

CITY OF MERCED
Planning Commission

Resolution #4114

WHEREAS, the Merced City Planning Commission at its regular meeting of June 7, 2023, held a public hearing and considered **Density Bonus #23-01**, initiated by Linc Housing, Corp, on behalf of the City of Merced Public Financing and Economic Development Authority, property owner. This application involves a request to consider Density Bonus #23-01 which allows concessions and waivers to certain development standards to allow the construction of a 54-unit apartment complex with 53 affordable housing units on 5 parcels totaling 22,500 square feet, generally located at the northwest corner of 18th and I Streets and the southwest corner of 19th and I Streets; also known as Assessor Parcel: 031-074-008; -009; -010; -011; -012; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through E of Attachment A of Planning Commission Staff Report #23-471 (Exhibit A); and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #23-19, and recommend approval of Density Bonus #23-01, subject to the Findings set forth in Exhibit A, attached hereto and incorporated herein by the reference.

Upon motion by Commissioner _____, seconded by Commissioner _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

PLANNING COMMISSION RESOLUTION #4089

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June 7, 2023

Adopted this 7th day of June 2023.

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Exhibits:

Exhibit A – Findings/Considerations

**Findings and Considerations
Planning Commission Resolution #4114
Density Bonus #23-01**

FINDINGS/CONSIDERATIONS:

State Density Bonus Law

- A) State Density Bonus Law (SDBL) states that a development which meets the requirements of the SDBL is entitled to receive a density bonus to increase the density of a project by right. This means that no discretionary review is required to allow an increase in the density of a project.

According to CA Government Code Section 65915 (f) (1) and (2), the number of units allowed by the density bonus is calculated on a sliding scale based on the number of affordable units provided. In 2019, AB 1763 was approved which allows a project that provides housing for low and very low-income residents a density bonus of up to 80% of the allowable units. Additionally, this Bill eliminated all restrictions on density if a project is located within one-half mile of a major transit stop such as a rail station or bus stop with a minimum of 15-minute headways. AB 1763 also allows a height increase of up to three additional stories or 33 feet. However, if the project receives a waiver from maximum controls on density, it is not eligible for the waiver or reduction of any development standards which would otherwise be available.

State Density Bonus Law also provides relief from parking requirements. If a project provides 100% affordable housing units to lower income residents (excluding a manager's unit) and is within one-half mile of a major transit stop, the City cannot require on-site parking. For projects that are not 100% affordable, the following parking requirements would apply:

Studio	1 space
1 Bedroom	1 space
2 Bedroom	1.5 spaces
3 Bedroom	1.5 spaces
4 Bedroom	2.5 spaces

In addition to an increase in density, the City is required to grant concessions or incentives proposed by the developer unless it finds one of the following:

- That the proposed concession or incentive does not result in identifiable and actual cost reductions: or,
- Would cause a public health or safety project: or,
- Would cause an environmental problem; or,
- Would harm historical property; or,
- Would be contrary to law.

The City has the burden of proof in the event it declines to grant a requested incentive or concession. Financial incentives, fee waivers, and reductions in dedication requirements may be, but are not required to be, granted by the City.

The number of required incentives or concessions is based on the percentage of affordable units in the project as shown in the table below:

No. of Incentives / Concessions	Very Low-Income Percentage	Low-Income Percentage	Moderate Income Percentage
1	5%	10%	10%
2	10%	17%	20%
3	15%	24%	30%
4	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)

A concession or incentive is defined as:

1. A reduction in site development standards or a modification of zoning requirements or architectural design requirements that exceed the minimum State building standards, such as reductions in setback, square footage, or vehicular and bicycle parking space requirements. The requested concession or incentive must result in an identifiable and actual cost reduction to provide for affordable housing costs or rents.
2. Approval of mixed-use zoning for housing projects if associated commercial, office, industrial, or other land uses will reduce the cost

of the housing project, and existing or planned development in the immediate area.

3. Other regulatory incentives or concessions that result in identifiable and actual cost reductions to provide for affordable housing costs, which may include the provision of direct financial incentives or land for the housing development by the City.

