



November 13, 2024

***VIA E-MAIL***

Administrative Zoning and Subdivision Committee  
500 Castro Street  
Mountain View, CA 94039

Re: 294-296 Tyrella Avenue Builder's Remedy Project  
Yes In My Back Yard Comment Letter

Dear Administrative Zoning and Subdivision Committee:

YIMBY Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California. YIMBY Law pursues this mission through the enforcement of state housing laws, including the Housing Accountability Act ("HAA" or Gov. Code § 65589.5). As you know, subdivision (d)(5) of the HAA states that if a city or county does not have a "substantially compliant" Housing Element, that jurisdiction cannot utilize its zoning or general plan standards to disapprove a housing project that reserves 20% of its units affordable to lower income households. In other words, cities that fail to pass a compliant housing element by their deadline lose local control over housing development. This is known as the Builder's Remedy.

The City of Mountain View failed to adopt a substantially compliant Housing Element by the statutory deadline, and a preliminary application for an 85-unit housing development project with 20% low-income units at 294-296 Tyrella Avenue was submitted while the City was out of compliance. The submittal of a preliminary application ensures that the Builder's Remedy applies to the project throughout the entire entitlement process.

YIMBY Law previously sent the the City a letter explaining how the City is attempting to execute an end run around the Builder's Remedy by enforcing its zoning through conditions of approval. We are attaching the prior letter for your convenience. The City has chosen to ignore our letter and the requirements of state law, and are now proposing to impose over 200 hundred conditions of approval. The City's demand for over 3 million dollars in fees is particularly egregious for a project that reserves 20% of units for low-income households. These conditions would make any housing project infeasible, but imposing such conditions on a project that qualifies as "housing for very low, low- or moderate income households" all but ensures this project will not be constructed.

We are writing (again) to inform you that the City's actions are inconsistent with the Builder's Remedy and violate the HAA for the same reasons stated in April 9, 2024 letter. The Builder's Remedy requires the City to approve the project as submitted and proposed by the applicant, regardless of any purported code inconsistency.

YIMBY Law (again) reminds the City that the HAA squarely places the burden of proof on the City to demonstrate that it has complied with the HAA's requirements. (Gov. Code § 65589.6.) In other words, YIMBY Law does not have to demonstrate that the proposed conditions of approval violate the HAA, the burden is on the *City* to demonstrate that its conditions comply with the HAA's requirement.

The proposed project at 294-296 Tyrella Avenue provides desperately needed affordable housing in a community where skyrocketing housing costs have made housing unattainable except for the wealthiest individuals. Adding millions of dollars in fees, imposing procedural barriers, and adding to constructions costs will ensure that either this project will not be feasible. Even if the project were still able to be built, the proposed conditions would require the sale price of the market rate units to be raised significantly to offset the cost of the City's conditions, perpetuating the root cause of the City's housing cost problems.

We respectfully request that the City process the project consistent with the state law, and approve the project as submitted without the proposed unlawful conditions of approval. If the City fails to do so, YIMBY Law reserves the right to pursue litigation against the City to enforce state housing laws.

Best,



Sonja Trauss  
Executive Director  
YIMBY Law

Cc:

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