

City Properly Exempted Project from Certain Local Development Standards Under Density Bonus Law

The City did not abuse its discretion in finding a residential project to be consistent with the City's development standards since the project qualified for exemption from those standards under the Density Bonus Law. *Bankers Hill 150 v. City of San Diego* 74 Cal. App. 5th 755 (2022).

Petitioner, a community association, challenged a decision by the City of San Diego to approve a development application for a 20-story mixed-use building project with a total of 204 dwelling units in the Bankers Hill neighborhood near downtown San Diego.

Petitioner claimed the project was inconsistent with development standards and policies in the City's General Plan and the Uptown Community Plan, arguing that the project's design improperly obstructed views, failed to complement neighboring Balboa Park, and towered over adjacent smaller-scale buildings.



The court found that petitioners claims "sidestep[ed] a critical factor in the City's decision-making process: the application of . . . the Density Bonus Law" (Gov. Code §§ 65915 et seq.), which is designed to encourage the construction of affordable housing. Under the Density Bonus Law, a developer may add additional housing units beyond the zoned capacity and take advantage of other incentives in exchange for including deed-restricted affordable units in a project. If a developer meets the requirements of the Density Bonus Law, the City must permit the increased density and waive any conflicting local development standards, unless certain limited exceptions apply.

Here, the developer included 18 units with deed restrictions to make them affordable to low-income households. With the density bonus, the developer sought to exceed the maximum zoned capacity of 147 units by 57 units. With the development incentives, the developer sought to avoid a setback on one street, eliminate two on-site loading spaces for trucks, and reduce the number of private storage areas for residents. The City could deny the project as inconsistent with these development standards only if it made specific findings that their waiver would (1) not result in any actual cost reductions; (2) adversely affect public health or safety; (3) be contrary to state or federal law. The City Council found there was no substantial evidence to support the denial of the requested incentives.

The court upheld the City Council's determinations. The City did not abuse its discretion in finding that several policies cited by petitioner did not apply to the project and the record supported the City's conclusion that the project did not conflict with the policies that were applicable. The record also demonstrated that including the affordable units in the project was only possible if the building was designed as proposed. If the City had denied the requested incentives or failed to waive the inconsistent design standards, it would have physically precluded construction of the project, including the affordable units--which would defeat the Density Bonus Law's goal of increasing affordable housing.

The City Council properly concluded that the project qualified for the benefits of the Density Bonus Law and that the evidence did not justify refusal to waive the local development standards.

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