Concessions and incentives are differentiated from waivers and reductions in the SDBL. Projects that are eligible for a density bonus, and that are approved for concessions or incentives, cannot be subjected to any development standard that will have the effect of physically precluding the construction of the project. If a local development standard is found to have this effect, applicants have the option of requesting a waiver or reduction of any development standard that may preclude completion of the project; there is no limit on the number of waivers that may be requested. Waivers or reductions do not take the place of concessions or incentives that the project is qualified to receive.

Additional information about Density Bonus Law is provided in the Guide to the California Density Bonus Law (revised January 2023) by Jon Goetz and Tom Sakai of Meyers-Nave Law Firm (**Attachment B** of Planning Commission Staff Report #23-471).

Requested Density

- B) The applicant is proposing 54 units over the entire 0.52-acre site. Thirty-nine of the units would be located at the northwest corner of 18th and I Streets and fifteen units would be located on the corner of 19th and I Streets (refer to the Site Plan at Attachment E of Planning Commission Staff Report #23-47). Under the current zoning, one unit is allowed for every 1,000 square feet of lot area. The property at the northwest corner of 18th and I Streets currently consists of 4 individual parcels totaling 15,000 square feet (the parcels would be combined into one parcel through the development process). Based on the zoning, 15 units would be allowed on these parcels. The property at the southwest corner of 19th and I Streets consists of one 7,500-square-foot parcel, which would allow 8 units (rounding up from 7.5). Therefore, the total number of units allowed for these parcels would be 23 units.

The requested 54 units would exceed the allowable density by 31 units. However, as explained above, as a 100% affordable housing project within

one-half mile of a major transit stop, SDBL prohibits the City from placing limits on the density of the project.

Parking

- C) As previously described, the proposed project would provide 100% affordable housing units to lower income residents. Because of the affordability and the fact that the site is located within one-half mile of a major transit stop (the Amtrak Station and 24th and K Streets and the Transportation Center at 16th and O Streets), state law prohibits the City from applying any parking requirements.

The proposed project would provide 3 off-street parking spaces (one handicap accessible) in Building A (refer to the Site Plan at Attachment E of Planning Commission Staff Report #23-471. These spaces would be accessible from the alley. Bicycle storage areas are provided in both Building A and Building B (refer to the Floor Plans at Attachments G of Planning Commission Staff Report #23-471).

Building Height

- D) As described in Finding A, Density Bonus law allows a project providing 100% affordable housing units located within one-half mile of a major transit stop an increase in height of up to 3 additional stories or 33 feet. The site is located within an R-4 zone which has a height limit of 40 feet.

Building Type A located at the northwest corner of 18th and I Streets is a four-story building with a maximum height of 48 feet at the top of the stairway/elevator shaft (refer to the Building Elevations at Attachment F of Planning Commission Staff Report #23-471. However, the majority of the building would have a maximum height of 44 feet at the top of the parapet.

Building Type B located at the southeast corner of 19th and I Streets is a three-story building with a maximum height of 38 feet at the top of the stairwell/elevator shaft.

Because SDBL allows an increase in height as described above, Building Type A is allowed even though it exceeds the maximum height allowed for the zone. Building Type B is less than the maximum height allowed in the R-4 zone.

Zoning Ordinance Findings

E) Merced Municipal Code Section 20.56.080 (C) establishes specific findings that must be made to approve a Density Bonus. These findings are as following:

1. *The findings included in Section 20.56.030 (land Donation) if the density bonus is based all or in part on donation of land.*

This finding does not apply as the project does not include land donation.

2. *The findings included in Section 20.56.040 (Child Care Facilities) if the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility.*

This finding does not apply as the project does not include a Child Care Facility.

3. *The findings included in Section 20.56.070 (Modifying Development Standards) if the incentive or concession includes mixed use development.*

This finding does not apply as the project does not include a mixed use development.

