[Exempt From Filing Fee Government Code § 6103]

ALESHIRE & WYNDER, LLP
JUNE S. AILIN, State Bar No. 109498
jailin@awattorneys.com
PAM K. LEE, State Bar No. 246369
plee@awattorneys.com
2361 Rosecrans Ave., Suite 475
El Segundo, California 90245
Telephone: (310) 527-6660
Facsimile: (310) 532-7395

Attorneys for Respondents and Defendants
CITY OF CULVER CITY and CITY COUNCIL
OF THE CITY OF CULVER CITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

YES IN MY BACK YARD, a California nonprofit corporation; and SONJA TRAUSS,

Petitioner and Plaintiff,

v.

CITY OF CULVER CITY; CITY COUNCIL OF THE CITY OF CULVER CITY; and DOES 1-25,

Respondents and Defendants.

Case No. 20STCV43253

OPPOSITION BRIEF OF RESPONDENTS AND DEFENDANTS CITY OF CULVER CITY AND CITY COUNCIL OF THE CITY OF CULVER CITY

Assigned for All Purposes to:
Hon. Mary Strobel, Dept. 82

Action Filed: 11/10/2020

Date: Feb. 22, 2022
Time: 9:30 a.m.
Dept. 82

TABLE OF CONTENT

I. INTRODUCTION 4

II. STATEMENT OF FACTS 5

A. The City Undertook A Study of the Impact of Residential Development Standards in the R-1 Zone 5

B. JKA Makes Recommendations 6

C. The City's Planning Commission Adopts Recommendations to the City Council Regarding Amending Development Standards in the R-1 Zone 6

D. Ordinance No. 2020-010 Amending Development Standards in the R-1 Zone Is Introduced 8

E. YIMBY Comments on the Ordinance 8

F. The Ordinance Is Adopted 9

G. The Department of Housing and Community Development Found No Issues With The Ordinance 10

III. ARGUMENT 10

A. The Result Sought By The Legislature in Enacting SB 330 Is The Production of More, Smaller Homes, Not More Bedrooms 10

B. Government Code § 66300 Does Not Absolutely Prohibit Changes in Development Standards Affecting Housing Density and Intensity 13

C. Ordinance No. 2020-010 Does Not Actually Result in a Reduction of the Maximum Buildable Square Footage in the Single Family Residential Zone 15

D. Ordinance No. 2020-010 Does Not Violate § 66300 Because It Facilitates Development of Housing for Lower Income Households and Increased Density 16

IV. CONCLUSION 18

TABLE OF AUTHORITIES

Page(s)

Statutes

Govt. Code § 65589. 11

Govt. Code § 65589.5(m)(n) 10, 11

Govt. Code § 65905.5 11

Govt. Code § 66300 ..... 4, 5, 8, 9, 10, 11, 12, 13, 15, 16, 17

Govt. Code § 66300(a) 14

Govt. Code 66300 (a)(1) 10, 12

Govt. Code § 66300(a)(1)(A)(5) 15

Govt. Code § 66300(a)(1)(A)(7) 15

Govt. Code § 66300(b)(1) 10, 15

Govt. Code § 66300(f)(A) and (C) 17, 18

Govt. Code § 66300(f)(3) 17

Govt. Code § 66300(i) 4

Govt. Code § 66300(i)(1) 8

Govt. Code § 66300(j) 4, 17, 18

Health & Safety Code § 50079.5 ..... 14, 17

Other Authorities

SB 9 12

SB 330 ..... 8, 9, 10, 11, 12, 16, 18

Respondents and Defendants, City of Culver City and City Council of the City of Culver City (collectively, "City"), file the following Opposition Brief in response to the Opening Brief filed by Petitioners and Plaintiffs Yes In My Back Yard and Sonja Trauss (collectively, "YIMBY").

I. INTRODUCTION

On July 13, 2020, the City Council of the City of Culver City ("City Council") adopted Ordinance No. 2020-010 amending the City's Zoning Code with respect to single family zone development standards (the "Ordinance"). In search of a lawsuit to try to prove a point, YIMBY has challenged the City's Ordinance based on a severely narrow and literal reading of state statute, Government Code § 66300, and without a complete and accurate understanding of both the statute and the Ordinance it claims violates that statute. Government Code § 66300[1] does not contain an absolute prohibition on certain changes in development regulations. The statute recognizes that development regulations, if read literally and narrowly, may appear to reduce housing density and intensity when they do not. For example, subdivisions (i) and (j) of § 66300 allow changes that actually may increase density or make housing more affordable, even if at first blush the changes appear contrary to the literal text of the statute. YIMBY, however, has ignored those important provisions of the statute and has focused on a nonexistent metric for alleging a violation of the statute (i.e., the number of bedrooms YIMBY speculates cannot be built as a result of the Ordinance), which the Legislature has not adopted, and which was not raised in YIMBY's comments on the Ordinance prior to its adoption.

