



NOTICE OF FINAL APPROVAL OF AN SB 35 PROJECT

Date: 5/31/2023
BPA No.: 202211045959
Planning Record No. **2022-009171PRJ**
Project Address: **1939 MARKET ST**
Zoning: NCT-3 - MODERATE SCALE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT
85-X Height and Bulk District
Cultural Districts: None
Block/Lot: 3501 / 006 and 007
Project Sponsor: Clare Murphy
Mercy Housing California
1256 Market Street
San Francisco, CA 94103
Staff Contact: Jeffrey Horn - 628-652-7366
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Project Description

The proposed project consists of a 159-foot tall, 15-story multi-family residential building, with a total of 187 affordable apartments for seniors (a mix of studio, one-bedroom and two-bedroom units), residential interior amenity spaces and outdoor spaces. The building's ground floor includes a 1,524 square foot commercial space, residential lobby and mailroom, and residential service offices. The project includes on-site bike parking, and no on-site vehicle parking.

Background

California Senate Bill 35 (SB-35) was signed by Governor Jerry Brown on September 29, 2017 and became effective January 1, 2018. SB-35 applies in cities that are not meeting their Regional Housing Need Allocation (RHNA) goal for construction of above-moderate income housing and/or housing for households below 80% area median income (AMI). SB-35 amends Government Code Section 65913.4 to require local entities to streamline the approval of certain housing projects by providing a ministerial approval process, removing the requirement for CEQA analysis, and removing the requirement for Conditional Use Authorization or other similar discretionary entitlements granted by a Planning Commission.

Roselie Enriquez Ledda submitted an SB-35 Application for the project at 1939 Market Street on November 8, 2022. On December 17, 2022, department staff determined that the SB-35 Application was complete, and that the proposed project was eligible for SB-35.

The Planning Director did not request a Planning Commission Hearing or Historic Preservation Commission Hearing for this project.

Project Approval

The Project Sponsor seeks to proceed pursuant to Planning Code Section 206.6, Individually Requested State Density Bonus Law, Government Code Section 65915 et seq (the “State Law”). Under subsection 65915(b)(1)(G) of the State Law, a housing development that provides 100 percent of the total units for lower income households is entitled to four concessions and incentives that result in identifiable and actual cost reductions to provide for affordable housing costs. Such project, when located within one-half mile of a major transit stop, shall be relieved of maximum density controls and shall also receive a 50% gross floor area bonus, and unlimited waivers from development standards that might otherwise preclude the construction of the project are permitted under this subsection of the State Law.

Since the Project Sponsor is providing 187 units of housing affordable to low-income households, and the project is located within one-half mile of a major transit stop, the project is not subject to any maximum control on density and is entitled to receive up to four concessions/incentives, a 50% gross floor area bonus, and unlimited waivers. The project sponsor is requesting one concession/incentive from the development standards for transparency and fenestration (Planning Code Section 145.1(c)(6)). The project has requested waivers from the development standards for height (Planning Code Section 260), rear yard (Planning Code Section 134), usable open space (Planning Code Section 135), active uses at the street frontage (Planning Code Section 145.1(c)(3)), ground floor commercial (Planning Code Section 145.4) and off-street freight loading (Planning Code Section 152).

Concessions and Incentives

The project has requested a concession/incentive from the development standards for transparency and fenestration (Planning Code Section 145.1(c)(6)). Pursuant to Planning Code Section 206.6, the Department shall grant the concession or incentive requested by the applicant unless the Department makes a written finding, based upon substantial evidence, of any of the following:

- A. The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

Transparency and Fenestration Planning Code Section 145.1(c)(6) requires that frontages with active uses have transparent windows and/or doorways for no less than 60% of the street frontage at the ground level to allow visibility to the inside of buildings. The Project proposes commercial and accessory residential uses at the ground floor along the Market Street frontage and commercial and building service uses along the Duboce Avenue frontage. Of the 2,861 square feet of area at ground floor frontage along Duboce Avenue, 665.5 feet of area (or 23%) would be provided as qualifying active uses with transparent fenestration. Strict compliance with this section of the Planning Code would require the developer to construct a basement level to provide an area for the relocated building services. The relocation of non-active uses and the addition of basement level to the

building would result in an overall cost increase of \$6,500,000. Without an incentive or concession from the Planning Code's transparency and fenestration requirements, the Project and accompanying density bonus would not be feasible.

- B. The concession or incentive would have a specific, adverse impact, as defined in paragraph upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

The requested concession/incentive from the development standards transparency and fenestration at the street frontage (Planning Code Section 145.1(c)(6)) would not result in a specific, adverse impact to public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources.

- C. The concession or incentive would be contrary to state or federal law.

The requested concession/incentive from the development standard for transparency and fenestration at the street frontage (Planning Code Section 145.1(c)(6)) would not be contrary to state or federal law.

Waivers

The Planning Department may waive any development standard that will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by the State Density Bonus Law. The Department is not required to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. The Department is not required to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

The project has requested waivers from the development standards for height (Planning Code Section 260), rear yard (Planning Code Section 134), usable open space (Planning Code Section 135), active uses at the street frontage (Planning Code Section 145.1(c)(3)), ground floor commercial uses (Planning Code Section 145.4) and off-street freight loading (Planning Code Section 152).

- A. The waiver is not required to permit the construction of the project meeting the density permitted or with the Concessions and Incentives permitted under Planning Code Section 206.6.

Heighty Per Planning Code Section 260, the maximum height limit for the subject property is 85 feet. The Project proposes a 159-foot-tall building to accommodate additional affordable units. Limiting the height of the building to 85 feet as allowed under Planning Code Section 260 would reduce the number of dwelling units by approximately half of the total units that are currently proposed, thus the project is eligible for the Waiver.

Rear Yard Per Planning Code Section 134, the Project is required to provide a Rear Yard equal to 25% of the depth of the lot, to be provided at the lowest story containing a dwelling unit and at each succeeding level or story of the building. The Project proposes to relocate and reconfigure the required Rear Yard to the southern corner of the triangular shaped parcel. The relocated rear yard allows for a double-loaded corridor layout of the residential floors, which simplifies the geometry of the building and efficiently maximizes the use of the interior space, allowing the building to contain the number of dwelling housing units currently proposed, and thus is an eligible Waiver.

Open Space The requested waiver from usable open space further allows the project to add dwelling units at the project site. 1,592 square feet of common usable open space is provided, approximately seventeen percent of the square footage required, and is maximized in a common area at the podium's roof deck. Providing private open space in the form of balconies or additional common space in the form of a roof deck is financially and operationally infeasible, as it would preclude the construction of the proposed new building.

Active Uses Planning Code Section 145.1(c)(3) requires that space for active uses be provided within the first 25 feet of building depth at the ground floor and the first 15 feet on floors above from any façade facing a street at least 30 feet wide. Active uses includes any principal, conditional, or accessory use that by its nature does not require non-transparent walls facing a public street or involves the storage of goods or vehicles, and in residential buildings, spaces accessory to residential uses, such as fitness or community rooms, are considered active uses only if they meet the intent of this section and have access directly to the public sidewalk or street, and building lobbies are considered active uses, so long as they do not exceed 40 feet or 25 percent of building frontage, whichever is larger. The project's frontage along Market Street will contain a residential lobby, and offices for building management and resident services that comprise a total of 100 linear feet (63%) and the Duboce frontage will contain 106 linear feet (59%) of mechanical and operational building services with non-transparent walls. Strict compliance with this section of the Planning Code would require the developer to either make alterations to the ground floor levels to be consistent with Ground Floor Residential Design Guidelines, or create a basement level to relocate building services, or relocate resident service uses to a higher floor, which would reduce the residential area for and decrease the overall number of residential units.

Ground Floor Commercial Uses Per Planning Code Section 145.4, street frontages on Market Street located within an NCT-3 District shall be developed at the ground floor with active commercial uses. The project's frontage along Market Street will contain the residential lobby, and offices for building management and resident services that comprise a total of 100 linear feet (63%) and are not considered active commercial uses. Strict compliance with this section of the Planning Code would require the developer to relocate resident service uses to a higher floor, which would reduce the residential area and decrease the overall number of residential units.

Off-Street Loading Per Planning Code Section 152.1, the Project must provide one off-street loading space. The Project does not provide any off-street loading spaces. The inclusion of an off-street loading space would require the relocation of ground floor resident services to an upper floor of the building, which would result in the loss of residential area needed to provide the number of units currently proposed. Additionally, site constraints including the lot shape and restrictions on modifications of the street frontage make an off-street loading space that meets the dimensional and locational standards of Planning Code Sections 152.1 infeasible without requiring relocation of resident services such that at least one (1) dwelling unit would be lost.

- B. The waiver would have a specific, adverse impact, as defined in paragraph upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

The requested waivers from the development standards for height (Planning Code Section 260), rear yard (Planning Code Section 134), usable open space (Planning Code Section 135), active uses at the street frontage (Planning Code Section 145.1(c)(3)), ground floor commercial uses (Planning Code Section 145.4) and off-street freight loading (Planning Code Section 152) would not result in a specific, adverse impact to public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources.

- C. The waiver would be contrary to state or federal law.

The requested waivers from the development standards for height (Planning Code Section 260), rear yard (Planning Code Section 134), usable open space (Planning Code Section 135), active uses at the street frontage (Planning Code Section 145.1(c)(3)), ground floor commercial uses (Planning Code Section 145.4) and off-street freight loading (Planning Code Section 152) would not be contrary to state or federal law.

The Department has determined that the project meets all the objective standards of the Planning Code and has completed design review of the project. The project has been approved in accordance with the provisions of SB-35, as recorded in Building Permit Application No. 202211045959.