



**CITY OF GLENDALE, CALIFORNIA
REPORT TO THE PLANNING COMMISSION**

AGENDA ITEM

Report: Appeal of Density Bonus Review Approval

Location: 246 North Jackson Street

Legal Description: Lot 2 in Block 6 of Town of Glendale Tract

Case Number: PDBP2120753

Applicant: Farzin Maly

Owner: Artshar, LLC

Appellant: Grant Michals, Glendale Homeowners Coordinating Council

Approved for	November 02, 2022
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ADMINISTRATIVE ACTION

Prepared by:
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Reviewed by:
Vilia Zemaitaitis, Principal Planner

SUMMARY

This is an appeal of a decision made on July 7, 2022 by the Planning Hearing Officer to grant with conditions the requested incentives/concessions and waivers associated with Density Bonus Review Case Number PDBP2120753, pursuant to the provisions of State Density Bonus Law and the Glendale Municipal Code, Title 30, Chapter 30.36 (Density Bonus Incentives). The density bonus project involves construction of a new 9,760 square-foot (SF), three-story, 11-unit rental housing project, with one unit being reserved for very low income households, and with a request for two incentives and two

waivers. The two incentives are for additional height/stories and reduced setbacks, and the two requested waivers are for increased floor area ratio and decreased unit sizes. Development of the project includes demolition of an existing three-unit multi-family building (constructed in 1946), and will require Design Review Board approval.

ENVIRONMENTAL DETERMINATION

The Planning Hearing Officer found, and Planning staff recommends that the Planning Commission find, that his project is categorically exempt from further review under the California Environmental Quality Act (CEQA), as it qualifies as a Class 32 In-Fill Development Project per CEQA Guidelines Section 15332, because the project is consistent with the General Plan and Zoning Code; occurs within city limits on a project site of less than five acres surrounded by urban uses; is on a site with no value as habitat for endangered, rare or threatened species; upon approval would not result in any significant impacts relating to traffic, noise, air quality, or water quality; and can be adequately served by all required utilities and public services. See Exhibit 1 for full analysis and further information, including supporting studies and other documentation.

RECOMMENDATION

That the Planning Commission sustain the Planning Hearing Officer's CEQA determination and decision to grant with conditions the requested incentives/concessions and waivers associated with Density Bonus Review Case Number PDBP2120753, based on the findings made by the Planning Hearing Officer. If the Planning Commission is inclined to reverse the Planning Hearing Officer's decision and deny the application, staff recommends that the matter be continued for two weeks so that the City Attorney may draft a motion for denial with findings.

SITE CONTEXT

General Plan: High Density

Zone: R-1250 (High Density Residential)

Description of Existing Properties and Uses: The site is located on the southeast corner of North Jackson Street and East California Avenue, on a relatively flat lot 7,512 SF in size; there is a slight slope across the lot from the north-east corner to the south-east corner of the property. The lot is currently developed with a two-story multi-family building, constructed in 1946, with three units. The building is not identified as a historic resource. There are no indigenous protected trees per GMC 12.44 on or within 20 feet of the site.

Neighboring Zones and Uses:

	Zoning	Existing Uses
North	R-1250	One-story multi-family
South	R-1250	Two-story multi-family

East	R-1250	Two-story multi-family
West	R-1250	Two-story multi-family
Project Site	R-1250	Three-story multi-family

See Exhibits 3 and 4 for location map and photos.

Previous Permits for the Site:

November 9, 1945 – Building permit #23939 issued to build a two-story duplex with a four-car garage on the first floor.

February 9, 1951 – Building permit #39591 issued to convert two garage spaces and a store room to a residential unit.

April 22, 1971 – Building permit #69216 issued to demolish a one-story, 700 SF dwelling.

Project History:

February 24, 2021 – Applicant submitted a “preliminary application” per Gov. Code §65941.1;

March 10, 2021 – Staff feedback provided to applicant;

June 25, 2021 – Applicant resubmitted a “preliminary application” per Gov. Code §65941.1;

July 22, 2021 – Staff feedback provided to applicant;

July 23, 2021 – Applicant resubmitted a “preliminary application” per Gov. Code §65941.1;

August 12, 2021 - Staff feedback provided to applicant;

November 3, 2021 – Applicant resubmitted a “preliminary application” per Gov. Code §65941.1;

January 3, 2022 – Applicant submitted the Density Bonus Review Application (“Application”);

May 4, 2022 – Application deemed complete;

June 1, 2022 - The Planning Hearing Officer conducted a public hearing for the Application. The appellant, Grant Michals, did not submit a comment or testify at the public hearing, though the appellant claims in his appeal that others that testified at the hearing represented his interest. Following review of the staff report and attachments,

and having heard all testimony at the public hearing, the Planning Hearing Officer took the matter under submission for a decision to be made at a later date. A copy of the staff report presented at this hearing is attached as Exhibit 7.

July 7, 2022 – The Planning Hearing Officer granted with conditions the requested incentives/concessions and waivers associated with the Application. A copy of the decision letter is attached as Exhibit 8.