In practical terms and application, the Ordinance does not violate Government Code § 66300 as it does not functionally decrease the amount of square footage that can be built on a single family residential lot in the city; rather, it is intended to result in increased density by encouraging the construction of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"), which may provide housing for lower income households. Therefore, this Court should deny the petition for writ of mandate.

[1] References to sections are to the Government Code unless otherwise indicated.

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW

II. STATEMENT OF FACTS

A. The City Undertook A Study of the Impact of Residential Development Standards in the R-1 Zone

Resident property owners of single family neighborhoods in the City have long been concerned about unattractive, box-like "McMansions" being built in their neighborhoods, whether by property owners undertaking their own renovations or by developers buying older homes and replacing them with new homes. Moreover, property owners have felt oppressed by the loss of light and air, shadows cast on previously sunny rooms (AR 229, even to the point of describing the atmosphere as similar to "living next door to a penitentiary." (AR 733.) One resident commented that "A .45 FAR is tried and tested and is working beautifully [in other cities]. The only thing being lost here is the ability to screw over your neighbors in pursuit of profit." (AR 344.)[2]

As a result of these concerns, the City began a process which played out over several years and began before Government Code § 66300 went into effect in 2020.

On January 4, 2016, the City Council adopted an anti-mansionization ordinance, but at the same time directed City staff to undertake a more detailed study of the issue. The City retained John Kaliski, Architects ("JKA"), to undertake studies of residents' concerns and preferences through extensive neighborhood meetings and an online questionnaire. (AR 67-68, 89, 661.) There were 99 comments made in person at neighborhood meetings and 239 responses to the online survey. (AR 26, 27.) The comments are summarized at AR 29-35, 203-222.

Some residents expressed concerns about the impact of large two-story homes next door to one-story homes, the loss of light and air, the inconsistency of development that results from renovations, and new homes that are built out to the maximum square footage allowed. Others were more concerned about being able to build more space to accommodate growing families, elderly parents who would be safer living with their children, the need for home office space, and the impact on property values if options for expansion were limited.

[2] Other cities have FARs less than .45. (AR 25, 69, 764:1-4.)

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW

B. JKA Makes Recommendations

Based on the public's input, JKA developed a set of recommendations for amending the City's R-1 development standards and also developed unique hillside development standards addressing the differences between development standards for the City's hillside neighborhoods relative to neighborhoods built on largely level topography. (AR 12-15, 36-57.) As relevant to the issues raised by YIMBY in this case, JKA's initial recommendations included the following proposed changes to the development standards:

- Change FAR from .60 to .45 for lots less than 10,000 SF and .35 for lots 10,000SF and larger (AR 12)
- Include mezzanine areas and accessory buildings in calculation of FAR (AR 12)
- Increase all setbacks and distances between structures on the lot (AR 13-14)
- Continue to require a minimum of two off street parking spaces per dwelling unit (AR 15)

A joint Planning Commission/City Council study session took place on May 8, 2019 at which JKA's original recommendations were discussed. (AR 16-77, 192-200.)

C. The City's Planning Commission Adopts Recommendations to the City Council Regarding Amending Development Standards in the R-1 Zone

City staff presented revised recommendations from JKA for amendments to R-1 development standards to the City's Planning Commission on January 22, 2020. (AR 160-165, 166-296, 297-306.) The recommendations included:

- Change FAR to .45 (AR 169, 181)
- Exclude garages located behind the dwelling unit from calculation of FAR (previously only detached garages were excluded from calculation of FAR) (AR 170)
- Increase front and side yard setbacks (AR 171)
- Count double height area twice in calculating FAR, but exclude 250 SF of that area from the calculation (AR 171-172)
- Allow half covered or uncovered parking in rear or sideyard setbacks (AR 172, 188-189)

The objective of the recommendation regarding R1 development standards was to strike a balance between concerns about mansionization and single story homes being overwhelmed by two-

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW

story homes, while still allowing people to build a useful home. (AR 327-329.) The objective was not to change building intensity, but more so to change how homes are perceived from the street. (AR 329.) To address the issue of large homes looming over side yards, the recommendations included establishing an encroachment plane on the sides of a home that is on a diagonal rather than simply requiring the upper story of a home to be entirely stepped back a specific distance. (AR 333-336.)

