



Jul 9, 2024

City of Carmel-by-the-Sea
P.O. Box CC
Carmel-by-the-Sea, CA 93921

Re: Proposed Housing Development at Dolores Street 2 (Esperanza Carmel Commercial - JB Pastor Building)

By email: bswanson@ci.carmel.ca.us

Cc: cityclerk@ci.carmel.ca.us; planning@ci.carmel.ca.us; crerig@ci.carmel.ca.us; bpierik@ci.carmel.ca.us

Dear Carmel-by-the-Sea Planning Commission,

The California Housing Defense Fund (“CalHDF”) submits this letter to remind the Commission of its obligation to abide by all relevant state housing laws when evaluating the proposed housing development project at Dolores Street 2, DR 23-140 & LM 20-394 & UP 21-113 (Esperanza Carmel Commercial - JB Pastor Building). These laws include the Housing Accountability Act (Gov. Code, § 65589.5; the “HAA”), SB 330 (Gov. Code, § 65941.1), and CEQA Guidelines.

The HAA provides the project legal protections. It requires approval of zoning and general plan compliant housing development projects unless findings can be made regarding specific, objective, written health and safety hazards. (Gov. Code, § 65589.5, subd. (j).) The HAA also bars cities from imposing conditions on the approval of such projects that would reduce the project’s density unless, again, such written findings are made. (*Ibid.*) As a development with at least two-thirds of its area devoted to residential uses, the project falls within the HAA’s ambit, and it complies with local zoning code and the City’s general plan.

Furthermore, the HAA only permits consideration of objective standards. (Gov. Code, § 65589.5, subd. (j).) The HAA defines “objective” as “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.” (*Id.* at subd. (h)(9).)

SB 330 also protects projects against non-objective criteria. Specifically, SB 330 prohibits “Imposing or enforcing design standards established on or after January 1, 2020, that are not objective design standards.” (Gov. Code, § 66300, subd. (b)(1)(C).) SB 330 defines “Objective design standard” in almost identical terms as the HAA: “a design standard that involves no personal or subjective judgment by a public official and is 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 before submittal of an application.” (Id. at subd. (a)(7).)

It should be noted that the City’s design guidelines are replete with non-objective standards. Furthermore, the standard in CMC § 17.14.100, “whether the project constitutes an improvement over existing conditions,” is itself non-objective, as it is impossible for an applicant to know, *ex ante*, whether the Commission would consider the proposal an “improvement” given that it is an inherent value judgment.

Additionally, the project is exempt from state environmental review under the Class 32 CEQA categorical exemption (In-Fill Development Projects) pursuant to § 15332 of the CEQA Guidelines, as the project is consistent with the applicable general plan designation and all applicable general plan policies as well as the applicable zoning designation and regulations; the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; the project site has no value as habitat for endangered, rare or threatened species; approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the site can be adequately served by all required utilities and public services. And recent caselaw from the California Court of Appeal affirms that local governments err, and may be sued, when they improperly refuse to grant a project a CEQA exemption or streamlined CEQA review to which it is entitled. (*Hilltop Group, Inc. v. County of San Diego* (2024) 99 Cal.App.5th 890, 911.)

In summary, the HAA obligates the Commission to approve the design review, use permit, and lot merger for the project, unless the Commission makes specific written findings that the project would endanger public health and safety, which the Commission cannot do because the preponderance of evidence on the record does not support such findings. The Commission may not refuse to grant these permits on non-objective grounds, including any non-objective standards found in the City’s design guidelines. Furthermore, the City is obligated to grant the project an exemption from environmental review pursuant to § 15332 of the CEQA Guidelines.

As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit; it will bring increased tax revenue, new customers to local businesses, decarbonization in the face of climate crisis – and most importantly, it will provide multifamily housing. It will also help cut down on

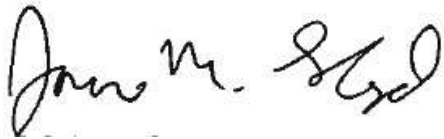
transportation-related greenhouse gas emissions by providing housing in more urban areas as opposed to farther-flung regions in the state (and out of state). While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the Commission to approve it, consistent with its obligations under state law.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,



Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations