



Agenda Report

June 10, 2024

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

SUBJECT: AN APPEAL OF THE BOARD OF ZONING APPEALS' DECISION REGARDING A DETERMINATION THAT AN APPLICATION FOR CONCEPT DESIGN REVIEW (DHP2024-00099) IS INCOMPLETE FOR A PROJECT AT 615 SOUTH CATALINA AVENUE

RECOMMENDATION:

It is recommended that the City Council:

Uphold the Board of Zoning Appeals' decision and the determination that the Concept Design Review application No. DHP2024-00099 is incomplete, in that the application does not contain the following information required on the City's application form and listed in the incompleteness letter, as described in detail in this staff report:

- a. Design evolution information, as listed in the incompleteness letter; and
- b. Zoning Code compliance or an application for a Zoning Map amendment or a Variance.

BACKGROUND:

What is before the City Council is an appeal of a determination that an application for Concept Design Review is incomplete for processing.

On March 4, 2024, the applicant submitted a Concept Design Review application for a new multi-family project located at 615 S. Catalina Avenue. The project scope includes a new 7-story building, with 49 residential dwelling units, in the RS-6 single-family residential zone.

The application was reviewed for completeness against the required submittal checklist for Concept Design Review. A review of the application determined that not all of the required material specified in the submittal checklist was submitted. On April 3, 2024, an incomplete letter was provided to the applicant (Attachment A). On April 9, 2024, the applicant submitted an appeal application to the Board of Zoning Appeals (Attachment B).

On May 16, 2024, the Board of Zoning Appeals heard the appeal. 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. (Attachment C).

On May 28, 2024, the applicant filed an appeal application of the decision of the Board of Zoning Appeals (Attachment D), stating that the City violated SB 330, the Housing Accountability Act, the Permit Streamlining Act, and “other state laws that preempt the City’s code” in finding the application incomplete.

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. Even after the application is complete, 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 (Government Code § 65944.)

A letter determining that the application was incomplete for processing was sent to the applicant on April 3, 2024 (Attachment A), within 30 days of the March 4, 2024, application submittal. The letter provided a list of three items that resulted in the incomplete determination. The items missing are specified in the required submittal checklist for Concept Design Review (Attachment E) and are listed below. The applicant paid the application fees on May 17, 2024, after the BZA determination. Items 2 and 3 remain outstanding.

1. Application Fees

Application fees are required to review and process the Concept Design Review application.

Submittal Checklist Requirement: “Application fees are required for all projects. Applications for Concept Design Review may also be charged a fee for Preliminary Plan Check, which will be conducted by staff of the Current Planning Section, as well as the 3% Records Management Surcharge. See the adopted fee schedule or consult with Design & Historic Preservation staff to determine the amount of the application fees. Application fees may be paid online once an invoice is created by staff.”

Finding of Incomplete Letter: The following items need to be submitted to deem your application complete: Payment of application filing fees pursuant to the invoice provided.

Project Compliance: As of the date of the BZA hearing, no Concept Design Review application fees had been submitted. Concept Design Review application fees were paid on May 17, 2024, during the pendency of this appeal.

2. Design Evolution Information

Preliminary Consultation is the first phase of the design review process. Concept Design Review is the second phase. Applicants are required to demonstrate visually and in writing how the Concept Design Review application addresses the comments provided during Preliminary Consultation.

Submittal Checklist Requirement:

“Design Evolution Exhibit - One (1) 11” x 17” copy (Additional 11”x 17” copies may be required for Design Commission reviews, subsequent to initial application submittal).

- 1) “Provide a written and illustrated exhibit (before and after imagery; e.g., story boards) describing how the project’s design concept responds to each of the comments and recommendations provided by the Design Commission and/or staff during the Preliminary Consultation process.
- 2) “Provide images of studies conducted to address the Preliminary Consultation comments, including cases where comments were not implemented in the design.
- 3) “Written and illustrated exhibit describing how the previously presented Site Planning and Building Design Concepts have developed since the Preliminary Consultation. The exhibit should clearly visually depict the design evolution.”

