

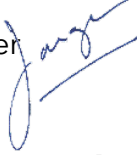
# BAL HARBOUR

- V I L L A G E -

OFFICE OF THE VILLAGE MANAGER

LETTER TO COUNCIL

NO. 073-2024

To: Mayor Jeffrey P. Freimark and Members of the Village Council  
From: Jorge M. Gonzalez, Village Manager   
Date: May 13, 2024  
Subject: **Bal Harbour Shops Site Development Plan Application - #3 Completeness Review Revisions - Package is Incomplete**

The purpose of this Letter to Council (LTC) is to share with you a copy of the letter from the Village's Building Official and Consultant Planner regarding the Bal Harbour Shops Site Development Plan Application.

The application has been deemed incomplete, even though some required documentation has been received. Therefore, the review process cannot proceed. The attached letter includes the reasons for the determination.

In addition, on May 10, 2024, pursuant to Section 166.033(2)(d), the Building Official sent a letter to the applicant offering to schedule a meeting to attempt to resolve outstanding issues on the pending application. (Letter attached)

Should you receive any media inquiries, we ask that you refer the inquiry to the Village Manager's Office so that all responses are provided by, and reflect, the Village's position.

If you have any questions or need any additional information, please feel free to contact me.

# BAL HARBOUR

- V I L L A G E -

**ELIEZER PALACIO**  
**BUILDING OFFICIAL**

May 13, 2024

Bal Harbour Shops, LLC  
420 Lincoln Road  
Suite 320  
Miami Beach, Florida 33139  
Attn: Matthew Lazenby

Re: Site Development Plan Application - Initial Completeness Review  
Revisions to Approved Bal Harbour Shops Master Site Plan  
9700 Collins Avenue  
Village Project No.: SP2024-0003  
MMPA Acct. No.: 00-1103-0160C

Dear Sirs:

Please see the attached letter from Village Planner Michael J. Miller, AICP, assessing the completeness of your submission pursuant to Section 166.033(1), Florida Statutes.

There may be additional issues or questions that could arise from the review of the additional material and information requested. Upon receipt and review of the missing or incomplete items, the Village may find they are not adequate to address the incomplete determination and may request further information.

Please review and respond to the letter in accordance with the requirements of that statute.

Sincerely,



Eliezer Palacio  
Building Official

CC: Jorge M. Gonzalez - Village Manager  
Michael J. Miller, AICP - Consultant Village Planner  
Susan L. Trevarthen, Esq. - Village Attorney

May 13<sup>th</sup>, 2024

**Re: Site Development Plan Application - #3 Completeness Review  
Revisions to Approved Bal Harbour Shops Master Site Plan  
9700 Collins Avenue  
Village Project No.: SP2024-0003  
MMPA Acct. No.: 00-1103-0160C**

Bal Harbour Village is in receipt of a letter from the Shubin Law Group, as agent for Bal Harbour Shops, LLC dated May 3<sup>rd</sup>, 2024, Re: Response to the April 3<sup>rd</sup>, 2024, Bal Harbour Village Letter entitled "Site Development Plan Application Initial Completeness Revisions to Approved Bal Harbour Shops Master Plan." The material provided has been reviewed for completeness pursuant to state and local regulations.

As you know, upon receipt of the initial application on January 9<sup>th</sup>, 2024, the Village staff and MMPA inspected the information submitted with the application and found that the application package was **INCOMPLETE**, as some of the required documents were incomplete or missing. On February 7<sup>th</sup>, 2024, the Village issued its initial application "Completeness" letter to the applicant detailing the missing documents, information and analysis. On March 5<sup>th</sup>, 2024, the Village received a response letter from the applicant's law firm but only some of the missing information listed in the Village's initial letter. Upon receipt of the applicant's March 5<sup>th</sup>, 2024 response letter, the Village staff and MMPA again inspected the information submitted with the application and found that the application package was still **INCOMPLETE**, as some of the required documents were incomplete or missing. On April 3<sup>rd</sup>, 2024, the Village issued its second (#2) application "Completeness" letter to the applicant detailing the remaining missing documents, information and analysis. The Village's April 3<sup>rd</sup>, 2024 #2 completeness letter included a status update on each of the items listed in the initial February 7<sup>th</sup>, 2024 completeness letter, and as requested included specific citations (particularity) of the applicable Village Comprehensive Plan, various Land Development Regulations (Zoning / Other) and Site Development Plan submittal requirements. On May 3<sup>rd</sup>, 2024, the Village received a second (#2) response letter from the applicant's law firm. However, no new documents, analysis or information was included to address the application completeness deficiencies. Again, only some of the missing information listed in the Village's initial (#1) and second (#2) letters has been provided to date. Therefore, the Village again finds the application package is still **INCOMPLETE**, as some of the required documents were incomplete or missing.

