CITY OF GLENDALE, CALIFORNIA
REPORT TO THE CITY COUNCIL

AGENDA ITEM

Hearing: Appeal of Planning Commission's approval of Density Bonus Review Case Number PDBP2120753, for 246 North Jackson Street (Environmental Determination of Class 32 "In-fill Development Project" Exemption Per State CEQA Guidelines Section 15332)

1. Motion to sustain the Planning Commission's decision to sustain the Planning Hearing Officer's granting with conditions of Density Bonus Review Case Number PDBP2120753 for 246 North Jackson Street
2. Motion to continue the matter, directing the City Attorney to draft findings reversing the Planning Commission's decision to sustain the Planning Hearing Officer's granting with conditions of Density Bonus Review Case Number PDBP2120753 for 246 North Jackson Street

COUNCIL ACTION

Item Type: Public Hearing

Approved for August 15, 2023 **calendar**

EXECUTIVE SUMMARY

This hearing is an appeal of a decision made on November 2, 2022 by the Planning Commission to sustain the decision made on July 7, 2022 by the Planning Hearing Officer, to grant with conditions the requested density bonus, incentives/concessions, and waivers associated with Density Bonus Review Case Number PDBP2120753 ("DB Review Case"), pursuant to the provisions of Cal. Gov't Code sections 65915, *et seq*. ("State Density Bonus Law") and the Glendale Municipal Code ("GMC"), Title 30, Chapter 30.36 ("City Density Bonus Law").

The 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 subsequent Design Review Board approval.

The appellant's arguments focus on its claim that both the Planning Commission and the Planning Hearing Officer relied on invalid calculation of base density, invalid calculation of density bonus units, invalid calculation of incentives, invalid calculation of replacement units required; and that the decision was not based on adequate findings.

As detailed below, staff's calculations, upon which the Planning Commission relied, were correctly made, and there was adequate support for the incentives and waivers granted. Additional justification and evidence to support the calculations and the grant of the incentives and waivers were submitted by the applicant/owner in July of 2023 (dated May of 2023) (Exhibit 13), and such justification and evidence is incorporated into, and discussed in, this report. Since any appeal to City Council is *de novo*, the Council can consider any additional or new evidence produced as part of this hearing.

COUNCIL PRIORITIES

N/A.

RECOMMENDATION

That the City Council review, consider and affirm staff's and the Planning Commission's Class 32 CEQA exemption determination and sustain its decision to sustain the Planning Hearing Officer's granting with conditions of the DB Review Case for 246 North Jackson Street, based on the evidence and findings made by the Planning Hearing Officer, as well as any additional evidence and findings in the record. If the Council is inclined to reverse the Planning Commission's decision and deny the application, staff requests a continuance for two weeks so that the City Attorney may prepare denial findings.

BACKGROUND

General Information

Appellant: Grant Michals, Glendale Homeowners Coordinating Council

Applicant: Farzin Maly ("Applicant")

Owner: Artshar, LLC

Requested Action: Reverse the Planning Commission's decision to sustain the Planning Hearing Officer's decision to grant with conditions Density Bonus Review Case Number PDBP2120753

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 ("Project Site"). 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 Project 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; see Exhibits 5 and 6 for architectural plans and City department comments.

June 1, 2022 – The Planning Hearing Officer conducted a public hearing for the Application. A copy of the staff report presented at this hearing is attached hereto 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 hereto as Exhibit 8.

July 22, 2022 – Grant Michals, representing 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 hereto as Exhibit 9.

November 2, 2022 – The Planning Commission conducted a hearing on the appeal of the Planning Hearing Officer’s decision, and sustained the Planning Hearing Officer’s decision to grant with conditions the requested incentives/concessions and waivers associated with the Application. A copy of the staff report is attached hereto as Exhibit 10. A copy of the Planning Commission Motion is attached hereto as Exhibit 11.

November 16, 2022 - Grant Michals, representing Glendale Homeowner’s Coordinating Council, submitted an appeal of the Planning Commission’s decision to sustain the Planning Hearing Officer’s decision. A copy of the application (also known as the “Notice of Appeal”) is attached hereto as Exhibit 12.

May 4, 2023 – Additional documentation submitted by project owner, Artshar LLC is attached hereto as Exhibit 13.

Files Available for Review:

All files and exhibits relative to the DB Review 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.

Project Information:

The project consists of demolition of an 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 (hereinafter, "Project").

