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YIMBY LAW

9/2/2021

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place - City Hall, Room 244
San Francisco, CA 94102

Board.of.Supervisors@sfgov.org
Via Email

Re: 450 O'Farrell Street

Dear San Francisco Board of Supervisors,

YIMBY Law submits this letter to inform you that the Board of Supervisors has an obligation to abide by all relevant state housing laws when evaluating the above captioned proposal, including the Housing Accountability Act (HAA).

California Government Code § 65589.5, the Housing Accountability Act, prohibits localities from denying housing development projects that are compliant with the locality's zoning ordinance or general plan at the time the application was deemed complete, unless the locality can make findings that the proposed housing development would be a threat to public health and safety. The most relevant section is copied below:

> (j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:
>
> > (1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
> >
> > (2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.
> >
> > . . .
> >
> > (4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and

> criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

The project proposed at 450 O'Farrell Street would demolish three existing buildings and construct a mixed use building up to 13-stories on O'Farrell and Shannon Streets and up to 4-stories on Jones Street. The project currently includes 316 group housing rooms with a maximum of 632 group housing beds; 48 of the rooms are designated to be rented at below-market rates.

The project was entitled by the Planning Commission at their September 13, 2018 meeting, and a revised application was approved again at their June 24, 2021 hearing with Conditions as amended to include: 1. Increase the number of larger group housing units, wherever feasible; 2. Provide balconies to maximum projection on all sides except O'Farrell Street; 3. Continue working with Staff to increase the number of bicycle parking spaces, up to 200; 4. Convert the ground-floor retail space to group housing units; and 5. Work with Staff to analyze the feasibility of converting the basement to additional group housing units.

An appeal letter was filed by the Tenderloin Housing Clinic and Pacific Bay Inn, Inc. on July 21, 2021. The Appeal Letter challenges previous actions that were not part of the June 24, 2021 action by the Planning Commission. Specifically, the appeal is based on objections to alleged construction impacts and the authorization for group housing at this site. None of the reasons stated as the basis for the appeal concern the items modified by the Planning Commission action. Nothing in the action of the Planning Commission affects the previously approved site plan and associated construction impacts, and group housing is a permitted use in this zoning district, requiring no Planning Commission or Board of Supervisors approval.

The amended Conditional Use Authorization which was approved by the Planning Commission falls well within the bounds of the General Plan. Even expanding our view to the project's previous approvals, including specific items within the Planned Unit Development, nothing proposed or adopted is outside the scope of the city's general plan to conclude that the project is not protected by the Housing Accountability Act. As the project is subject to protection under the HAA, the City is limited both in the actions it may take on the project and the number of hearings the project may be subjected to.

The second half of paragraph § 65589.5(j)(4) directs cities how to proceed when a project complies with the general plan, and the objective standards and zoning also comply with the general plan, "the standards and criteria [of the zoning] shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project."

Planned Unit Development and the Housing Accountability Act

Planning staff maintain that the conditional use authorization is not the problem when it comes to the project's status under the HAA. Rather their contention is that exceptions required as part of the PUD were what rendered the project HAA exempt. The specific parts of the PUD referenced include *"Planned Unit Development/ Conditional Use Authorization Condition of Approval Nos. 24, 25, 26, and 32 of Planning Commission Motion No. 20281, to reflect compliance of the amended Project with Sections 166, 155, 155.1, and 155.2, and of 415 of the Planning Code, respectively. The Commission must also approve the additional condition of approval related to Group Housing cooking facilities."* These are exceptions from height, rear yard setback, dwelling unit exposure, off-street loading requirements, and permitted obstructions standards, amongst others.

The above-referenced exceptions are to the zoning standards, not to the General Plan. The exceptions noted as inconsistent with the General Plan (*Housing Element Policies 1.1, 1.2, 1.10, 2.1, 4.1, 4.4, 4.5, 11.1, 11.2, 11.3, 11.4, 11.6, 11.8, 12.2; Urban Design Element Policies 1.3, 1.7, 2.6, 3.1, 3.5; and Commerce and Industry Element Policies 1.1, 2.1, & 6.4*) are not objective standards and cannot be considered in reviewing a project application for approval, , In addition, the Planning Commission has approved this project with the requested exceptions.

Like everything else in the CUA, as both originally entitled and amended, we do not believe that these provisions bring the project out of compliance with the General Plan. Though the project may require exceptions from specific zoning standards, these are all allowed under the PUD and CUA process without any zoning amendments or general plan amendments, and have been approved, the majority of them twice, by the Planning Commission.

If the project were asking for exceptions that exceed the scope of those allowed as part of the PUD and CUA process, or that were not in compliance with the general plan, then this issue would be different. The project does not propose anything of the sort however, and therefore should be considered covered by the HAA.

Conditional Use Authorization and the Housing Accountability Act

It is not the case that any additional approvals for a project besides a simple site permit automatically renders the Housing Accountability Act void. The Housing Accountability Act only allows localities to apply objective standards when evaluating projects. If a housing development proposal meets the objective criteria in a Conditional Use authorization (if there are any), it must be approved.

When approving the application, the Planning Staff and Commission found,

> *Planning Code Section 303 establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use authorization. On balance, the Project is consistent and does comply with said criteria as originally described in Section G of Planning Commission Motion No. 20281, except as amended below:*
>
> *A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.*

B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

(1) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

(2) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

C. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

Please be advised that the above-captioned exceptions noted in the Conditional Use Authorization approval are not objective standards, and cannot be considered in reviewing a project application for approval.

Hearing History

The Housing Crisis Act of 2019 amended the HAA to streamline the approval process of applications deemed to meet objective zoning and general plan requirements. The HAA, as amended, now reads:

> **§ 65905.5.** (a) Notwithstanding any other law, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, after the application is deemed complete, a city, county, or city and county **shall not conduct more than five hearings** pursuant to Section 65905, or any other law, ordinance, or regulation requiring a public hearing in connection with the approval of that housing development project. **If the city, county, or city and county continues a hearing subject to this section to another date, the continued hearing shall count as one of the five hearings allowed under this section**. The city, county, or city and county shall consider and either approve or disapprove the application at any of the five hearings allowed under this section consistent with the applicable timelines under the Permit Streamlining Act

In 2021 alone there have been eight Planning Commission hearings for this project, six of which were continued by the Planning Department:

January 7, 2021 - continued by Planning Department Staff
January 21, 2021- continued by Planning Department Staff
February 4, 2021 - continued at request of Sponsor
March 11, 2021 - continued by Planning Department Staff
April 1, 2021 - continued at request of Planning Department Staff & Sponsor
April 15, 2021 - continued by Planning Department Staff
June 10, 2021 - continued by Planning Department Staff
June 24, 2021 - Planning Commission Approved Application

The project application does not require a zoning or General Plan legislative amendment. This application has already exceeded the five-hearing maximum required under the law, and hearing

an appeal would constitute a further breach of the statutory requirement to approve or deny the application in a timely manner.

Conclusion

This project must be treated as any other project would be under the HAA. This means that the Board of Supervisor's discretion is limited in this case. The project does not pose a threat to public health and safety and complies with every objective General Plan standard. Not only was this project approved by Planning Commission on June 34, 2021, it has already been entitled previously, with very similar characteristics, on September 13, 2018; it is clear that Commission and planning staff agree with us on this point. The appeal filed against the approved project should be denied.

Yimby Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California.

I am signing this letter both in my capacity as the Executive Director of YIMBY Law, and as a resident of California who is affected by the shortage of housing in our state.

Sincerely,



Sonja Trauss
Executive Director
YIMBY Law