July 22, 2022 - Grant Michals, representing GHCC (Glendale Homeowner's Coordinating Council) submitted an appeal of the Planning Hearing Officer's approval. A copy of the application (also known as the "Notice of Appeal") is attached as Exhibit 9.

Files Available for Review:

All files and exhibits relative to the Density Bonus Case have been available for review in the Community Development Department – Planning Division, are available at this hearing, and by reference are hereby made part of the record.

BACKGROUND

The project consists of demolishing the existing three-unit multi-family building, and constructing a new 9,760 SF, three-story, 11-unit (with seven base units and four density bonus units) multi-family building on a 7,512 SF lot in the R-1250 Zone (High Density Residential Zone). One unit will be reserved for very low income households.

The project is not subject to the City's Inclusionary Zoning Ordinance per GMC §30.35, which requires a rental housing development with a base density of eight or more dwelling units to provide fifteen percent of the units as affordable to low-income households. With a base density of seven units, the project is not subject to this code section. See GMC §§30.35.020(B) & 30.35.030(A) (inclusionary requirement only applies to housing development of 8 or more units).

The project qualifies as a density bonus project per State Density Bonus Law (Gov't Code §65915) and City Density Bonus Law (GMC §30.36.050), because according to the project's Density Bonus Housing Plan (See Exhibit 2), the project provides at least 5% of the total units (not including the density bonus units) of the housing development for very low income households, as defined in the California Health and Safety Code §50105. The project provides one affordable unit to very low income households (one of seven units = 14%), which exceeds the 5% minimum. Therefore, it qualifies as a density bonus project.

Per State Density Bonus Law (CA Govt Code § 65915), an applicant is ineligible for a density bonus or any other incentives or concessions if a project is proposed on a parcel or parcels with rental dwelling units that have been vacated or demolished within a five-year period preceding the project's development application, or have been

occupied by lower¹ or very low² income households, unless the proposed project replaces those units.

If the rental dwelling units have been vacated or demolished within a five-year period preceding the project's development application, the proposed project is required to provide the same number of units of equivalent size (i.e., the same total number of bedrooms as the units being replaced) as affordable to the same or lower income households in occupancy during such time. If the incomes are unknown to the applicant, there is a rebuttable presumption that low-income³ and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all rental households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's (HUD's) Comprehensive Housing Affordability Strategy Database⁴. The rebuttable presumption per HUD's Comprehensive Housing Affordability Strategy Database amounts to 37%⁵ of renter households at or below 80% area median income. Replacement unit calculations resulting in fractional units are rounded up.

Per the Los Angeles County Assessor, the project site contains three (3) residential dwelling units at one (1) bedroom each, with an average of 569 square feet per unit⁶. The project site was purchased on September 2, 2020 and Applicant submitted a development application to Planning (PMPA2016969) on February 24, 2021. Applicant has provided Housing staff supporting documentation in the form of a Grant Deed, Real Estate Withholding Statements, an Addendum, Tenant Estoppel Certificates and Mutual Termination of Rental Agreements to confirm owner-occupancy of one (1) residential unit above 80% area median income and the vacancies of the remaining two (2) residential units. By applying the established rebuttable presumption of 37% to the two (2) remaining vacant residential units, one replacement unit at one (1) bedroom is required under State Density Bonus Law ($37\% \times 2 = .74$ (rounded up to 1)). The household size assumption for a one (1) bedroom unit is two persons. Applicant will

¹ Lower income means household income that does not exceed the maximum income set forth in California Health and Safety Code (HSC) § 50079.5. Lower income means 80% area median income and below, including low-income, very low income, extremely low income and acutely low income.

² Very low income means household income that does not exceed the maximum income set forth in HSC § 50105. Very low income means 31% to 50% area median income.

³ Low-income means household income that does not exceed the maximum income given to "lower income" households in HSC § 50079.5. Low-income means 51% to 80% area median income.

⁴ <https://www.huduser.gov/portal/datasets/cp.html#2006-2018>

⁵ Pursuant to the most recently available data from HUD's Comprehensive Housing Affordability Strategy Database for Los Angeles County between years 2014 and 2018, very low income (318,845) and low-income (344,185) renter households make up 663,030 (318,845 + 344,185 = 663,030) of renter households within the jurisdiction of Los Angeles County. From a total of 1,791,480 renter households in Los Angeles County, these 663,030 renter households make up 37% ($663,030 / 1,791,480 = .37$) of renter households at or below 80% area median income in Los Angeles County.