The Project is not subject to the City's Inclusionary Zoning Ordinance per GMC section 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 sections 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 and City Density Bonus Law, 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, the Project qualifies as a density bonus project.

Per State Density Bonus Law, an applicant is ineligible for a density bonus or any other incentives or concessions if a project is proposed on a parcel(s) 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 lower[1] or very low[2] income households, unless the proposed project replaces those units. Cal. Gov't Code section 65915(c)(3)(B)(ii).

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[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.

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. Id. If the incomes are unknown to the applicant, there is a rebuttable presumption that low-income[3] 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 Database[4]. Id. 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 State Density Bonus Law.

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 unit[6]. The 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 with a household at or above 80% area median income and the vacancies of the remaining two (2) residential units within a five-year period preceding the Project's development application. (See Exhibit 14).

By applying the statutorily required 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% x 2 = .74 (rounded up to 1)). The household size assumption for a one (1) bedroom unit is two persons. Applicant will reserve Unit 204, a

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[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

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 section 50052.5(h). Accordingly, although the Applicant is replacing the required one unit, it is replacing the existing 1-bedroom unit with a larger 2-bedroom unit.

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 up[7]) are permitted as the base density. The Applicant is providing 14% of the base density as affordable housing for very low income households (14% of 7 = 1), and is therefore entitled to 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 density 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 includes at least 11% very low income housing and 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 provides the requisite affordable housing and 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

[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.

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, which meets and exceeds the parking minimum under State Density Bonus Law.

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*[8]

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.

[8] The Appellant claims that the Project's setback incentives should have been separated out into three separate incentives (street front, street side, and interior), per the City Council's direction on October 11, 2021 related to density bonus setback incentives. In this case, the City may not apply this policy change to the Project because the Applicant submitted a preliminary application, pursuant to Gov. Code section 65941.1 on February 24, 2021 – well before October of 2021, when the City Council passed the motion directing staff to change its practice with respect to density bonus setback incentives.

A submitted preliminary application that meets the requirements of Government Code section 65941.1 (which is the case here) has the effect of vesting a project pursuant to California Government Code section 65589.5(o)(1). Such vesting restricts a local agency from applying ordinances, policies or standards enacted after a preliminary application is submitted. Specifically, if a preliminary application is submitted, "a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application . . . was submitted." Pursuant to Government Code section 65589.5(o)(4), "'ordinances, policies, and standards' includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and <u>any other rules, regulations, requirements, and policies of a local agency</u>, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions." <u>Id.</u> (emphasis added).

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.

ANALYSIS

Requested Action by the Appellant:

Appellant is requesting that the City Council overturn the Planning Commission's decision to sustain the Planning Hearing Officer's approval of the subject DB Review Application.

DENSITY BONUS FINDINGS

Incentives/Concessions: Pursuant to GMC section 30.36.080(A) and California Government Code section 65915(d)(1), when an applicant for a density bonus requests incentives, the hearing officer must grant the requested incentives, 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 section 30.36.080(B) and California Government Code section 65915(e)(1), when an applicant requests waivers in addition to incentives, the hearing officer shall review the request(s) for modifications of development standards or waivers in conjunction with the density bonus request and incentive(s) at a public

hearing. The hearing officer may grant the request(s) 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 granted pursuant to this chapter.

2. The waiver(s) or reduction in development standard(s) 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(s) or reduction in development standard(s) will not have an adverse impact on any real property that is listed in the California Register of Historical Resources.

4. The waiver(s) or reduction in development standard(s) will not be contrary to state or federal law.

BASIS OF THE PLANNING HEARING OFFICER'S & THE PLANNING COMMISSION'S DECISIONS:

After considering the evidence presented with respect to the DB Review Case, the plans submitted therewith, the Planning Hearing Officer ("Hearing Officer"), on July 7, 2022, approved the DB Review Case, inclusive of the mandatory density bonus, two incentives, two waivers, and the mandatory parking concession, 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. Following the appeal of that decision by the same Appellant, on November 2, 2022, the Planning Commission sustained the Hearing Officer's decision to grant approval of the DB Review Case. The Planning Commission adopted and incorporated the reasoning and findings made by the Hearing Officer. (See Exhibit 11 (PC Motion)).

