

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



February 16, 2023

Jennifer Armer, Planning Manager
Town of Los Gatos
Community Development Department, Planning Division
110 E. Main Street
Los Gatos, CA 95030

Dear Jennifer Armer:

RE: 405 Alberto Way Preliminary Application – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the Town of Los Gatos (Town) regarding the Preliminary Application for a proposed housing project to be located at 405 Alberto Way (Project). The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the subject Project, and the reasonable subset of information required in a Preliminary Application pursuant to Government Code section 65941.1, subdivision (a).

Background

HCD understands the Project will create a total of 60 units, including 9 units that would be affordable for low-income households. The construction of the Project will result in two four-story buildings, with grade-level parking garage and upper story residential units in each building. The applicant submitted the Preliminary Application, including a site plan and architectural renderings representing the proposed building design. However, the Town found the application materials insufficient and requested elevation drawings. Specifically, the Town requested conventional two-dimensional elevation drawings of all four sides of each of the two buildings. The applicant disagrees with the Town's position, believing that the three-dimensional architectural renderings adequately meet the statutory requirement (Gov. Code, § 65941.1, subd. (a)(3)). As of the date of this letter, the Town has not yet set a vesting date and is awaiting receipt of elevation drawings. This inquiry has prompted an exploration into the purpose and intent of a Preliminary Application and the definition of elevations in this context.

Purpose of a Preliminary Application

The purpose of a Preliminary Application is to increase certainty for developers with development projects in the early stages of the entitlement process. The Preliminary Application established under Senate Bill 330 (Chapter 654, Statutes of 2019) allows housing developers to submit a Preliminary Application in advance of a full application

submittal. The Preliminary Application process allows a developer to “freeze” the applicable ordinances, policies, and standards and prevent changes to development requirements that could impact the project. A Preliminary Application becomes vested upon the submittal of exactly 17 items enumerated in statute along with the permit processing fee payment (Gov. Code, § 65941.1, subd. (a)).

Meaning of “Elevations” within a Preliminary Application

As commonly understood in the field of planning, an “elevation” typically refers to a two-dimensional drawing of a building which visually demonstrates the finished appearance and dimensions of a given side of a building. While the general intent for providing elevations in a Preliminary Application is to share a visual representation of each proposed building that is to be occupied (Gov. Code, § 65941.1, subd. (a)(3)), the statute explicitly states that “elevations” are to be provided. This should not be construed to prohibit local agencies from accepting alternative visual representations (e.g., architectural renderings) if they so choose, but it does not obligate a local agency to accept an alternative to conventional building elevations. It should be noted that elevations submitted for Preliminary Application purposes are expected to be conceptual in nature and need not contain a level of detail associated with construction drawings. Requiring elevations for all sides of each building seems excessive for meeting the purpose of the statute, which is to communicate the “design, color, and material, massing, and height” of the primary side of the proposed structures.

Affirmative Determination

The statute provides that an “affirmative determination” is not required to be made by a local agency when processing a Preliminary Application (Gov. Code, § 65943, subd. (d)(3)). This provision does not prohibit a local agency from reviewing the contents of the Preliminary Application. Indeed, a local agency must review the application to confirm that the two vesting eligibility criteria are met: (1) All 17 items are included in the application and (2) the processing fee is paid. On the date that both criteria are met, the application is considered vested. An application that does not contain all 17 items is not vested and will not become vested until all items are submitted. The primary focus of local agencies, therefore, should be on verifying the presence of all application materials – without analyzing the substance of the materials submitted. Analyzing the application materials is contrary to the purpose of the Preliminary Application. Applicants, for their part, should be fastidious in their preparation and submittal of Preliminary Application materials.

Conclusion

The Town may accept the Project renderings to satisfy the intent of the elevation requirement for the Preliminary Application, but it does not have to. While the rendering may be accepted as satisfactory, the Town may request elevations for each building,

but requiring elevations for all sides of each building seems excessive for meeting the purpose of the statute. Assuming the fees have been paid, the Town may deem the Preliminary Application vested on the date the Town received the submittal that included the renderings, or it may require the applicant to provide elevations. If the latter, the vesting date for the Preliminary Application would be the date the elevations are provided to the Town, assuming all other parts of the Preliminary Application have been provided and fees paid.

HCD reminds that the State of California is in a housing crisis, and the provision of housing is a priority of the highest order. HCD encourages the continued effort to streamline the housing development process in order to meet the pressing need of housing across California. If you have any questions regarding the content of this letter or would like additional technical assistance, please contact Mehrsa Imani, of our staff, at mehrsa.imani@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" being more prominent than the last name "West".

Shannan West
Housing Accountability Unit Chief