Finding of Incomplete Letter: The following items need to be submitted to deem your application complete:

- 1) As noted on Page 3, under Design Evolution Exhibit section, provide a written and illustrated exhibit (before and after imagery; e.g., story boards) describing how the project’s design concept responds to each of the comments and recommendations provided by the Design Commission and/or staff during the Preliminary Consultation process.
- 2) As noted on Page 3, under Design Evolution Exhibit section, provide images of studies conducted to address the Preliminary Consultation comments, including cases where comments were not implemented in the design.
- 3) As noted on Page 3, under Design Evolution Exhibit section, written and illustrated exhibit describing how the previously presented Site Planning and

Building Design Concepts have developed since the Preliminary Consultation.

Project Compliance: No items required under the Design Evolution Exhibit submittal requirements for the Concept Design Review application have been submitted.

3. Zoning Code Compliance

A project is required to comply with the Zoning Code in order for the Concept Design Review application to be deemed complete and processed, unless they obtain any necessary land use permit first (i.e., variance, Zoning Map or General Plan Diagram Amendment). No land use permits have been approved and a review of the development standards that apply to the project indicates that the project does not comply with the applicable development standards in the Zoning Code.

Submittal Checklist Requirement: "Consult with the Current Planning Section to ensure that the proposed project complies with the development standards in the Zoning Code. (626) 744-6777; Window 3, Permit Center; or zoningquestions@cityofpasadena.net. If a Zoning Entitlement is not required for the proposed project, a Preliminary Plan Check will be formally conducted by Current Planning Staff upon submittal of an application for Concept Design Review. Projects that are found to be out of compliance with Zoning Code requirements or inconsistent with a previously approved Entitlement will not be scheduled for a Concept Design Review hearing or issued a staff decision until found to be in compliance."

Finding of Incomplete Letter: The following items need to be submitted to deem your application complete:

Pursuant to Pasadena Municipal Code (PMC) Section 17.60.060.5.a, an application shall not be accepted as complete unless, or until the Director determines that, it is in compliance with zoning district requirements applicable to the site, except for a Zoning Map Amendment or Variance filed in compliance with Chapter 17.74 (Amendments). As provided to you in the Predevelopment Plan Review (PPR) process, the project has been found to be non-compliant with a number of zoning district requirements applicable to the site and an application for a Zoning Map Amendment or Variance has not been filed. Please refer to Attachment F, PPR Comments, pages 11-21 for a review of the project's compliance with the zoning district requirements applicable to the site.

As noted on page 1 of the Concept Design Review Submittal Checklist, prior to submitting an application for Concept Design Review, applicants are required to consult with the Current Planning Section to ensure that the proposed project complies with the development standards in the Zoning Code. Applications not in

compliance cannot receive Concept Design Review approval unless they obtain any necessary land use permit first (i.e., variance or Zoning Map Amendment). The PPR found that the project did not comply with the development standards in the Zoning Code, and the project cannot be approved or found complete until either variances or a Zoning Map Amendment are obtained.

Project Compliance: The project does not comply with the Zoning Code and no Variance, Zoning Map or General Plan Diagram Amendment application has been submitted.

The incomplete letter included the invoice for payment and a copy of the Submittal Checklist for Concept Design Review. The incomplete letter also included an attachment that informed the applicant of Zoning Code requirements that the project did not comply with.

As of the preparation of this report, the application fees were paid on May 17, 2024, and this item is not outstanding. The other two items have not been submitted.

REQUEST FOR APPEAL:

On May 28, 2024, the applicant filed an appeal of the decision of the Board of Zoning Appeals to uphold the determination that the Concept Design Review application is incomplete (Attachment D). The appeal application does not specifically address the outstanding items listed in the incomplete letter. Rather, it is the applicant's assertion that the City violated Senate Bill 330 (the Housing Crisis Act), the Housing Accountability Act, the Permit Streamlining Act, and other unspecified State laws that preempt the city's Zoning Code. The appeal application did not specify how the City violated the referenced State laws.

The same assertions were made by the appellant in the appeal application filed to the Board of Zoning Appeals; without information specifying how the City violated the referenced State laws. Additional information, supporting the appeal points, was submitted by the appellant on the day of the Board of Zoning Appeals hearing on May 16, 2024 (Attachment G).

RESPONSE TO APPEAL:

In response to the appeal application, the following provides information regarding the City's compliance with State law in relation to the project.