The following is a summary of the findings contained in the Planning Hearing Officer's Decision Letter, dated July 7, 2022 (Exhibit 8):

Incentives/Concessions: The City has the burden to make a showing of substantial evidence to support findings to deny a requested incentive. The Hearing Officer and Planning Commission approved the two requested incentives for increased height/stories and reduced setbacks because they were unable to make 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 incentives or concessions 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.*

   This finding cannot be made. The incentives 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 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: The Applicant/Owner has the burden to provide substantial evidence that it is entitled to a waiver to allow the City to make the necessary findings. The Hearing Officer and Planning Commission approved the two requested waivers/modifications of development standards for increased floor area and reduced dwelling unit size, because they were able to make all of the following findings pursuant to GMC §30.36.080(B), based on substantial evidence:

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.*

   This finding can be made. As to the first requested waiver, the Applicant seeks relief from the minimum unit size requirements in GMC section 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. Please 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 and Planning Commission 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 and subsequently, the Planning Commission, approved the density bonus request, 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

Planning Commission Hearing

The hearing is available for viewing online: https://youtube.com/watch?v=cV_FNVasS8k

SUMMARY OF THE APPELLANT'S DISCUSSION AND STAFF RESPONSES

Appellant's Argument

Below are summaries of the statements made by the Appellant in their application ("Part 4. Statement of Error" – see Exhibit 12 [Notice of Appeal] for detailed statements) that form the basis of the appeal.

A. There was a violation of a specific provision of law in that the City: 1) miscalculated the density bonus, 2) failed to comply with the California Public Records Act, 3) failed to require information from Applicant to justify the waiver findings of fact, 4) miscalculated the number of incentives, and 5) miscalculated the required number of affordable housing replacement units.

B. The Planning Commission exceeded its authority by virtue of any of the provisions of law given in item A above by failing to consider evidence, not citing evidence for its decision, and not making findings.

C. The Planning Commission failed to fulfill a mandatory duty by any provision of law given in item A above by failing to consider evidence, not citing evidence for its decision, and not making findings.

D. The Planning Commission refused to hear or consider certain facts before rendering its decision, specifically the documentation shared by appellant at the hearing including staff emails and staff oral presentation at the hearing pertaining to calculation of lot size and base density, not requiring documentation from application to support requested incentives/waivers, not requiring more affordable units, and miscalculating requested incentives.

E. The evidence before the Planning Commission was insufficient or inadequate to support its action, determination or ruling or any specific finding in support thereof, because the Commissioners did not cite relevant evidence to support their decisions.

F. The appellant stated they will likely obtain new evidence of material facts not previously presented, which if considered should change the act, determination,

or ruling, but to date have not submitted any additional information or documentation since their initial appeal application.

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

Staff's Analysis of Appeal

The appellant's main arguments for the appeal are: 1) miscalculation of base density, number of waivers/incentives, and required affordable housing replacement units, and 2) not requiring additional information from Applicant to support requested incentives/waivers.

As detailed above, as well as below, the calculations of base density, waivers/incentives, and required affordable housing replacement units are in compliance with State Density Bonus Law and the GMC, and the Applicant has provided sufficient evidence to allow the City Council to make the required findings in favor of approving the requested incentives and waivers.

Part 4A (Violation of Specific Provision of Law)

The Appellant cites five violations of specific provisions of law which form the basis of this appeal:

1) Miscalculation of base and bonus density (GMC section 30.10.70(H) and GMC section 30.36.050-060)

The Applicant is requesting a 46.25% density bonus for a total of 11 units. Per State Density Bonus Law (Gov't Code section 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 up[9]) 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 Appellant objects to the use of 7,512 SF as the lot size for calculating the base density, which includes a 1972 easement to the City of Glendale for a portion of the

[9] Per State Density Bonus Law (Gov't Code section 65915(q)) and GMC section 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.

northwest corner of the lot to be used for public street purposes, approximately 21 SF in size. The Applicant has proposed, and the City has agreed to allow (as a condition of approval), the requirement that the Applicant apply for a vacation of the easement to restore the lot size to the full amount of 7,512 SF, and subsequently record a new easement to restore and expand the existing easement, which is required in order for the public street easement to meet current Americans with Disabilities Act accessibility requirements. This would provide a benefit to the City through a new code-compliant easement. The vacation process complies with the GMC, and Density Bonus Law requires cities to interpret the law liberally in favor of producing the maximum number of total housing units (Gov't Code section 65915(r)); therefore, staff and the Community Development Department Director allowed the applicant to utilize this process to calculate the lot size for purposes of determining the base density. Although no building permits for the Project would be issued without the vacation process being completed, the Planning Commission also added a condition of approval (included in the City Council Motion as well) to ensure the Applicant vacates the easement to validate the lot size calculation, and then records the new easement to meet the City's current easement requirements.