⁶ <https://portal.assessor.lacounty.gov/parceldetail/5642018039>

reserve Unit 204, a two (2) bedroom unit at 768 square feet, as affordable to very low income households. The household size assumption for a two (2) bedroom unit is three persons. HSC § 50052.5(h)

The applicant is requesting a 46.25% density bonus for a total of 11 units. Per State Density Bonus Law (Gov't Code §65915(f)(2)), a project qualifies for the requested 46.25% density bonus if it provides at least 14% of the total number of units (not including the density bonus units) as affordable to very low income households. The project's zone (R-1250) permits a maximum density of 34 units per acre (one unit per 1,250 SF). Based on the lot area of 7,512 SF, a total of 7 units (6.01 rounded up⁷) are permitted as the base density. The applicant is providing 14% of the total number of units as affordable housing (14% of 7 = 1) and therefore is requesting a 46.25% density bonus of four additional units (46.25% of 7 = 3.2 rounded up to 4). This results in a total of 11 units with the bonus.

The applicant is requesting two incentives/concessions. Per State Density Bonus Law (Gov't Code §65915(d)(2)(B)) and GMC 30.36.070, a project qualifies for two incentives/concessions if it provides at least 10% of the total units for very low income households. Since the project provides 14% of the base density units as affordable to very low income households, it qualifies for two incentives, which are described in the below section.

Per State Density Bonus Law, the City shall not require parking spaces in excess of one-half parking space (inclusive of handicapped and guest parking) per unit if the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the California Public Resources Code ("the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods"), and there is unobstructed access to the major transit stop from the housing development. The applicant has demonstrated the project qualifies for this parking concession because the project is located 0.4 miles from the intersection of North Glendale Avenue and East Broadway. The Glendale/Broadway intersection is served by the Beeline Route 4, which runs north/south and east/west between the Glendale Galleria and the Glendale Transportation Center, the central transportation hub for the City of Glendale, and Metro Bus Route 180/181, a regional route running primarily east/west from Pasadena to Hollywood. Both lines have a service interval of less than 15 minutes during peak commute periods. Under this provision, the project is only required to provide six parking spaces (0.5 space x 11 units). The project provides 14 parking spaces.

⁷ Per State Density Bonus Law (Gov't Code §65915(q)) and GMC 30.36.050, each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number.

REQUESTED INCENTIVES

1. Maximum Height/Stories

Requested: The applicant is requesting an incentive to allow a maximum height of 37'-6" and three stories.

Required: In the R-1250 Zone, on lots having a width of 90 feet or less, a maximum of 26 feet and two stories are allowed.

2. Setbacks

Requested:

Street Front: 4'-4" minimum and an average of 15'-10" on the subterranean parking level; 20 feet minimum and an average of 23 on the first floor; 20 feet minimum and an average of 26 feet on the second and third floor.

Street Side: Zero feet and 4 inches minimum and average on the subterranean parking level; 4 feet minimum and 8' average on the first floor; 4 feet minimum and 7'-8" average on the second floor; 4 feet minimum and 8'-10" average on the third floor.

Interior: 5 feet minimum and an average of 10'-9" on the second floor.

Required:

Street Front: 20 feet minimum and an average of 23 feet for any garage or first residential floor; not less than 23 feet and an average of 26 feet for the second and third residential floors.

Street Side: 5 feet minimum and an average of 8 feet for the first residential floor; not less than 8 feet and an average of 11 feet for the second residential floor; and not less than 11 feet and an average of 14 feet for the third residential floor.

Interior: 5 feet minimum and an average of 8 feet for the first residential floor; not less than 8 feet and an average of 11 feet for the second residential floor; and not less than 11 feet and an average of 14 feet for the third residential floor. No setback required for subterranean parking garage.

REQUESTED WAIVERS

1. Floor Area Ratio (FAR)

Requested: Maximum 1.32 (9,760 SF)

Required: Maximum 1.2 (8,904 SF)

2. Dwelling Unit Size

Requested: Minimum 574 SF for one-bedroom units and 768 SF for two-bedroom units:

Unit Number	# Bedrooms	Floor Area (SF)
102	1	574
103	1	574
202	1	574
203	1	574
204	2	768
302	1	574
303	2	768

Required: Minimum 600 SF for efficiency and one-bedroom units; 800 SF for two-bedroom units

DISCUSSION/ANALYSIS

Requested Action by the Appellant:

The appellant is requesting that the Planning Commission reverse the July 7, 2022, Planning Hearing Officer's approval of the subject Density Bonus Review Application and staff's CEQA determination for the project.

DENSITY BONUS FINDINGS

Incentives/Concessions: Pursuant to Section 30.36.080(A) of the Glendale Municipal Code, and based on California Government Code Section 65915(d)(1), when an applicant for a density bonus requests Incentives, the hearing officer must grant the requested incentives or concessions, unless he or she makes written findings, based upon substantial evidence, of any of the following:

1. The incentive or concession does not result in identifiable and actual cost reductions to provide for affordable housing costs or to provide affordable rents.
2. The incentive or concession will have a "specific adverse impact upon public health and safety," as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no

feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the housing development unaffordable to low-income and moderate-income households. As used herein, "specific adverse impact upon public health or safety" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or the land use designation in the general plan shall not constitute a specific, adverse impact upon public health or safety.

3. The incentive or concession will be contrary to state or federal law. The granting of an incentive or concession shall not require or be interpreted, in and of itself, to require a general plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition.

