

**From:** [Linda Arriaga](#)  
**To:** [eComments, PBA](#)  
**Subject:** 1212 E. Fourth Street - Transit Zoning Code/Spec Dev No. 84 (SD84)  
**Date:** Sunday, August 27, 2023 11:57:35 PM

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Matter to be heard on: Monday, August 28, 2023 at 5:30 p.m. City Council Chambers

My name is Linda Arriaga, I reside at 1215 E. 3rd Street, Santa Ana, CA 92701. I have lived at this address for over 20 years. My parents were the previous owners. My father was Frank Rodriguez, the first Hispanic police officer hired by the Santa Ana Police Department. My property is directly behind the property (1212 E. Fourth Street) that applicants (Oscar Uranga and Unison Real Estate Group, LLC) are proposing to construct a 15-unit rental residential property.

This is my concern with building a 15-unit rental residential on this property. First, the congestion it would cause. It is near the corner of 4th and Grand Ave. This intersection has had numerous accidents; the parking alone would not be enough, thereby causing residents from this 15-unit to come and park on our street (1215 E. 3rd Street). We have several homeowners renting out rooms to individuals already causing limited parking. You figure 15 apartments times the number of people living in these apartments, not including renting out rooms to others, in order for these folks to pay for rent. Is too much.

Should you choose to approve this project, this is to place the City of Santa Ana on notice of the propensity of a major accident to happen because of the congestion. Was a legal assistant for over 48 years, 10 of those years working for attorneys who represented several public entities and saw a lot of accidents the city could have prevented.

Thank you for allowing me the opportunity to voice my concerns.

Sincerely  
Linda Arriaga

Sent from my iPad

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**From:** [Lindo, Jared@DOT](mailto:Jared.Lindo@dot.ca.gov) <Jared.Lindo@dot.ca.gov>

**Sent:** Saturday, August 26, 2023 1:45 PM

**To:** Imani, Mehrsa@HCD <Mehrsa.Imani@hcd.ca.gov>; Pezeshkpour, Ali <APezeshkpour@santa-ana.org>

**Subject:** 1212 E Fourth Street Application TZC/CDR zoning requirements

Dear Mehrsa Imani, Ali Pezeshkpour,

The purpose of this letter is to halt any approval to modification of zoning requirements and to adhere to the development requirements of a first floor commercial/mixed use zoning at the subject property. This is in response to the attached letter sent to the City of Santa Ana Planning Manager on 4/27/2023 referencing 1212 E Fourth Street Application – Letter of Technical Assistance. The letter outlines the timeline of project phases and highlights the local governments reluctance to provide timely review and responses to both the applicants Phase 1: Applicants Submittal to Application Completeness Determination, and Phase 2: Application Completeness Determination to Project Consistency Determination. I find that both of these review processes would have been critical reviews based on the applicants request for concessions to reduce, modify or eliminate development standards and zoning code requirements.

In light of the letter where its written that a concession may be sought not only to modify a zoning code requirement where: "First the applicable zoning classification is simply "multi-family dwellings" (i.e., not "MixedUse"). Second, the ground floor commercial requirement is subordinate in function to the primary zoning classification of "Multi-Family Dwellings," relating primarily to the location of the commercial floor area". This does not correctly describe the subject projects zoning classification, where as, in review of the City of Santa Anas Zones Established & Uses document (April 28 2022) and stated in the attached letter, the project location is zoned as Transit Zoning Code (TZC) and Corridor (CDR) Zone, which defines CDR as:

"This zone is applied to properties fronting existing commercial corridors and provides standards to improve pedestrian-orientation in a transit-supportive, mixed use area. Mixed-use flex block and live-work building types are at or near the sidewalk, and accommodate street level retail, service, and office uses, with office and residential above...."

Therefore, the project is zoned as CDR, meaning the project needs to comply to is zoning requirements and include first floor commercial. Altering the zoning of this corner is not consistent with the adjacent zoning and use of the adjacent and surrounding properties of the area. These properties are for mixed-use and live-work spaces making the primary function of such developments first floor commercial and upper story dwellings subordinate to the first floor commercial use. Using the State Density Bonus Law (SDBL) to modify zoning away from commercial local need is an overreach. The SDBL directive of "shall be interpreted liberally in favor of producing the maximum number of total housing units" does not mean to increase housing by altering exiting zoning, reduce local jobs, reduce local businesses, and reduce local resources for residents in the local and regional area. This zoning is also in place to protect the resources available to the greater regional area due to its proximity of local and regional transit as part of the TZC zone. Noting that the "the cost of adding an additional story to the building to meet the ground floor commercial requirement and providing 16 units is presumably economically infeasible" would not be sufficient justification since the property location per code is only allotted 12 units per is size allotment and any allowed units using an incentive to grant is just that, an incentive. An reduction in an incentive should not be justification enough to replace a zoning standard and itself be the reason for first floor commercial exceptions. The applicant will be granted the additional 4 units per the SDBL which it is entitled, however it is up to the applicant to incorporate the incentive or not. The applicant has demonstrated that they can incorporate 2 of the 4 SDBL incentive units while adhering to the first floor mixed use zoning requirements meaning that there is no need for an additional floor nor is it infeasible as the letter states.

