

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

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May 24, 2022

Justin Hess, City Manager
City of Burbank
150 N. Third Street
Burbank, CA 91502

Dear Justin Hess:

**RE: City of Burbank Denial of Pickwick Gardens Housing Project and
Applicability of the Streamlined Ministerial Approval Process – Notice of
Violation**

The California Department of Housing and Community Development (HCD) has reviewed the City Council's denial of the Pickwick Gardens Housing Project (Project) on April 18, 2022, and has found that in denying the Project, the City of Burbank (City) has violated the Streamlined Ministerial Approval Process under section 65913.4 of the Government Code, more commonly known as SB 35, as detailed in this letter. As you are aware, the State of California is in a housing crisis, and the provision of housing is a priority in the highest order.

The City has 30 days to respond to this letter. HCD requests that the City provide a written response to these findings no later than June 24, 2022. HCD will review and consider the City's written response, if any, before taking any action authorized by Government Code section 65585, subdivision (j), including referral to the California Office of the Attorney General.

Background

In July 2021, a preliminary application for the project, prepared pursuant to Government Code section 65941.1, was submitted to the City. The Project proposes 96 dwelling units, of which ten units are proposed for lower-income households (80 percent or area median income), on 5.05 acres that is one of two parcels of an 8.53-acre property. The Project is located at 921-1001 W. Riverside Drive in Burbank, California. In the City's General Plan, the land use designation for that site is Rancho Commercial; in the City's Municipal Code, the site is zoned Commercial Recreation. Existing on-site uses consist of a bowling alley, restaurant, banquet rooms, garden wedding venue, ice rink, and parking lots.

On November 10, 2021, HCD sent an email to the City stating that, based on information reviewed, the Streamlined Ministerial Approval Process applied to the Project. On February 24, 2022, the applicant submitted a complete application.

On April 18, 2022, the City Council held a public hearing on the completed application, heard testimony, reviewed and considered the completed application, voted unanimously to deny the Project, and adopted City Council Resolution No. 22-29,310 (Resolution) formalizing the denial. The City Council denied the Project despite HCD's technical assistance informing the City that the Streamlined Ministerial Approval Process applied to the Project. The City Staff Report also correctly concluded that the Project was consistent with the applicable objective general plan and zoning standards, objective subdivision standards, and objective design review standards applicable to the Project based on the underlying zoning designation of C-R (Commercial Recreation) and the General Plan land use designation of Rancho Commercial.

Analysis

The City Council wrongfully denied the Pickwick Gardens Housing Project based on, among others, the following relevant findings in its Resolution:

- The Burbank 2035 General Plan designates the Project site as Rancho Commercial, which is a nonresidential land-use designation.
- Burbank Municipal Code ("BMC") Section 10-1-502 provides that residential uses are prohibited in the Commercial Recreation (CR) zone. In addition, residential uses have not been authorized within the CR zone under the City Planner Classification process established in BMC Section 10-1-503.
- In Burbank, residential development proposals for non-residential land use designations typically move forward under a General Plan Amendment, Planned Development, and a Development Agreement.

However, as explained below, the Project qualifies for the Streamlined Ministerial Approval Process because 1) the General Plan allows residential development in the Rancho Commercial zone; 2) where the General Plan and the zoning ordinance are in conflict, the General Plan controls, and the Project is consistent with the General Plan's objective standards; and 3) the General Plan's discretionary approval requirement does not apply under SB 35.

The General Plan's Rancho Commercial Land Use Designation Allows for Residential Development

Although the Rancho Commercial land use designation for the site falls under a section in the General Plan land use element regarding "non-residential land uses," the question for SB 35 purposes is whether the site's General Plan designation "allows

residential use or a mix of residential and nonresidential uses....” (Gov. Code, § 65913.4, subd. (a)(2)(C).) Here, a mix of residential and nonresidential uses is clearly allowed under the General Plan designation. The operative provisions of the General Plan expressly recognize that the properties within Rancho Commercial would include single family residential, some lower intensity multifamily, and commercial uses. The General Plan provides:

RANCHO COMMERCIAL

(Maximum 0.60 FAR, 20 units per acre with discretionary approval)

The Rancho Commercial designation is located in the unique Rancho Neighborhood that allows for the keeping of horses on single-family residential properties, and a variety of low-intensity multi-family residential and commercial uses. The neighborhood is located close to the Los Angeles Equestrian Center and a vast regional trails network. The FAR for Rancho Commercial anticipates that some properties will recycle and that the intensity of new development will be comparable to what exists today. Supplemental land use goals and policies are provided in the Rancho Master Plan.

(Burbank General Plan, p. 3-16.)

