Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 831
Author: Grayson (D)
Amended: 8/27/20 in Senate
Vote: 27 - Urgency

SENATE HOUSING COMMITTEE: 10-0, 8/6/20
AYES: Wiener, Morrell, Caballero, Durazo, McGuire, Moorlach, Roth, Skinner, Umberg, Wieckowski
NO VOTE RECORDED: Bates

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 73-0, 5/28/19 - See last page for vote

SUBJECT: Planning and zoning: housing: development application modifications

SOURCE: Bay Area Council
San Francisco Bay Area Planning and Urban Research Association

DIGEST: This bill makes several changes to SB 35 (Wiener, Chapter 366, Statutes of 2017), which requires streamlining of certain housing developments in jurisdictions that have not met their housing obligations.

Senate Floor Amendments of 8/27/20 resolve chaptering conflicts with AB 168 (Aguiar-Curry).

ANALYSIS:

Existing law, under SB 35:

1) Allows a development proponent to submit an application for a development that is subject to the streamlined, ministerial approval process, and not subject to a conditional use permit if the infill development contains two or more residential units and satisfies specified objective planning standards.

2) Requires, among other things, for sites subject to ministerial approval to be limited to zones for residential use or residential mixed-use development, with at least two-thirds of the square footage of the development designated for residential use.

3) Specifies, if a local government determines that a development submitted pursuant to the bill's provisions is in conflict with any of the objective planning standards listed in 1) above, that it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

   a) Within 60 days of submittal of the development to the local government if the development contains 150 or fewer housing units; or,

   b) Within 90 days of submittal of the development to the local government if the development contains more than 150 housing units.

This bill:

1) Clarifies that a development subject to the streamlined, ministerial approval process, and the site on which it is located must be zoned for residential use or mixed-use development and at least 2/3 of the square footage of the development must be designated for residential use.

2) Provides that a development proponent may request a modification to a development that has been approved under the streamlined, ministerial approval if that request is submitted prior to the issuance of the final building permit required for construction. The local government shall approve a modification if it determines that the modification is consistent with the objective planning standards outlined in SB 35 and using the same assumptions and methodology that was originally used to assess consistency for the development.

3) Prohibits a guideline adopted or amended by the Department of Housing and Community Development (HCD) after a development was approved from being used as a basis to deny proposed modifications.

4) Provides that, upon receipt of an application requesting a modification, the local government shall determine if the modification is consistent with the objective planning standards and approve or deny the modification request within 60 days after submission of the request, or with 90 days if design review is required.

5) Provides that the local government may apply objective planning standards adopted after the development application was first submitted in any of the following instances:

   a) The development is revised such that the total number of residential units or total square footage of construction changes by 15% or more.

   b) The development is revised such that the total number of residential units or total square footage of construction changes by 5% or more and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted to mitigate or avoid a specific adverse impact upon the health or safety and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

   c) Objective standards contained in the California Building Standards Code, including, but not limited to building plumbing, electrical, fire, and grading codes may be applied to all modifications.

   d) The local government's review of a modification request shall be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the developments consistency with the objective planning standards and shall not consider prior determinations that are not affected by the modification.

6) Provides that if a public improvement is necessary to implement a development that is subject to streamlined, ministerial approval, including but not limited to, a bicycle lane, sidewalk or walkway, public transit stop, driveway, street paving or overlay, a curb or gutter, a modified intersection, a street sign or street light, landscape or hardscape, an above-ground or underground utility connection, a water line, fire hydrant, storm or sanitary sewer connection, retaining wall, and an related work, and that public improvement is located on land owned by the local government, to the extent that the public improvement requires approval from the local government, the local government shall not exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, chill, or preclude the development.

7) Requires the local government, if it receives an application for a public improvement, to do the following:

a) Consider an application for a public improvement based upon any objective planning standards in any other state or local laws that were in effect when the original development application was submitted;

b) Conduct its review and approval in the same manner as it would evaluate the public improvement if required by a project that is not eligible to receive ministerial or streamlined approval.

8) Prohibits a local government, if it receives an application for a public improvement, from doing the following:

a) Adopting or imposing any requirement the applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval.

b) Unreasonably delay in its consideration, review, or approval of the application.

Comments

1) *Housing needs and approvals generally*. Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. State law mandates seven elements: land use, circulation, housing, conservation, open-space, noise, and safety. Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the California Environmental Quality Act, while projects permitted ministerially generally are not.

2) *SB 35*. In 2017, SB 35 (Wiener) created a streamlined approval process for infill projects with two or more residential units in localities that have failed to produce sufficient housing to meet their regional housing needs allocation. The streamlined approval process requires some level of affordable housing to be included in the housing development. To receive the streamlined process for housing developments, the developer must demonstrate that the development meets a number of requirements including that the development is not on an environmentally sensitive site or would result in the demolition of housing that has been rented out in the last ten years. Localities must provide written documentation to the developer if there is a failure to meet the specifications for streamlined approval, within specified a period of time. If the locality does not meet those deadlines, the development shall be deemed to satisfy the requirements for streamlined approval and must be approved by right.

