

## Martha Ochoa

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**From:** Emily Price <singingemily23@gmail.com>  
**Sent:** Wednesday, August 9, 2023 3:16 PM  
**To:** Martha Ochoa  
**Subject:** Proposed construction in Lantern District

Hello Martha,

I sent my comments to Alyssa and she asked me to pass them on to you. This is in reference to the August 14 Planning commission meeting. Please see original email below.

Please feel free to reach out to me if I can be of further assistance or if you have any questions.

Thank you for your time,

Emily Price  
Sent from my iPhone

Begin forwarded message:

**From:** Alyssa Gonzalez <agonzalez@danapoint.org>  
**Date:** August 9, 2023 at 10:04:51 AM PDT  
**To:** Emily Price <singingemily23@gmail.com>  
**Subject:** RE: Proposed construction in Lantern District

Hi Emily,

Thank you for your comment! Could you please send this to our Senior Administrative Assistant, Martha Ochoa? She is the person who records the public comments. Let her know that this is for the August 14 Planning Commission meeting and it is for 33861 Malaga Dr. Her email is mochoa@danapoint.org. Let me know if you have any questions!

Best,

Alyssa Gonzalez  
Assistant Planner  
City of Dana Point – Community Development  
(949) 248-3556 | agonzalez@danapoint.org  
33282 Golden Lantern | Dana Point | CA 92629

-----Original Message-----

**From:** Emily Price <singingemily23@gmail.com>  
**Sent:** Tuesday, August 8, 2023 9:26 PM  
**To:** Alyssa Gonzalez <agonzalez@danapoint.org>  
**Subject:** Proposed construction in Lantern District

Hello Alyssa,

It was a pleasure speaking with you on the phone a while back. I just want to email and put in writing my

concern with the proposed construction at the bottom of my block. For reference, the property that I own and occupy is at [REDACTED]. If possible, I would prefer my exact address not be mentioned to the party proposing the new construction.

I believe the property in question is located at 33861 Malaga Drive. My understanding is that the owner wants to convert a garage into an additional living space. This is a property that already has multiple units and it does not appear that any of its garages are currently being used for vehicle parking. I pass this property every day as I drive to work and I often see cars parked along the curve or across the sidewalk, which I didn't even think was legal.

This is a densely populated area with many duplexes and triplexes and street parking is already difficult to find on a daily basis. My concern is that allowing a garage to be converted into a living space in this neighborhood will add more vehicles for new tenants and exacerbate the already challenging street parking situation.

Thank you for allowing me to contribute my thoughts. If you need anything further from me, I can be reached at [REDACTED]

Thank you for your time,

Emily Price  
Sent from my iPhone



Aug 14, 2023

**City of Dana Point**  
**33282 Golden Lantern St.**  
**Dana Point, California 92629**

**By Email:** DGIOMETTI@DanaPoint.org; adhingra@danapoint.org; mopel@danapoint.org; lboughen@danapoint.org; enelson@danapoint.org

**CC:** ssharke@danapoint.org; PMunoz@rutan.com

**Re:** Proposed Accessory Dwelling Unit at 33861 Malaga Drive

Dear Dana Point Planning Staff and Planning Commission,

The California Housing Defense Fund (“CalHDF”) writes regarding the application to construct an accessory dwelling unit (“ADU”) at 33861 Malaga Drive. In sum: the City must process the application in accordance with state law, and its failure to do so exposes it to liability.

California law sets clear rules for ADU applications. (*See* Gov. Code § 65852.2.) These rules apply even in the absence of a local zoning ordinance that complies with them. The ADU here is proposed to be built “within the portions of existing multifamily dwelling structures that are not used as livable space.” (*Id.* at subd. (e)(1)(C).) Thus, the City has an absolute duty to process the application ministerially, and no local rules – whether or not they comply with state law – can disturb that duty. (*Id.* at subd. (e) [“Notwithstanding subdivisions (a) to (d), inclusive, a local agency **shall ministerially approve** an application [...]”] [emphasis added].)

On top of this, “A local agency **shall not require**, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of **nonconforming zoning conditions.**” (*Id.* at subd. (e)(2) [emphasis added]; *see also id.* at subd. (d) [“The local agency shall not deny an application for [...] an accessory dwelling unit due to the correction of nonconforming zoning conditions”].)

Here, the City, citing section 9.07.210(f)(1)(D) of the zoning code, has refused to process the ADU application because of existing nonconforming conditions on the site. The City believes this nonconforming condition requires the applicant to seek a Site Development Permit (“SDP”) before building an ADU. The City is very obviously mistaken: its position directly

conflicts with the state ADU law summarized above. That law requires the City to process the application ministerially, regardless of existing nonconforming conditions and regardless of any local rules.

CalHDF notes the city, in adopting its new ADU ordinance, tries to evade this obligation by distinguishing between denying an ADU application for failure to correct a non-conforming zoning condition and ex ante making it impossible for an ADU applicant to receive permits if non-conforming zoning conditions exist. (See Section 7 of the associated Resolution.) Whether or not this sleight-of-hand does anything, it carries no relevance for the application at hand. That is because – again – Government Code section 65852.2, subdivision (e), imposes an absolute duty on the City to ministerially process the application at issue here. (Compare Section 7 of the Resolution [citing Gov. Code § 65852.2, subd. (a) for authority] with Gov. Code § 65852.2, subd. (e) [**“Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve...”**] [emphasis added].)

Furthermore, the City must obey strict timelines in processing the application. The City “shall either approve or deny the application to create [...] an accessory dwelling unit [...] within 60 days” of receiving the application. (Gov. Code § 65852.2, subd. (b)(1).)

CalHDF reminds the City that state law does not look kindly on jurisdictions that play games to suppress housing construction (*see, e.g.*, Gov. Code § 65589.5), and courts will award attorneys’ fees for a successful challenge to a bad-faith disapproval (*see id.*; *see also* Code of Civ. Proc. § 1021.5). The City of Huntington Beach, for example, recently had to pay \$600,000 in attorneys’ fees to housing organizations, including CalHDF, that sued the City for improperly denying a housing development project. CalHDF would not mind taking free money if Dana Point insists on giving it to us, but we would prefer to see the City simply follow the law in the first place.

We urge the City to process the application to construct an ADU at 33861 Malaga Drive in accordance with the 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](http://www.calhdf.org).

Sincerely,



Dylan Casey  
CalHDF Executive Director



Courtney Welch  
CalHDF Director of Investigations and Enforcement