The Applicant's arguments, statements and supporting evidence for its contention that the base density was correctly calculated (related to the 1972 easement discussed above) can be found on pages 4-5 of a May 4, 2023 letter to Planner Cassandra Pruett from Artshar LLC (the Owner). (See pgs. 4-5 of Exhibit 13). These additional arguments/statements/evidence may be considered by the City Council.

2) Failure to comply with the California Public Records Act (CPRA)

Appellant claims the City has withheld ("unlawfully redacted") documents in response to a Public Records Act Request submitted by Appellant on August 8, 2022, November 2, 2022, and January 9. 2023. However, the City timely produced all relevant documents. Appellant claims the City is withholding documents related to: 1) staff communications relating to item no.1 above (lot size and dedication); 2) the operating agreement of the LLC that owns the property; and 3) documents related to findings of fact for waivers.

As for item 1 (lot size and dedication records), staff searched for any such additional records as soon as the request was made to ensure it did not inadvertently miss any records that should have been produced during the first-round response to the public records request, but could not locate any – and this fact was communicated to the Appellant and/or his representative (Ms. Catherine Jurca) through the City Attorney's Office. (See Exhibit 15, pg. 4). As for item no. 2 above (LLC operating agreement), that document was determined by the City Attorney's Office to be exempt from disclosure because it was not relevant or related to the Project decision and the public interest served by not disclosing it (privacy and confidentiality concerns of the Owner)

outweighed the public interest served by disclosure (little to no interest since it lacks relevance to the decision and was only used to verify which members of the LLC (natural persons) are authorized to sign the development application on behalf of the LLC). (See Exhibit 15, pg. 7). As for item no. 3 above (findings-related records) all such records were provided to Appellant and nothing was withheld. (See Exhibit 15, pgs. 1-3 & pg. 6).

3) Failure to require necessary information from Applicant to justify the waiver requests (GMC 30.40.020(B)(3)), which requires density bonus requests to contain any information necessary to determine… whether and in what amount the Applicant qualifies for any requested density bonus and/or any concessions or waivers

The Planning Hearing Officer and Planning Commission Staff Reports (Exhibits 7 & 10, respectively) 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 and Planning Commission was sufficient and adequate to support their decision. Subsequent to the Planning Hearing Officer hearing, as is not unusual, staff asked the Applicant for further information regarding their findings of fact, in order to more fully demonstrate that without the waiver the Project would be physically precluded from being able to be developed. The Applicant provided this information which was sufficient to determine whether and in what amount the Project qualified for waivers.

For the benefit of City Council's review, the Project owner has provided additional evidence to support the findings (in particular, Finding 1) for the requested waivers. (See Exhibit 13).

In summary, the following additional information was provided, which staff has determined provides additional substantial evidence to support the required waiver findings:

FINDING 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:

The Project's compliance with the City's other development standards leaves no room to spare on the Project Site since the proposed Project is already at the bare minimum in meeting the various components of the City's development standards, the City's Design Guidelines, and basic building codes. Adhering to the City's minimum unit size requirements, therefore, will physically preclude the Project from being built, as

envisioned at the density allowed under the State Density Bonus Law and with the requested incentives.

If the Applicant cannot create a larger building via the waivers requested, the Project is reduced from 11 units with one affordable unit to 6 units with no affordable units, which is contrary to the spirit and intent of the State Density Bonus Law. Eleven units, however, are also only possible if the minimum size of some of the units are reduced slightly so that the Project can comply with the City's Design. In particular, and as described by license architect in the May 4, 2023 letter (Exhibit 13), the site is fully built out under the proposed design and there is no room to push the building boundary any further than what is being proposed with the concessions for setbacks and for height/stories. There also is no extra space on the site for larger units because the common open space ratio and the landscape ratio already are at the code minimums. Similarly, the interior circulation elements such as the corridors, staircases and elevator shafts are at the code minimums. As such, if the Applicant must comply with the minimum unit size requirements, the Project will lose one, probably 2 units, one of which will be the on-site affordable unit. The Project also will lose its distinct common open spaces and amenities on the ground level, and on the 3rd floor deck. At that point, it makes no sense to build a density bonus Project. Instead, the Applicant would be the by-right 6-unit Project, which is contrary to the purposes of the State Density Bonus Law.

