



MEMO TO FILE

September 30, 2024

Subject: Zoning Administrator Interpretations

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Background

Pursuant to Planning Code Section 307(a), the Zoning Administrator (ZA) issues rules, regulations, and interpretations they deem necessary to administer and enforce the provisions of the Code. Formal interpretations are listed within the Planning Code, as well as a series of topical bulletins (e.g., neighborhood notice, bicycle parking, affordable housing, etc.).

Interpretations

The attached document details several new ZA interpretations deemed necessary to implement the provisions of the Planning Code related to Individually Requested State Density Bonus projects, Accessory Dwelling Units, and neighborhood notification requirements.

Appeals

Each individual ZA interpretation in the attached document is separately appealable to the Board of Appeals within 30 days of issuance. A single appeal may not be filed to encompass two or more separate interpretations.

Attachments:

Amendments to Zoning Administrator Interpretations of the Planning Code – Issued September 30, 2024

cc: Elizabeth Watty, Director of Current Planning
Planning Commission
Odaya Buta, Office of City Attorney
Citywide Neighborhood Groups

Amendments to Zoning Administrator Rules, Regulations, and Interpretations of the Planning Code – September 30, 2024

NOTE: Additions are single-underline italics Times New Roman;
Deletions are ~~strike-through italics Times New Roman~~.

INTERPRETATIONS BY CODE SECTION

Code Section: 206.6(e) and 415A.5

Subject: State Density Bonus Projects and Planning Commission Approvals

Effective Date: 09/24

Interpretation:

Ordinance No. 187-23 became effective on October 15, 2023. Among other things, it added Section 415A et seq. to the Planning Code, which provides an administrative path for certain previously approved projects to reduce their inclusionary housing obligations. Pursuant to Section 415A.5 and Planning Commission Resolution No. 21353, the Planning Commission delegated authority to the Planning Director to administratively amend certain conditions of approval related to inclusionary housing obligations for eligible projects. Projects that propose a “significant modification,” however, would continue to require a Planning Commission hearing per Section 415A.5.(a) to approve the modified project.

Ordinance No. 248-23 subsequently became effective on January 14, 2024. Among other things, it amended Section 206.6(e) to exempt most Individually Requested State Density Bonus projects from Planning Commission approvals that would otherwise be required, with some caveats.

This interpretation addresses whether a “Pipeline Project” per Section 415A.2 that proposes a “significant modification” pursuant to Section 415A.5(a), but is also an Independently Requested State Density Bonus project that does not otherwise require any Planning Commission hearing per Section 206.6(e), would require a Planning Commission hearing to approve the modified project and amend the conditions of approval.

It's important to note that a new development application does not necessarily represent a new “project.” In certain instances, an existing “project” may need a new application merely because the project requires an additional approval, or because it is using an alternative approval option currently available under the Planning Code or State law. Even though the requirements for the new application may differ, the underlying project is still the same. As such, an Individually Requested State Density Bonus project that 1) qualifies as a Pipeline Project pursuant to Section 415A.2, 2) qualifies for

administrative approval pursuant to Planning Code Section 206.6(e), and 3) does not change to the extent that it becomes a new project, may be approved pursuant to Section 206.6(e) without a Planning Commission hearing, and any previous Planning Commission approval for such project will be superseded with no need to amend any prior conditions of approval. Additionally, any such prior Planning Commission approval will continue to qualify the project for any applicable grandfathering provision of the Planning Code or State law (e.g., Pipeline Project status, impact fee triggers and rates, etc.).

Code Section: 207.1(c)(5)

Subject: Dormer Additions for Local Program ADUs

Effective Date: 09/24

Interpretation:

This section prohibits Local Program ADU projects from including a vertical addition, with certain exceptions. The question was raised if adding dormers to the attic level of an existing building to make it habitable for a new ADU is considered a vertical addition. The determination was made that such dormers would not be considered a vertical addition for this purpose so long as they fully complied with the area limit for dormers above the height limit found in Section 260(b), which is no more than 30% of the horizontal roof area. It's important to note that this specific threshold for defining a vertical addition applies even if the proposed dormers are not above the height limit.

Code Section: 207.1(c)(5)

Subject: ADUs Restricted to Permitted Buildable Area

Effective Date: 09/24

Interpretation:

This section requires Local Program ADUs to be within the permitted buildable area or within the built envelope of a legally existing building. For example, a variance cannot be granted to construct an addition into the required rear yard to add a Local Program ADU. The question was raised if this prohibition would also apply to a rear stair structure associated with or otherwise required by the new ADU (i.e., a second means of egress, etc.). The determination was made that this buildable area limitation only applies to the ADU itself, and therefore a variance may be granted for other features that extend beyond the unit itself, such as decks and stairs. Additionally, a variance may be granted for other applicable Planning Code requirements, such as the exposure requirements of Section 140, so long as the ADU itself is within the permitted buildable area.

Code Section: 311(b)(3)(B)

Subject: Notice Requirements for Subterranean Additions Outside the Priority Equity Geographies (PEG) SUD

Effective Date: 09/24

Interpretation:

This interpretation addresses the question of whether subterranean additions count towards the Gross Floor Area (GFA) trigger for notice per Section 311(b)(3)(B) for projects outside the PEG SUD. The response to this question depends on the specific scenario:

1. **Subterranean work only.** If the scope of work is purely subterranean, then the GFA trigger of Section 311(b)(3)(B) is not triggered because Section 311 only applies to “Alterations” as defined in Section 311(b)(4), which is “an increase to the exterior dimensions of a building” other than certain Section 136 exemptions. “Exterior dimensions” connotes the outer structure of the building that may be visible, including building portions that are above grade. As an example, if a project scope is to add a completely subterranean basement level that represents more than a 25% increase in GFA and results in the building having GFA greater than 3,000 square feet, no notice would be required because that scope of work does not constitute an “alteration.”
2. **Combination of subterranean and above-ground work.** If the scope of work includes an above-grade “alteration” (as defined in Section 311(b)(4), which exempts certain Section 136 features) plus a subterranean expansion, then the total GFA increase for the project must be used (including the subterranean GFA) when calculating the Section 311(b)(3)(B) GFA trigger for notice. As an example, if a project scope is to construct a horizontal “alteration” plus a new subterranean basement that collectively is more than a 25% increase in GFA and results in the building having GFA greater than 3,000 square feet, then notice would be required.

Scenarios other than the two described above will be reviewed on a case-by-case basis by the Zoning Administrator to determine if notice is required pursuant to Section 311.

~~Code Section: 311(b)(3)(B)~~

~~Subject: Notice Requirements for Single Family Home Alterations Outside the Priority Geographies SUD~~

~~Effective Date: 02/24~~

~~Interpretation:~~

~~Ordinance No. 248-23 added Section 311(b)(3) to provide a specific size threshold in which a building permit for a single family home alteration would trigger neighborhood notice. However, the Code~~

~~language is not clear. Therefore, Subsection (3)(B) shall be interpreted as the following 2-step threshold to require neighborhood notice. Any permit for an alteration to a building containing only one dwelling unit that 1) increases the existing building's Gross Floor Area (GFA) by 25% or more, and 2) results in a building of more than 3,000 square feet of GFA will require neighborhood notice (regardless of how large the building was to begin with, and assuming no new unit will be added). Both conditions must be met in order for notice to be required.~~