Waivers: Pursuant to GMC 30.36.080(B) of the Glendale Municipal Code, and based on California Government Code Section 65915(e)(1), when an applicant requests Waivers/Modifications in addition to the Incentives requested, the hearing officer shall review the request for modifications of development standards or waivers in conjunction with the density bonus request and incentive or concession requests at a public hearing. The hearing officer may grant the request for waivers or reductions in development standards only if he or she makes all of the following written findings:

1. The application of said development standard(s) will have the effect of physically precluding the construction of the housing development at the density and with the incentives or concessions granted pursuant to this chapter.
2. The waiver or reduction in development standards will not have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
3. The waiver or reduction in development standards will not have an adverse impact on any real property that is listed in the California Register of Historical Resources.
4. The waiver or reduction in development standards will not be contrary to state or federal law.

BASIS OF THE PLANNING HEARING OFFICER'S DECISION:

After considering the evidence presented with respect to this application, the plans submitted therewith, the Planning Hearing Officer ("Hearing Officer") approved the density bonus housing plan, inclusive of the mandatory Density Bonus, two Incentives, two Waivers/Modifications, and the mandatory Parking Concessions, with eight conditions, allowing for the development of the affordable

housing project with reduced setbacks and increased height, as well as increased floor area and lot coverage. The following is a summary of the findings made in the Record of Decision (Exhibit 8):

Incentives/Concessions: The City has the burden to make the findings to deny a requested incentive. The Hearing Officer approved the two requested incentives for increased height/stories and reduced setbacks because she was unable to make written findings, based upon substantial evidence, of any one or more of the following:

1. *The incentive or concession does not result in identifiable and actual cost reductions to provide for affordable housing costs or to provide affordable rents.*

This finding cannot be made. There is no evidence in the record that the granting of the incentives or concessions will not result in cost reductions to provide for affordable housing costs or provide affordable rents. To the contrary, evidence supports the conclusion that the incentives or concessions do result in identifiable and actual cost reductions to provide for affordable housing costs or to provide affordable rents. The requested concessions for additional height/stories and reduced setbacks are required in this case to allow for additional buildable area to provide more units and accommodate the additional density resulting from the grant of the density bonus. These additional units will reduce the costs to the developer of providing the affordable unit. The cost reductions that the developer will realize will allow the affordable housing costs to be reduced to a point where the development will be economically feasible. The additional height/story and reduced setbacks will allow for the proposed density and appropriately sized apartment units with sufficient on-site parking to ensure project success with the intended market.

These concessions enable the project to be economically feasible for the following reasons:

A) To facilitate the proposed design and programming and ensure architectural character that complies with the City's Design Guidelines, including distinct and separate common open spaces with amenities both on the building's ground level and also on the third floor deck, including provision of a required elevator, the applicant is proposing a 37'-6" high building. The additional height is necessary for the elevator shaft to provide access to the units and to the common open space on the third floor, and the additional building height/stories will enable the construction of additional buildable area to provide more units (density bonus units) that will reduce the overall costs per unit of the project and thereby make the very low income affordable unit economically feasible.

B) The reduction in the subterranean parking garage setbacks will enable the construction of a larger garage area and additional parking spaces that will improve the viability and marketability of the project. The additional

parking spaces will enable the project to better compete with its surrounding development.

The two concessions will reduce costs to the applicant of providing an affordable unit by creating cost reductions from allowing the construction of a greater number of units and improving the viability of the project. The additional units will result in actual and identifiable cost reductions because the additional units will take advantage of construction efficiencies when being built, and will generate rental income to offset the cost of providing the unit at an affordable rent. Without these concessions, the applicant would not be able to provide the additional affordable unit.

2. *The incentive or concession will have a “specific adverse impact upon public health and safety,” as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the housing development unaffordable to low-income and moderate-income households. As used herein, “specific adverse impact upon public health or safety” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or the land use designation in the general plan shall not constitute a specific, adverse impact upon public health or safety.*

This finding cannot be made. The incentive or concession will not have a “specific adverse impact upon public health and safety” or the physical environment or on any real property that is listed in the California Register of Historical Resources. Staff research finds that the property does not meet any of the eligibility criteria for listing in the National, California, or Glendale Registers and therefore is not considered a historic resource under CEQA. The project is exempt from the California Environmental Quality Act as a Class 32 Infill Exemption and no significant environmental impacts have been identified. The project is designed to comply with the various sections of the Glendale Municipal Code as administered by different City Departments (e.g. Fire, Glendale Water & Power, Public Works, Building & Safety, etc.). Aside from the two incentive/concession requests and waivers, the project otherwise fully complies with the Zoning Code (GMC Title 30).