The Planning Commission voted to recommend the changes to the City Council as proposed with the exception of the FAR. The Planning Commission recommended, on a 3 to 2 vote, that the FAR be changed to .50 instead of .45. (AR 304, 450-451.)

D. Ordinance No. 2020-010 Amending Development Standards in the R-1 Zone Is Introduced

The City Council held a public hearing on the Planning Commission's recommendation on May 26, 2020 and Ordinance No. 2020-010 was introduced. (AR 495-772.) The proposed changes to the development standards, largely in line with prior proposals, are summarized in the staff report for that meeting. (AR 513-516.) Much of the discussion at the meeting centered around whether the FAR should be .50 or .45. (AR 691-692, 742, 750-765.) The City Council decided to set the FAR at .45 and to adopt the other changes in the development standards as recommended by the Planning Commission. (AR 647-648, 768-770.)

One of the City Council's stated objectives in changing the FAR from the .50 recommended by the Planning Commission to .45 was to encourage and facilitate the construction of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs") in areas where they are allowed. (AR 763.) On January 13, 2020, the City Council had adopted an ordinance regarding ADUs and JADUs, in compliance with new statutes requiring, among other things, that ADUs and JADUs not be counted toward FAR. (AR 148-159.) The City's ordinance prohibits ADUs in the Culver Crest overlay zone, but not other hillside areas, due to differing topographic, roadway geometrics, and geologic conditions. (AR 140, 155, 156, 158.)

E. YIMBY Comments on the Ordinance

On June 5, 2020, the City received a comment letter regarding the proposed ordinance from Sonja Trauss at YIMBY Law. (AR 854-855.) Among other things, the letter asserts that the change in FAR and "the changes in the method by which side and front yard setback requirements are applied to buildings of particular heights would . . . result in a reduction in residential intensity permitted on affected sites." (AR 855.) "Lower FAR and excessive setback result in smaller homes with fewer bedrooms, limit options for ADU placement, and disincentivize development. It is difficult to distinguish between a 'monster home' and a home that simply maximizes space for more residents. This particular ordinance is not well-crafted to make this distinction." (AR 855.) The letter, however, does not attempt to demonstrate or illustrate the alleged impacts of the proposed ordinance.

The letter goes on to make statements regarding Ms. Trauss' view of Section § 66300: "The only way for the city to move forward with this effort and remain in compliance with state law is to concurrently re-zone for additional capacity elsewhere. The law allows for reductions in residential intensity provided that the deficit is remedied elsewhere. As long as there is no net-loss in residential intensity or capacity the ordinance is permitted under Govt. Code § 66300(i)(1)." (AR 855.)

On July 21, 2020, Ms. Trauss sent an email to the City Council and the City's Current Planning Manager which read as follows:

> I am writing regarding the above captioned project to follow up on our earlier letter, which is also attached to this email.
>
> I will also comment in person at your meeting tomorrow. I strongly urge you follow the state law and either *abandon this downzoning, or pass an upzoning that increases residential capacity in some other part of Culver City.*
>
> The law is very clear that it applies to the situation here, where the zoning change is a reduction in floor area ratio, "For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio ..." 66300(b)(1)(A).
>
> *We haven't yet had an opportunity to enforce SB 330*, because we have not yet come across an example of a city transgressing it as clear and straightforward as this one.

(AR 857 [emphasis added].)

The proposed ordinance was on the City Council's agenda for June 22, 2020 for its second reading and adoption as part of the consent calendar, but a need for separate discussion of the item arose. (AR 868 [item C-7].) The City's Current Planning Manager addressed the City Council on whether the proposed ordinance was consistent with SB 330 and Ms. Trauss addressed the City Council on that subject as well. (AR 906; *see also* Exhibit 3 to Request for Judicial Notice filed concurrently herewith ("RJN").) The agenda item was held over to the next City Council meeting on July 13, 2020 to provide time for discussion between Ms. Trauss and City staff. (AR 907, 958.)

