Nancy McPeak

From: ps4man@comcast.net
Sent: Friday, December 10, 2021 10:27 AM
To: Jeffrey Cavanaugh; Hanson Hom; Rona Rothenberg; Teresa Ruiz; Asheshh Saheba; Alan Teague; rcurtis@alameda.gov
Cc: Nancy McPeak; Andrew Thomas; Eric Levitt; Yibin Shen
Subject: [EXTERNAL] Dec. 13, 2021 Planning Board Agenda-Item 7-A Proposed Amended AMC Section 30-4, R-1 Zoning District

Follow Up Flag: Follow up
Flag Status: Flagged

Dear President Saheba, Vice-President Ruiz and Board Members Cavanaugh, Hom, Rothenberg, Teague, and Curtis:

I commend Andrew Thomas, his staff and others who I understand contributed to the draft of the amended R-1 zoning ordinance which is now presented to you for review. I think that it presents a reasonable structure for the application of SB-9 in Alameda. However, I lack your collective expertise in this matter and trust that you will make any adjustments that you deem appropriate.

I do have a concern for an issue not addressed in the proposed resolution. That is the fact that SB-9 becomes effective on Jan. 1, 2022, but the new R-1 zoning ordinance will not be presented to City Council until Jan. 4, 2022 with the second reading scheduled for Jan.18 and the ordinance not being in effect until 30 days later on Feb. 18. During the time gap between the effective date of SB-9 (Jan. 1) and the effective date of the ordinance (Feb. 18) development applications could be filed.

Mr. Thomas has informed me that during this interim period his staff will enforce the new pending ordinance rather than the existing one. However, that does not square with state law. SB 330 (CA Govt. Code Sec. 65589.5) provides that applicants have the absolute and unqualified right to submit a preliminary application, containing seventeen statutorily prescribed pieces of information, along with payment of the applicable permit processing fee which automatically renders the project "deemed complete" and protects the project against changes in ordinances, policies, and standards not in effect on the day the preliminary application was submitted with certain limited exceptions. https://www.jdsupra.com/legalnews/establishing-vested-rights-through-sb-30456/#:~:text=And%20new%20Government%20Code%20section%2065941.1%20%28d%29%20%283%29,application%20for%20purposes%20of%20compliance%20with%20this%20section.%E2%80%9D

Therefore, a project submitted prior to the projected Feb. 18 effective date of the amended R1 ordinance would be entitled to approval based upon the current R-1 ordinance which does not contain the proposed limits of a 1200 sq. ft. floor area and total dwellings, including ADUs, to four. Fortunately, Ca Govt. Code Sec. 65858 is specifically designed as an urgency interim measure to allow enforcement of a contemplated zoning change while it is in progress, thus preventing developers from rushing an application in order to avoid the proposed changes. Subsection (a) is quoted it italics below:

Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

The urgency ordinance, if adopted, only has a life of 45 days. You will have time to improve on it in the future if needed. The cities of Los Altos Hills, Portola Valley and Santa Barbara have enacted such an ordinance while their SB-9 revisions to their zoning ordinance are pending.

Based upon all of the above I urge you to amend the Resolution presented as an exhibit to Item 7-A to add an item #4 to your findings in the last Whereas clause to read:

4. **The amendments, if approved by City Council, will not be effective until Feb. 18, 2022 at the earliest.** Inasmuch as SB-9 will be effective on Jan. 1, 2022, it is imperative that any project applications filed prior to the effective date of the amendments, be subject to the provisions thereof. The Board recommends that City Council adopt an urgency ordinance pursuant to Ca. Govt. Code Sec. 65858 so that SB-9 and the amendments to the ordinance become effective simultaneously or as close in date as possible.