   Existing law requires HCD to determine when a locality is subject to the streamlining and ministerial approval process in SB 35 (Wiener) based on the number of units issued building permits as reported in the annual production report that local governments submit each year as part of housing elements. Streamlining can be turned on at the beginning of the term of housing element (generally eight years but in some cases five) and turned off halfway through if a local government is permitting enough units to meet a proportional share of the RNHA at all income levels (low-, moderate-, and above moderate-income). If a local government is not permitting enough units to meet its above moderate and its lower income regional housing needs assessment (RHNA), a development must dedicate 10% of the units to lower income in the development to receive streamlined, ministerial approval. If the jurisdiction is permitting its above moderate income and not the lower income RHNA, then developments must dedicate 50% of the units for lower income to have access to streamlining.

3) *Clarifying the 2/3 requirement.* SB 35 provides that 2/3 of a project must be residential (*i.e.* authorizes certain mixed-use projects) to qualify for streamlined approval. In its guidelines, HCD interprets the language this way. Recently in an SB 35 lawsuit, a superior court judge interpreted SB 35 streamlining to apply only to mixed-use projects in the narrow circumstance where the site's zoning calls for at least 2/3 residential. According to the sponsors, there is likely not a zoning district in the state that would meet this requirement. This bill clarifies the author's intent that the 2/3 residential requirement apply to the proposed project itself, not the zoning.

4) *Modifying existing SB 35 applications.* According to the sponsors, as housing projects evolve, developers sometimes need to make modifications to projects. This is because residential projects by their nature are complex and, for example, can involve building out lobbies, corridors, back of house spaces, storage, parking, amenity facilities, and outdoor areas, in addition to the units themselves. Many of these cannot be figured out until the completion of the design for the project for the building permit and final applications. Additionally, the time between the initial application and the first building permit can take one to two years, sometimes longer, during which time market conditions, which drive project decisions can change.

   For example, some potential changes may include: the cost of materials which may lead to a change in construction type or architecture; building codes; housing financing and securing of public subsidies; and the imposition of impact fees, which may impact the overall project.

   Some jurisdictions use this opportunity to change the planning standards that are applied to a project as a means to invalidate a project. This bill provides that an SB 35 project may make modifications to the project prior to the issuance of the final building permit required for construction so long as the project continues to meet specified objective standards that were in place when the original application was submitted to the local jurisdiction. The local government may apply objective standards adopted after the initial application was submitted only when the modification to the project results in the total number of residential units or square footage changes by 15% or more, when the total number of residential units or square footage changes by 5% or more and is necessary to subject the development to a development standard in order to avoid a specific adverse impact to health and safety and there is no other alternative to mitigate the impact, or meeting objective standards in Building Standards Code. These exceptions are intended to impose guardrails so that a

developer does not make substantial changes resulting in essentially new project and claim the rights to use existing standards.

5) *Approval of off-site improvements.* According to the sponsors, the SB 35 process is not clear as to how off-site public improvements necessary for a housing project are to be approved. Housing projects must connect with existing infrastructure, such as roads, sidewalks, and public utilities, which is often in the public right of way. In order to connect in the public right of way, a developer must seek approvals do to so and some jurisdictions have used the improvements approval proves as a means to stall or frustrate SB 35 projects. Given that these approvals are necessary for a housing development project, this bill attempts to clarify that local governments must approve these improvements by issuing approvals without delay and in a manner that does not inhibit, chill, or preclude the project.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/28/20)

Bay Area Council (co-source)
San Francisco Bay Area Planning and Urban Research Association (co-source)
All Home
American Planning Association, California Chapter
Bay Area Housing Action Coalition
California Apartment Association
California Association of Realtors
California Community Builders
California YIMBY
Council of Infill Builders
Sand Hill Property Company
Silicon Valley at Home
The Two Hundred
Up for Growth

OPPOSITION: (Verified 8/28/20)

City of Rancho Palos Verdes

ARGUMENTS IN SUPPORT: According to the author, "California is in the midst of an historic housing crisis. We need to make sure our state laws work to enable housing to be built where it is most needed. The state has already done a lot of work to create new housing, but we still need to do more. AB 831 makes

technical clarifications to SB 35 (Wiener, 2017), the law related to housing projects that may be approved under a streamlined and ministerial process. Housing projects often require modifications to the initial project design and additional permits to connect the project to existing public infrastructure. This bill clarifies an allowable level of changes to be made to the initial design of a project before a new application is required and makes clear that off-site improvement permit requests cannot be used to block a project, though the permits could still be denied for cause. Finally, AB 831 clarifies that the 2/3 residential requirement in SB 35 applies only to a project, and not the project's site or its zoning. AB 831 will ensure that an important state law works as it was intended."

ARGUMENTS IN OPPOSITION: The City of Rancho Palos Verdes opposes this bill because they oppose legislation that pre-empts local discretionary land use authority and compromises project level environmental review and public input.

ASSEMBLY FLOOR: 73-0, 5/28/19
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooper, Cunningham, Dahle, Daly, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Kiley, Lackey, Levine, Limón, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Voepel, Waldron, Weber, Wicks, Wood, Rendon
NO VOTE RECORDED: Cooley, Diep, Eggman, Eduardo Garcia, Gray, Low, Ting

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8/28/20 13:18:46

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