I did read that this project is either determined or seeking Environmental Categorically Exempt (CE) CEQA determination. If this is the case, I believe that any consideration in an exception to local zoning would violate CE/CE determination and require a revalidation and trigger an Initial Study Mitigated Negative Determination (IS/MND) or Environmental Impact Report (EIR). Where local community members would have the opportunity to comment and review.

Thank you for your consideration. If you have any questions please feel free to reach out to me.

Jared Lindo, PE

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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April 27, 2023

Ali Pezeshkpour, Planning Manager  
City of Santa Ana  
Planning Division  
20 Civic Center Plaza  
Santa Ana, CA 92701

Dear Ali Pezeshkpour:

**RE: 1212 E Fourth Street Application – Letter of Technical Assistance**

The purpose of this letter is to provide technical assistance to the City of Santa Ana (City) regarding the application for a proposed housing project to be located at 1212 E Fourth Street (Project). The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the subject Project, and the determination of application completion and consistency pursuant to the Permit Streamlining Act (PSA) (Gov. Code, § 65920 et seq.), the Housing Accountability Act (HAA) (Gov. Code, § 65589.5), and the State Density Bonus Law (SDBL) (Gov. Code, § 65915 et seq.). Additionally, the request asks if the Project will be subject to the City's recently amended inclusionary zoning ordinance, named the Affordable Housing Opportunity and Creation Ordinance (AHOCO).

HCD understands that the proposed Project will create a total of 14 units, including one unit dedicated to very low-income (VLI) households. The Project site has a general plan land-use designation of Urban Neighborhood-Medium, allowing residential densities of up to 40 dwelling units per acre (du/ac). The site is zoned Transit Zoning Code (TZC) / Corridor Zone (CDR). The Project's zoning classification is "Multi-Family Dwellings."<sup>1</sup> Under the SDBL, the Project's base density is 12 units (0.287 acres x 40 du/ac, rounded up per Gov. Code, § 65915, subd. (q)). The applicant is providing eight percent VLI units (one unit) to earn a 27.5-percent density bonus (four units). While entitled to four units, the applicant has chosen to incorporate only two bonus units. The Project seeks concessions and development standard waivers pursuant to the SDBL.

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<sup>1</sup> Transit Zoning Code (TZC), Section 41-2007, Table 2A – Use Standards.

## **Project Timeline**

This letter presents the Project's permitting history in three distinct phases, punctuated by key milestones, to present the information in the clearest way possible.

### **Phase 1: Application Submittal to Application Completeness Determination**

On November 10, 2021, the applicant submitted the full development application. Under the Permit Streamlining Act, local governments have 30 calendar days after the development application submittal to inform the applicant of whether the application is complete. If the local government does not inform the applicant of any deficiencies within that 30-day period, the application will be "deemed complete," even if it is deficient (Gov. Code, § 65943, subd. (a)).<sup>2</sup>

The City failed to inform the applicant in writing that the application was not complete by December 10, 2021 (i.e., 30 days from the date of submittal). Therefore, on December 10, 2021, the application was deemed complete by operation of law.

### **Phase 2: Application Completeness Determination to Project Consistency Determination**

The HAA requires that for housing development projects containing 150 or fewer housing units, the local agency has 30 days from the date the development application is deemed complete to provide the applicant with written documentation of any inconsistency, incompliance, or inconformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision (Gov. Code, § 65589.5, subd. (j)(2)(A)(i)). If the local agency does not provide written documentation of such findings within 30 days, the development project shall be deemed consistent, compliant, and in conformity of the applicable plan, ordinance, and standards (Gov. Code, § 65589.5, subd. (j)(2)(B)).

The City failed to inform the applicant in writing of any inconsistencies by January 9, 2022 (i.e., 30 days from the date that the application was deemed complete by operation of law). Therefore, on January 9, 2022, the Project was deemed consistent and compliant with the applicable plan, ordinance, and standards by operation of law. On the same date, the Project became vested under the HAA (Gov. Code, § 65589.5, subd. (j)(1)). Note that the Project's vesting is not based on the submittal of a Preliminary Application (Gov. Code, § 65941.1) because the applicant did not submit a Preliminary Application. The Project's vesting occurred when the application was deemed consistent by operation of law (Gov. Code, § 65589.5, subd. (h)(5)).

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<sup>2</sup> See also Housing Accountability Act Technical Assistance Advisory Memo, dated September 15, 2020, Page 8.

