

Implications of State Housing Laws on Objective Standards in Berkeley

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1. Most all neighborhood opposition to development projects contain some form of claim of detriment: View, Sunlight, Privacy and yet those claims are never upheld.
2. Berkeley's permit approval process is based on Findings that rely on a **subjective definition of detriment**: 'substantial' blockage of light, an 'unreasonable' blockage of view. Denial of a permit requires proving that a project will be detrimental to the health, comfort or welfare of persons residing in the surrounding area or neighborhood.
3. Berkeley's Zoning Code currently does not specify objective standards for Sunlight and View Detriment. Without objective standards it is extremely difficult to prove detriment and neither Planning staff, ZAB, or Council will rule in favor of such a claim.

New Developments in State Housing Laws

In late 2017 a complex package of State housing bills were passed which were designed to accelerate the building of affordable housing. One of the primary bills is SB35, the Housing Accountability Act (HAA).

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SB35 or the HAA allows a developer who proposes to build a multi-family housing project containing a minimal number of 'affordable', below-market-rate (BMR) units, to qualify for a State-mandated streamlined approval process which technically cannot be blocked by the local municipal jurisdiction.

- If a City such as Berkeley has not built its share of affordable housing as set by the statewide Regional Housing Needs Allocation (RHNA), it must follow state-mandated guidelines for Streamlined Approval of conforming projects and offer specific zoning concessions such as foregoing minimum parking requirements, etc.
- If a project conforms to a checklist of items such as number of affordable, below-market-rate (BMR) units, the project can be approved under what is called 'Ministerial Approval'. A project granted Ministerial Approval does not

have to take public input, pass CEQA compliance, and once approved is not Appealable to the Zoning Board or Council.

- One of the key items in the checklist is the conformance to Objective Standards with respect to Views and Sunlight Detriment.

The legal implications of the State Housing laws on the City of Berkeley are now under analysis. (Currently Berkeley has its own Inclusionary Housing Ordinance which is also undergoing analysis as to the impact of new State housing laws.

JSISHL

In parallel, the City Council has created a subcommittee called the Joint Subcommittee for the Implementation of Housing Laws (JSISHL) to recommend how the City should proceed to conform with the new State laws.

- Council is requesting recommendation for a Streamlined Permit Process and Ministerial Approval for projects with >50% BMR housing. Of that 50%, 20% of the units must be affordable to Very-Low-Income (VLI) or Extremely-Low-Income (ELI) households.
- One of the first actions the Planning Department has taken is to issue an RFP for a Density Standard, as many of the State-mandated laws require conformity to a numerical density standard.
- The next step JSISHL will take is to evaluate and recommend the adoption of Objective Standards for View and Sunlight Detriment. **The discussion is scheduled to take place at the Sept. 20th meeting of JSISHL.**

BNC has an opportunity to influence JSISHL's discussion and recommendation on how those objective standards should be defined.