F. <u>The Ordinance Is Adopted</u>

On the July 13, 2020 City Council agenda, the second reading and adoption of the ordinance was again on the consent calendar. (AR 974 [item C-15].) The staff report concluded the Ordinance is consistent with SB 330, particularly noting that the Ordinance did not reduce the number of units that could be built on a lot, facilitates construction of more units per lot, and overall does not actually decrease the total square footage allowed on a lot. (AR 981-983.) The item was removed from the consent agenda to read a typographical correction into the record, but there was no further comment from YIMBY. (AR 1074-1075.) The City Council voted unanimously to approve the ordinance. (AR 1058, 1075.)

Ordinance No. 2020-010 includes the following finding (AR 1043):

> The proposed Zoning Code Amendment was initiated as a result of public concerns that new construction in single-family neighborhoods is affecting quality of life for existing residents due to large homes. The proposed Zoning Code Amendment provides new regulations to better fit new homes within existing single-family zones consistent with prevailing FAR in adjacent cities, and provide opportunities for the creation of additional housing development through the construction of accessory dwelling units (ADUs) and junior accessory dwelling unit (JADUs). By reducing bulk and mass of a home, residents will have more opportunities for light and air access, privacy, maintenance of existing single-family neighborhood character, and development of ADUs and JADUs.
>
> New regulations will allow for existing single family dwelling units averaging between 1,200 and 1,800 square feet to further develop and expand to approximately 2,250 square feet. Further, consistent with Government Code Section 66300, the proposed Zoning Code Amendment facilitates the preservation of existing development and development of additional dwelling units through the construction of ADUs and JADUs; restricts the over-development of single family parcels, which has

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW

traditionally limited the ability to develop additional units via ADUs or JADUs; provides additional opportunities to construct ADUs and JADUs, effectively increasing the housing supply and reducing the costs of housing development; and does not propose any changes which result in a net loss of residential capacity. In addition, with respect to hillside development standards for the Residential Hillside Overlay shown in Exhibit A, the proposed changes maintain consistency with the Culver Crest Overlay Zone, which were previously implemented in response to unique life safety conditions in the hillside areas. Based on the foregoing, the Zoning Code Amendment will not be detrimental to the public interest, health, safety, convenience, and welfare of the City.

G. The Department of Housing and Community Development Found No Issues With The Ordinance

The Legislature has tasked the California Department of Housing and Community Development (HCD) with a variety of responsibilities related to housing policy, production and regulation. (*See generally,* Health & Safety Code, Div. 31, Parts 1 and 2.) The responsibility has been extended to various aspects of the Housing Crisis Act. (§§ 65589.5(d)(1) & (g)(4), 65941.1(b)(2), 66300 (a)(1) & (b)(1).) The City thus consulted with HCD regarding the Ordinance, both before and after its adoption. HCD personnel considered the question whether the City's ordinance ran afoul of Section 66300 to be a difficult one, but HCD has taken no action to challenge it. In fact, the same HCD employee who described the question as a difficult one later said HCD did not have any issues with the ordinance. (AR 1123-1127.) HCD, when asked to review recent housing-related ordinances adopted by the City, again responded there were no issues. (AR 1122-1130, 1373-1383.)

III. ARGUMENT

A. The Result Sought By The Legislature in Enacting SB 330 Is The Production of More, Smaller Homes, Not More Bedrooms

While the City was going through the several years-long process of adopting the Ordinance , in 2019, the Legislature was considering, and ultimately adopted, legislation intended to address concerns about the difficulty of development of single and multi-family housing in California. The bill, known as SB 330, or the "Housing Crisis Act" (the "Act") went into effect on January 1, 2020, enacting and amending various sections of the Government Code. Among other things, SB 330

addresses delays and subjectivity in the processing and approval of housing development projects by, among other things, limiting the discretion of city and county officials who approve these projects. (Govt. Code §§ 65589.5, 65905.5.) It also seeks to expedite litigation regarding housing development projects. (Govt. Code § 65589.5(m)(n).)

SB 330 also limits the ability of local legislators to make changes to zoning ordinances and development regulations. (§ 66300.) Changes to such ordinances and regulations are at issue in this case. YIMBY contends the City has made changes "outlawed" by the Act.

