



Office of the City Manager

Appeal of BZA Decision
Regarding Completeness Determination
141 South Lake Avenue

City Council
November 14, 2022





Background

Planning & Community Development Department

- What is before the Council is an appeal of a determination that an application for Concept Design Review is incomplete for processing:
 - > On May 10, 2022, a Concept Design Review application was filed for a new mixed-use project located at 141 S. Lake Ave. The project includes density bonus and concessions.
 - > The application was reviewed for completeness against the required submittal checklist for Concept Design Review.
 - > Required items from the checklist were not provided and staff deemed the application incomplete for processing.



Background

Planning & Community Development Department

- **Completeness Review:**

- > Under the Permit Streamlining Act, a public agency is required to review a development application and determine its completeness within 30 days of submission and notify the applicant of missing items.
- > On June 9, 2022, the subject application was deemed incomplete due to missing three required items and an incomplete notice was sent to the applicant.
- > On June 14, 2022, the applicant filed an appeal of the incomplete determination.
- > The Permit Streamlining Act requires that an appeal be heard and provided with a final written determination within 60 days by the governing agency; the City Council or the Planning Commission, or both.
- > The applicant waived the 60-day timing requirement and requested that the appeal be heard first by the Board of Zoning Appeals, with any subsequent appeal heard by the City Council.
- > An appeal hearing date of July 21, 2022, was offered to the appellant. However, due to scheduling conflicts, the appellant elected to have the appeal heard August 18, 2022.



Background: Board of Zoning Appeals

Planning & Community Development Department

- On August 18, 2022, the Board of Zoning Appeals heard the appeal at a scheduled public meeting:
 - > At the conclusion of the public hearing, a motion was made to deny the appeal and uphold the determination that the submitted Concept Design Review application is incomplete by a vote of 3-0.
 - > The decision was based on the fact that not all the required items from the checklist for Concept Design Review were submitted for the application.
 - > On August 29, 2022, the applicant filed an appeal application citing a disagreement with the decision of the Board of Zoning Appeals.



Incomplete Notice – Current Status

Planning & Community Development Department

- Deemed incomplete for missing these required submittal items:
 1. Payment of application fees;
 - Fees were paid immediately after the issuance of incomplete letter
 2. Notification Packet (for public noticing purposes); and
 - Notification Packet was submitted after the BZA meeting
 3. Density Bonus Concessions and Incentives Information.
 - ***This item is still outstanding***
- As is permitted and standard practice, the incomplete notice included a separate list requesting that the applicant clarify or correct material that was submitted for Concept Design Review and for compliance with the Zoning Code.

These clarification/correction items were not the basis for determining the application to be incomplete; this is provided as information only to an applicant.



Appeal of Incomplete Notice

Planning & Community Development Department

- **Appeal:**

- > The applicant asserts that the submitted application is complete and that the requested information related to “Density Bonus Concessions and Incentives Information” is not required and is contrary to State law.

- **Response to Appeal:**

- > California Government Code §65915 (Density Bonus Law) allows an agency to request, from an applicant, **reasonable documentation to establish eligibility for a requested density bonus or concession(s) and information that the concession results in identifiable and actual cost reductions to provide for affordable housing costs or rents.**
- > The City’s application form asks only for the information specifically allowed by state law related to “Density Bonus Concessions and Incentives Information,” as follows:
 - “...provide documentation showing that the requested incentive or concession will result in identifiable and actual cost reductions to provide for affordable housing costs or rents.”
- > The applicant can submit the remaining submittal item to have the application deemed complete.



Conclusion and Recommendation

Planning & Community Development Department

- Staff recommends that the City Council deny the appeal; and
- Uphold the determination that the application is incomplete.



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Submittal Requirements

Planning & Community Development Department

DENSITY BONUS CONCESSIONS AND INCENTIVES

Does the project seek a concession or incentive(s) as allowed pursuant to State Density Bonus law?

Yes **No**

a) If yes, provide documentation showing that the requested incentive or concession will result in identifiable and actual cost reductions to provide for affordable housing costs or rents.

Provide documentation.

b) The City must grant a requested concession or incentive unless it finds the following:

- The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs or rents.
- Granting the concession or incentive would have a specific adverse impact on public health or safety or on property listed on the California historical register, which cannot be mitigated; or
- The concession or incentive would be contrary to state or federal law.



Project Description

Planning & Community Development Department

- Mixed-Use Project:
 - > 134 dwelling units
 - > 3,954 sf of commercial space
 - > Up to six-stories (72')
 - > 139,241 sq. ft. of floor area
- CD-5 Zoning District.
- High Mixed Use (0-87 du/ac, 0-3.0 FAR) General Plan