feet of living space, but they would also lose a bedroom which could not be recaptured either on the second floor without sacrificing communal space that is critical to the livability of the homes or on the ground floor without eliminating the Junior ADUs or the live/work flex space – features of the Terminal One SFR Project which make the Project unique and contribute to its superior design.*

- *This loss of marketable square footage would come on top of the cumulative loss of approximately 23,300 square feet of living area under roof (or the equivalent of ten+ 2,200 square foot homes) occasioned by changes that have been made to the design of the Project in response to DRB input since the initial June 22, 2022 DRB Study Session.<sup>1</sup> Any further loss of density or marketable square footage would be extremely consequential and pose a significant threat to the capacity of the Project to generate the home sale revenues required both to privately subsidize the 16 affordable units that will be an integral part of the Latitude residential neighborhood and to cover the extraordinary costs involved in redeveloping the Terminal One Site – costs which include approximately \$18M-\$20M to seismically stabilize the site, remediate the residual soil and groundwater contamination, structurally retrofit the Wharf, demolish the lead-paint contaminated 90,000+ square foot warehouse, mitigate for potential sea-level-rise, and build a public Waterfront Park which will occupy the Project’s entire shoreline and will include as its centerpiece the 100+ year old Municipal Wharf No. 1 repurposed as a public park facility as well as a shoreline extension of the Bay Trail.*

**Steps Already Taken to Address Concerns Regarding Third Floor Massing** – *It should be noted that the 154-home Project consists of six different single-family home plans which include both detached units and attached duplex units as well as two- and three-story residences. Although the Project is designed to feature the use of a “Coastal Modern” architectural vernacular that is themed to the Project’s unique location by the Bay, each of the six plans employ two or three distinct elevations and nine contrasting color/material schemes to affect a significantly higher level of design diversity than is commonly found in single-family subdivisions. In addition, a number of changes have been made to the design of the Project during the design review process to address concerns regarding the third-floor massing of the three-story homes. These modifications include:*

- *The diversity of unit types has been increased and the visual effect of the third-floor massing reduced by replacing 18 three-story homes with two-story homes.*
- *The design of the three-story homes has been revised to increase the use of contrasting colors, materials, and pop-out/step-back features to break up the verticality of the homes, give the homes a more layered sense of base/mid-section/top, enhance the articulation of the building facades, and give the elevations a more textured aesthetic; and*
- *A new plan has been introduced for the duet units that employs asymmetry to de-emphasize vertical mass and give additional expression to the horizontal elements of the building design.*

---

<sup>1</sup> The Conceptual Site Plan reviewed by the DRB at the June Study Session included 161 single family homes and a total living area under roof of approximately 366,500 square feet. As a result of changes made to the design of the Project in response to input from the DRB, the residential component of the Site Plan that has been recommended for approval by the DRB consists of 154 homes with a combined square footage of approximately 343,200.

86. The corner retail space shall provide a dumpster enclosure.

**Response** -- *Proposed COA #86 is acceptable, but we would request the condition be reworded as follows –*

*“The corner retail space shall provide a trash enclosure.”*

87. The applicant shall add to Site Plan B a tree or mound (traffic control measure) at the center of drop off area.

**Response** -- *Proposed COA #87 is acceptable, but we would request the condition be reworded as follows –*

*“If compatible with considerations of safety and efficiency of operation, a landscaped centerpiece shall be added to the turn-around bulb at the southern terminus of the Dornan Drive extension shown on the Alternative B Site Plan.”*

88. The bay trail retaining wall guard rail shall be hot-dipped galvanized vertical pickets.

**Response** – *Proposed COA #88 is unacceptable. Until improvement plans for the Bay Trail are developed during the Design Development phase of the Project, we will not know;*

- *where a retaining wall will be required at the edge of the Bay Trail or,*
- *if a retaining wall is required, whether the height of the retaining wall will warrant the installation of a guard rail at the edge of the Bay Trail, or*
- *if a guard rail is required, how that guard rail will need to be designed to integrate with the design of the retaining wall and to assure safe passage of the Bay Trail users.*

*We object to this proposed condition of approval not only because it is premature to specify the design character of a guard rail before the engineering analysis involved in determining that design character is undertaken and completed, but also because the design both of the Bay Trail and of any safety features that are incorporated as part of the Bay Trail improvements requires engineering expertise that the DRB does not have. We would respectfully submit that, in making this recommendation, the DRB is acting beyond the design review authority it is authorized to exercise under Richmond Municipal Code Article 15.04.806 (Design Review), and that, for this reason alone, the Planning Commission should reject this recommendation of the DRB out of hand.*

89. The bay trail retaining wall along the south shore and RYC lockers shall not exceed 6-feet in height.

**Response** -- *Proposed COA #89 is unacceptable. Until improvement plans for the Bay Trail are developed during the Design Development phase of the Project, we will not know where a retaining wall will be required at the edge of the Bay Trail or, if a retaining wall is required, what the height of that retaining wall will need to be. We object to this proposed condition of approval not only because it is premature to specify the height of a retaining wall before the engineering analysis involved in designing the retaining wall and determining its height has been undertaken and completed, but also because the design both of the Bay Trail and of any retaining wall that is incorporated as part of the Bay Trail improvements requires engineering expertise that the DRB does not have and involves a scope of review the DRB is neither qualified nor authorized to exercise. We would respectfully submit that, in making this recommendation, the DRB is acting beyond the design review authority it is authorized to exercise under Richmond Municipal Code Article 15.04.806 (Design Review), and that, for this reason alone, the Planning Commission should reject this recommendation of the DRB out of hand.*

90. The bay trail retaining wall shall be a minimum of 3-feet away from the Richmond Yacht Club lockers and shall be maintained by the HOA with drainage to capture and divert water from the lockers.

**Response** -- *Proposed COA #90 is unacceptable. In accordance with COA #81, we will be meeting with the Richmond Yacht Club in a good faith effort to resolve issues involving the common boundary separating the Yacht Club Property and the Terminal One Property. Any Yacht Club concerns regarding the retaining wall we will be constructing along this common border will be addressed in this meeting. These common boundary issues are not design issues that are subject to regulatory oversight by the DRB. As noted in our Response to COA #89, the design of the retaining wall requires an engineering analysis that has not been completed and that the DRB does not have the expertise to perform. This proposed condition is yet another example of an attempt by the DRB to extend the reach of the Board's regulatory oversight beyond the scope of the design review authority the DRB is authorized to exercise under the Design Review provisions of the RMC and should be rejected by the Planning Commission.*

91. The applicant shall return to the DRB at a future meeting for major design review of the architecture, landscaping, lighting, and signage.

**Response** – *We request that this proposed condition be reworded as follows:*

*“The applicant shall be required to return to the DRB at a future meeting to complete design review of the building architecture (consisting of the architectural plans for the 154 single-family homes, the Resident Recreation Building, and the Retail Building), landscaping, lighting, and signage. All other elements or aspects of the design of the Terminal One SFR Project are deemed to have been subjected to Major Design Review under Article 15.04.805 (Design Review) and approved by the DRB at the Public Hearing held on October 26, 2022. “*