Yes In My Back Yard

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12/9/2019

Clayton Planning Commission
Clayton City Hall
6000 Heritage Trail
Clayton, CA 94517

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Via Email

Re: 6170 High Street, 6450 Marsh Creek Rd, 6490 Marsh Creek Rd
SPR-04-17

Dear Clayton Planning Commissioners,

Yes In My Back Yard submits this letter to clarify some points of contention that came up in the previous meeting on this project on November 12th. We'd like to go over some of the relevant details of the Housing Accountability Act (HAA) and State Density Bonus Law.

**Housing Accountability Act**

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 above captioned proposal is zoning compliant and general plan compliant, therefore, your local agency must approve the application, or else make findings to the effect that the proposed project would have an adverse impact on public health and safety, as described above.

**Density Bonus**

Cities are required to issue concessions and incentives associated with the State Density Bonus Law (Gov Code Section 65915) provided the project fulfills all the objective zoning and design requirements. Cities are allowed to deny concessions and incentives provided they can demonstrate that doing so would impose no financial costs on the project, that the granting of the incentives violate a state or federal law, or that the incentives pose a threat to public health and safety.

*(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the*

*concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:*

*(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).*

*(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.*

*(C) The concession or incentive would be contrary to state or federal law.*

This significantly limits the discretion on the part of the Planning Commission in this case. None of the concessions or incentives being requested could be denied without having a significant financial impact on the project. Similarly, none of the concessions or incentives violate state or federal law.

To address another concern that came up in the previous discussion of the project, density bonus requirements are calculated for an entire project, not for individual buildings. Though the program is called a "density bonus" it encompasses a variety of different types of concessions and incentives, some of which do not directly impact the physical dimensions of a given building.

**Conclusion**

The Planning Commission's discretion on this matter is limited. The Commission may assess the project's compliance with objective zoning and design standards contained within the city's existing ordinances. Beyond that, any denial must be supported by findings, based on existing city standards, of a specific adverse impact on public health and safety.

Yes In My Back Yard 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 Yes In My Back Yard, and as a resident of California who is affected by the shortage of housing in our state.

Sincerely,



Sonja Trauss
Executive Director
Yes In My Back Yard