



# Agenda Report

November 14, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Planning & Community Development Department

**SUBJECT: APPEAL OF THE BOARD OF ZONING APPEALS' DECISION REGARDING A DETERMINATION THAT AN APPLICATION FOR CONCEPT DESIGN REVIEW IS INCOMPLETE FOR A PROJECT AT 141 SOUTH LAKE AVENUE**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Uphold the Board of Zoning Appeals' decision and the determination that the Concept Design Review application is incomplete.

## **BACKGROUND:**

What is before the City Council is the appeal of a Board of Zoning Appeals' decision regarding a determination that an application for Concept Design Review is incomplete for processing.

On May 10, 2022, the applicant submitted a Concept Design Review application for a new mixed-use project located at 141 S. Lake Avenue. The proposal is for a new 6-story building consisting of 134 residential dwelling units, with use of density bonus, and 3,954 square feet of commercial space on the ground floor.

The application was reviewed for completeness against the required submittal checklist for Concept Design Review. A review of the application determined that not all the material specified in the submittal checklist was submitted. On June 9, 2022, an incomplete letter was provided to the applicant (Attachment A).

On June 14, 2022, the applicant filed an appeal application citing a disagreement with the determination that the application is incomplete (Attachment C). It is the applicant's assertion that the submitted application is complete .

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. As a result, action was taken to uphold the determination that the application is incomplete (Attachment D).

On August 29, 2022, the applicant filed an appeal application citing a disagreement with the decision of the Board of Zoning Appeals (Attachment E).

### **ANALYSIS – COMPLETENESS REVIEW:**

California Government Code §65943 (Permit Streamlining Act), requires that development project applications be reviewed and their completeness determined, by a public agency, within 30 days of submission. If the application is determined to be incomplete, the lead agency shall provide the applicant with a list of items that resulted in the determination of incompleteness. That list shall be limited to those items required on the agency's submittal requirement checklist for the application. Furthermore, an agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application.

A letter, determining that the project was incomplete for processing, was sent to the applicant on June 9, 2022, within 30 days of application submittal. The letter provided a list of three items that resulted in the determination. The items missing are specified in the required submittal checklist for Concept Design Review (Attachment B) and are as follows:

1. **Application Fees;**
2. **Notification Packet;** and
3. **Density Bonus Concessions and Incentives Information.**

As of the preparation of this report, the application fees were paid on June 9, 2022 and this item is not outstanding. On August 24, 2022, after the Board of Zoning Appeals hearing, the applicant submitted the notification packet. The third item has not been submitted. The project has requested a concession to deviate from Zoning Code Section 17.30.030.C.2.b, which states that along Lake Avenue: *“ground-floor housing is prohibited, and housing shall not occupy more than 50 percent of total building floor area along Lake Avenue from Green Street south to California Boulevard, to maintain the commercial retail and service character of the South Lake Shopping Area. Housing is allowed on upper floors and adjacent parcels to stimulate and activate the area.”* The requested concession would allow housing to occupy more than 50 percent of the project's gross floor area on the eastern portion of the site (along Lake Avenue).

The City's application form requires the submittal of documentation to demonstrate that the requested concession(s) will result in identifiable and actual cost reductions to provide for affordable housing costs or rents. California Government Code §65915 (Density Bonus Law) allows an agency to request, from an applicant, reasonable documentation to establish eligibility for a requested concession(s). Specifically, California Government Code §65915(a)(2) states that:

*A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).*

Additionally, while a “study” cannot be required, Section 65915(j)(1) states that a study “does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k).” (Subdivision (k) states, in part, that a concession is a regulatory modification “that results in identifiable and actual cost reductions to provide for affordable housing costs...or rents.”) Finally, the Court of Appeal in *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 557, stated that, “A city or county is not prohibited from requesting or considering information relevant to cost reductions. Subdivisions (a)(2) and (j)(1) of section 65915 neither mandate nor prohibit the city from requiring that the applicant provide ‘reasonable documentation’ regarding cost reductions.”

The incomplete letter also provided a separate list requesting that the applicant clarify or correct application material that was submitted with the Concept Design Review application. In addition, the letter included an attachment that informed the applicant of Zoning Code requirements that the project did not comply with or additional information needed to determine compliance.

Neither the list requesting the applicant to clarify or correct application material, or the attachment regarding Zoning Code requirements, were a basis for determining the application to be incomplete. The incomplete determination was based only on items missing as noted on the required submittal checklist for Concept Design Review.

### **REQUEST FOR APPEAL:**

On August 29, 2022, the applicant filed an appeal application citing a disagreement with the decision of the Board of Zoning Appeals to uphold the determination that the Concept Design Review application is incomplete (Attachment E).

As it relates to the three items that deemed the application incomplete, in the appeal application, the applicant acknowledges that fees were paid and that the notification packet was submitted. It is the applicant’s assertion that the submitted application is complete and that the requested information related to “Density Bonus Concessions and Incentives Information” is not required, as outlined in their appeal application, and is contrary to State law.

As outlined in the analysis, 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 the Court of Appeal has stated that the City may request information regarding cost reductions. 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."*

Additionally, the appeal application addresses the attachment to the incomplete letter that informed the applicant of Zoning Code requirements that the project did not comply with (e.g. density, FAR...etc.) and additional information needed to determine compliance. In the appeal application, the applicant indicates that the attachment and comments regarding the projects compliance with the Zoning Code development standards should be appealable and considered as part of this appeal process.

The attachment to the incomplete letter that informed the applicant of Zoning Code requirements was not a factor in determining the application incomplete and thus is not part of this appeal.

The applicant has been advised that if they disagree with the application of the Zoning Code, they may submit a request for a determination by the Zoning Administrator pursuant to Zoning Code Section 17.12.030.a. The determination by the Zoning Administrator may be appealed in compliance with Chapter 17.72.

**CONCLUSION:**

Based on the above discussion, the application remains incomplete; one of the three items requested in the incomplete letter has not been provided. If the applicant provides the last remaining item the case will be deemed complete for processing.

**RECOMMENDATION:**

It is recommended that the City Council uphold the Board of Zoning Appeals' decision and the determination that the Concept Design Review application is incomplete because the applicant has not provided reasonable documentation demonstrating that the requested concessions result in identifiable and actual cost reductions to provide for affordable housing costs or rents.

**FISCAL IMPACT:**

The recommended actions will have no immediate fiscal impact.

Respectfully submitted,



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JENNIFER PAIGE, AICP  
Acting Director of Planning & Community  
Development

Prepared by:



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Rathar Duong  
Senior Planner

Reviewed by:



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Luis Rocha  
Planning Manager

Approved by:



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MIGUÉL MÁRQUEZ  
City Manager

Attachments: (5)

- Attachment A – Incomplete Letter dated June 9, 2022
- Attachment B – Submittal Checklist for Concept Design Review
- Attachment C – Appeal Application to the BZA dated June 14, 2022
- Attachment D – Board of Zoning Appeals Decision Letter, without attachments
- Attachment E – Appeal Application to the City Council received August 29, 2022