

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

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August 10, 2023

San Francisco Board of Appeals
City and County of San Francisco
Via: boardofappeals@sfgov.org
49 S Van Ness Ave.
San Francisco, CA 94103

Dear San Francisco Board of Appeals:

RE: 2550 Irving Street – Letter of Support and Technical Assistance

The purpose of this letter is to provide technical assistance to the City and County of San Francisco (City/County) regarding the housing project proposed at 2550 Irving Street (Project) by the Tenderloin Neighborhood Development Corporation (TNDC). This assistance is based partly upon Appeal No. 23-034 that is scheduled to be heard at the August 16, 2023, Board of Appeals meeting. Appeal No. 23-034 is an appeal of the site permit issued on June 26, 2023.

The California Department of Housing and Community Development (HCD) is submitting this letter to aid with the interpretation of the Streamlined Ministerial Approval Process created by Senate Bill (SB) 35 (Chapter 366, Statutes of 2017) and codified in Government Code section 65913.4 in relation to the appeal of the site permit. On February 22, 2023, HCD provided a Letter of Support and Technical Assistance regarding the appeal of the Project's demolition permit. Much of that letter's discussion is applicable to this appeal as well. It is HCD's understanding that the site and Project description have not changed and that no additional studies have been conducted since the February appeal hearing that would impact the Project's eligibility for streamlining.

Project Approval under the Streamlined Ministerial Approval Process

The 90-unit affordable housing Project was processed and approved under Government Code section 65913.4 (SB 35 streamlining). Section 65913.4, subdivision (a), states that a development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit (CUP) or any other non-legislative discretionary approval if the development satisfies all of the objective planning standards outlined in subdivision (a). As noted in HCD's previous technical assistance letter, San Francisco's approval of the SB 35 application establishes that the Project does comply with all the objective standards set forth in subdivision (a).

Of particular relevance is Government Code section 65913.4, subdivision (a)(6)(E), which states that a project located on a hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control (DTSC) pursuant to Health and Safety Code section 25356 does not qualify for streamlined ministerial review under SB 35 unless DTSC has cleared the site for residential use or residential mixed-uses. It is HCD's understanding that the Project is not located on any listed or designated hazardous waste site, so this exception to streamlined, ministerial approval does not apply. Moreover, DTSC approved a Site Assessment Plan and Report of Findings on June 8, 2021, confirming that the Project site had been adequately analyzed under DTSC standards. The Project site was not identified as a hazardous waste site pursuant to Government Code section 65962.5 or Health and Safety Code section 25356 and was not listed on the Hazardous Waste and Substances Sites List. Thus, the Project meets the requirements for streamlined review under Government Code section 65913.4, subdivision (a)(6)(E).

Section 65913.4 goes on to state, in subdivision (c)(1), "If a local government determines that a development submitted pursuant to this section is consistent with the objective planning standards specified in subdivision (a) . . . it shall approve the development." Accordingly, the City/County acted correctly when it approved the Project under SB 35 and when it granted the site permit in question, and the Board of Appeals acted correctly when denying the appeal of the demolition permit in February. As with the appeal of the demolition permit, upholding the appeal of the site permit would be counter to the requirements of SB 35 streamlining.

Furthermore, Government Code section 65913.4, subdivision (h)(2)(A), requires that "[i]ssuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a subsequent permit means a permit required subsequent to receiving approval under subdivision (c), and includes, but is not limited to, demolition, grading, encroachment, and building permits and final maps, if necessary." A site permit meets this definition of subsequent permits, and therefore an appeal of the site permit would be considered an attempt to chill or preclude development.

Limitations on Public Oversight of SB 35 Projects

Additionally, Government Code section 65913.4, subdivision (d)(1), clearly limits the scope of review and public oversight on SB 35 projects. Under this subdivision, design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects and, similar to subdivision (h)(2)(A), shall not in any way inhibit, chill, or preclude ministerial approval.

Since there are no conflicts with subdivision (a), including subdivision (a)(6)(E) as discussed above, no further public oversight is permissible. Undoubtedly, further review of a hazardous waste issue already reviewed by DTSC and covered by the City in its review of the SB 35 application is not appropriate. Analysis of criteria required for streamlined

projects has already been completed through the SB 35 application process. An appeal of the demolition permit, site permit, or any other future permit covered under the project's SB 35 application is incompatible with streamlined, ministerial approval and is not permitted under subdivision (d).

Conclusion

The State of California is in a housing crisis, and the provision of housing is a priority of the highest order. HCD encourages the Board of Appeals to deny the appeal and uphold the approval of the Project's site permit. Granting this or any future appeal would be in violation of the Streamlined Ministerial Approval Process created by SB 35 and codified in Government Code section 65913.4.

HCD would also like to remind the City/County that HCD has enforcement authority over the implementation of Government Code section 65913.4, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a local government's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Bentley Regehr at bentley.regehr@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief