



SAN FRANCISCO PLANNING DEPARTMENT

Planning Department Report

Date: January 17, 2023
Report Name: Interim Controls – Large Residential Projects in RC, RM and RTO Districts
Case Number: 2021-000694PCA
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STATEMENT OF PURPOSE

Per Planning Code Section 306.7(i), the Planning Department is required to conduct a study of zoning proposal contemplated in interim controls enacted by the Board of Supervisors and propose permanent legislation. For any control that is placed in effect for more than six months, a report to the Board of Supervisors is required six months from the date of the imposition of the controls and at least every six months thereafter. This report is intended to satisfy that requirement.

Per Planning Code Section 306.7(i), this report is required inform the Board of (1) the status of the planning study, (2) the findings and recommendations to date, and (3) the estimated time of completion of such study and proposed permanent legislation.

BACKGROUND

This report was prepared in response to the extension of a resolution (BF 220895), introduced by Supervisor Peskin on July 26, 2022, and enacted into law on September 29, 2022 (enactment number 404-22). This resolution extends and modifies the interim zoning controls enacted in Resolution No. 10-21 for parcels in Residential-Commercial Combined (RC), Residential-Mixed (RM) and Residential-Transit Oriented (RTO) districts, requiring Conditional Use authorization for certain residential developments that do not maximize the number of units allowed by applicable density restrictions.

The Way It Was:

1. The Planning Code did not require Conditional Use authorization for projects that did not maximize their zoning district's underlying residential density limits in RC, RM, or RTO Districts.

The Way It Is Now:

1. For the duration of the interim controls, in all RC, RM, and RTO Districts (except RTO-M) the following controls apply:
 - a) Proposed new construction of a residential building, or any proposed alteration that would result in the expansion of a residential building shall require a Conditional Use authorization if the residential building does not maximize the principally permitted

residential density. For the purposes of this requirement, “maximum density” shall not include any additional residential density permitted under state law or Planning Code, Section 206. Projects must also adhere to the minimum unit size requirements set forth in Planning Code Section 206.3.

- b) If existing lot conditions or form-based restrictions on development (e.g., height, bulk, rear yard requirements) are such that a proposed project cannot maximize density without seeking a variance or subdividing existing units on the lot, (and while adhering to the minimum unit size requirements set forth in Planning Code), a Conditional Use authorization shall *not* be required so long as the proposed project:
 - i. Increases density on a subject lot;
 - ii. Does not include any single unit greater than 2,000 square feet in size, and;
 - iii. Would not be subject to Conditional Use Authorization under any other provision of the Planning Code.
- c) A Conditional Use authorization shall *not* be required for expansions of existing residential buildings when the proposed expansion is 25% or less of the existing residential building, provided that the proposed expansion:
 - i. Does not increase the size of any unit that is already larger than 2,000 square feet in size;
 - ii. Does not create any new unit that is greater than 2,000 square feet in size, and;
 - iii. Does not cause an existing unit that is less than 2,000 square feet in size to be larger than 2000 square feet in size.

September 2022 Update:

In September of 2022, Supervisor Peskin extended the interim controls and added an additional exception. The new provision provides an exception from the Conditional Use authorization for buildings with two or more existing dwelling units who propose expansions of existing units resulting so long as no unit is greater than 3,000sqft, and no unit is less than 50% of the largest unit in the building.

PLANNING STUDY

Status of Study

The interim controls will be in effect until January 22, 2023, or until the adoption of permanent controls. The Planning Department has completed its study, the findings of which are covered in this report.

Findings and Recommendations

Study Findings

The Department has identified seven projects that have been affected by the interim controls. Three of the affected projects consisted of additions to existing single-family homes already over the 2,000sqft threshold that are not adding density. Of those, two of the projects are moving forward with the Conditional Use authorization without amending their project scope. The third project has not yet decided whether to amend their project to comply with the interim controls; however, staff believes they will likely also apply for the Conditional Use authorization, rather than change their project scope.

Only one of the seven projects proposed to increase the size of a single-family home that was under 2,000sqft. This project sought to expand an approximately 1,900sqft single-family home by 380sqft and add an Accessory Dwelling Unit. The Commission approved that project because adding additional density would have been infeasible without multiple variances (very little buildable area exists on the lot).

The most successful application of the interim controls was on a project at 1263 Clay Street. The original project proposed to demolish the adjacent garage of an existing 2-unit building, and construct a single-family home over 2,000sqft. Due to the presence of the interim controls, as well as a Discretionary Review application filed on the project, the sponsors amended the project to instead build a 2-unit condo building on the garage site and add an ADU to the ground floor of the existing 2-unit building.

Of the final two projects, both are seeking to expand at least one unit of a multi-unit building where at least one of the existing units is currently under 2,000sqft, without maximizing density. Of these, one of the project's sponsors has not yet responded to the Department's notice that the interim controls apply to their project, and the other is considering whether to move forward with the original project, or to amend the application to comply with the interim controls.