### **Phase 3: Project Consistency Determination to Project Consideration**

Nine days after the Project was deemed consistent by operation of law, on January 18, 2022, the City sent the applicant its first letter regarding the Project. The letter confirmed the application submittal date of November 18, 2022 and provided a list of required modifications to the design of the Project. It is apparent from the length and level of detail in the letter that its purpose was related to Project consistency and not application completeness. Throughout the following year, the applicant continued to revise the Project while periodically receiving inconsistency letters from the City. The most recent letter from the City to the applicant, dated March 15, 2023, states that the project “has met the requirements and conditions of the City’s Development Review (DRC) to complete the Development Project Review process” – except for the singular issue of compliance with the AHOCO.

### **Santa Ana’s Affordable Housing Opportunity and Creation Ordinance (AHOCO)**

HCD understands that the AHOCO was formerly known as the Housing Opportunity Ordinance (HOO), which was adopted in 2011 and later amended in 2015, 2020, and 2022. The HOO, as amended in 2020, applied to “any new residential project comprised of twenty (20) or more residential lots or residential units” (NS-2994, Sec. 41-1902). As of April 19, 2022, the newly adopted AHOCO became applicable to “any new project comprised of five or more residential lots or residential units” (Ord. No. NS-3019, Sec. 41-1902). Relative to the State Density Bonus Law, the City’s AHOCO requires more affordable units, and more deeply affordable units, than the minimums specified in the SDBL (Gov. Code, § 65915, sub. (b)).

While HCD recognizes the City’s efforts for a more robust inclusionary zoning ordinance, due to the Project being deemed consistent (under operation of law) on January 9, 2021, the Project is not subject to the AHOCO. The Project is only subject to the requirements in effect on January 9, 2021.

### **State Density Bonus Law**

At the time the application was initially submitted on November 10, 2021, the Project design included 16 units, including four bonus units. The applicant sought to use a SDBL concession to reduce or eliminate a requirement that “Multi-Family Dwellings” be located “only on second or upper floors, or behind retail or service ground floor use.”<sup>3</sup> The City informed the applicant in a letter dated January 18, 2022 that “[t]he Density Bonus Law’s provisions do not allow an applicant to request a waiver for land uses, such as the commercial/mixed-use requirement for a project.” This is an overly broad interpretation. The SDBL contains no language creating a distinction between

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<sup>3</sup> Transit Zoning Code (TZC), Section 41-2007, Table 2A – Use Standards, Footnote 1.

requirements associated with “land use” and development standards.<sup>4</sup> A concession may be sought not only to modify or eliminate a development standard but also to modify “zoning code requirements” (Gov. Code, § 65915, sub. (k)(1)). First, the applicable zoning classification is simply “Multi-Family Dwellings” (i.e., not “Mixed-Use”). Second, the ground floor commercial requirement is subordinate in function to the primary zoning classification of “Multi-Family Dwellings,” relating primarily to the location of the commercial floor area.

If the applicant chooses to request a concession to eliminate or modify the requirement for ground floor commercial, they may. The decision-making body must consider the requested concession pursuant to the SDBL. The City must grant (i.e., “shall approve”) the specific incentives/concessions requested by the applicant unless the City makes written findings, based on substantial evidence, that the incentive/concession would (1) not result in a cost reduction, (2) have a specific adverse impact on health or safety (as defined), or (3) be contrary to state or federal law (Gov. Code, § 65915, subd. (d)). Because the City wrongfully rejected its concession request, the applicant has removed the two ground floor residential units and replaced them with commercial floor area. This has reduced the number of units in the overall project from 16 to 14, thus not achieving the full 27.5-percent density bonus to which the applicant is entitled. The cost of adding an additional story to the building to meet the ground floor commercial requirement and providing 16 units is presumably economically infeasible.

Finally, the SDBL contains the directive that it “shall be interpreted liberally in favor of producing the maximum number of total housing units” (Gov. Code, § 65915, subd. (r)).

## **Conclusion and Next Steps**

HCD encourages the City’s efforts to prioritize housing affordability and to increase the overall supply of housing. However, the City must process development applications in accordance with the timelines established under the PSA and the HAA. Failure to do so results in project applications being deemed complete and consistent with local regulatory requirements by operation of law, as seen here. Moving forward, HCD expects the City to advance the Project to a meeting where it can be considered by the decision-making body.

HCD would also like to remind the City that HCD has enforcement authority over the SDBL, HAA, and PSA, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city’s actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

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<sup>4</sup> “Development Standard” is defined in Government Code section 65915, subdivision (o)(2).



If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Mehrsa Imani, of our staff, at [mehrsa.imani@hcd.ca.gov](mailto:mehrsa.imani@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West  
Housing Accountability Unit Chief