Any project impacts with respect to increased height/stories and reduced setbacks are mitigated by several factors, such as: The project is located on a corner lot with two sides adjacent to a street, and one side adjacent to an alley. These public rights-of-way that are open to the sky provide a buffer of air and light and visual massing that mitigates the impact of the three-story building in a typically two-story neighborhood. Furthermore, the building uses several design techniques that reduce the apparent massing and scale of the building, including the central part of the building which features a two-story massing, a variation in building form and façade planes that break up the massing, and a variety of exterior finish

materials to help break up the apparent massing. Finally, the building provides setbacks in excess of code requirement on various sides/floors of the building to help compensate for the reduced setbacks in other areas, particularly on the south side of the building, which is adjacent to a two-story apartment building. The provision of housing and affordable housing benefits the public health and safety, and is consistent with the Glendale General Plan Housing Element goals of providing a wide range of housing types, including affordable housing.

3. *The incentive or concession will be contrary to state or federal law. The granting of an incentive or concession shall not require or be interpreted, in and of itself, to require a general plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition.*

This finding cannot be made. The incentives or concessions will not be contrary to state or federal law. The project complies with State Density Bonus Law, the California Environmental Quality Act (CEQA), and the City's Density Bonus Ordinance, and is designed to comply with the various sections of the Glendale Municipal Code as administered by City Departments (e.g. Fire, Glendale Water & Power, Public Works, Building & Safety, etc.). The incentives/concessions do not require any other discretionary entitlement other than future design review approval. No other known federal or state laws would be in conflict with granting of the incentives/concessions.

Waivers

1. The Hearing Officer approved the two requested Waivers/Modifications of development standards for increased floor area and reduced dwelling unit size, because he was able to make any of the following written findings, pursuant to GMC §30.36.080(B): *The application of said development standard(s) will have the effect of physically precluding the construction of the housing development at the density and with the incentives or concessions granted pursuant to this chapter.*

This finding can be made. As to the first requested waiver, the applicant seeks relief from the minimum unit size requirements in GMC 30.11.050, since the units listed below do not meet the minimum unit size, as follows:

- Unit 102 - 1 bedroom at 574 SF, which is 26 SF (4.33%) less than the minimum 600 SF requirement
- Unit 103 - 1 bedroom at 574 SF, which is 26 SF (4.33%) less than the minimum 600 SF requirement
- Unit 202 - 1 bedroom at 574 SF, which is 26 SF (4.33%) less than the minimum 600 SF requirement

- Unit 203 - 1 bedroom at 574 SF, which is 26 SF (4.33%) less than the minimum 600 SF requirement
- Unit 204 - 2 bedrooms at 768 SF, which is 32 SF (4.0%) less than the minimum 800 SF requirement
- Unit 302 - 1 bedroom at 574 SF, which is 26 SF (4.33%) less than the minimum 600 SF requirement
- Unit 303 - 2 bedrooms at 768 SF, which is 32 SF (4.0%) less than the minimum 800 SF requirement

The project is designed to optimize density with a balanced unit mix consisting of one-bedroom and two-bedroom apartments within the allowable 11-unit density (with the density bonus). The requested waiver from minimum unit sizes is needed to make this balanced unit mix physically possible to build. The waiver will allow relief to provide for a more balanced unit mix that will meet the 11-unit design of the proposed development project. The minimum unit size requirements of GMC §30.11.050 would physically preclude the construction of the housing development (with the desired unit mix) at the density and with the incentives or concessions.

As an example, Unit 102 is 26 SF less than the minimum 600 SF requirement for a one-bedroom unit. However, Unit 102 is a functional, contemporary one-bedroom urban in-fill unit. As designed, the 26 SF is inconsequential since the unit has functional kitchen and living areas, an above average-sized bedroom area, a private bathroom, a private washer and dryer and adequate storage/closet area. Without the requested waiver the project would consist of five (5) studios and six (6) one-bedroom units, which would physically preclude the construction of the housing development at the allowable 11-unit density with the desired unit mix, and with the incentives or concessions. In addition to the increased number of bedrooms, the requested waiver will improve and balance the project's unit mix which will help provide a range of housing types which is consistent with the General Plan Housing Element.

The proposed decrease in the minimum unit size is minor, not exceeding 4.33% less than the minimum requirement. While the units listed above are smaller than the minimum requirements of the GMC, the project will comply with the various sections of the Glendale Municipal Code as administered by different City Departments (e.g. Fire, Glendale Water & Power, Public Works, Building & Safety, etc.). Moreover, there are similarly sized residential units elsewhere in the City. Additionally, the current trend of urban infill multifamily unit sizes is smaller in footprint compared to units built during the latter part of the 20th century. The requested minimum unit size waiver will provide the creation of a greater number of marketed bedrooms and will allow the very low income affordable unit to be a two-bedroom unit versus a one-bedroom unit. Without the waiver it will be

physically impossible to build the project with the proposed unit mix and the development, as proposed, would be physically precluded.

As to the second requested waiver, the applicant is requesting a waiver to allow an increase in FAR to 1.32 (9,760 SF) where a maximum FAR of 1.20 (8,904 SF) is permitted.