YIMBY contends the Legislature's objective in enacting Section 66300 was the creation of larger homes and more bedrooms. (Opening Brief at 12-13.) As discussed elsewhere in this Opposition Brief YIMBY did not exhaust administrative remedies as to the claim the Legislature's intent was the creation of larger homes and more bedrooms. But the more important issue is whether larger homes and more bedrooms was in fact the Legislature's objective. It was not.

SB 330 begins with express statements of legislative intent which are not codified. (AR 1009-1011.) Those statements of legislative intent make it clear the objective was increased density – more dwelling units per lot – rather than increased square footage per dwelling unit.

Section 2(a)(4) of SB 330 states: "California needs an estimated 180,000 additional homes annually to keep up with population growth, and the Governor has called for 3.5 million new homes to be built over the next 7 years." Note that the Legislature is focused on additional homes, not additional bedrooms. (AR 1010.)

The Legislature also expressed its concern about the price per dwelling unit, both in terms of construction costs for developers and purchase price for homebuyers. (*See* SB 330, Section 2(a)(5), (6) (C) & (D), (9) & (10); AR 1010.) Smaller homes cost less to build and buy.

The solution to the housing crisis, the Legislature concluded, lies in rapidly remodeling or developing underutilized properties "to add affordable homes without subsidy where they are needed with state assistance." (*See* SB 330, Section 2(13); AR 1011.) "Building *more smaller homes* with good access to schools, parks, and services, will provide the most immediate help." (*See* SB 330, Section 2(14) [emphasis added]; AR 1011.)

///

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW

Legislative committee reports also support the conclusion the Legislature's concern was units, not square footage or bedrooms. "Zoning ordinances also add additional constraints that can reduce *density*: setbacks, floor-area ratios, lot coverage ratios, design requirements, dedications of land for parks or other public purposes, and other regulations can *reduce the space on a lot that a building can occupy in ways that lower the* ***number of units*** *it is feasible to construct on a lot*." (Report of Senate Committee on Housing, dated April 22, 2019, RJN, Ex. 1, p. 16 [emph. added].) "According to Up for Growth's 2018 analysis, housing underproduction is rampant throughout the United States, but California's ***underproduction*** is greater than the other 49 states combined. According to the 2016 McKinsey study, California's housing deficit is over 2 million units, and that it would require production of 500,000 units a year (3.5 million units total) over a seven year period to normalize the state's housing prices. According to HCD, there needs to be 180,000 units built per year to maintain housing costs. By contrast, housing production averaged less than 80,000 new homes annually over the last 10 years." (Report of Assembly Housing and Community Development Committee, dated June 17, 2019, RJN, Ex. 2, p. 27 [emph. added].)[3]

Subject to certain conditions, the City allows the construction of a single family dwelling, an ADU and a JADU on the same lot. (AR 155-156.) As discussed in more detail below, the changes to the allowed FAR and the way in which FAR is calculated that were made by the Ordinance increase the potential for construction of up to three dwelling units on a lot where only one unit could have been built. Increasing potential density in this manner does not run afoul of Section 66300; to the contrary, Section 66300 recognizes that a change in development standards can be beneficial for purposes of the objectives of SB 330. The Ordinance does not reduce the buildable square footage on a lot in a way that lowers the number of units that can be built; it does

[3] YIMBY looks to SB 9, effective January 1, 2022, to support its interpretation of SB 330 and to claim the Ordinance "thwarts" SB 9. (Opening Brief at 13.) Legislation enacted in 2021 sheds no light on the legislative intent of a bill enacted two years earlier. But SB 9 supports the City's position, not YIMBY's, because it shows the Legislature's intent is to create *more* housing units, not *larger* housing units. Splitting single family lots results in smaller lots and, of necessity, smaller homes, not larger ones.

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW

just the opposite, by increasing the feasibility of building more units on a lot. Therefore, Ordinance No. 2020-010 is fully consistent with the Legislature's intent.

B. Government Code § 66300 Does Not Absolutely Prohibit Changes in Development Standards Affecting Housing Density and Intensity

As relevant to this case, Government Code § 66300, provides as follows:

(b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city[4] shall not enact a development policy, standard, or condition that *would have any of the following effects*:

(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district *below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018*, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, *"less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio*, new or increased open space or lot size requirements, or *new or increased setback requirements*, minimum frontage requirements, or maximum lot coverage limitations, or anything that *would lessen the intensity of housing*.