The necessity for the second waiver from the maximum floor area ratio of 1.20 is the same. As described in the license architect's May 4, 2023 letter (Exhibit 13), the proposed Project has a floor area ratio of 1.32 so that it can construct the 9,760 square feet needed for all eleven units. Without it, the maximum floor area ratio is 1.20, and the Project could be no larger than 8,904 square feet, which results in the loss of one, and probably two units, including the on-site affordable unit. The requested deviation is thus minor and consists of only 856 square feet of additional floor area over the allowable limit so that the Project can provide all eleven units with the one on-site affordable unit and the amenities and open-space shown on the plans. Without the additional 856 square feet, the units size also shrinks even further, thus exacerbating the minimum unit size problem. Simply put, the two waivers will provide the necessary building square footage and unit count to allow for the desired Project size, the desired Project unit-mix, and the desired Project amenities to bring this Project to fruition as envisioned and as explained in the architect's letter, with the density and requested concessions allowed under the State Density Bonus Law. To state the converse, denying the requested waivers from the floor area ratio and minimum unit size requirements will physically preclude the Project from being built per the desired unit mix, per the desired number of bedrooms, per the desired net livable area and per the desired net average unit size, and with the density permitted under the State Density Bonus Law.

Further evidence and facts supporting this finding can be found in the architect's May 4, 2023 letter (subject line: "Density Bonus Review Case No. PDBP2120753 at 246 N. Jackson Street, Glendale CA Letter Addressing the Necessity for the Waivers"), and, in general, throughout Exhibit 13.

4) Miscalculated the number of incentives contrary to City Council policy direction and GMC 30.36.030 ("Definitions")

Appellant claims the Project's setback incentives should have been separated out into three separate incentives (street front, street side, and interior). This argument is based on the fact that in October of 2021 City Council adopted a motion that directed staff to draft revisions to the City's density bonus ordinance and to institute a policy to separate out setback incentive/waiver requests (as opposed to the currently practiced policy of grouping setback incentives them into one request). As discussed on page 8 of footnote 8, above, notwithstanding the City Council motion, such a policy cannot legally apply to the Applicant/Owner here because of prohibitions imposed by State Law.

The Applicant submitted a preliminary application, pursuant to Government Code section 65941.1 on February 24, 2021 – well before October of 2021, when the City Council passed the motion directing staff to change its practice with respect to density bonus setback incentives. A submitted preliminary application that meets the requirements of Government Code section 65941.1 (which is the case here) has the effect of vesting a project pursuant to Government Code section 65589.5(o)(1). Such vesting restricts a local agency from applying ordinances, policies or standards enacted after a preliminary application is submitted. Specifically, if a preliminary application is submitted, "a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application . . . was submitted." "'[O]rdinances, policies, and standards' includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions." Cal. Gov. Code section 65589.5(o)(4) (emphasis added).

Accordingly, the Project was vested under ordinances, policies and standards existing as of February 24, 2021 (including the policy of grouping setback incentives into one incentive) per the mandates of the Housing Accountability Act (Gov't Code section 65589.5), because the Applicant submitted a qualifying preliminary application on February 24, 2021 (see "Project History" section of this report, page 3).

5) Miscalculated the required number of affordable housing replacement units (Government Code section 65915 [Density Bonus and Other Incentives])

Per Government Code section 65915, and as more fully described in the "Background" ("Project Information") section of this report (pgs. 5-6), the Project is required to provide one affordable replacement unit and provides one very low-income unit; therefore, it meets the replacement requirement. Further, the replacement unit is larger and provides two bedrooms, whereas the original unit was only one bedroom.

The Appellant states that "there is no evidence one of the units was owner occupied and thus the number of replacement affordable units deficient…."; however, as set froth in pages 5-7 of this report, the 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. (See Exhibit 14). The Appellant refers to a Form 593 "Real Estate Withholding" that it claims shows there was not an owner-occupied unit; however, the form shows the property being sold qualified as the seller's principal residence.