SB 330 Preliminary Application

The Housing Crisis Act of 2019 (SB 330) created a preliminary application process through which an applicant for a residential development may obtain assurances for continued review under the ordinances, standards, and policies in effect when a complete preliminary application is submitted. Once an SB330 preliminary application

containing all required information is submitted to the City, the housing project is vested under the rules in effect at the time of submittal.

Project History

The SB330 preliminary application was submitted to the City on February 15, 2023 (Attachment H). The City is not required to conduct a determination regarding completeness of a preliminary application.

On June 15, 2023, the applicant submitted a request for Preliminary Plan Review (PPR). The applicant then submitted for Preliminary Consultation for design review on July 24, 2023. That application was initially found incomplete and was finally determined to be complete on February 8, 2024.

The PPR, a non-entitlement application and request for City staff review, is the first step in the development process and serves to inform the applicant of City regulations and processes. One of the main purposes of a PPR is to identify issues that may arise during review of the project (e.g., conformance with any applicable design guidelines and Zoning Code, and conformance with the goals, policies, and objectives of the General Plan). The PPR process was completed on March 14, 2024.

Preliminary Consultation, also a non-entitlement application that provides informal consultation on project design, is the first step in the design review process and serves to inform the applicant regarding applicable design guidelines, findings, and procedures that will apply to the project, and to discuss compliance of the project with the design guidelines. The Preliminary Consultation process was completed on April 25, 2024. The application for Concept Design Review (the second step of design review) was filed on March 4, 2024, before the Preliminary Consultation had been completed, and a letter finding the application incomplete was sent on April 3, 2024. This letter is the subject of this appeal.

Builder's Remedy

On the Concept Design Review application, the applicant stated that the multi-family project was utilizing the "Builder's Remedy", based on their SB330 preliminary application submitted to the City on February 15, 2023.

The "Builder's Remedy" arises from the Housing Accountability Act (Government Code Section 65589.5; the HAA). If a city has not adopted a housing element in substantial compliance with state law, developers may propose housing development projects that do not comply with either the zoning or the general plan. The city then cannot deny the project because it does not comply with the zoning and the general plan. The project may be denied for other reasons, such as failing to comply with state or federal law or inadequate water or sewer. The project must also include all mitigation measures required by the California Environmental Quality Act (CEQA), and the City must make all findings required by CEQA.

On March 10, 2023, the California Department of Housing and Community Development (HCD) issued a letter to the City of Pasadena (Attachment I). In the letter, HCD confirmed that the housing element adopted by the City on July 18, 2022 and received by HCD on January 11, 2023, was in substantial compliance with State Housing Element Law (Article 10.6 of the Gov. Code).

The SB330 preliminary application for a “Builder’s Remedy” project was submitted on February 15, 2023, after the adopted, substantially compliant, housing element was provided to HCD on January 11, 2023.

The SB330 preliminary application was submitted under the assumption that the City of Pasadena did not have a compliant housing element; thus, attempting to vest rights to a “Builder’s Remedy” project not compliant with the existing zoning or the City’s general plan. However, because the City had adopted a housing element in conformance with state law before the SB330 preliminary application was submitted, it is the City’s position that the “Builder’s Remedy” does not apply to the project.

Need for Variance, Zoning Map or General Plan Diagram Amendment

Regardless of whether the project is eligible for the “Builder’s Remedy,” the project must either comply with the Zoning Code or apply for a Zoning Map and General Plan Diagram amendment or Variance in order for the Concept Design Review application to be deemed complete and processed. An amendment to the Zoning Map would require a concurrent amendment to the General Plan diagram.

The applicant has asserted that because the project is eligible for the “Builder’s Remedy,” the City cannot require the applicant to apply for a Zoning Map amendment. However, on March 28, 2024, HCD sent a Letter of Technical Assistance to the City of Compton determining that a city can require a General Plan/Zoning Amendment and other discretionary approvals, such as a Variance, in order to avoid a legal non-conformity for “Builder’s Remedy” projects (Attachment J). HCD noted that “no provision in the [Housing Accountability Act] prevents a local government from requesting a general plan/zoning code amendment in order to avoid a legal non-conformity.” HCD also opined that this requirement cannot render the project infeasible. Regardless of the project’s position as a “Builder’s Remedy” project, the City may therefore apply its usual requirement for a Zoning Map amendment or Variance.