Sincerely,

Paul Foreman

ALAMEDA
ARCHITECTURAL
PRESERVATION
SOCIETY

December 12, 2021

City of Alameda Planning Board
2263 Santa Clara Avenue, Room 190
Alameda, CA 94501

Subject: Proposed Alameda Municipal Code amendments to bring the R-1 zoning district regulations into compliance with Senate Bill 9 (SB 9) - -Item 7-A on the Planning Board's December 13, 2021 agenda.

Dear Planning Board members:

The Alameda Architectural Preservation Society (AAPS) has the following comments on the proposed amendments:

1. The proposed amendments should be limited to just the SB 9-related provisions and not include the additional proposals, such as the changes to the lists of permitted users and uses requiring use permits, except for those specifically related to SB 9. Given the time urgency for adopting the SB 9 amendments and the complexity of the amendments, the non-SB 9 related amendments should not be subject to the somewhat hasty review process needed to adopt the SB 9 amendments by the City Council either before January 1, 2022, or as soon thereafter as possible. If staff desires Planning Board and City Council consideration of the non-SB 9 provisions, those provisions should be presented in a separate set of amendments, especially since staff has advised that additional amendments concerning the R-2 through R-6 zones will be presented in the future.

2. The SB 9 amendments should follow the SB 9 text as closely as possible. However, there are the following significant deviations from the SB 9 text, which should be corrected as follows:

   a. Add "or alteration" after "demolition" in line 2 of item 2a on page 3, since "or alteration" is used in SB 9's corresponding sections 65852.21(a)(3) and 66411.7 (a)(3)(D). "Or alteration" may have been deleted because of concern that not allowing alterations would excessively impair the ability of rental buildings to use SB 9. But it may be that the authors of SB 9 were concerned that alterations could be very extensive and so disruptive that the building would be virtually unlivable during construction and owners could use an SB 9 project to force tenants to move out. Also, Sections 65852.21 (a)(3) and 66411.7 (a)(3)(D) precede the "demolition or alteration" language with the clause "notwithstanding any provision of this section or any local law"(emphasis added), which suggests that even if the city wanted to allow at least minor alterations to the listed types of rental housing for SB 9 projects, SB 9 prohibits it.

b. See attached marked-up copy of Subsections 30-4.1.b.2(b) and 30-4.1.d.2(c) of the draft amendments for additional changes needed to conform with the SB 9 text.

3. Define "demolition." It should be in terms of percentage of exterior wall surfaces and probably roof structure as has been previously discussed as part of the historic preservation ordinance revisions, rather than the current approach using the percentage of building value. Here is one of the previously presented proposals:

> Demolition shall mean any one of the following:
>
> 1. Removal of more than twenty-five percent of the surface of a street-facing exterior wall and more than fifty percent of the surface of any non-street-facing exterior walls of any building, except for replacement in kind.
>
> 2. Enclosure or visual obstruction of more than twenty-five percent of a street-facing wall and more than 50% of the surface of a non-street-facing wall of any building so that the wall no longer functions as an exterior wall.
>
> 3. Removal of more than fifty percent of the roof surface area as measured in plain view, except for the replacement of roof surfaces in kind or replacement to match original roof surfaces.
>
> 4. Any alteration that, in combination with other alterations within the preceding five years, will represent a change as defined in one or more subsections above.

4. Any changes to the lists of permitted uses and uses requiring a use permit in R-1 should be reflected in ALL of the residential zones and possibly other zones. The proposed amendments to the use lists should be expanded to do this.

5. Permitted uses (enumerations refer to those in Subsections 30-4.1.b. of the draft zoning amendments):

> 7. Should not include substations, generating plants, and gas holders, which can be extremely intrusive facilities. They should still be subject to Planning Board approval. Why is allowing them by right now the current practice? Are local regulations preempted by state law?
>
> 8. Why is "included in the General Plan" deleted from public parks, schools, playgrounds, etc. under permitted uses? If such uses are not in the General Plan, they should require a use permit like in R-2. Although, as noted in the staff commentary, some of these uses are listed in the recently adopted General Plan's Low and Medium Density Land-Use Classifications, our understanding of which uses are actually "permitted by the General Plan" within each residential zoning classification for a particular location is based on where such uses are shown on the Land Use Diagram. It is not the intent of the General Plan to allow such uses by right anywhere within the Low Density Land-Use Classification (which corresponds to the R-1 zone) - -only where such uses are shown on the Land Use Diagram.