Applicant/Owner has since provided additional information/evidence to address this point, as summarized below. (See Exhibit 13):

"The IRS Tax Form 593 used by the Seller, plus the Grant Deed that shows "Letticia Banaag" as the previous owner and the seller of the property, are consistent with the name of the landlord on the two August 2020 Tenant Estoppel Certificates for the two-upper level units occupied by tenants, as well as the name of the landlord on the Mutual Termination of Rental Agreements that were signed before Applicant closed escrow. All of these tenant documents are limited to only two of the units being tenant occupied, because Ms. Banaag was occupying one of the 3 units; specifically, the lower-level unit was occupied by Ms. Banaag and the two upper level units were tenant occupied.

To add to that evidence, enclosed (see Exhibit 13, Exhibit A) is a letter from Mr. Paul Sarkissian dated February 16, 2023, who co-represented buyer during the acquisition of the property, stating that he directly communicated with Ms. Banaag at her unit on the property, and that he saw Ms. Banaag packing her belongings before vacating her unit. Further, the Applicant will testify at the City Council hearing that he too witnessed the seller, Ms. Banaag, packing her belongings before vacating her lower level unit. This direct evidence should put to rest any objection to the fact that one of the units was owner occupied."

Accordingly. The weight of the evidence demonstrates that one unit was owner-occupied and not rented, disqualifying it as a rental unit subject to State Density Bonus Law replacement obligation. The remaining two rental units were considered in calculating the replacement obligation, resulting in a statutory obligation to replace a single one-bedroom unit, which is satisfied because Applicant has agreed to replace the one-bedroom unit with a two-bedroom unit. (See pg. 6 above for detailed discussion).

Part 4B (Planning Commission exceeded its authority)

Appellant states the Planning Commission exceeded its authority by virtue of any of the provisions of law given in Part 4A, because it failed to consider evidence presented by the Appellant, did not cite evidence for its decision to sustain the Planning Hearing Officer's decision, and did not make findings.

The Planning Commission did listen to and consider the evidence the Appellant presented at the hearing, as evidenced by the fact that the Commission asked follow-up questions and obtained clarification from staff on the various issues raised by the Appellant at the hearing. The Staff Report (Exhibit 10) 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 Commission was sufficient and adequate to support their decision. The Motion approved by the Commission cites as its basis the findings of fact as outlined in the Planning Hearing Officer's approval.

Part 4C (Planning Commission failed to fulfill a mandatory duty)

Appellant states the Planning Commission failed to fulfil a mandatory duty by any provision of law given in Part 4A, because it failed to consider evidence presented by the Appellant, did not cite evidence for its decision to sustain the Planning Hearing Officer's decision, and did not make findings.

The Planning Commission did listen to and consider the evidence the Appellant presented at the hearing, as evidenced by the fact that the Commission asked follow-up questions and obtained clarification from staff on the various issues raised by the appellant at the hearing. The staff report (Exhibit 10) 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 Commission was sufficient and adequate to support their decision. The Motion approved by the Commission cites as its basis the findings of fact as outlined in the Planning Hearing Officer's approval.

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

Appellant states the Planning Commission refused to consider documentation shared by the Appellant at the hearing, including staff emails and staff oral presentation at the hearing pertaining to processing the density bonus application. The Planning Commission did listen to and consider the evidence the Appellant presented at the hearing, as evidenced by the fact that the Commission asked follow-up questions and obtained clarification from staff on the various issues raised by the Appellant at the hearing. Based on all of the information provided, the Planning Commission was able to render its decision in compliance with State and local Density Bonus Law and under the purview of its authority.

Appellant cites to an email between staff referring to “special treatment” given to the Applicant/Owner from the case planner regarding calculating base density and density bonus; however, Appellant has taken this email entirely out of context and assumed it applies to matters not related to the email content. The email discussion was about only one matter and that was accommodating the Applicant in terms of scheduling a meeting time with staff; no other subject matter was part of that email thread, which would have been apparent had the appellant not obscured the surrounding email text and email thread components during the Planning Commission presentation, or excluded that email from the most recent appeal application.

Appellant claims to cite to staff’s oral presentation where, Appellant alleges, staff stated it would “gift” the developer City-owned property for the purpose of increasing the lot size and corresponding base density calculation; however, staff made no such statement. Staff only described the Applicant’s proposal to vacate an existing street dedication, which would restore the original lot size, and then record a new (larger) dedication to meet current dedication requirements. This vacation would have to be applied for by the Applicant through the City’s standard process, and only if such application was approved would the Applicant then be able to use the resulting lot size for density calculation purposes. Staff stated at the hearing that no building permits would be issued unless the applicant completed such process. Further, staff clarified that Density Bonus Law requires cities to interpret the law liberally in favor of producing the maximum number of total housing units, which is why staff supported this proposal for the Project.

