



Mar 25, 2024

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Re: Proposed Accessory Dwelling Unit at 34585 Calle Portola

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 34585 Calle Portola. In sum: the City must process the application in accordance with state law, which requires ministerial approval of ADUs, without public hearing.

California law sets clear rules for ADU applications. (*See* Gov. Code § 65852.2.) State law clearly states that ADUs are to be permitted ministerially: (*Id.* at subd. (a)(3)(A).)

A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits.

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 “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].)

Additionally, the Commission may not require the parking be replaced (*id.* at subd(a)(1)(d)(xi)):

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

Of note, given that the duplex at 34585 Calle Portola is non-conforming, “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); *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”].)

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).)

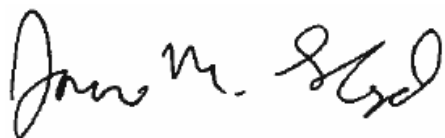
Requiring a public hearing and discretionary review to process this application for an ADU is contrary to the requirements of state ADU law, as discussed above. CalHDF notes this is not the first, or even the second, ADU application where we have had to remind the City of its legal duties, and the City is facing at least one lawsuit for its conduct around ADU permits, as well as action by the State Department of Housing and Community Development. We urge the City to follow the law and process the application to construct an ADU at 34585 Calle Portola 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.

Sincerely,



Dylan Casey
CalHDF Executive Director



James M. Lloyd

CalHDF Director of Planning and Investigations