15. Shared living serving more than a specified number of residents should probably require a use permit at least in R-1.

16. Incidental shelters should probably require a use permit. Clarify the definition of incidental shelters as per Comment 10 below.

17. Domestic violence shelters should also probably require a use permit, at least in R-1. Staff has advised that a use permit would compromise the confidentiality of clients, but we don't understand why such compromise would occur, since the use permit would apply to the facility itself and have no reference to who the clients would be. If confidentially concerns truly demand that use permits not be required, maybe domestic violence shelters could be provided by-right in R-1 if, as recommended above for shared living, the maximum number of residents is specified and the facility does not include high-profile administrative offices or other significant non-residential activities. Further description of the physical and operating characteristics of these facilities would be helpful. The Housing Element should also address this.

6. c. 6. (Page 6). At one time the front yard averaging provision was applied to all new residential development, not just projects involving a full block frontage. The Guide to Residential Design has a statement reflecting this. The averaging option is a good strategy and should be retained and modified to individual lots in all residential zoning districts.

7. c. 7. (Page 6). Why are the reductions of existing side and rear yard setbacks to 4 feet allowed in all cases rather than just where greater setbacks would preclude the construction of two units on each lot with at least 800 ft.^{2} in floor area per unit? This provision should cite Government Code Section 66411.7 as well as 65852.21.

8. c. 10. (Page 7). Why are "minimum lot width, maximum building coverage, minimum setback or other bulk and space requirements" called out specifically while SB 9 simply refers to "objective zoning standards"? Although subsection c. 10 is intended to reflect Government Code Section 66411.7 exemptions, we can't find the reference to "or a one family dwelling with at least one thousand two hundred (1200) square feet of floor area" in Section 66411.7 or anywhere else in SB 9. Are we missing something? Assuming there is no SB 9 requirement that new SB 9 one family dwellings over 800 ft.^{2} be allowed exemptions from normal zoning standards, the 1200 ft.^{2} should be changed to 800 ft.^{2} to reduce the likelihood of projects entitled to exemption from these standards, especially reductions of rear yard setbacks to as little as 4'.

9. Definitions.

   Page 8. Incidental Shelters. Staff has advised us that incidental shelters will be accessory uses to primary uses, such as churches. This should be reflected in the definition. Since incidental shelters will be accessory, should the definition provide that such shelters occupy less than 50% of the usable square footage of the building like San Jose's definition does? Percentage limitations like this should probably be considered for other accessory uses. Has Alameda adopted an incidental shelter program? If not, such a program should be outlined in the Housing Element.

10. Other considerations:

    a. Should separate utility meters be required for SB 9 units?

    b. There has been concern that SB 9 units could later be combined to reduce the total number of units. Should there be a deed restriction to prevent this, especially since SB 9 units in many cases will receive exceptions to normal zoning standards such as rear and side yard setbacks?

    c. Should floor areas greater than 1200 ft.^{2} be allowed for new units if normally required side and rear yard setbacks and possibly other normal zoning requirements are maintained?

    d. Should there be a requirement that at least some SB 9 units be affordable, perhaps in the case of the third and or fourth units on a pre-split lot?

    e. Are revisions to the City's subdivision ordinance needed to address lot splits?

    f. Provide an informational notice to neighboring property owners of SB 9 projects prior to issuance of the building permit. Also, post the notice on the City's website as is currently done for Minor Cases.

    g. Consider addressing SB 9 in an urgency ordinance as at least several other California communities are doing. This would expedite the effective date, since only one City Council meeting (rather than the usual two meetings for ordinances) and the emergency ordinance would become effective immediately. This would allow the current draft ordinance to be given more careful consideration, including addressing the issues discussed above.

    h. It might be simpler to just upzone R-1 to R-2 so that R-1 areas are not subject to SB 9.Should this be considered?