As noted, the General Plan allows “20 units per acre” to be developed on the site, which, pursuant to Government Code, section 65913.4, subdivision (a)(5)(A), is the controlling density. Nevertheless, the zoning code provisions regarding the Rancho Master Plan Zones, moreover, reaffirms that the maximum residential density in Rancho Commercial is 20 units per acre: “In the RC Zone, all uses shall be consistent with the maximum FAR and maximum residential density, as prescribed in the General Plan, as follows....” (BMC, § 10-1-2428.5.) This section – and sections throughout the zoning code – then refers to a table that summarizes the General Plan land use Designation, maximum FAR, and maximum residential density in the General Plan. In the table, Rancho Commercial includes 0.6 FAR and 20 units per acre maximum residential density. The section regarding the Commercial Recreation Zone – a designation that does not appear in the General Plan’s land use element – includes the same language and table. (See BMC, § 10-1-2436.5.)

In addition, even as recently as its sixth cycle housing element, which is currently under review by HCD, the City included the 921-1001 W. Riverside Drive site where the Pickwick Gardens Housing Project is located as a site available for lower- and above moderate-income households (allocation of ten lower- and 86 above moderate-income units). If the City had not intended that this site be used for housing, it would not have included the site in the housing element sites inventory.

Housing is thus an allowable use at the site in accordance with the land use designations under the City’s General Plan and reaffirmed in the zoning code.

The Project Is Consistent with the General Plan's Objective Standards

Under SB 35, a qualifying project is only subject to applicable "objective standards." Where the objective standards in the General Plan and zoning ordinance conflict, SB 35 provides that the project is deemed consistent if it is consistent with objective standards in the General Plan. (Gov. Code, § 65913.4, subd. (a)(5)(B).)

Here, the standards in the General Plan allow for residential use while the standards in the zoning code cited by the City Council do not. (See, e.g., BMC, §§ 10-1-501 ["uses in all zones are only allowed as described in the use table comprising Section 10-1-502... or authorized by other provisions of this Code"], 10-1-502 [residential is not an allowed use in C-R zone].) Because the objective standards in the General Plan are "mutually inconsistent" with the objective standards in the zoning ordinance, the General Plan standards control. (Gov. Code, § 65913.4, subd. (a)(5)(B).)

Since the Project proposes approximately 18 dwelling units per acre, falling within the maximum density allowed within the Rancho Commercial designation, the Project would, under SB 35, be deemed consistent with applicable objective General Plan standards. (Gov. Code, § 65913.4, subd. (a)(5)(A).)

In addition, as stated in Section 404(b) of HCD's Streamlined Ministerial Approval Process Guidelines (Guidelines), "[a] development qualifying for the Streamlined Ministerial Approval Process does not prevent a development from also qualifying as a housing development project entitled to the protections of the Housing Accountability Act (Government Code section 65589.5)." The City should be aware that the incorrect denial of the Project could also result in a violation of the Housing Accountability Act. (Gov. Code, § 65589.5, subs. (f)(4), (j), and (j)(4).)

The General Plan's Discretionary Approval Requirement Does Not Limit the Application of a Streamlined Ministerial Approval Process

As noted above, the General Plan allows within land designated as Rancho Commercial a maximum 0.60 FAR and 20 units per acre with discretionary approval. The nature of the required discretionary review is unspecified. (Burbank General Plan, p. 3-16 ["Maximum 0.60 FAR, 20 units per acre with discretionary approval."].)

Such "discretionary approval" is not objective and would not apply to an SB 35 project. As noted in Section 300(c)(2) of HCD's Streamlined Ministerial Approval Process Guidelines, "[a] standard that requires a general plan amendment, the adoption of a specific plan, planned development zoning, or another discretionary permit or approval does not constitute an objective standard." Section 301(a) further states that ministerial approval "shall be non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval."

For certain qualifying projects, SB 35 eliminated discretionary processes that delay or de facto prohibit housing during the housing crisis. It is the policy of the State per Government Code section 65913.4, subdivision (n), that SB 35 be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply. The statute is not intended to be so narrowly construed as to apply only to where uses are permitted outright. Rather, SB 35, where and when it applies, prohibits discretionary review of new housing.

Conclusion

In sum:

- The General Plan allows residential uses on property with the Rancho Commercial designation up to 20 units per acre. (Burbank General Plan, p. 3-16; BMC § 10-1-2428.5.)
- SB 35 allows projects pursuant to densities allowed in the General Plan regardless of underlying zoning, because where the two conflict, the objective standards of the General Plan prevail. (Gov. Code, § 65913.4, subd. (a)(5)(B).)
- Where housing is an allowable use, a discretionary review requirement for the approval of new housing is not an objective standard and would therefore not apply to an SB 35 project.

Therefore, it is HCD's determination, based upon the statute and referenced in [HCD's Updated Streamlined Ministerial Approval Process Guidelines](#), that SB 35 applies to the Pickwick Gardens Housing Project. HCD finds that, by improperly denying the Project, the City is in violation of Government Code section 65913.4. The City must provide a written response to this finding by June 24, 2022. After that date, HCD may move forward with any of the actions authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General.

The City's response should include, at a minimum, a specific plan and timeline for corrective action, including (1) repeal of the City's resolution denying the Project and (2) allowing the Project to move forward with its plans without further delay.

If you have questions or would like to discuss the content of this letter, please contact Fidel Herrera of our staff at fidel.herrera@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Zisser", with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability