

How SB 35 and AB 1763 Pushed Through An Affordable Housing Project

William Fulton on Feb 8, 2021

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As *CP&DR* has [written repeatedly](#) over the last couple of years, SB 35 is turning project-level housing review upside down, especially in the Bay Area. But by and large, SB 35 – which limits cities to ministerial review over housing projects in some circumstances – has been used to promote market-rate projects in upscale locations like [Berkeley](#), [Cupertino](#), and [Los Altos](#). This isn't surprising, especially since a precondition for SB 35 is paying construction laborers prevailing wage – an expensive proposition that usually requires a big revenue stream.

Now, as our writer Sarah Klearman [recently reported](#), a clever developer from Los Angeles has figured out how to use SB 35 – along with low-income housing tax credits and density bonuses – to make ministerial review of an affordable housing project work in a community that's located in an affluent county – but already has lots of affordable housing. And key to making the project work was not just SB 35, but also AB 1763, a 2019 bill that gave affordable housing developers way more leverage over local governments.

The community is [Marin City](#), north of Sausalito, which has been a proud and demographically diverse community with a large African-American population ever since it was built as defense housing during World War II. After redevelopment in the '70s, Marin City now has a variety of housing types, including single-family homes, public housing, and co-ops – all pretty affordable by Marin County standards.

The developer is [Alexis Gevorgian](#) of AMG & Associates (and, full disclosure, a onetime student of mine at Cal Poly Pomona).

And the issue raised is whether SB 35, cleverly applied, will alleviate housing problems in a place like Marin County or raise environmental justice concerns related to the concentration of affordable housing – or both.

The backstory on the project begins in 1999, when [fire gutted](#) the [Village Baptist Church](#), a mostly African-American church that dates back almost 80 years to the founding of Marin City. In the early 2000s, the church [planned to rebuild at the original location](#) but eventually moved to Petaluma instead and created a nonprofit, [Village Oduduwa Housing](#), to redevelop the site. The housing nonprofit partnered with Gevorgian on the project.

SB 35 is an important part of the story – but only a part. And part of the lesson is the clever way that AMG combined different funding sources and housing incentives to create the project. As stated above, AMG used low-income housing tax credits allocated by the California Tax Credit Allocation Committee to help finance the project, which is 100% affordable – 20% low income and 80% moderate income. But in addition to that, AMG took advantage of several other incentives enacted into law in the past few years.

In particular, the project was shaped by various provisions of the state density bonus law. The site is just about one acre in size and [was subject to a planned development multi-family residential zoning designation](#) that would have limited the project to 34 units and a land-use designation of about 40 units per acre.

But [AB 1763](#), which went into effect last year, vastly increases the density bonus available for a project like the one in Marin City. In particular, AB 1763 doubles the available density bonus for a 100% affordable project to 80%. Using AB 1763, AMG got the unit count up to 74. (That’s 40.1 units per acre times 1.01 acres times 1.8 density bonus.)

But AMG wouldn’t be able to build a 74-unit affordable project on a one-acre lot in Marin County if it had to follow all of the standard development code requirements. SB 35 played a key role here, because the law prohibits local governments from imposing any parking requirement at all on a 100% affordable project within a half-mile of high-quality transit. The Marin City site is located about a quarter-mile from the Marin City transit center, which serves nine different bus lines. AMG is providing only 24 on-site parking spaces – about one for every three units.

But AB 1763 also played a role here. State law requires require a local government to provide up to four concessions to a developer in exchange for an affordable project. That’s also because of AB 1763, which kicked up the required number of concessions from three to four.

AMG only asked for [three concessions](#) from Marin County on the project – and got them all:

1. A height increase from 30 feet to 52.5 feet.
2. A decrease in the required windows in the street-facing façade from 25% to 21%.
3. A waiver from the tree canopy required for the project’s parking spaces. This involved the interplay with SB 35, as the project was not required to provide any parking.

In addition, however, AMG took advantage of *another* provision of the density bonus law – one that prohibits local governments from applying “any development standard that will have the effect of physically precluding the construction of a development” that otherwise qualifies for a density bonus. Using this provision, AMG asked for waivers from two of Marin County’s development standards: a requirement to provide 5,000 square feet of open space and a requirement to provide one bicycle parking space for every two units.

So in the end, using SB 35, AB 1763 in tandem on a 100% affordable project, AMG got to build twice as many units as otherwise permitted, in a building almost twice as tall as would otherwise be permitted, with

very little parking, no tree canopy in the parking lot, no open space, and no bike parking. And because SB 35 was invoked, there wasn't anything Marin County could do about all this. No wonder Tom Lai, Marin County's community development director, expressed a fair amount of frustration to our Sarah Klearman about the whole process.

Of course, not all developers are as clever or experienced as working the levers as AMG is. And building an affordable housing project still requires jumping through lots of hoops, both to obtain financing and to obtain regulatory relief. But as the Marin City project shows, all of the changes in state law over the past few years have created an opening that allows affordable housing developers to slip through most regulatory hurdles – even in Marin County.