The Village still disagrees with the law firm's assertion under Section I. of the previous March 5<sup>th</sup>, 2024 letter that MMPA failed to comply with the "Particularly" requirement of Section 166.033(1), Florida Statute. However, by voluntarily agreeing to respond to your March 5<sup>th</sup>, 2024, supplemental submission and voluntarily providing additional information, Bal Harbour Village does not waive and expressly reserves all of its rights in this matter.

The law firm's previous March 5<sup>th</sup>, 2024 letter also asserts that the January 9<sup>th</sup>, 2024, submission is not a "Site Development Plan review and approval for major revisions;" however, page G-001 of the submission materials titles the submission as a "Major Site Plan Application. In addition, pursuant to Section 21-322(a)(4), a site plan application is presumed to be a major site plan. Section 21-322(b) further provides that the application shall be in a form prescribed by the Village Manager or designee. Therefore, the materials requested in our previous February 7<sup>th</sup>, 2024 and April 3<sup>rd</sup>, 2024 correspondence remain outstanding, in order to finalize our "Completeness Review."

The Village acknowledges that some additional information was provided with the applicant's March 5<sup>th</sup>, 2024 first (#1) response submittal, however, no new additional information to address the deficiencies was provided with the applicant's May 3<sup>rd</sup>, 2024 response (#2) as requested. Therefore, the application remains **INCOMPLETE** at this time. The application package still does not contain all of the information items specified in the Village's February 7<sup>th</sup>, 2024 Initial Completeness Review nor the April 3<sup>rd</sup>, 2024 second (#2) letters, the Village's Comprehensive Plan, the Village Code and the Site Plan submittal checklist. Below is a summary of your application and the still outstanding items. For ease of reference, it is organized in a similar format as was used for the Village's initial February 7<sup>th</sup>, 2024 and April 3<sup>rd</sup>, 2024 correspondence. Those deficiency items that have already been deemed "Complete" have been removed; however, as previously stated, upon the Village's formal review of the application additional information and analysis may be required. In order to proceed with the review of your submission, a complete application is required. Please provide the material identified.

Again, per Village Code Section 21-322 the Village Manager or their designee determines what information and documentation are required for a Site Development Plan application – administrative or normal ARB / VC approvals. The BHS or law firm states they "feel the application contained all the information that was required for sufficient administrative Site Plan review under the LLA" - the Village makes the determination of what information is required and has numerous Code provisions, Comprehensive Plan provisions, and a long-established Site Development Plan application submittal checklist. What was initially submitted and subsequently submitted was deemed incomplete, unacceptable and failed to meet the Village's local laws and regulations (See Sec. 166.04151(7)(d) and (g), F.S.).

### **Missing/ Insufficient Information/ Request for Information:**

As an overall observation, we note that the set of plans submitted is extremely vague and conceptual and insufficient to allow an adequate review. In order for the Village to properly review and render a decision on the application pursuant to all regulations, more information is required. The following is a summary of the needed information:

- 3) **Hurricane Evacuation Study from Coastal High Hazard Area (CHHA)** - State law, the SFRPC Regional Plan and Village Comprehensive Plan heavily discourages and prohibits any new permanent residential density on the coastal barrier islands, due to the limited roadways / clearance times to evacuate people from the coastal barrier islands for Hurricanes / Tropical Storms. Provide an analysis of the expected impacts to evacuation times to the Village and surrounding communities given the limited evacuation routes and facilities. Therefore, the application is deemed incomplete.

**Comment #3 Update** – Not Received in the March 5<sup>th</sup>, 2024, re-submittal package nor the May 3<sup>rd</sup>, 2024, re-submittal package. **INCOMPLETE**. Upon the Village's receipt and review additional information and analysis may be necessary. Please refer to Sec. 163.3178(2)(d), Florida Statutes and the Village's adopted Comprehensive Plan (CME Goal 2 and implementing Objectives and Policies) which can be found on the Florida Papers website. The applicant incorrectly states the LLA preempts all local ordinances and the Comprehensive Plan, but the LLA only applies to uses, residential density and building height, which the Village acknowledges. The LLA clearly states that all local laws and regulations apply (zoning / etc.).

- 4) **Parking Study / Parking Operational Plan** - The application proposes a significant increase in total area to the site, as well as new uses. The application appears to propose additional parking structures. However, no parking analysis accompanies the proposal. The plans show parking garages at the base of Buildings "L" and "K" but no parking at all in Building "Z". Required parking is required to be part of a

development, be designated by land use type, and be easily accessible. There is no parking operational parking plan or explanation as to how the parking will occur by land use type. Provide a Parking Study conducted by professional parking consultants, identifying where parking for each land use type / building is anticipated. Provide a Parking Operational Plan setting forth how/ where/ hours of parking / vehicle stacking for the Village's consideration. Therefore, the application is deemed incomplete.