4. *If a waiver or modification is requested, the developer has to prove by submitting substantial evidence that the waiver or modification is necessary to make the housing units economically feasible.*

A 2021 appellate court case, *Schreiber v. City of Los Angeles*, held that a local government may not require an applicant to submit a pro forma or other documentation to prove that a requested incentive or concession is required in order to make the housing development economically feasible. However, local agencies can require applicants to show that requested incentives and concessions will result in cost reductions for the project to provide for affordable housing costs or rents. The local jurisdiction has the burden of proof in the event it declines to grant a requested incentive or concession.

The requested concessions are outlined below along with the applicant's justification as to how the concession would result in cost reductions to provide affordable housing costs or rents.

Concessions and Waivers

F) Reduction in Exterior Yard Setbacks (Concession)

The proposed buildings would have a maximum 5-foot setback on all sides of the building (refer to the Site Plan at Attachment C of Planning Commission Staff Report #23-471). The R-4 zone requires a 15-foot setback for exterior, front yards, a 10-foot setback for exterior side yards on corner lots, other yards may have a 5-foot setback.

Additionally, Merced Municipal Code (MMC) Section 20.46.040 establishes design standards for any multi-family dwelling with 5 or more units (or 3 or more units on corner lots). Section 20.46.040 (A) (1) states: Building construction shall not exceed the plan established by 1:1 height and setback ratio from any exterior property line of a lot or parcel, for more than 50 percent of the allowable building area at any established distance from said exterior property line.

Based on the height of Building Type A, at least 50% of the building should have a setback from the exterior property lines of 44 feet and at least 50% of Building Type B should have a setback of 34 feet.

Justification:

The reduced setbacks allow the project to maximize the number of units on the site. The site is very small, and it would be impossible to accommodate the setbacks required by MMC Section 20.46.040(1:1 height and setback ratio) even if the buildings were only 2 stories.

To meet the setbacks required by the R-4 zone, the number of units would be drastically reduced, or the units would be very small. By providing more total units the buildings are more efficient and the cost per unit is decreased, making the project financially feasible. It is expected that the operating expenses per unit would decrease by providing more units because many maintenance costs are typically based on a flat fee rather than per unit. These cost reductions allow for lower rents making the units more affordable.

Private Outdoor Space (Concession)

The applicant is requesting a relief from Zoning Ordinance Section 20.46.030 (I) (1) and (2) which states that every unit should have a private outdoor usable space, if feasible, of a minimum size of 5 feet by 8 feet.

Justification:

The project includes an outdoor courtyard area to provide tenants with an outdoor usable space. Adding individual spaces to each unit would increase the cost, reduce the indoor living area, and reduce the number of units that could be constructed.

Roof-mounted Mechanical Equipment (Concession)

The applicant is requesting a relief from Zoning Ordinance Section 20.46.040 (A)(5a) which prohibits roof-mounted mechanical equipment.

Justification:

Allowing roof-mounted mechanical equipment screened from public view, allows more space on the ground for this small parcel. Placing mechanical equipment on the ground takes up space that could be otherwise used for open space or general outdoor area. Additionally, the cost of a roof-mounted HVAC unit is typically less because the entire unit is on the roof. Ground-mounted units require a portion of the unit to be inside the living area. This not only takes up space, but adds cost to the apartment unit.

Reduction in the number of trees

The applicant is requesting a reduction in the number of trees required for the site per MMC Section 20.46.040 (A) (2). This section requires one tree for every 3 units. The requested reduction would reduce the number of trees from 18 to 14.

Justification:

The reduction in the number of trees results in a cost savings in the number of trees required and in the on-going maintenance of the trees.

As described above, the applicant is requesting four concessions. Based on the affordability, the project is eligible for four concessions, but is not entitled to any waivers. However, there is nothing that would prohibit the City from granting a waiver if it was requested. Without the requested concessions, the project would not be feasible to build. The requested concessions would not result in any of the conditions listed in Finding A of this resolution that would result in the denial of the requested concession. Therefore, the concession complies with State Density Bonus Law.

Environmental Clearance

- G) The adoption of the resolution is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15061(b)(3) (Common Sense Exemption) because it can be seen with certainty that the adoption of the resolution will not have a significant effect on the environment and none of the circumstances in CEQA Guidelines Section 15300.2 apply.