Response to Supplemental Letter Submitted to the Board of Zoning Appeals

A letter with additional information, supporting the appeal, was submitted by the appellant on the day of the Board of Zoning Appeals hearing on May 16, 2024 (Attachment G). The letter includes eight points where the appellant asserts the City has violated State law. Responses to the appeal points were provided by staff to the Board of Zoning Appeals during the public hearing. The following are responses to a summary of the eight appeal points.

Point No. 1: The appellant claims that the City positioned itself to deprive the owner of the rights provided by the SB330 Preliminary Application.

The City has never taken the position that the SB330 preliminary application has expired. The preliminary application remains in effect.

Point No. 2: The appellant disagrees with the finding that the “Builder’s Remedy” does not apply to the project.

Regardless of whether the project is eligible for the “Builder’s Remedy,” applications for a Zoning Map amendment, with concurrent amendment to the General Plan diagram, or Variance, are required for the application to be determined to be complete.

HCD found on March 10, 2023, that the City’s adopted housing element submitted on January 11, 2023 was in substantial conformance with state law; the SB330 preliminary application was submitted in February, after adoption but before HCD approval. HCD and the applicant have taken the position that a housing element cannot be considered to conform with state law until HCD finds it in conformance. However, the statute references a city’s “adopted” housing element, not the date of HCD approval. (Gov’t Code Section 65589.5(d)(5).) Because the City’s adopted housing element conformed with state law before the SB330 preliminary application was submitted, the “Builder’s Remedy” does not apply to the project. The project is required to be consistent with both the Zoning Ordinance and General Plan.

The applicant has submitted a number of letters from HCD asserting that its approval is required for a housing element to be found in conformance with state law. Although HCD asserted in a letter to Redondo Beach (attached to the appeal) that its housing element was not in conformance with state law until approved by HCD on September 1, 2022, the Superior Court determined that the housing element was in conformance with state law **when adopted** on July 5, 2022.¹ A housing element is (or is not) in substantial compliance with state law on the date when it is adopted. Pasadena’s City Council adopted the housing element on July 18, 2022.

Point No. 3: The appellant asserts that notification of inconsistencies with the zoning code and general plan needs to be provided to an applicant within 30 days of the date that a SB330 preliminary application containing all required information is submitted. If the notice is not sent, that application is “deemed consistent.” Because the City did not send this notice, the applicant asserts that the project has been “deemed consistent” with the existing zoning and general plan, and so no application for a Zoning Code or general plan amendment is needed.

¹ *New Commune DTLA, LLC v. City of Redondo Beach*, Case No. 22TRCP00203 (October 30, 2023).

No statute requires the City to review the completeness of an SB 330 preliminary application within any time period or to notify the applicant of inconsistencies with the Zoning Code and general plan within 30 days.

State law does require the City to provide a notice of any inconsistencies with adopted codes, plans, or standards within 30 days after an application for a project with 150 units or less is “determined to be complete.” (Gov’t Code Section 65589.5(j)(2)(A).) “Determined to be complete” means “the applicant has submitted a complete application pursuant to Section 65943.” (Gov’t Code Section 65589.5(h)(10).) A preliminary application is submitted pursuant to Section 65941.1, and so does not determine the deadline for providing a notice of any inconsistencies. Under the City’s design review process, only applications for Concept and Final Design Review are submitted under Section 65943. Neither application has yet been deemed complete, and so no time period has expired for notifying the applicant of inconsistencies.

Point No. 4: The appellant states that subjective design standards cannot be applied to the project. Furthermore, the appellant states that the Design Evolution information provided for Preliminary Consultation should suffice for Concept Design Review.

Case law establishes that a City can consider subjective standards and use them to apply conditions of approval.² The Housing Crisis Act of 2019 also allows use of subjective standards established before January 1, 2020 (Gov’t Code Section 66300(b)(1)(C)). The City’s subjective design standards have not been amended since that date.

Separate design evolution submittal information is required for the Preliminary Consultation application and the Concept Design Review application. The applicant is expected to use the comments on the Preliminary Consultation to modify the application for Concept Design Review and to explain how the design has evolved.

Point No. 5: The appellant states that the City has violated the Permit Streamlining Act by requiring design evolution information for Concept Design Review when the Preliminary Consultation was not complete, and by not providing an invoice at an earlier date.