**Comment #4 Update** – Not Received in the March 5<sup>th</sup>, 2024, re-submittal package nor the May 3<sup>rd</sup>, 2024, re-submittal package. **INCOMPLETE.** Upon the Village's receipt and review additional information and analysis may be necessary. Please refer to Village Code Sec. 21-385(q) and the 2017 Development Agreement for applicable details. The applicant incorrectly states in the May 3<sup>rd</sup>, 2024, response that the 2017 Development Agreement (DA) does not apply the pending BHS application. The 2017 DA is a binding "contract" that governs all development activity on the BHS site for 30 years.

- 5) **Public School Impacts** - Due to the proposed affordable / market rate residential uses, a number of school-aged children will likely occupy the site. Provide a MDPS impact report. Therefore, the application is deemed incomplete.

**Comment #5 Update – ACKNOWLEDGED.** As stated in the Village's April 3<sup>rd</sup>, 2024, letter, the Village staff is coordinating with the Miami-Dade School District staff to obtain an analysis of this project's impact on public schools. Upon the Village's receipt and review of the Miami-Dade School District analysis additional information and analysis may be necessary.

- 6) **Public Safety Impacts** - Due to the proposed residential / transient uses there is expected to be an impact on the Village's Police & MD Fire Departments. There are Concurrency LOS in the Comprehensive Plan. Provide an analysis of the expected impacts. Mitigation may be required. Therefore, the application is deemed incomplete.

**Comment #6 Update** – Not Received in the March 5<sup>th</sup>, 2024 re-submittal package nor the May 3<sup>rd</sup>, 2024 re-submittal package. **INCOMPLETE.** Upon the Village's receipt and review additional information and analysis may be necessary. Please refer to Village Code Sec. 21-322(f)(4) and Sec. 14-8(a)(4) (analysis reqd. at the time of Site Plan approval).

- 8) **Affordable Housing Details** - While conceptual plans are submitted, due to the use of the Live Local Act residential use allowance, more detail is required to ensure the "Affordable" housing units will be preserved for the mandatory 30-year timeframe. Provide more details on covenants. Also missing are the details of the proposed housing: what level of affordability is proposed, and what is the configuration of units and unit sizes? Therefore, the application is deemed incomplete.

**Comment #8 Update** – Not Received in the March 5<sup>th</sup>, 2024 re-submittal package nor the May 3<sup>rd</sup>, 2024, re-submittal package. **INCOMPLETE.** Sec. 166.04151, Florida Statutes, entitled Affordable Housing (LLA) requires at least 40% of the proposed dwelling units to be "Affordable", as defined by Section 420.0004, Florida Statutes for a minimum of 30 years. An analysis is required to illustrate the expected occupant characteristics and how many Very Low Income / Low Income / Moderate Income units are necessary. See Village Code Sec. 21-322(i)(5) for required information.

- 9) **Village Application Fee** - A personal check from an employee of BHS was submitted with the application. This needs to be a corporate check.

**Comment #9 Update** – Not received in the March 5<sup>th</sup>, 2024, re-submittal package or subsequently. **INCOMPLETE**. Please provide a corporate check for the \$3,500 application fee to the Village. As of this writing no corporate check has been received.

- 10) **Flood Impacts (FEMA / Storm Surge/ Sea Level Rise)-An** analysis of the impacts of this very dense development needs to be provided.

**Comment #10 Update** – Not Received in the March 5<sup>th</sup>, 2024 re-submittal package nor the May 3<sup>rd</sup>, 2024, re-submittal package. **INCOMPLETE**. Upon the Village's receipt and review additional information and analysis may be necessary. Please refer to the Village's adopted Comprehensive Plan (Goals, implementing Objectives and Policies) which can be found on the Florida Papers website, Village Code Section 14-6, and the Village's Site Plan Checklist. This issue is not covered in the drainage LOS analysis as argued in the new response letter.

- 13) **Civil Engineering Plans** - No preliminary Civil Engineering plans were submitted as required (water / sewer / drainage / parking lots & pavement). Therefore, the application is deemed incomplete.

**Comment #13 Update** – Not Received in the March 5<sup>th</sup>, 2024, re-submittal package nor the May 3<sup>rd</sup>, 2024, re-submittal package. **INCOMPLETE**. The submitted plans do not include any preliminary water / sewer / drainage plans or calculations, only a partial parking lot layout plan (Sheet C-140). Upon the Village's receipt and review additional information and analysis may be necessary. Please refer to the Village Code Section 21-322(b) and the Village's Site Plan Checklist.

