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YIMBY LAW

4/18/2022

Burbank City Council
275 East Olive Avenue
Burbank, CA 91502

citycouncil@burbankca.gov
Via Email

Re: 921-1001 W. Riverside Drive (Pickwick Gardens Development)

Dear Burbank City Council,

YIMBY Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California. YIMBY Law sues municipalities when they fail to comply with state housing laws, including the Housing Accountability Act (HAA). As you know, the City Council has an obligation to abide by all relevant state housing laws when evaluating the above captioned proposal's conformance with objective standards, including the HAA. Should the City fail to follow the law, YIMBY Law will not hesitate to file suit to ensure that the law is enforced.

The Proposed Project includes demolition of existing commercial buildings and construction of a 96-unit townhome-style condominium project. It is located on one of two parcels encompassing an 8.53-acre property, which is known as the Pickwick Gardens. Of the total units, 10.2% (10 units) would be deed restricted affordable to "low income" households (80% of LA County Area Median Income). This project is eligible for streamlining under the provisions of SB-35 (Government Code Section 65913.4), with 10% of the Base Units as Affordable.

Consistency with Objective Standards

The Planning Department's staff have reviewed the above-captioned proposal and have made the recommendation to find that this proposal is consistent with all applicable objective zoning and general plan standards. Unless the City Council has some other evidence or reason to believe the staff recommendation has been made in error, it must find that this Proposal meets the requirements of the Streamlined Ministerial Approval Process created by SB-35 (2017, Wiener).

The staff report produced for this agenda item properly notes that variances to zoning standards granted via the waiver and concessions afforded by the California State Density Bonus Law do not constitute an inconsistency with meeting objective standards for the purposes of the Streamlined Ministerial Approval Process. Additionally, density bonus "shall be interpreted liberally in favor of producing the maximum number of total housing units" (65915(r)). Therefore, unless there is a preponderance of evidence of a violation of a written health and safety standard or policy, the concession or waiver must be granted. The staff have found no evidence of a violation of a written health and safety standard or policy that was in effect at the time of the development application,

so it would be remarkable if the council were to find otherwise. Some members of the public may raise concerns about public health and safety, however unless those concerns are regarding a written, objective, health and safety standard that cannot be mitigated, and there is a preponderance of evidence to support that concern, then the density bonus must be granted.

Role of City Council

We have cautioned you from proceeding with having the City Council be the ministerial oversight body for SB-35 development applications. Allowing a political body to perform a function where politics cannot play a role was a strange, confusing decision to make. But now that the Council is in this position, you must follow the law, which requires you to put aside your politics, your conscience, or anything else that might " inhibit, chill, or preclude" you from being objective in analyzing the Proposal's conformance with the allowable zoning and general plan standards, and "be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution." (see Government Code 65913.4(c)).

This evening's Special Meeting is set to be a political theater where no politics can be considered by the council. You may hear from speakers with different opinions about what you should do or why, but unless a speaker is presenting you with compelling evidence that will satisfy that the "preponderance of evidence" threshold to support a public health or safety disapproval of a project, you are compelled to approve the project by both the Housing Accountability Act, and via the Streamlined Ministerial Approval Process, where you cannot use any judgment other than considering whether the project meets all objective standards required by the law.

California Government Code § 65589.5, the Housing Accountability Act, also 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.

Conclusion

The above captioned proposal is zoning compliant with its entitled Density Bonus Concessions and Waivers, and general plan compliant, as it meets all of their objective standards, and also meets the eligibility requirements to be considered under the Streamlined Ministerial Approval Process therefore, your local agency must find the proposed application consistent with the applicable objective design standards, and proceed with the ministerial approval of the application, or provide "written documentation in support of its denial identifying with specificity the standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards." Should the City fail to comply with the law, YIMBY Law will not hesitate to take legal action to ensure that the law is enforced.

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