See attached marked-up pages for specific and relatively minor additional comments.

Thank you for the opportunity to comment. Please contact me at (510) 523-0411 or cbuckleyAICP@att.net if you would like to discuss these comments.

Sincerely,

Christopher Buckley, Chair
Preservation Action Committee
Alameda Architectural Preservation Society

Attachments:
1. Marked-up pages from the draft standards

cc: Mayor and City Councilmembers (by electronic transmission)
Historical Advisory Board

Andrew Thomas and Allen Tai, Planning, Building, and Transportation Department (by electronic transmission)
AAPS Board and Preservation Action Committee (by electronic transmission)

ATTACHMENT 1 -- ADDITIONAL ABAG COMMENTS (12/12/21)

30-4.1 R-1, One-Family and Two-Family Residence District.

a. *General.* The following specific regulations, and the general rules set forth in Section 30-5, shall apply in all R-1 Districts as delineated and described in the zoning maps. It is intended that this district classification be applied in areas subdivided and used or designed to be used for one-family and two-family residential development, and that the regulations established will promote and protect a proper residential character in such districts.

b. *Uses Permitted.*

1. One-family dwellings~~, including private garages, accessory buildings and uses; reconstruction of destroyed two-family dwellings, provided that all zoning requirements other than density shall be met and that any requirement that would reduce the number or size of the units shall not apply; private, noncommercial swimming pools, boat landings, docks, piers and similar structures; and home occupations in compliance with the standards as set forth in Section 30-2 of this Code to the satisfaction of the Planning and Building Director. Upon the approval of the Planning and Building Director, a Registration of Home Occupation form shall be completed and filed with the Planning and Building Department. Any property owner aggrieved by the approval or non-approval of the Planning and Building Director shall have the right to appeal such action to the City Planning Board in the manner and within the time limits set forth in Section 30-25 of this Code. Nothing contained herein shall be deemed to deny the right of appeal under Section 30-25 following the determination of the City Planning Board.~~

to implement the provisions of state law as reflected in Government Code Section 65852.21 et seq. and Section 66411.7 et seq.

2. Two-family dwellings or two one-family dwellings on the same lot, provided that:

(a) Any new unit added to a property with an existing single family home or any new unit added to a lot created pursuant to the provision of Lot Splits subsection d.2 below shall not exceed 1,200 square feet in size.

USE CAUTION LETTER

or alteration

(b) The proposed housing development shall not require or result in the demolition of an existing dwelling unit that (1) is subject to a recorded covenant, deed restriction, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes; (2) is subject to subsection 6-58.60 (Establishment of Base Rent, Annual General Adjustment) of the City Rent Control Ordinance (Article XV of Chapter VI of the AMC); or (3) has been occupied by a tenant within the last three (3) years; and (4) the proposed housing development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site designated as a City Historic Monument, historic property, or historic district pursuant to a City ordinance. Notwithstanding the above, any demolition that is subject to the demolition controls of AMC Section 13-21 shall require approval of a Certificate of Approval prior to issuance of a demolition permit.

CONFORM TO SB 9 TEXT AS CLOSELY AS POSSIBLE.

or listed

(c) The subject property is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code ("Ellis Act") to withdraw

~~3. Community care facilities not listed under uses permitted.~~

~~4. Temporary tract sales offices, advertising signs, construction offices, equipment storage yards or structures therefore, which are incidental to the development during the construction and/or sales period.~~

~~5. Automobile parking lots and ancillary facilities for ferry terminals serving the general public, provided that:~~

~~(a) Parking lots and ancillary facilities adjoin a commercial planned development zoned area or an industrially zoned area in which terminals are permitted;~~

~~(b) There is an entrance to the automobile parking lots and ancillary facilities for ferry terminals adjacent to nonresidential areas; and~~

~~(c) Any additional parking lot entrances adjacent to residentially zoned areas shall be allowed only if conditions are imposed to minimize the nonlocal automobile traffic to the terminal through the residential areas.~~

SEE COVER LETTER

d. *Minimum Height, Bulk and Space Requirements.*

1. Minimum Lot Area: Five thousand (5,000) square feet ~~per dwelling unit~~. Lot area may be reduced through a lot split subject to Subsection d.2.