The City’s design review ordinance establishes a strict three-step design review process. (PMC Section 17.61.030.C.1.) Preliminary Consultation, which is an informal discussion to discuss project compliance with the design guidelines but grants no entitlements, is the first phase of the design review process. Concept Design Review is the second phase, which, if approved, grants an entitlement for use. Applicants are required to demonstrate visually and in writing how the Concept Design Review application (second phase) addresses the comments provided during Preliminary Consultation (first phase). The conflict the appellant raises is a result of the applications being submitted out of sequence, i.e., the Concept Design Review application was

² *CaRLA v. City of San Mateo* (2021) 68 Cal.App.5th 820, 846.

submitted prior to the completion of the Preliminary Consultation application. Now that the Preliminary Consultation has been completed, the applicant can complete the Concept Design Review application.

As noted, an invoice was provided, all fees have been paid, and payment of fees is no longer an issue regarding the completeness of the application.

Point No. 6: The appellant states that the City violated the PSA by not notifying the applicant of inconsistencies with the Zoning Code in the incomplete letter for the Preliminary Consultation application, dated August 24, 2023, or at any other time prior to April 3, 2024.

Zoning Code compliance is not a required item on the Preliminary Consultation submittal checklist. The City reviews applications against their respective submittal checklist and only raises issues when items on the checklist are missing. However, both the Preliminary Plan Review and Preliminary Consultation notified the applicant of inconsistencies with the Zoning Code.

Point No. 7: The appellant reiterates that notification of inconsistencies with the zoning code and general plan needs to be provided to the applicant within 30 days of the submittal of an SB330 preliminary application containing all required information.

Please see response to Point No. 3

Point No. 8: The appellant states that the City violated the PSA by not notifying them of their rights to appeal an incomplete letter.

State law only requires that a process has to be provided to allow an appeal of an incomplete determination.

CONCLUSION:

Based on the above discussion, the application remains incomplete; two of the three items requested in the incomplete letter have not been provided. If the applicant provides the two remaining items, the Concept Design Review application will be deemed complete for processing.

It should be noted that the City has a track record of facilitating the production of housing and will process applications that conform to adopted regulations. In 2023, the City processed applications for 1,247 units, of which 324 were affordable. Furthermore, the City is implementing the General Plan through eight different specific plan updates that cover the majority of the City. The most recently adopted plan, the Central District Specific Plan, increased housing capacity significantly by introducing housing as an allowed use at the highest density in the City of 87 du/ac on Lake Avenue, north of Green Street, to provide new housing opportunities near public transit. This was an area of the plan that was previously envisioned as commercial only. In progress is a Zoning

Code Amendment to establish an Adaptive Re-Use ordinance to allow the conversion of non-residential buildings to housing. Further, the city has already adopted a Religious Sites ordinance to expand opportunities for housing, and the City Council has already adopted a comprehensive package of code amendments identified as Housing Element implementation measures.

A “Builder’s Remedy” application such as this one is not needed to stimulate housing production in Pasadena.

RECOMMENDATION:

It is recommended that the City Council uphold the Board of Zoning Appeals’ decision and the determination that the Concept Design Review application No. DHP2024-00099 is incomplete, in that the application does not contain the following information required on the City’s application form and listed in the incompleteness letter, as described in detail in this staff report:

- a. Design evolution information, as listed in the incompleteness letter; and
- b. Zoning Code compliance or an application for a Zoning Map amendment or variance.

FISCAL IMPACT:

The recommended actions will have no immediate fiscal impact.

Respectfully submitted,



JENNIFER PAIGE, AICP
Director of Planning & Community
Development

Prepared by:



Luis Rocha
Planning Manager

Approved by:



MIGUEL MÁRQUEZ
City Manager

Attachments: (10)

- Attachment A – Incomplete Letter dated April 3, 2024
- Attachment B – Appeal Application to BZA dated April 9, 2024
- Attachment C – Board of Zoning Appeals Decision Letter
- Attachment D – Appeal Application to the City Council received May 28, 2024
- Attachment E – Submittal Checklist for Concept Design Review
- Attachment F – PPR comments dated March 14, 2024
- Attachment G – Supplemental Appellant Appeal Letter dated May 16, 2024
- Attachment H – SB330 Preliminary Application received February 15, 2023
- Attachment I – Letter from HCD dated March 10, 2023
- Attachment J – HCD Letter of Technical Assistance to the City of Compton