. . .

(f) (1) Except as provided in paragraphs (3) and (4) and subdivisions (h) and (i), this section shall prevail over any conflicting provision of this title or other law regulating housing development in this state to the extent that this section more fully advances the intent specified in paragraph (2).

[4] Section 66300 (a)(1) defines "affected city" to include charter cities.

(2) It is the intent of the Legislature that this section be broadly construed so as to maximize the development of housing within this state. Any exception to the requirements of this section, including an exception for the health and safety of occupants of a housing development project, shall be construed narrowly.

(3) This section shall not be construed as prohibiting the adoption or amendment of a development policy, standard, or condition in a manner that:

(A) Allows greater density.

(B) Facilitates the development of housing.

(C) Reduces the costs to a housing development project.

(D) Imposes or implements mitigation measures as necessary to comply with the California Environmental Quality Act . . .

. . .

(i) (1) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.

. . .

(j) Notwithstanding subdivisions (b) and (f), this section *does not prohibit* an affected city or an affected county from enacting a development policy, standard, or condition *that is intended to preserve or facilitate the production of housing for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or housing types that traditionally serve lower income households,* including mobilehome parks, single-room occupancy units, or units subject to any form of rent or price control through a public entity's valid exercise of its police power.

[Emphasis added.]

Subdivision (a) of Section 66300 contains definitions applicable to terms in the section. It defines "development policy, standard, or condition" as a provision of, or amendment to, a general

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW

plan, a specific plan, or a zoning ordinance. (§ 66300(a)(1)(A)(5).) "Objective design standard" means "a design standard that involve[s] no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application." (§ 66300(a)(1)(A)(7).) The statute does not define the terms "intensity of land use," "intensity of housing," or "residential capacity."

C. <u>Ordinance No. 2020-010 Does Not Actually Result in a Reduction of the Maximum Buildable Square Footage in the Single Family Residential Zone</u>

YIMBY claims the City did not look at the FAR amendment as a method of encouraging construction of ADUs and JADUs until after YIMBY submitted its June 5, 2020 comment letter. (Opening Brief 7:15-25) That is not the case. At the May 8, 2019, joint Planning Commission/City Council study session, there was already a focus on ADUs and how a reduction in FAR would affect opportunities to create them, and were mentioned when the Ordinance was introduced. (AR 49, 195-198, 670.)

Be that as it may, what § 66300 focuses on is the *effect* of a change in development standards, not the reasons the change was made. (§ 66300(b)(1): "an affected county or an affected city shall not enact a development policy, standard, or condition that ***would have any of the following effects***." [emphasis added]) Petitioner admitted in its comment letter regarding the Ordinance it is the effect of the change that matters, not just a literal reading of words: "The law is specific in its prohibition of modifying floor area ratios or mandatory setbacks *in a way* that reduces the intensity of housing development." (AR 855 [emphasis added].)

The changes made by Ordinance No. 2020-010 did *not* result, from a practical standpoint, in a reduction in the density or intensity of development. YIMBY ignores the fact the Ordinance also made changes in the type of building area included in calculating FAR, with the result being that the amount of square footage that can be built is not impacted by the Ordinance. For example, maximum square footage on a typical 5,000 square foot loot, including areas that were modified to not count towards FAR, such as garages, and ADUs, is 4,250 square feet, which would result in an actual FAR of as much as .70. (AR 666-667; see also AR 981-982.) Add a basement, which also

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW

is not counted toward FAR, and the actual FAR could be even greater. This is actually more buildable square footage than would be allowed with an FAR of .60 in the context of pre-Ordinance No. 2020-010 development standards, in which a garage would count toward FAR (unless it is at the rear of the lot), covered parking is required, and a second story must be stepped back 25 feet from the front of the house.

YIMBY misrepresents the changes made by the Ordinance with regard to setbacks. The front setback requirement was changed in a way that actually can increase maximum square footage. Previously, the front setback required for a single story home was 20 feet; that setback is unchanged. (AR 1046.) For two-story homes, the previous requirement was 20 feet for the first story if the second floor were stepped back an additional 5 feet, but 25 feet if the second story was not stepped back. The Ordinance changed that to simply 20 feet for the first story and 25 feet for the second story. (AR 1047.) While this impacts the ability to build a second story that is not stepped back, it does not take floor area away from the first story as the prior regulation did.