2. Lot Splits: Pursuant to Government Code Section 66411.7, the division of an existing lot into two lots is permitted in an R-1 Zoning District, provided that all of the following requirements are met:

OR ALTERNATIVE

(a) The area of each lot is at least one thousand two hundred (1,200) square feet and at least forty (40%) percent of the area of the original lot prior to the lot split.

(b) Each lot provides frontage on a public street or a pedestrian or vehicular access easement to a public street.

CONFORM TO SB9 TEXT AS CLOSELY AS POSSIBLE

(c) The land division will not require or result in the demolition of an existing dwelling unit that: (i) is subject to a recorded covenant, deed restriction, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes; (ii) is subject to subsection 6-58.60 (Establishment of Base Rent, Annual General Adjustment) of the City Rent Control Ordinance (Article XV of Chapter VI of the AMC); or (iii) has been occupied by a tenant within the last three (3) years; and (iv) the existing lot is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site designated as a City Historic Monument, historic property, or historic district pursuant to a City ordinance. Notwithstanding the above, any demolition that is subject to the demolition controls of AMC Section 13-21 shall require approval of a Certificate of Approval prior to issuance of a demolition permit.

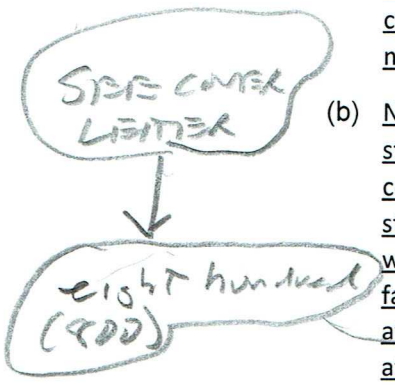
OR LISTED

(d) The existing lot has not been subject to the exercising of the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code ("Ellis Act") to withdraw accommodations from rent or lease within 15 years before the date of application for the land division.

the front-yard of the key lot, as defined in Section 30-2, "yard, front," and no structure, excluding barriers, may be permitted within five (5') feet of the rear property line on the corner lot.

10. ~~Off-Street Parking Space: As regulated in Section 30-7 of this Code.~~ Government Code Section 65852.21 and 66411.7 Exemptions.

(a) If a proposed housing development is being provided pursuant to Government Section 65852.21 or 66411.7 entirely within the footprint of an existing building or constructed in the same location and to the same dimensions as an existing building, no additional setback is required.



(b) No objective zoning standards, objective subdivision standards, or objective design standards, including but not limited to minimum lot width, maximum building coverage, minimum setback or other bulk and space requirement, shall apply if that standard would physically preclude a land division resulting in two lots consistent with the requirements of Subsection d.2, Lot Splits, or the development of a two-family dwelling, or two one-family dwellings on the same lot, each unit of which has at least eight hundred (800) square feet of floor area, or a one-family dwelling with at least ~~one thousand two hundred (1,200)~~ square feet of floor area, provided that such dwellings are set back at least four (4') feet from interior side and rear lot lines.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Planning Board recommends that the City Council amend Section 30-2 of the Alameda Municipal Code to include the following new definitions, amended definitions, and deleted definitions:

Efficiency Unit shall mean a dwelling unit for occupancy that has a minimum floor area of 150 square feet and a maximum floor area of 450 square feet and which may also have partial kitchen or bathroom facilities as regulated in Section 17958.1 of the California Health and Safety Code.