Similar to the minimum unit size waiver, the requested waiver to exceed the FAR maximum is necessary to accommodate added floor area to achieve a more balanced unit mix as an 11-unit development project. If the project were to comply with the FAR maximum of 1.2, the project would necessarily include smaller residential units with less total bedrooms and only 10 total units versus the maximum allowable 11 units.

The additional FAR allows for an 11-unit project with a more balanced unit mix consisting of six (6) two-bedroom units and five (5) 1-bedroom units. Similarly, the increased FAR allows for the one very low income affordable unit to be a two-bedroom versus a one-bedroom unit – allowing the affordable unit to accommodate a larger family. As a result, the strict application of the FAR development standard would physically preclude the construction of the housing development at the 11-unit density, with the unit mix, and with the incentives or concessions.

The Density Bonus Housing Plan meets the requirements of Government Code Section 65915 because at least 14% of the total units of the housing development are for very low income households. The waivers result in a project with appropriate unit sizes, an appropriate number of bedrooms and a balanced unit mix, to provide a variety of housing types and thus render the project feasible to build per the maximum allowable 11-unit density and with the incentives/concessions granted pursuant to Density Bonus Law.

2. *The waiver or reduction in development standards will not have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;*

This finding can be met. The project is exempt from the California Environmental Quality Act and no significant environmental impacts have been identified. The project is designed to comply with the various sections of the Glendale Municipal Code as administered by different City Departments (e.g. Fire, Glendale Water & Power, Public Works, Building & Safety, etc.). Aside from the two incentive/concession requests and waivers, the project otherwise fully complies with the Zoning Code (GMC Title 30). Further, the provision of additional housing and affordable housing benefits the public health and safety, and is consistent with the General Plan Housing Element goals of providing a wide range of housing types, including affordable housing.

The project's impact in terms of increased FAR and decreased minimum unit sizes are mitigated by certain factors. The project is located on a corner lot with two sides adjacent to a street, and one side adjacent to an alley. These public rights-of-way that are open to the sky provide a buffer of air and light and visual massing that mitigates the impact of the building that features a higher than code-allowed FAR. Furthermore, the building uses several design techniques that reduce the apparent massing and scale of the building, including a variation in building form and façade, and a variety of exterior finish materials that help break up the apparent building size. The reduced unit sizes (574 SF instead of 600 SF and 768 SF instead of 800 SF) are 4% less than the required size, a relatively insubstantial amount. Further, there has been increased interest in the housing market for smaller units that lend support to the proposal in order to assist in the provision of affordable housing.

3. *The waiver or reduction in development standards will not have an adverse impact on any real property that is listed in the California Register of Historical Resources.*

This finding can be met. Staff research finds that the property does not meet any of the eligibility criteria for listing in the National, California, or Glendale Registers, and therefore, is not considered a historic resource under CEQA. See Exhibit 1 (specifically, Attachment A to Exhibit 1) for further information and analysis.

4. *The waiver or reduction in development standards will not be contrary to state or federal law.*

This finding can be met. The waiver or reduction in development standards will not be contrary to state or federal law and do not require any other discretionary entitlement other than future design review approval. The project complies with State Density Bonus Law, the California Environmental Quality Act (CEQA), and the City's Density Bonus Ordinance, and is designed to comply with the various sections of the Glendale Municipal Code as administered by City Departments (e.g. Fire, Glendale Water & Power, Public Works, Building & Safety, etc.). No other known federal or state laws would be in conflict with granting of the waiver/reduction.

Because the Planning Hearing Officer determined that all required findings for the incentives/concessions (per Government Code Section 65915(d)(1) and GMC Section 30.36.080.A) and waivers/modifications (Government Code Section 65915(e)(1) and GMC Section 30.36.050.B) were satisfied and could be made, the Hearing Officer approved the density bonus requests for the two requested incentives and two requested waivers.

Planning Hearing Officer's Hearing

The hearing is available for viewing online: <https://youtube.com/watch?v=kpJtR5jSj-c>

SUMMARY OF THE APPELLANT'S DISCUSSION AND STAFF RESPONSES

Appellant's Argument

Below are the statements made by the appellant in their application (“Part 4. Statement of Error”) that form the basis of the appeal. Note: The application provided no additional information or documentation with, or subsequent to, the appeal application submittal and the short answers quoted and italicized below:

- A. There was a violation of a specific provision of law, specifically: *“Gov. Code §65915, provisions regarding calculation of replacement units, incentives and waivers, CEQA Guidelines §15332 and §15300.2.”*
- B. The hearing officer exceeded its authority by virtue of any of the provisions of law given in item A above by: *“Granting of density bonus, concessions and waivers, despite limitations in Gov. Code §65915 above, and CEQA exemption.”*
- C. The hearing officer failed to fulfill a mandatory duty by any provision of law given in item A above, specifically: *“See B.”*
- D. The hearing officer refused to hear or consider certain facts before rendering its decision, specifically: *“Council direction re: Density Bonus projects; misapplication of §65915; relevance of GMC 9.30.”*
- E. The evidence before the hearing officer was insufficient or inadequate to support its action, determination or ruling or any specific finding in support thereof, specifically: *“Pro Forma.”*
- F. The appellant states they have new evidence of material facts not previously presented, which if considered should change the act, determination, or ruling. Applicant wrote *“Calculations of affordable replacement unit not included in staff report.”*

The appeal hearing is *de novo*, meaning that the Planning Commission may evaluate the case anew and is not bound by any of the findings or determinations made by the Hearing Officer.

Staff’s Analysis of Appeal

The appellant’s main arguments for the appeal are: 1) Incorrect application of State Density Bonus Law (Gov. Code §65915); 2) Incorrect application of California Environmental Quality Act Review (§15332 Categorical Exemption for In-Fill Development Projects, and §15300.2 Exceptions); 3) Relevance of GMC § 9.30 (Just Cause and Retaliatory Evictions) and miscalculation of required replacement of affordable dwelling units, and 4) Reference to a pro forma was insufficient evidence.

As described more fully below, staff and the Planning Hearing Officer correctly applied State Density Bonus Law, conducted the appropriate CEQA review, calculated the replacement units correctly under State Density Bonus Law, and did not need to require and were prohibited from requiring, a pro forma from the applicant to justify the incentives requested.

Part 4A (Violation of Specific Provision of Law)

The appellant states the following as their argument and provides no further explanation: "Gov. Code §65915, provisions regarding calculation of replacement units, incentives and waivers, CEQA Guidelines §15332 and §15300.2."

The approval of the density bonus does not violate any specific provisions of the law and the project complies with replacement unit standards, incentives and waivers, and CEQA guidelines. Per Gov. Code §65915, and as more fully described in the "Background" section of this report (page 5), the project is required to provide one affordable replacement unit and provides one very low income unit; therefore, it meets the replacement requirement.

Per Gov. Code §65915, the applicant's requested incentives/waivers must be granted if the required findings are made in the applicant's favor. As described in the "Basis of the Planning Hearing Officer's Decision" section of this report (pages 10-12), the required findings to deny the density bonus incentives/concessions could not be made and therefore, per state law, the incentives/concessions must be granted. Further, the applicant was able to demonstrate the required findings for the waivers and therefore, per state law, the waivers must be granted.

Per CEQA Guidelines, and as more fully described in Exhibit 1 ("CEQA Class 32 Infill Exemption Analysis"), the project qualifies as a Class 32 Infill Exemption (§15332) because the project is consistent with the General Plan and Zoning Code; occurs within city limits on a project site of less than five acres surrounded by urban uses; is on a site with no value as habitat for endangered, rare or threatened species; upon approval would not result in any significant impacts relating to traffic, noise, air quality, or water quality; and can be adequately served by all required utilities and public services, and does not qualify as a "Significant Effect" due to unusual circumstances (§15300.2). Public noticing for the project was proper pursuant to Gov't Code §§65090, *et seq.*, and all statutorily required information was provided, including: the date, time, and place of the public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.

Part 4B (Planning Hearing Officer exceeded their authority despite substantial evidence)

The appellant states the following as their argument and provides no further explanation: "Granting of density bonus, concessions and waivers, despite limitations in Gov. Code §65915 above, and CEQA exemption."

The Planning Hearing Officer did not exceed his authority by approving the density bonus incentives and waivers and there was no substantial evidence to the contrary.

As described in Part 4A above, granting of the density bonus concessions and waivers complies with state law, and the CEQA determination complies with the CEQA Guidelines.

The granting of density bonus complies with state law, because the project qualifies as a density bonus project. Per State Density Bonus Law (Gov't Code §65915) and City Density Bonus Law (GMC §30.36.050), because according to the project's Density Bonus Housing Plan, the project provides at least 5% of the total units (not including the density bonus units) of the housing development for very low income households, as defined in the California Health and Safety Code §50105. The project provides one affordable unit to very low income households (one of seven units = 14%), which exceeds the 5% minimum. Therefore, it qualifies as a density bonus project.

Part 4C (Planning Hearing Officer failed to fulfill a mandatory duty under CEQA)

The appellant states the following as their argument and provides no further explanation: "See B."

The Planning Hearing Officer did not fail to fulfill a mandatory duty under CEQA because as described in Part 4A above, granting of the density bonus, concessions, and waivers complies with state law, and the CEQA determination complies with the CEQA Guidelines.

Part 4D (Planning Hearing Officer refused to hear or consider certain facts before rendering its decision)

The appellant states the following as their argument and provides no further explanation: "Council direction re: Density Bonus projects; misapplication of §65915; relevance of GMC 9.30."

The Planning Hearing Officer did not refuse to hear or consider certain facts before approving the incentives and waivers. All correspondence and public testimony was considered prior to the decision, and the following addresses the three additional topics that the appellant contends were not addressed by the Hearing Officer.

With respect to the appellant's ground for appeal related to "council direction re: density bonus projects", there is no explanation beyond this statement and, therefore, staff cannot speculate what this ground means and cannot respond.