This second project described above illustrates how the interim controls can capture relatively minor and supportable projects. The project in question is in an RM-4 district, where the maximum residential density is 12 units. The site contains one office unit with a residential unit above. The project seeks to expand the existing dwelling unit to accommodate a new bathroom and add a new dwelling unit through a vertical addition. The existing dwelling unit is approximately 2,300sqft and the proposed new dwelling unit would be 2,054 square feet. Both the small expansion of the existing unit, and the proposal for a new dwelling unit over 2,000sqft would trigger the interim controls. To avoid the Conditional Use process, the project would need to maximize density, which would require adding 10 units. Since the building is also a historic resource, the alterations needed to add 10 additional dwelling units is not only difficult, but also prohibitively expensive. This project is not seeking to expand or build an overly large unit and is in fact adding density. The current interim controls have no Conditional Use exception for projects that would result in units just over 2,000sqft if they do not maximize density, therefore this project's only alternative to filing a Conditional Use application is to abandon the bathroom addition of the existing unit, and reduce the second unit to under 2,000sqft.

A finding in the interim control's adoption resolution indicates that one of the primary purposes of the controls was to create disincentives "for low-density projects in zoning districts that allow for greater density." At this stage $\frac{3}{4}$ of the affected projects are still in process, making it difficult to determine whether the interim controls have been successful. So far, however, staff has found that the projects the interim controls most seek to dissuade (expansions of single-family homes) have largely decided to move forward with the Conditional Use authorization, rather than maximize density or reduce their expansion.

The reasons for pursuing this route rather than altering the project to add density appears to be three-fold. The first reason is some of the projects are proposing smaller additions (less than 500sqft) with no other proposed work. The second is that some of the projects would require either a Certificate of Appropriateness or Variance to maximize density and avoid a Conditional Use hearing. These additional processes would delay the application on their own, making avoiding a Conditional Use authorization to expedite their application moot. Finally, at least two of the projects have found that maximizing density on their lot would either be financially or physically infeasible.

The interim controls did not include criteria for the Planning Commission to consider when evaluating Conditional Use applications; therefore, the standard, subjective criteria in Planning Code Section 303 were used by staff and the commission to evaluate these projects. Subjective criteria are problematic because they are left to interpretation, and don't provide an objective means to deny an otherwise code complying project. Objective criteria also help specify what types of housing in a particular zoning district we want to encourage or discourage. Further, if the criteria are well developed, a Conditional Use hearing can be avoided entirely, removing a process barrier to building housing and reducing the burden on the Planning Commission's calendar.

Planning's Recommendation

Over the past 18 months, the Department has studied the affected cases, and worked with the Supervisor to better understand the intended outcome of both the interim controls and any permanent legislation. Through that process we understand the goal of these interim controls is to encourage projects to maximize density in the affected districts, and to discourage projects that seek to build large single-family homes. Based on that analysis, the Department is proposing permanent controls for the Board to consider for permanent legislation. The Department's proposal seeks to encourage projects to maximize density using objective criteria, while allowing for modest expansions of existing non-compliant housing units. Lastly, the Department sought to create an easier path for projects that we want to encourage by creating a clear and direct process for their approval.

Proposed Controls:

In all RM, RC, and RTO (except RTO-M), the following standards would apply:

New Construction Projects:

- Unit Size Limits (FAR = Floor Area Ratio)
 - 1 unit = 1,500gsf.
 - 2 units = 4,000gsf or 1.6 FAR (whichever is greater)
 - 3 units = 6,000gsf or 2.4 FAR (whichever is greater)
 - 4 units = 8,000gsf or 3.2 FAR (whichever is greater)
 - >4 units = No gsf or FAR limit
- No unit may be smaller than 1/3 the size of the largest unit
- New construction projects that maximize density would receive priority processing.
 - To qualify the project must also propose:
 - No unit smaller than 1/3 the size of the largest unit
 - No unit over 2,000sqft or 0.8 FAR (whichever is less)
 - No demolition of:
 - Historic resource
 - Property with an Ellis Act Eviction within the last 10 years
 - Projects that qualify would receive:
 - No Discretionary Review, objective design standards, and 180-day processing timeline
 - For projects proposing development on a vacant lot or demolition of a non-historic single-family home: No Conditional Use authorization for Sec. 317

FOR EXPANSIONS OF EXISTING UNIT:

- Hard cap on expansions that would result in any dwelling unit being more than 3,000gsf or 1.2FAR
 - Exceptions for small expansions of less than 15%, measured over 10 years
- Create priority processing for projects seeking to add max units allowed under zoning:
 - Same standards as proposed for new construction projects must be met to receive priority processing – except that maximum unit sizes would only apply to *newly created* units (must be no larger than 2,000gsf or 0.8 FAR whichever is less).
Example: An existing single-family home of 2,500gsf would be able to add a unit of 1,500gsf and receive priority processing.

Next Steps

The Department has completed its study of the interim controls. The Department estimate that time to implement permanent legislation would take approximately 4-6 months, depending on public outreach and the calendars of the Planning Commission and the Board of Supervisors.

RECOMMENDATION

The Planning Department is recommending that the Board accept this report, and that the sponsoring Supervisor work to develop permanent controls as outlined above.

REQUIRED BOARD ACTION

The Board may approve or disapprove this report.

ENVIRONMENTAL REVIEW

This Report was determined not to be a project per State CEQA Guidelines, Sections 15378 and 15060(c)(2), because it does not result in a physical change to the environment.