Appellant also contends that staff’s request for additional information after the Planning Hearing Officer hearing from the Applicant regarding the waiver finding of fact was unlawful. Staff’s intent in making the request was merely to seek clarification of some information on the waiver findings but understands that the communication may not

have been in line with best practices. Regardless, with two *de novo* hearings being held subsequent to the planning hearing officer hearing, all relevant evidence pertaining to the waiver findings will have been clearly presented in those hearings and any alleged due process issue will have been addressed.

Appellant states that all of the existing dwelling units are affordable units and two affordable replacement housing units should be provided, not one. This claim has already been addressed above (pgs. 5-6 and 23-24).

Appellant raises the issue of grouping setback incentives, which has been addressed above in Part 4A, #4 (pgs. 22-23 and footnote 8, pg. 8).

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

The staff report (Exhibit 10) 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 Commission was sufficient and adequate to support their decision. The Motion approved by the Commission cites as its basis the findings of fact as outlined in the Planning Hearing Officer's approval.

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

To date, Appellant has not submitted any new evidence of material facts not previously presented.

Conclusion

In conclusion, staff finds that the appeal does not present any new substantial evidence not already analyzed and discussed by the Planning Commission that warrants overturning the decision, and that the Planning Commission fulfilled their duty in accordance with State Density Bonus Law. Moreover, additional substantial evidence submitted by the Applicant supports denial of the appeal, and is included herein for Council's consideration. (Exhibit 13)

Therefore, based on the above analysis, all of the evidence in the record, and the reasoning set forth in the approval of Density Bonus Review Case No. PDBP2120753, staff recommends that, following review, consideration and adoption of the Class 32 CEQA exemption findings/analysis, the City Council deny the appeal, and sustain the Planning Commission's decision to sustain the Planning Hearing decision to grant with conditions the requested incentives/

concessions and waivers for the Project. The corresponding Motion for this action includes comprehensive findings and additional recommended conditions for Council consideration.

STAKEHOLDERS/OUTREACH

In addition to the City Council agenda being posted on the bulletin board in front of City Hall, a public notice was sent to all owners and occupants within 500 feet of the subject Project Site, a sign was posted on the Project Site, and a public notice was sent as a courtesy to all Glendale homeowners associations.

FISCAL IMPACT

There is no fiscal impact associated with the decision to deny the appeal, and sustain the Planning Commission's decision to approve the DB Review Case, other than potential increases to property tax and/or other fee/impact fee revenues.

ENVIRONMENTAL REVIEW

The Planning Hearing Officer and Planning Commission found, and Planning staff recommends that the City Council find, that this 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).

CAMPAIGN DISCLOSURE

The names and business addresses of the members of the board of directors, the chairperson, CEO, COO, CFO, Subcontractors and any person or entity with more than 10% interest in the company proposed for contract in this Agenda Item Report are attached in Exhibit 16, in accordance with the City Campaign Finance Ordinance No. 5744.

ALTERNATIVES

Alternative 1: Following CEQA exemption consideration, sustain the Planning Commission's decision to sustain the Planning Hearing Officer's granting with conditions of Density Bonus Application for 246 North Jackson Street.

Alternative 2: Continue the matter for two weeks and direct the City Attorney to draft findings reversing the Planning Commission's decision to sustain the Planning Hearing Officer's granting with conditions of Density Bonus Application 246 North Jackson Street.

Alternative 3: Any other alternatives not proposed by staff.

ADMINISTRATIVE ACTION

Prepared by:
Cassandra Pruett, Senior Planner

Approved by:
Roubik R. Golanian, P.E., City Manager

EXHIBITS / ATTACHMENTS

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 5 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
10. Planning Commission Staff Report for Density Bonus Review Case No. PDBP2120753
11. Planning Commission Motion sustaining Planning Hearing Officer's Decision
12. Notice of Appeal to City Council of Planning Commission's Decision
13. Additional documentation/evidence provided by Applicant

14. Evidence submitted to Housing staff re: replacement obligation
15. City Attorney e-mail correspondence with Appellant re: Public Records Act requests
16. Campaign Disclosure Form