- 14) **Major Anchor Outparcels** - It is our understanding that the major anchor stores at the Shops (Saks Fifth Ave./ Neiman Marcus) have long-term leases with many years remaining. The site plan shows the elimination of those major anchor stores with new land uses. The Village has received correspondence from Saks expressing that they have not been consulted about the proposal and are objecting to this request. We are unaware of the situation with regard to Neiman Marcus. Provide documentation that the two (2) leaseholders have been informed and have consented to the application, so that it is properly authorized. Therefore, the application is deemed incomplete.

**Comment #14 Update** – Not Received in the March 5<sup>th</sup>, 2024 re-submittal package nor the May 3<sup>rd</sup>, 2024, re-submittal package. **INCOMPLETE**. Please refer to the Village Code Section 21-322 and 21-51(a). The Village Codes / application forms / Site Plan checklist require the same submittal & types of information whether the matter is processed administratively or for public hearings.

- 15) **Shadow Study** - As this request involves the possibility of high-rise buildings on the BHS site, which is limited via the Zoning Code and Village Charter to 56' in height (exception for 42,600 sq. ft. carve out area at 69'), when the Village receives OF Oceanfront site plan applications, a Shadow Study has been required to demonstrate the impacts of shadows at different times of the year / day from the proposed high-rise structure. Due to the proximity of the BHS site to low density single-family homes and low-density multifamily developments in the gated area,

the Village requires a Shadow Study for the proposed high-rise residential structures. Therefore, the application is deemed incomplete.

**Comment #15 Update** – Not Received in the March 5<sup>th</sup>, 2024 re-submittal package nor the May 3<sup>rd</sup>, 2024, re-submittal package. **INCOMPLETE**. Please refer to the Village Code Section 21-322 and the Village’s Site Plan Checklist.


- 16) **Proposed Development Agreement** - The Zoning Code (Sec. 21-322(h)) mandates that, as part of a Major Site Plan application, a Development Agreement (DA) is required to be approved and recorded in the public records memorializing the exact type & site design of the project, and any required conditions / terms. No proposed Development Agreement was submitted. Therefore, the application is deemed incomplete.

**Comment #16 Update** – Not Received in the March 5<sup>th</sup>, 2024 re-submittal package nor the May 3<sup>rd</sup>, 2024, re-submittal package. **INCOMPLETE**. Please refer to the Village Code Section 21-322(h) and Section 163.3221 Florida Statutes entitled Florida Local Government Development Agreement Act for purpose, contents, and legal effect. At this time a preliminary DA is required for the proposed LLA site plan modifications. The existing 2017 Development Agreement (DA) governs all development activities on the BHS site for 30 years. Unless the Village agrees to revisions to the 2017 development plan “contract” which are reflected in an amendment to the DA, the project cannot proceed, as it would be inconsistent with the approved plan. At the time of final approval of the Site Plan revisions, this must be completed. Please confirm and acknowledge that pursuant to Sec. 21-322(h) an amended DA is required – not a possibility.

In summary, the Village determined that the initial application package submitted on January 9<sup>th</sup>, 2024, and the applicant’s revised responses / supplemental information submitted on March 5 and May 3, 2024, the application remains **INCOMPLETE** at this time. Please address all the submittal completeness deficiencies review of the additional material and information requested. The Village has attempted to list the missing information items and address what we feel will be the most important issues for this application. There may be additional issues or questions that could arise from the review of the additional information requested.

Upon receipt and review of the above missing or incomplete items, the Village may find they are not adequate to address the incomplete determination and may request further information. Please revise the plan set, and provide the missing documents required as part of the Village's local land development regulations.

Sincerely,



Michael Miller

cc: Jorge Gonzalez, Villager Manager  
Eliezer Palacio, Building Official  
Susan Trevarthen, Village Attorney

# BAL HARBOUR

- V I L L A G E -

**ELIEZER PALACIO**  
**BUILDING OFFICIAL**

May 10, 2024

Bal Harbour Shops, LLC  
420 Lincoln Road, Suite 320  
Miami Beach, FL 33139  
Attn: Matthew Lazenby

Re: Site Development Plan Application – Initial Completeness Review  
Revisions to Approved Bal Harbour Shops Master Site Plan  
9700 Collins Avenue  
Village Project No.: SP2024-0003  
MMPA Acct. No.: 00-1103-0160C

Dear Sirs:

Pursuant to Section 166.033(2)(d), before a third request for additional information is made by the Village regarding a pending application, the applicant "must be offered a meeting to attempt to resolve outstanding issues." This letter is being sent to offer you that meeting on the above application.

The relevant Village personnel have the following availability for such a meeting if desired: Thursday, May 16 between 11 am and 2 pm, and Friday, May 17 between 1 and 3 pm.

Please advise whether you wish to have such a meeting, and if so, what time within these options works for you.

Sincerely,



Eliezer Palacio  
Building Official

cc: Jorge M. Gonzalez – Village Manager  
Michael J. Miller, AICP – Consultant Village Planner  
Susan L. Trevarthen, Esq. – Village Attorney