Side yard setbacks under the Ordinance remain at a 5 foot minimum. The new requirement that there be a 1.1 inclined setback plane starting at 18 feet above a side lot line is not a substantial change and does not result in an "excessive" side yard setback. (AR 1047, 526-527.)

Notably, HCD was on notice of the City's Ordinance, both before and after its adoption, and concluded it did not have any issues with the Ordinance's consistency with SB 330. (AR 1122-1130, 1373-1383.)

D. <u>Ordinance No. 2020-010 Does Not Violate § 66300 Because It Facilitates Development of Housing for Lower Income Households and Increased Density</u>

In YIMBY's view, Section 66300 only allows a change in development standards if, at the same time, "the deficit [in density/intensity] is remedied elsewhere." (AR 855.) That is not correct. Section 66300 itself recognizes that not all changes have negative impacts and that some changes can be beneficial. Subdivision (f)(3) of Section 66300 provides:

> (3) This section shall not be construed as prohibiting the adoption or amendment of a development policy, standard, or condition in a manner that:
>
> (A) *Allows greater density.*

(B) *Facilitates the development of housing*.

(C) *Reduces the costs to a housing development project.*

[Emph. added]

Subdivision (j) provides as follows:

> (j) Notwithstanding subdivisions (b) and (f), this section *does not prohibit* an affected city or an affected county from enacting a development policy, standard, or condition *that is intended to preserve or facilitate the production of housing for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or housing types that traditionally serve lower income households,* including mobilehome parks, single-room occupancy units, or units subject to any form of rent or price control through a public entity's valid exercise of its police power.

[Emph. added.]

Ordinance No. 2020-010 is exactly what the Legislature had in mind when it included subdivisions (f)(3) and (j) in Section 66300. How much square footage gets built on any particular lot within parameters established by state law and local ordinances ultimately is within the discretion of the developer or homeowner. Some will choose to build the maximum square footage allowed; others will undertake more modest projects. In addition, different neighborhoods have different characters and ambience. The Legislature has not expressed an intent to completely homogenize all residential development. If that were the objective, the Legislature would have simply adopted laws dictating FAR, setbacks, height, etc., in single family zones. It has not done that. The Legislature has not seen fit to dictate how people choose to allocate the buildable square footage allowed to different functions.

Section 66300 allows neighborhood character to be preserved as long as the objectives of the Housing Crisis Act are furthered by those changes. Rather than allow a single large dwelling to max out the allowed square footage, the City's approach encourages the use of developable square footage for habitable space rather than enclosed garages that dominate the street view of properties by excluding a rear garage from calculation of FAR. Double height spaces such as stairwells and elevator shafts increase mass but are not living space. The Ordinance excludes 250 SF of such

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW

spaces from the calculation of FAR, making it possible to build a second story without losing square footage to the stairwell, but discourages large double height spaces built just for the sake of their existence by counting any floor area above 250 SF for each floor. A property owner who wants to maximize square footage can do so by including an ADU or JADU on the property, which *doubles density on an R-1 lot*, and *creates housing for lower income households* as contemplated by § 66300(f)(A) and (C) and (j). In addition, smaller homes cost less to build and buy. Accordingly, there is no basis for concluding the Ordinance violates § 66300.

IV. CONCLUSION

For the reasons set forth above, YIMBY's Petition for Writ of Mandate should be denied.

DATED: January 18, 2022

ALESHIRE & WYNDER, LLP
JUNE S. AILIN
PAM K. LEE

By: _____
JUNE S. AILIN
Attorneys for Respondents and Defendants CITY OF CULVER CITY and CITY COUNCIL OF THE CITY OF CULVER CITY

PROOF OF SERVICE

Yes In My Back Yard, et al. vs. City of Culver City, et al.
Case No. 20STCV43253

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

On January 18, 2022, I served true copies of the following document(s) described as on the interested parties in this action as follows:

ZACKS, FREEDMAN & PATTERSON, PC
Ryan J. Patterson, Esq.
601 Montgomery Street, Suite 400
San Francisco, CA 94111
Telephone: (415) 956-8100
Fax: (415) 288-9755
E-mail: ryan@zfplaw.com

Attorneys for Petitioner and Plaintiffs YES IN MY BACK YARD SONJA TRAUSS

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address cevans@awattorneys.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 18, 2022, at El Segundo, California.

Claire Evans

Claire Z. Evans

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW