

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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May 12, 2022

Elise Semonian, Community Development Director
City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939

Dear Elise Semonian:

RE: Magnolia Avenue Project (1169-1133 Magnolia Ave.) – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the Magnolia Avenue Project (Project) currently in review by the City of Larkspur (City). As HCD understands it, the Project application includes a concession request pursuant to State Density Bonus Law (SDBL) (Gov. Code, § 65915). Through our communication with the City and review of Project review documents, HCD is aware that the City is uncertain about the eligibility of the requested concession under SDBL. The purpose of this letter is to provide technical assistance regarding the application of SDBL concessions/incentives to assist the City in its review of the Project.

Background

On or around October 21, 2021, Edge Development Group, LLC (Applicant) submitted a preliminary application pursuant to Government Code section 65941.1. On December 13, 2021, within the 180-day timeframe outlined in statute (Gov. Code, § 65941.1, subd. (d).), the Applicant submitted a full application. On January 13, 2022, the City determined the application to be incomplete. Additionally, HCD understands that the Applicant submitted a revised application on May 10, 2022.

The Applicant proposes to develop a 20-unit mixed use for-sale housing development project on an approximately 1.55-acre site located at 1135-1169 Magnolia Avenue (APN 020-024-14). Four units would be deed-restricted affordable housing units, including two units for moderate-income households and two units for low-income households. A portion of one existing commercial building would remain on-site to be integrated into the new development.

The site has a general plan land use designation of Commercial and a zoning designation of C-2, Commercial. Additionally, the site is identified in the City's 5th Cycle housing element sites inventory.¹

The Applicant's Requested Concession

The Applicant has requested a concession to allow residential use on the ground floor of the proposed mixed-use project.² As HCD understands it, the City ordinarily requires residential use to be located exclusively above ground floor commercial use within the C-2, Commercial zoning district. Specifically, the C-2 zone conditionally permits "multiple dwellings and residential units above first-story commercial."³ Additionally, the Commercial general plan land use designation "encourages" second-story housing."⁴

Concessions/Incentives Under SDBL

Although waivers are restricted to physical development standards, SDBL intentionally defines incentives and concessions more broadly to encompass a broad range of possible zoning or other regulatory modifications proposed by a developer to aid in the production of affordable housing. As further described in Government Code section 65915, subdivision (k), a concession could mean any of the following types of modifications that result in identifiable and actual cost reductions to provide for affordable housing:

- A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission (see Gov. Code, § 65915, subd.(k)(1));
- Approval of mixed-use zoning in conjunction with the housing project in specified circumstances (see Gov. Code, § 65915, subd.(k)(2)); or,
- Other regulatory incentives or concessions proposed by the developer (see Gov. Code, § 65915, subd.(k)(3)).

SDBL Reasonable Documentation Standard

In reviewing any developer's requested concession/incentive, SDBL allows local agencies to require the submission of "reasonable documentation" to establish eligibility. (Gov. Code, § 65915, subd. (a)(2).) For instance, the City may require an applicant to provide a basic explanation to demonstrate that the incentive or concession meets the definition set forth in Government Code section 65915, subdivision (k), and provides an

¹ City of Larkspur Housing Element, 2015-2023, pg. 50 and Appendix A "Housing Opportunity Sites."

² Applicant's Magnolia Village Project Description, pg. 2.

³ Larkspur Municipal Code, section 18.48.022(K).

⁴ Larkspur General Plan, "Land Use Categories" pg. 7 of 28.

identifiable and actual cost reduction. However, the City cannot require any additional report or study as “reasonable documentation” under subdivision (j). (Gov. Code, § 65915, subds. (a)(2), (j), (k).)⁵

While early versions of SDBL required an applicant to prove that the incentives or concessions would result in identifiable cost reductions, AB 2501 (Bloom, Chapter 758, Statutes of 2018) reversed that burden by establishing a presumption that incentives and concessions inherently provide cost reductions, and that by providing cost reductions, they contribute to the development of affordable housing. A municipality has the burden of proof of demonstrating that a concession or incentive would *not* generate cost savings. Accordingly, SDBL, Government Code section 65915, subdivision (d)(1), requires cities to approve concessions, incentives and waivers unless specified written findings based on substantial evidence are made. The only reasons for denial are set forth in subdivisions (d)(1)(A)-(C), as follows:

- The concession/incentive does not result in identifiable and actual cost reductions.
- The concession/incentive would have a specific, adverse impact (as defined) upon public health and safety or the physical environment or on real property listed in the California Register of Historical Resources, and there is no feasible method to mitigate or avoid the impact.
- The concession/incentive would be contrary to state or federal law.

Applicability of SDBL Concession Provisions to Magnolia Village Project

In consideration of the above, HCD interprets that the Applicant’s proposed concession to allow residential use on the ground floor fits within SDBL’s broad construct – in particular, Government Code section 65915, subdivision (k)(3), that allows for *regulatory requirements proposed by the developer that result in identifiable and actual cost reductions*. In addition, HCD is aware that the Applicant has already provided reasonable documentation to establish eligibility by submitting a supplemental analysis describing the cost reductions associated with the requested concession. Here, the City must accommodate the requested concession and may only deny the request if one of the three preceding written findings can be made. HCD is not aware of any evidence demonstrating that any such findings can be made.

⁵ See also Sen. Rules Com., Analysis of Assem. Bill No. 2501 (2015 – 2016 Reg. Sess., as amended August 1, 2016, p.6)

Objective Standards and Housing Accountability Act

As the City proceeds in its review of the Project, HCD also reminds the City that pursuant to the Housing Accountability Act, or HAA (Government Code section 65589.5), if a proposed housing development project complies with applicable, *objective* general plan, zoning, and subdivision standards and criteria, the HAA prohibits a jurisdiction from disapproving the housing development project or requiring the project be developed at a lower density unless it makes specific statutory findings supported by a preponderance of the evidence in the record. (Gov. Code, § 65589.5, subd. (j)(1)). The HAA also clarifies that the receipt of a density bonus, incentive, concession, waiver, or reduction of development standards pursuant to SDBL is not a valid basis on which to find that a proposed housing development project is inconsistent, not in compliance, or not in conformity with an applicable objective standard or other similar provision. (Gov. Code, § 65589.5, subd. (j)(3)).

Lastly, for purposes of the HAA “objective” means “involving no personal or subjective judgment by a public official and being 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.” (Gov. Code, § 65589.5, subd. (h)(8)). As previously noted, HCD understands that the City’s general plan encourages residential above the ground floor; thereby, reserving the ground floor for commercial uses; and that the C-2 zoning seeks to implement this policy by conditionally permitting residential units above commercial. The City should continue to evaluate its general plan and zoning policies and standards as applied to individual projects to ensure consistency with these HAA provisions. Please see the Housing Accountability Act Technical Assistance Advisory for more information on the HAA: <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf>.

Conclusion

In sum, the City should identify the requested concession as eligible under SDBL and continue processing the application. While HCD respects the challenges inherent in interpreting ever-changing state housing law, the City and all local jurisdictions statewide have a statutory obligation to allow for exceptions to their standards for the purpose of facilitating the development of urgently needed affordable housing within SDBL-compliant projects. Finally, HCD reminds the City of the Legislature’s interpretive provisions: “This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.” (Gov. Code, § 65915, subd. (r).) Therefore, if ever in doubt regarding SDBL, the City should apply a liberal interpretation that helps to facilitate housing development.

HCD appreciates this opportunity to provide information to assist the City in its review of the Project and will continue to monitor its status. If you have any questions or need additional technical assistance, please feel free to contact Lisa Frank, of our staff, at lisa.frank@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief