



ADMINISTRATIVE ZONING MEMORANDUM
Item No. 5.1

DATE: November 8, 2024

TO: Rebecca Shapiro, Deputy Zoning Administrator
Quynh Byrer, Acting Assistant Public Works Director/City Engineer
Diana Fazely, Assistant City Attorney

FROM: Krisha Penollar, Senior Planner

SUBJECT: Recommendation for Zoning Permit No. PL-2023-102 and PL-2023-103 at 294-296 Tyrella Avenue (APN: 160-32-001 and 160-32-002)

Project Request

On May 30, 2023, Forrest Linebarger filed a request for a Development Review Permit, Heritage Tree Removal Permit, and Tentative Map to demolish an existing single-family house and construct a seven-story, 85-unit residential condominium development (20% affordable) with two-level parking garage on a 0.48-acre project site. This project is located on the southwest corner of Tyrella Avenue and East Middlefield Road in the R3-1 (Multiple-Family Residential) district.

Builder's Remedy

The California Legislature adopted the Housing Accountability Act (Gov. Code § 65589.5) to “significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects...” (Gov. Code § 65589.5(a)(2)(K)). It is the policy of the state that the Housing Accountability Act (HAA) “be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” (Gov. Code § 65589.5(a)(2)(L)).

The “Builder’s Remedy” provision of the HAA specifically prohibits a local agency from relying on inconsistency with zoning and general plan standards as a basis for denial of a housing development project for very low-, low-, or moderate-income households unless the agency has adopted a housing element in substantial compliance with State law. Forrest Linebarger of Tower Investment, LLC (Applicant), submitted a preliminary application before the City adopted a substantially compliant Housing Element for a housing development project which proposes 20% of its total units to be affordable to lower-income households. Therefore, the project qualifies as a Builder’s Remedy project.

Consistent with its intent to facilitate the approval of housing, the HAA limits the City's ability to deny or condition approval of a housing development project for very low-, low-, or moderate-income households in a manner that renders the project infeasible for affordable housing development (Gov. Code § 65589.5(d)). In addition, the Builder's Remedy provision of the HAA prohibits the City from relying on inconsistency with Zoning and General Plan standards as a basis for denial of a housing development project for very low-, low-, or moderate-income households.¹

However, the HAA contains provisions that maintain the City's ability to enforce some objective development standards, conditions, and policies if enforcement does not render the project infeasible or require a reduction in the proposed density. Section 65589.5(f)(1) of the HAA states that "nothing in [the HAA] shall be construed to prohibit a local agency from requiring the housing development project to comply with *objective,² quantifiable, written development standards, conditions, and policies* appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need" as long as they are applied to "facilitate and accommodate development at the density permitted on the site and proposed by the development." Section 65589.5(f)(3) of the HAA states that "[n]othing in [the HAA] shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project...."

Project Information

City staff has completed the review of the application and is recommending approval based on the findings and conditions of approval in the attached report including a recommendation that the project is categorically exempt pursuant to Section 15332 of the CEQA Guidelines ("In-Fill Development Projects").

This item will be discussed at a Joint Administrative Zoning and Subdivision Committee public hearing on November 13, 2024, where a recommendation to City Council, tentatively scheduled for December 10, 2024, will be made.

Public notices were sent to all property owners and renters within 750 feet of the project site.

Government Code Section 65103.5 requires the City to obtain consent from the project architect to post the full set of project plans online. The project architect of this project did not give the City their consent and therefore, the City is only authorized to post the site plan and massing

¹ A "housing development project for very low, low-, or moderate-income households" for purposes of the Builder's Remedy means a housing project in which at least 20% of the total units will be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or 100% of the units will be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of the Government Code.

² Under the HAA, "objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. (Gov. Code § 65589.5(h)(9).)

294-296 Tyrella Avenue

November 13, 2024

Page 2

diagram(s) on the City website for public viewing. Under State law, the City can distribute copies of the full plan set to members of the legislative body and members of the planning agency's governing body. The full set of plans and copies of all associated project documents are available for review during business hours at the Community Development Department, 500 Castro Street, First Floor, Mountain View, CA, 94041.

Attachments: Draft Findings Report
 Site Plan and Massing Diagram
 Draft Subdivision Conditions
 Tentative Map
 Public Comment