Residential care facility ~~shall mean a community care facility which provides care on a twenty-four (24) hour basis~~(per Health and Safety Code Section 1502(a)(1)) shall mean a facility licensed by the State of California that provides living accommodations and 24-hour care for persons requiring personal services, supervision, protection, or assistance with daily tasks. Amenities may include shared living quarters, with or without a private bathroom or kitchen facilities. This classification includes both for and not-for-profit institutions but excludes *Residential Care Facility, Small.*

Residential Care Facility, Small. A facility that is licensed by the State of California to provide care for six or fewer persons 18 years or older.

Residential Care Facility, Large. A facility that is licensed by the State of California to provide care for more than six persons 18 years or older.

Residential Care Facility, Senior (Assisted Living). A housing arrangement chosen voluntarily by the resident or by the resident's guardian, conservator or other responsible person; where residents are 60 years of age or older; and where varying levels of care and supervision are provided as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal. This

Nancy McPeak

From: Lara Weisiger
Sent: Monday, December 13, 2021 5:59 PM
To: Nancy McPeak; Erin Garcia; Celena Chen
Subject: FW: [EXTERNAL] Public comment Re 7-A 12/13/2021

Follow Up Flag: Follow up
Flag Status: Flagged

From: Zac Bowling [mailto:zac@zacbowling.com]
Sent: Monday, December 13, 2021 5:50 PM
To: City Clerk <CLERK@alamedaca.gov>; rcurtis@alameda.gov; Andrew Thomas <athomas@alamedaca.gov>; Xiomara Cisneros <xcisneros@alamedaca.gov>; Hanson Hom <hhom@alamedaca.gov>; Rona Rothenberg <RRothenberg@alamedaca.gov>; Teresa Ruiz <truiz@alamedaca.gov>; Asheshh Saheba <asaheba@alamedaca.gov>; Alan Teague <ateague@alamedaca.gov>; Manager Manager <MANAGER@alamedaca.gov>
Subject: [EXTERNAL] Public comment Re 7-A 12/13/2021

Dear President Saheba, Vice-President Ruiz and Board Members Cavanaugh, Hom, Rothenberg, Teague, and Curtis,

I'm in favor of the staff proposal as is without the changes suggested by AAPS, especially dropping down to 800 square feet.

If you want to consider any tweaks I would also consider dropping the 1200 sqft max requirement proposed by staff and letting form drive square footage instead of having an explicit cap to square footage. At the very minimum keeping it in line with ADUs will not put someone to consider an ADU over an SB9 unit and deprive someone of a potential homeownership opportunity down the road.

To the point raised by Mr. Forman, a city can not rezone under an urgency ordinance unless there is a current or immediate threat to public health, safety, or welfare. New SB 9 units being allowed in R-1 do not meet that criteria, especially since we allow similar ADUs units today. Urgency ordinances were not designed to give local governments a way to react to changes in state law to nullify the effect of the law but rather pending local changes. Mr. Forman's arguments calling for an emergency rezoning are therefore out of line with state law.

A few cities have made use of an urgency ordinance in relation to making reactionary changes to deal with SB 9. The AG office and HCD are currently scrutinizing this type of action to determine if it's legal and various housing organizations are currently considering legal options with the cities that have pulled this maniver.

In any event, it's unlikely anyone is going to be waiting to spring to file a SB 9 application on January 1st, especially one that doesn't fit the proposed changes, where this will have an impact.

Additionally I ask that you not follow the recommendation of AAPS to do this in two parts. Let's move forward with the R-1 changes we expect to make without changing zoning twice in the next year for R-1 and not simply tailor our zoning to fit only SB9. Instead let's be inclusive with the changes we expect are going to have to make for the housing element. Avoid going multiple rounds on this and creating more confusion and using extra staff time.

Thank you,

Zac Bowling