There is no misapplication of Gov. Code §65915:as more fully described in the "Background" section of this report (page 5), the project is required to provide one affordable replacement unit and provides one very low income unit and therefore, it meets the replacement requirement.

Lastly, GMC 9.30 refers to the Just Cause and Retaliatory Evictions ordinance. The appellant does not clarify how this applies to the appeal or the density bonus approval. When the building was purchased one unit was owner-occupied and the other two were vacant; therefore, GMC 9.30 does not apply.

Part 4E (The evidence before the hearing officer was insufficient or inadequate to support its action)

The appellant states the following as their argument and provides no further explanation: “Pro Forma.”

The staff report (Exhibit 7) provided detailed analysis of the requested incentives and waivers in relation to the required findings, and along with the submitted correspondence and public testimony at the hearing, the evidence before the Planning Hearing Officer was sufficient and adequate to support their decision.

The Appellant’s answer to this appeal finding, “Pro-Forma”, seems vague and inconclusive.

The staff report presented at the Planning Hearing Officer hearing referred to a pro forma, when it stated in four instances that the requested density bonus incentives and waivers would result in an improved financial pro forma for the project. These statements were general in nature, referring to financial feasibility of the project, and were not based on a specific pro forma document provided by the applicant, nor was a pro forma required to be submitted with the density bonus application. The decision letter did not refer to a pro forma or rely on that information as a basis for its decision.

Indeed, under State Density Bonus Law, the Planning Hearing Officer is only permitted to deny the incentive if he or she finds that the incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs or to provide affordable rents. A pro forma does not help make such a determination of actual cost reductions and is therefore not a requirement. Indeed, a recent case decided by the California Court of Appeal, Schreiber v. City of Los Angeles (2021) 69 Cal.App.5th 549 so held. Schreiber found that both density bonus law and a City of Los Angeles code implementing it require L.A. to grant requested incentives unless it can make findings that the requested incentives do not result in cost reductions or the incentives would have a specific, adverse impact on public health, safety, the physical environment, or any property listed in the California Register of Historical Resources. Id. at 555-556. According to the Court, both density bonus law and L.A.’s implementation ordinance place the burden of proof on the city to overcome the presumption that the incentive would result in cost reductions. Notably, neither the project applicant nor the city was required to show or find that the incentives would result in cost reductions. Rather, the city was required only to disapprove the requested incentives if it could make a negative finding that the incentives would **not** result in cost reductions.

The Court next determined that while AB 2501 (amending State Density Bonus Law) prohibited a municipality from requiring an “additional report or study that is not otherwise required by state law,” AB 2501 did not prohibit a municipality from requesting or considering information relevant to cost reductions. But, the Court drew a distinction between information pertaining to economic feasibility and information showing that an incentive would result in “cost reductions.” While the city could request the latter, AB 2501 prohibited the City from requesting the former. Thus, the portion of the city’s implementation ordinance that required an applicant to demonstrate that an off-menu incentive was needed to make the project “economically feasible” through requiring a pro forma was preempted. Id. at 556. It is therefore clear that the City cannot require

an applicant to submit a pro forma as required evidence to support the grant of incentives under State Density Bonus Law since a pro forma demonstrates the economic feasibility of a project and does not show cost reductions.

Part 4F (The appellant has new evidence of material facts not previously presented, which if considered should change the act, determination, or ruling)

The appellant states the following as their argument and provides no further explanation: "Calculations of affordable replacement unit not included in staff report."

Per Gov. Code §65915, and as more fully described in the "Background" section of this report (page 5), the project is required to provide one affordable replacement unit and provides one very low income unit; therefore, the development meets the replacement requirement.

The replacement unit calculation was described in the PHO staff report on page 7 (Exhibit 7), and was more fully amplified in the PHO decision letter on page 3 (Exhibit 8).

SUMMARY

In conclusion, staff finds that the appeal does not present any new substantial evidence not already analyzed and discussed by the Planning Hearing Officer that warrants changing the staff CEQA determination for the project, and that the Planning Hearing Officer fulfilled their duty in accordance with State Density Bonus Law and the CEQA Guidelines.

Therefore, based on the above analysis, the evidence in the record, and the reasoning set forth in the approval of Density Bonus Review Case No. PDBP2120753, staff recommends that the Planning Commission sustain the Planning Hearing Officer's decision to grant with conditions the requested incentives/concessions and waivers for the project and sustain staff's CEQA determination.

EXHIBITS

1. CEQA Class 32 Infill Exemption Analysis (with Attachment A);
2. Density Bonus Housing Plan
3. Location Map
4. Photographs
5. Reduced Plans
6. Departmental Comments
7. Planning Hearing Officer's Staff Report for Density Bonus Review Case No. PDBP2120753 (report with Exhibit 1 only)
8. Planning Hearing Officer's Decision Letter, dated July 7, 2022
9. Notice of Appeal to Planning Commission of Planning Hearing Officer's Decision